



## Breaking the Law or Breaking Vows? The Legal Implications of Adultery

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### ABSTRACT :

Does adultery hold weight in court? Is adultery an out-dated offence or relevant legal issue in today's world? Is it appropriate for a married woman to involve in sexual intercourse outside her marriage? The article addresses whether criminal laws supersede the sanctity of personal laws. The beginning of the article digs into the past to trace historical emergence of adultery law in India, locating their roots in colonial and traditional foundations. It covers the aspect of adultery under The Indian Penal Code, 1860 as well as provides a comparative analysis with de-criminalisation of adultery under The Bharatiya Nyaya Sanhita, 2023. The article analyses the inadequacies of Section 497 of the IPC by underlining its gender biasness and the influence on privacy and personal freedom. This leads to an intensive debate over the landmark decriminalization of adultery by the Supreme Court of India. It evaluates how the criminalization of adultery sparked a debate all over the nation, presenting arguments from various disputants. Further, it explores the concept of marital infidelity as mentioned in various Indian civil and religious laws as well as comparing them with the international landscape of adultery laws at the same time. The article covers the perception of how different societies tend to handle marital infidelity in India by a thorough assessment of diverse legal and cultural responses. It aims to contribute to an in-depth understanding of the evolving nature of adultery laws and their impact on personal and societal values with a change in time. The article examines the fine line between infidelity and illegality.

**KEYWORDS:** Adultery, marital infidelity, de-criminalisation, sanctity, gender-biasness

### INTRODUCTION :

Adultery is an act of cohabitating with a married woman, committed by a man without the existence of an institution called marriage in between them. The Indian Penal Code, 1860 of the British Era defined adultery as an offence under Section 497<sup>1</sup> stated 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*". Adultery is an offence that violates the sacredness of a marriage. It is also considered a sufficient ground for divorce under the family law.

After the enforcement of the Indian Penal Code, 1860<sup>2</sup> and before 2018, an adulterous act made a person liable criminally under the provided act. In recent times i.e. 2018; the judiciary has interpreted various aspects of the law of Adultery and even reached a conclusive point in de-criminalising adultery because of its unconstitutional nature. As a result of which the Hon'ble Supreme Court declared that law against adultery is opposed to the constitution under right to privacy, right to live with dignity and to make her own choice (Article 21<sup>3</sup> of the Constitution of India, 1950) and thus, S. 497<sup>4</sup> of the Indian Penal Code, 1860 was struck off. In adherence to the Hon'ble Supreme Court's decision wherein the act of adultery was de-criminalised, the emergence of the new criminal laws (wherein the Indian Penal Code<sup>5</sup>, 1860 is replaced by the Bharatiya Nyaya Sanhita<sup>6</sup>, 2023), removed the provision of adultery in totality.

However, not considering adultery as an offence raises question upon maintaining the sanctity of marriage under specific religious laws. The institution of marriage is considered pious and thus, its preservation is extremely essential which necessitates criminalizing adultery. Also, according to the S. 497<sup>7</sup>, a woman, even if she had provided assistance in the commission of an adulterous act, won't be punished under law irrespective of the fact that there was involvement of consent from both the parties for the commission of an adulterous act. This invokes the gender biasness of the law violating

<sup>1</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>2</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1949 (India)

<sup>3</sup> Constitution of India, 1950, Art 21, Acts of Parliament, 1949 (India)

<sup>4</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>5</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1949 (India)

<sup>6</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 1949 (India)

<sup>7</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

the right to equality (Article 14<sup>8</sup> and Article 15<sup>9</sup> the Constitution of India, 1950). Apart from being discriminatory towards a specific gender, adultery also is silent about whether a woman has a right to initiate criminal remedy against her adulterous husband. The modern times call for a more gender-neutral approach in the law and its enactment is fundamental in order to safeguard the spirituality a marriage upholds.

The Parliamentary Standing Committee on Home Affairs proposed to include and criminalise Adultery under Bharatiya Nyaya Sanhita, 2023<sup>10</sup> with essential amendments to be made in order to align it with the principles enshrined in the constitution. This law becomes extremely crucial in governing the conservation of the essence of marriage constituted under the Hindu Marriage Act, 1955<sup>11</sup> which prohibits polygamy on the same grounds of maintaining purification of a marriage.

