

What is Adultery?

Dictionary meaning of Adultery is a voluntary sexual intercourse between a married person and a person who is not the current partner or spouse of such married person.

As per Indian law Section 497 of IPC defines Adultery as, “ *Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.*”

Meaning a man having sexual intercourse with a woman whom he believes or knows to be the wife of another man, without the consent of the husband and if such intercourse does not amount to rape is said to be practicing Adultery. Which is punishable under sec. 497 of IPC with an imprisonment extending up to 5 years or fine or both. And a woman cannot be punished as an abettor.

Historical Background.

Indian Penal Code was enacted in the year 1860 under the British Raj, during that era women in India were considered as a property of men and sec. 497 of IPC is the clear mirroring of this.

The constitutionality of this section was questioned many a times in the court of law and it was also discussed but the Supreme Court held it valid. But in 27th September 2018 the 158 years old Victorian morality law was struck down by a landmark judgment passed by the Supreme Court in the case Joseph Shine V. Union Of India.

JOSEPH SHINE V. UNION OF INDIA

A writ petition was filed by Joseph Shine a non-resident of Kerala under Article 32, challenging the constitutionality of sec. 497 of IPC read with sec. 198 of Cr.P.C, being violative of Article 14, Article 15 and Article 21. It was claimed by the petitioner that the provision for adultery was discriminatory and arbitrary on the bases of gender. The

petitioner also claimed that such a law tears down the dignity of a women.

The petitioner contented that the provision considered the consent of the wife to be immaterial. The said provision was also found to be discriminative and arbitrary on the bases of gender as it treaded the husband alone as an aggrieved person and gave him the right to persecute whereas no such right was given to the wife. It did not consider the wife as an offender and only punished the third party. Such classification did not have any relevance in present day where women are considered equal to men in every aspect of life and are said to have their own independence. Hence it was violative of Article 14.

The provision was formed on the stereotypical perception that a woman is the property of the husband and if the husband gave the consent or connive to carry out the sexual intercourse then the act of adultery was not committed. It considered women passive and incapable of having sexual freedom. It was articulated that sec. 497 was beneficial for women, which is saved by Article 15(3). Article 15(3) was installed to pull women out of suppression and safeguard them from patriarchy, it was inserted mainly to bring them equal to men. But sec.497 was not a protective discrimination instead it promoted paternalism and patriarchy, which in turn violates Article 15. Such a provision was also claimed to be unconstitutional as it diminished the dignity of a women by not respecting her sexual freedom and self-determination. A woman is said to have equal privacy as a man but this provision clearly infringed her right to privacy. Hence it was also considered to be violative of Article 21.

Keeping in mind the above grounds a judgment was passed which struck down the 158 years old law on adultery. A question aroused whether adultery to be dealt as crime or not, the court was of the opinion that if adultery is treated as a crime, there would be massive intrusion by law in the private realm of an individual. Hence it was decided it is better to leave adultery as a ground for divorce and not crime.

CONCLUSION

This decision of the Supreme Court has been extensively criticized as it paved the way for people to commit adultery without any fear which

ultimately lead to increase in adultery. But a law so discriminative and arbitrary such as this needed to be struck down, as it encouraged patriarchy and paternalism. Although adultery has been decriminalized it is still looked upon as an unethical practice therefore this decision by the court to decriminalize adultery will need time to be fully accepted in its true spirit by the Indian society.