Thus, the law of adultery in itself is controversial; at one hand, where it punishes a man who engages in an adulterous act with a married woman, whereas it exempts the married women from any punishment for its commission irrespective of the fact that they provided their consent. Also, it mentions no criminal remedy that a married woman can seek against her husband who is involved in such act with another woman. Is the law women oriented? Is it just and fair to eliminate the law under new criminal laws irrespective of the prevailing religious marriage acts in India? The article will unveil the legal implications of the law in the past and the present along with analysing the disputable nature seeking a want for amendment.

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## **HISTORICAL ORIGINS OF ADULTERY LAWS IN INDIA :**

The history of the adultery law in India dates back to the British colonial Era when the task to codify criminal laws in India was given to the law commission. Various drafts were proposed to formulate these under a group of impressive leaders who adopted laws that suited the Indian conditions while taking reference from the existing religious codes followed under the reign of rulers. One such draft proposed by the second law commission recommended the law of adultery.

### ***The Exclusion of Adultery from the Indian Penal Code: Lord Macaulay's Perspective in 1837***

In the year 1837, the first law commission was given the job of amalgamating various rules and regulations for specific enforcement into codified laws as well as to understand the suitability and applicability of these laws in India. In order to achieve the same the law commission proposed their first draft in the year 1837 under the chairmanship of Lord Macaulay. The draft of Penal Code was finally submitted by law commission to the government in 1837, which had mainly been prepared by Lord Macaulay (also known as the Macaulay code). The law of adultery was not incorporated in the first draft of the Indian Penal Code. The principle reason behind not encompassing the concept of adultery and marital infidelity in the draft code was because it was believed that the law would better be taken into consideration by the community itself. The first law commission was of the opinion that such acts must not be tagged as criminal offences rather are dealt individually as a sin.

### ***The Second Law Commission's Decision on Adultery: Balancing Legal Reform and Precedents***

The second law commission was appointed in 1853 under the chairmanship of Sir John Romilly to identify the shortcomings of the first law commission. The second law commission submitted four draft reports and perceiving the grave situation of women in India and arrived at a common accord- to not omit this criminal wrong from the code. As a conclusion of which, adultery was incorporated in the draft code as an effort to shield married women from injustice. The aim of the second law commission was to safeguard women who were victims of cruelty by their husbands. It was also an attempt to maintain the sanctity of the marriage as an institution. Women at that time in history had no autonomy and were considered the "property" of their husbands.

The codification of the Indian Penal Code in 1860<sup>12</sup> as a pre-constitutional statute, included the law of adultery in Section 497<sup>13</sup>, which clearly states who shall be punished and what shall be the punishment for the commission of an adulterous act. The adultery was deemed a violation of contract since it was described as an abuse of the spouse's assets, giving the spouse the ability to file a lawsuit against the adulterer. However, there have been relevant developments in the thinking and mind-set of people from 1860s till 21<sup>st</sup> century that has resulted in challenging the validity of the law. Changing scenarios have led to significant judicial interpretations as well as legislative reforms so that it fits rightly in today's world.

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## **BREAKING DOWN SECTION 497: THE LEGAL FRAMEWORK OF ADULTERY :**

The section 497 is the provision under Indian Penal Code, 1860 which deals with the concept of adultery. As stated in [I], adultery is an intentional act of sexual intercourse between a man and a married woman without the consent of the woman's husband and with the consent of the woman such that it does not amount to the offence of rape. The man is guilty of the offence of adultery and is punished with an imprisonment stretching up to 5 years, or with fine, or both according to the circumstances of the case. However, the law exempts married women from any criminal liability under adultery.

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<sup>8</sup> Indian Constitution, 1950, art. 14, Acts of Parliament, 1949 (India)

<sup>9</sup> Indian Constitution, 1950, art. 14, Acts of Parliament, 1949 (India)

<sup>10</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 1949 (India)

<sup>11</sup> Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1949 (India)

<sup>12</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1949 (India)

<sup>13</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

### ***What constitutes adultery? A closer look at the definition and context.***

Section 497 of the Indian Penal Code<sup>14</sup>, 1860 states 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, ...”. In simple terms, Adultery is an act of engaging in a physical relationship with a person (outside the wedlock) in the due course of being in an institution called marriage with another person i.e. it is an extramarital intercourse. Provided that the act occurred with due consent of the two people involved and without the consent of the husband of the woman involved in adultery. Also, the act must not amount to the offence of rape. In layman language, if a man (either married or unmarried) knowingly or voluntarily engages in a physical relationship with a married woman with her consent and without the knowledge of her husband such that it does not constitute the offence of rape, the man is said to commit the offence of Adultery.

### ***Determining responsibility for Adultery: Who can be held accountable?***

Section 497 of the Indian Penal Code, 1860<sup>15</sup> states 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...” The offence is said to be committed voluntarily by a man who knows or has sufficient cause to believe that the woman is the wife of another. The man may be married or unmarried. However, the woman is married. In order to hold a person responsible under adultery is must be well-proved that the person was familiar of the fact that the woman is married to another person or he has sufficient grounds to consider that she is somebody else’s wife. Also, the husband of the woman was not aware of the commission of such act is a prerequisite to commit an act of adultery.

### ***Legal Repercussions for Adultery: Maximum Sentences and Fines.***

Section 497 of the Indian Penal Code, 1860<sup>16</sup> states as, “...shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both...” Any person who is held guilty for the act of Adultery shall be either penalised or imprisoned for a term that can extend up to 5 years depending on the nature and circumstances of the case. The duration of maximum sentence is 5 years in case of adultery. On the discretion of court, in certain cases, may convict the guilty by imposing both monetary fine as well as an imprisonment term to uphold the principles of justice.

### ***Navigating Adultery Exceptions: Status of the wife, Consent of the Husband and Rape***

Section 497 of the Indian Penal Code, 1860<sup>17</sup> states as, “...without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape...” The act if committed with the consent or assistance or knowledge of the husband of the married woman will not constitute an offence under the law. Also, in case the act was forceful or without the consent of the woman it would fall under the purview of rape rather than adultery. “...In such case the wife shall not be punishable as an abettor”. Under the specific provision, the married woman, who provided her consent or assistance for engaging in sexual intercourse with a man (other than her husband) shall not be punished for the act of adultery as per the law. Though, it may be taken as a specific ground for initiating divorce under the Hindu Marriage Act, 1955.

### ***The Anatomy of Adultery: Key Criteria***

For any act to constitute a crime 2 essential criteria are Actus-Reus and Mens-Rea. For adultery to be considered an offence, firstly, there must be a commission of adultery i.e. sexual intercourse or a physical relationship must have existed between a man and a married woman. Under the section 497 the Indian Penal Code, 1860<sup>18</sup>, the words, “Whoever has sexual intercourse...” indicates Actus-Reus (guilty-act).

Mens-Rea or guilty mind is proven by the fact that the person committing an act of adultery commits it voluntarily and with the due knowledge that the woman is already married to someone or has substantial grounds which prove that the woman is married. Under the section 497 the Indian Penal Code, 1860<sup>19</sup>, the words, “...with a person who is and whom he knows or has reason to believe to be the wife of another man...” indicates knowledge of the person committing such act. Since the act must not amount to rape i.e. consent of the married woman involved is a necessary criterion in performing adultery, it is suggestive of the fact that the act was performed voluntarily and intentionally from the side of both the parties. Additionally, adultery is executed without the knowledge or connivance of the woman’s husband which reflects the deliberate conduction. As stated under, Section 497 the Indian Penal Code, 1860<sup>20</sup>, “...without the consent or connivance of that man...” proves Mens-Rea.

<sup>14</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>15</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>16</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>17</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>18</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>19</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

<sup>20</sup> Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1949 (India)

## ADDRESSING THE INADEQUACIES IN SECTION 497 IPC: A CRITICAL REVIEW :

The idea behind criminalising adultery was to secure women in marriages and to lower down the rate of extra-marital relationships. However, it expresses a conservative approach where at the time of its implementation, women were considered a “property or an asset” of their husband and practically had no social identity of their own. As a result of which the provision neither provides an opportunity for women to seek remedy in form of punishment against their husband (engaged in an adulterous act) nor does it penalises the woman with whom the husband was involved in commission.

### *Constitutional Validity and Gender Bias*

The provision for adultery includes certain terms such as, “*wife of another man*” and “*the wife shall not be punishable as an abettor.*” which reflects that the law specifically focuses that the guilty person is- a man (males). Additionally, it exempts women from any criminal liability under this provision that expresses a concern of gender discrimination. In the 21<sup>st</sup> century where we talk about equality of opportunity and prohibition of discrimination on the grounds of gender, absolving women from any criminal liability irrespective of the fact that they provided their consent for the commission of an adulterous act is unjust and challenges the constitutional validity of law as well as demands an alteration in the provision to accommodate criminal liability for women involved as well. The provision is also silent about whether a wife whose husband has committed adultery can bring into action the required criminal remedy against her husband or not?

#### **A. The 1951 Challenge to Adultery Law: A Landmark Case and Its Ironies**

In the case of *Yusuf Aziz v. State of Bombay*<sup>21</sup>, the adultery law questioned to be violative of the fundamental rights enshrined in the constitution of India. The petitioners were of the view that the provision of Adultery is partial towards women and highly discriminatory against the men as it does not punish the women involved in such an extra-marital physical relationship and thus, violates article 14 (right to equality) and article 15 (prohibition of discrimination on grounds of gender, caste, religion etc.) of the constitution of India. According to Article 15(3) of the Indian Constitution, the court determined that Section 497 of the IPC is constitutionally legitimate. According to the court, the introduction of the adultery statute was justified by the fact that, in the majority of cases, women are the victims and, therefore, cannot be the offenders. What must be questioned is that, at one end the judiciary considers women as the victim of adultery but at the same time it does not provide them a right to seek criminal remedy against their husbands who have committed adultery.

### *The Discriminatory Edge of Adultery Law: Women's Limited Legal Remedies Against Husbands*

Is it true that only husbands can file a lawsuit against another male for infidelity? If either a woman or a man has an extramarital affair, aren't women just as much affected as men? Why women are denied the legal right to file a criminal complaint against their husbands for having an illicit relationship with another married woman? Under the Section 497 of the Indian Penal Code, husbands are exempted from any liability towards their wife if engaged in an adulterous relationship. The provision nowhere mentions suitable measures to rectify husband's fault. This not only is discriminatory towards wives but also allows husbands to cheat over their wife. An absence of express mentioning as to what remedy may be fetched under the law against husband is a major gap in the provision. This limits the rights of women and thus restricts its enforcement in today's world.

#### **B. Smt. Sowmithri Vishnu v. Union of India: Adultery Law in the Spotlight**

That case of *Smt. Sowmithri Vishnu v. Union of India*<sup>22</sup> brought a major loop hole of the law at front foot. It questioned the provision of adultery parallel with the constitution. The petitioner's husband committed adultery in the due course of their divorce suit. Wherein it was argued by the petitioner about a morally indefensible distinction between women and men which allows husband's to seek legal action against the person with whom his wife has entered into a physical relationship but does not state anything about the legal rights of a wife whose husband has committed the same. Such a demarcation is unjustified. Also, the provision provides certain rights to husbands which a wife cannot exercise which again invokes the right to equality. No criminal liability for men towards their wives permits them to enter into a physical relationship with any unmarried or married woman outside their marriage. Due to the wife's right to reputation and the failure of the provision to recognize her as an essential party in the case, the wife's ability to present her case and, her right to be heard, was also questioned on the basis of Article 21, or the right to life. Considering that challenging and altering the adultery rules would violate the institution of marriage's sacredness, the Court denied this motion.

### *Marital Reconciliation or Legal Prejudice? Justice, Social Good, and Constitutional Rights*

Does non-prosecution of women constitute a preservation of sanctity of marriage? If so, does it preserve fundamental rights? The answer is no. In a world where men and women are equal in all aspects considering only men for prosecution is not justified. Social good is in preserving our constitutional rights.

#### **C. Legal and Social Dimensions of Adultery: Insights from *V Revathy v. Union of India***<sup>23</sup>

<sup>21</sup> Yusuf Aziz v. State of Bombay, 1954 AIR 321

<sup>22</sup> Smt. Sowmithri Vishnu v. Union of India 1985 AIR 1618

<sup>23</sup> V Revathy v. Union of India, 1988 AIR 835

The court in this case, determined that the sole basis for not prosecuting women in matters of adultery was to maintain the integrity of marriage, which the court ruled out to be a social good. It was "*a shield rather than a sword*". As a result, the court determined that adultery statute does not violate anyone's constitutional rights, and thus, it is entirely lawful.

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### **A NEW DAWN FOR PRIVACY AND GENDER JUSTICE: ADULTERY DECRIMINALIZED :**

The year 2018 marked the call of justice. The duration from 1860 to 2018 saw several changes in how women were treated. In the 19th century where women were considered a "property or asset" of their husbands, the 21st century saw an awakening and now women had an "identity" of their own. They were no longer slaves of their husbands and could not be judged on the grounds of morality. If it was right to life and liberty for men it was equally for women. Though it was an on-going fight that lasted for more than 150 years, it would be untrue to say that the decriminalisation of adultery was sufficient. Since its decriminalisation contradicts various religious laws, it calls for amendment and not absolute striking off the law.

#### ***The End of an Era: Analysis of the Joseph Shine Decision***

In the case of *Joseph Shine v. Union of India*, 2018 24, Section 497 was taken into consideration on the grounds that it violated the constitutional rights. It was argued by the petitioners that criminal remedy must lie last as a way to maintain social order. Criminal liability must not be used to check what is moral and what is immoral with respect to a private person. The respondent, the Union, was of the point of view that the law on adultery was a necessity of time, as a measure to ensure the preservation of marriage as an institution. It was of utmost importance in order to maintain the pureness of marriage. Also, it is an intentional act whereby the person engaged is well aware of the consequences which forms a sufficient ground (*mens-rea*) for punishment.

The then Chief Justice of India, Deepak Misra, in the Hon'ble Supreme Court, pronounced the judgement in favour of the petitioners. As a result of which section 497 was struck off from the Indian Penal Code, 1860 declaring it to be unconstitutional. The court determined that the clause breached Article 14 (equality before the law) and 15 (prohibition of discrimination on grounds of sex) of the Indian Constitution because it was based on gender stereotypes. The Criminal Procedure Code's Section 198(2), which permitted a husband to file charges against the man his wife had an adulterous relationship with, was also overturned by the court. The Court further reached the conclusion that in case spouse committed suicide during the course of the affair then adultery is to be considered a criminal offence. Under Section 306 of the IPC, the other spouse would be held accountable for abatement to suicide in such a circumstance. Additionally, it was considered that criminalising adultery resulted in a violation of Article 21 of the Constitution of India since it deprived women of their Right to Privacy thus necessitates its elimination.

It was also very-well observed by Hon'ble Deepak Misra that any provision under the law which results in wife being the slave of the husband, or a asserting a master-slave like relationship between the two, is hereby considered to be unconstitutional. Also, due to the presence of consent from both the parties, an act of adultery does not qualify to be classified as an offence. Sharing the bench with Hon'ble CJI Deepak Misra, Hon'ble Justice Indu Malhotra, observed that Section 497 "institutionalises discrimination" and therefore, such a provision needs to be struck down. This judgement marked an initiation of end of "patriarchal control" and was appreciated throughout. It provided freedom to women and even prevented them from being subjected to inequality.

The Joseph Shine judgement however is not applicable to military personnel. Unless challenged by an army commander, the Army Act, 1950 will stay in effect, allowing the court to determine whether adultery is penalized as a crime. As of right now, an adulterer can be dealt with by the army.

#### ***Breaking Legal Chains: The End of Adultery Provisions in the IPC***

With the introduction of the new criminal laws in the year 2023, the Indian Penal Code saw an evolution that resulted in the law on adultery being completely eliminated from the newly made statutory law named "Bharatiya Nyaya Sanhita, 2023". Earlier being shadowed under the Supreme Court ruling, the commencement of the new criminal laws impacted the law on adultery. Section 497 of the Indian Penal Code was no more a part of the Bharatiya Nyaya Sanhita, 2023.

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### **WEIGHING THE DEBATE: EXPLORING BOTH SIDES OF CRIMINALIZATION :**

The end of adultery as an offence was criticised by many parliamentarians. As a result of which, the parliamentary committee on home affairs came up with a proposition to introduce adultery in Bharatiya Nyaya Sanhita, 2023 with required amendments. The necessary modifications included making the law gender-neutral as well as allowing both men and women to seek criminal remedy against the guilty. However, there has been a considerate debate over the implications of both criminalising and decriminalising adultery.

#### ***Guarding Traditional Values: The Need for Adultery Laws***

As per various religious laws it is considered that criminalising adultery would be helpful in protecting marriage as an institution. The law on adultery acts as a check over the sanctity and traditional values that a marriage constitutes. It acts as a shield for maintaining the integrity of marriage. It

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<sup>24</sup> *Joseph Shine v. Union of India*, 2019 (3) SCC 39

becomes of utmost importance in imparting a deterrent effect in the society by punishing people engaged in relationships outside their marriage, thereby, prevents individuals from such activity, preserving the traditional values in a marriage. Considering adultery a crime is a way to legally handle marital infidelity and gives the betrayed spouse recourse for an action that they believe to be a betrayal of trust and a disrespect of sanctity of a marriage. According to some proponents, adultery is immoral and ought to be criminalized, in accordance with accepted social order and moral principles.

### ***Balancing Dignity and Justice: Why Adultery Should Not Be a Crime?***

In the Supreme Court ruling of 2018, the Hon'ble Court observed that in case adultery is considered as an offence it would violate the article 21 of the Constitution of India which guarantees Right to Privacy as well as Right to Dignity as a fundamental right in accordance to which a woman must have Right to Privacy with respect to sexual relationships and it must not be an autonomy for the husband within a marital relationship. Moreover, it is her Right to Live with Dignity irrespective of any involvement outside marriage. It is contended that, adultery can be taken as a ground for divorce but there must not be any criminal liability pertaining to it. Additionally it is argued that since marriage is a contract plus sacrament, any involvement in a relation outside marriage would amount to breach of contract of marriage as a result of which, it invokes civil liability under breach of trust. Thus, adultery must not be viewed as a criminal offence. Therefore, commission of an act of adultery would commence civil liability for compensation, maintenance and divorce but not any punishment with regard to imprisonment and fine.

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## **NAVIGATING ADULTERY: HOW INDIAN CIVIL AND RELIGIOUS LAWS ADDRESS MARITAL INFIDELITY?**

Adultery has been taken into consideration under various civil and religious laws like the Hindu Marriage Act, 1955, the Marriage Laws (Amendment) Act (1976), the Dissolution of Muslim Marriage Act, 1939, the Indian Divorce Act, 1869, the Special Marriage Act, 1954 etc.

### ***Navigating Adultery in Civil Law: Divorce Grounds and Financial Repercussions***

Under the aspect of civil law, a husband can file for dissolution of marriage through divorce on the mere ground that the woman constituted an act of adultery. If adultery is taken as a ground for dissolution of marriage it could impact the woman getting lesser or even no maintenance from the husband in case she's the one involved in the commission of adultery.

### ***The Journey of Adultery in Hindu Marriage Law: Pre and Post-1976 Amendments***

Adultery is grounds for divorce under the Hindu Marriage Act, 1955, Section 13(1). This Section defines adultery as willingly engaging in sexual activity outside of marriage. Before the Marriage Laws (Amendment) Act of 1976, adultery was not a basis for divorce; instead, it was a separate cause of action from judicial separation. According to Section 10 of the Hindu Marriage Act of 1955, adultery was a reason for judicial separation prior to the amendment.

### ***The Role of "Lian" in Muslim Law: Addressing Adultery Allegations and Cruelty***

The aspect of Lian under the Muslim law deals with adultery indirectly. It specifies that in case a wife commits an act of adultery without the consent of her husband, the husband can opt for withdrawing the allegations under the Dissolution of Muslim Marriage Act, 1939, thereby considering the woman innocent. However, if it is proved before the Hon'ble Court that the husband is accused of presenting false accusations against the woman then the woman is entitled to get a decree of lian. According to this decree of lian the wife has the right to sue her husband and also ask for a decree of divorce on these grounds. The term "adultery" has not been directly used but under Section 2(viii) (b) of the Dissolution of Muslim Marriage Act, 1939, the woman has a right to seek criminal remedy against her husband who is guilty of engaging in a relationship outside marriage with any woman who is considered ill-famed.

### ***The Legal Treatment of Adultery in Christian Marriages: Historical and Contemporary Perspectives***

With respect to Christian laws, the husband whose wife has committed an act of adultery can file for divorce Section 22 of the Indian Divorce Act, 1869. Also, once the church where the marriage was performed has annulled the marriage, the wife can apply to the courts to have the adulterer named as a co-respondent in the case under section 11 of the Indian Divorce Act, 1869. The wife must, however, prove a ground other than adultery, such as cruelty, while a husband only needs to prove his wife's adultery.

According to section 27 of the Special Marriage Act, 1954, adultery is a sufficient ground for judicial separation. However, section 125 (4) of the Criminal Procedure Code, 1973, states that if a wife was involved in an adulterous relationship then she would not be entitled to receive any maintenance from her husband. Thus, adultery has serious financial repercussions.

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## **THE INTERNATIONAL LANDSCAPE OF ADULTERY: DIVERSE LEGAL AND CULTURAL RESPONSES :**

All across the globe, in the past there have been anti-adultery laws which prohibited adultery, however, the changing times, changing mind sets and concept of liberation has marked an end to such anti-adultery laws as a result of which adultery is decriminalised in various countries on the basis that

either these laws were gender-specific or it was an interference in inter-personal relationships of individuals. It is observed that adultery is retained for the purpose of divorce laws in various nations in general; however, it will be true to say that very few of the countries treat adultery as a criminal offence. Mostly, the countries that strictly adhere to the Islamic religion are the ones which have criminalised adultery. Western countries considering the controversial nature of the law have repealed them from their statutes.

#### ***China's Evolving Stance on Adultery: From Gender-Based Prosecution to Decriminalization***

Till the year 1935, China prosecuted individuals who committed adultery on the basis of their gender. Moreover, the criteria of punishment also varied on the grounds of gender of the spouse. However, since the year 1935 the People's Republic of China, decriminalised adultery and retained it for the aspect of divorce matters only. Similar to India, China also punishes individuals who commit adultery with the spouse of a service member in the People's Liberation Army.

#### ***Pakistan's Hudood Ordinance: Adultery, Legal Penalties, and the Burden of Proof***

The Hudood Ordinance (penal laws of Islam) enacted by the sixth president of Pakistan in the year 1979, indicates that adultery is illegal in Pakistan. The highest penalty that has been stipulated under the Ordinance is death. Because of the reason that Ordinance requires a woman alleging rape to present very strong proof in order to avoid being prosecuted with adultery herself, it has been especially contentious. It is important to ponder that a testimony from four witnesses or more is necessary for a rape conviction. Some other Muslim nations, like Saudi Arabia and Brunei, have legislation quite similar to this one. The Ordinance has received greater attention recently than the laws of a comparable nature in other nations due to high-profile rape cases in Pakistan.

#### ***From Conjugal Relations to Adultery: Exploring Gender-Specific Laws in the Philippines***

In the Philippines, adultery is considered illegal. The law in the Philippines makes a distinction in punishments based on the spouse's gender. A husband can only be charged with a more lenient crime of conjugal relations, which may include keeping the mistress in the family home, cohabiting with her, or engaging in scandalous sexual encounters, but a wife can be charged with adultery. However, it is important to note that the punishment with respect to adultery committed by husbands is loosely defined. In Philippines, there are debates to legalise adultery.

#### ***South Korea's Adultery Law Repeal: A Shift from Criminalization to Privacy***

The rule prohibiting adultery in South Korea was repealed by the country's Constitutional Court in 2015. In order to protect women from judicial separations, adultery was previously made a crime in 1953 and carried a two-year prison sentence. The court determined that adultery is a private problem in which the state should not become involved, leading to the overturning of the legislation by the Hon'ble Court.

#### ***From Abolition to Exceptions: The Status of Adultery Laws Across American States***

The United States is one of the few industrialized countries with laws criminalizing adultery, with laws varying from state to state. Until the mid-20th century, most states had laws against fornication, adultery, or cohabitation. These laws have gradually been abolished or struck down by courts as unconstitutional. As of December 1, 2023, adultery is a criminal offense in 17 states and the Commonwealth of Puerto Rico, but prosecutions are rare. Pennsylvania abolished its fornication and adultery laws in 1973. States that have decriminalized adultery include West Virginia (2010), Colorado (2013), New Hampshire (2014), Massachusetts (2018), Utah (2019), Idaho (2022), and Minnesota (2023). The District of Columbia repealed its adultery law in 2003. The last conviction for adultery in Massachusetts was in 1983, and the statute was deemed constitutional. Adultery laws are mostly found in conservative states, but some notable exceptions, such as New York. Twenty states in the US still view adultery as a criminal offense. The prosecution of adultery as a crime occurs infrequently. Terminations, penalties, demotions, and fines are more frequent consequences of adultery than criminal charges.

#### ***Adultery and Divorce in the UK: The Transition from Blame to No-Fault Divorce***

In the UK, adultery is not a criminal act. This means that it is not punishable by law. Adultery in the UK is a legal issue that involves voluntary sexual intercourse with someone of the opposite gender who is not their spouse. It is not considered as a significant ground for divorce application under the old divorce laws in the United Kingdom. However, the concept of no-fault divorce was introduced in recent years to eliminate lengthy divorce proceedings and the "blame game" that elevated the emotional unrest couples already faced during a marriage breakdown. Adultery's impact on financial settlements in divorce is often misunderstood.

#### ***Adultery in Australia: The Shift from Criminal Offense to Private Matter***

Australia does not criminalize adultery. In Australia, sexual relations between consenting adults (18 years of age or older) are private matters of the respective individuals, regardless of their marital status, as per the federal law passed in 1994. The criminal laws pertaining to adultery had already been repealed by the Australian states and territory. In 1975, Australia adopted a no-fault divorce system, eliminating adultery as a basis for divorce. Thus, in Australia, adultery is neither a criminal offence nor can be taken as a sufficient ground to seek judicial separation.

### ***How Canada Treats Adultery: A Review of Its Legal and Common Law Context***

In Canada, adultery is not illegal. It has never been classified as a criminal offence under the 1892 Criminal Code of Canada, nor is it regarded as a crime under common law. Thus, privacy of inter-personal relationships is maintained.

### ***The Sharia Law Approach to Adultery in Saudi Arabia: Legal Practices and Religious Influence***

The teachings of the prophet Muhammad (may peace and blessings be upon him) and the holy revelation from God (the noble Quran) serve as the major foundation for law of Saudi Arabia. Fornication carries a 100-lash sentence as a punishment under the law. The given sentence will only be pronounced if the commission of adultery has been implicated by four reliable witnesses. In the meantime, the false accuser may be subject to a specified number of lashes if they have unjustly accused someone else of fornication or adultery. In Saudi Arabia, the only people who are typically punished for fornication are those who follow Islam and those who admit to the crime out of fear of retribution in the afterlife.

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### **CONCLUSION :**

The act of adultery is in no way legal taking into consideration the ethical and moral standards. A person who's not loyal in marriage either a man or a woman must not continue the institution of marriage instead of creating disrespect towards the sanctity of such a sacred contract. Decriminalizing adultery is not a proven method in long term. Considering adultery legal will not stop or reduce the rate of marital infidelity against women. What is the need of hour is to amend the law in such a way that neither does the provision violate any constitutional rights of individuals nor does it promote any extramarital affairs. The provision of adultery must be made gender neutral where both men and women have a right to sue their spouse who has committed an act of adultery. Also, not only the third-party who was involved in such infidelity must be liable for the act but also the married party whether a man or a woman must be held equally liable for criminal offence. Such a provision is necessary to maintain the integrity of a pure institution like that of marriage. Thus, in order not to contradict with the religious institutions it becomes of utmost importance to criminalise adultery with required amendments under the Bharatiya Nyaya Sanhita, 2023.

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