



# Section 497 and the Indian Constitution: A critical analysis



The word adultery originates from the Latin word “adulterium”. Adultery is supposed to be a consensual sexual act between a married person and another person with an irrelevant marital

status. It is prohibited by almost all religious groups, cultures and is considered as inexcusable on the basis of morality as well.

Adultery according to the law was defined as an act of a married man having sexual intercourse with a married woman whom he knows to be the wife of another man who did not consent to the act. Initially, this act of man was not a violation but an offense of adultery for which the punishment could have been extended to five years or both. What's important is that this act was not an offense if the female's husband consent was there. This act cannot be called adultery if the man has indulged in sexual act with unmarried women / widow. However a woman cannot be held liable for this offense and also, she cannot file a case against her husband for the same.

This law faced sharp criticism for treating women as possession of men. Associate in Nursing Italy-based Indian businessperson Joseph Shine, World Health Organization hails from Kerala, filed a **Public Interest Litigation (PIL)** in

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the year 2018 under Section 497 of the Indian Penal Code, 1860 where he contended that the particular law is discriminatory.

There have been instances before the Supreme Court i.e., **Yusuf Aziz vs. State of Mumbai**, **Sowmithri Vishnu vs. Union of India** and **Sowmithri Vishnu vs. Union of India** wherein, the arguments against adultery were contested not once but thrice. The petition requested that the Section 497 of the Indian Penal Code, 1860 and Section 198 of the Code of Criminal Procedure, 1973 to be rendered unconstitutional in Joseph Shine Vs. Union of India.

The Adultery law was challenged in 1951 in the case of **YUSUF AZIZ VS. STATE OF MUMBAI**. The Petitioner contended that the Adultery law desecrated the basic right of equality bonded underneath Article 14 and Article 15 of the Constitution of India.

The dominant argument within the court hearing was that **Section 497**, governing Adultery law, discriminated against men by not holding women equally responsible in an adulterous relationship. It was additionally argued that Adultery law gave a license to women's to commit this crime.

Three years later in 1954, the Supreme Court gave a decision that Section 497 was valid. It stated that Section 497 didn't provide a license to women to commit criminal conversation.

The judgment conveyed that by creating a special provisions for women's to flee culpableness was constitutionally valid beneath Article 15(3) that permits such a law. Moreover, in a remarkable observation, the Supreme Court within the judgement marked that "it is usually accepted that it's the person who is that the seducer, and not the women." The Supreme Court declared that ladies may solely be a victim of criminal conversation and not a wrongdoer of the crime under Section 497. The next landmark judgement concerning extra-marital affairs as mentioned under Section 497 came in **SOWMITHRI VISHNU VS UNION OF**

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**INDIA**, in 1985. The Centre has cited that this judgement in its 2018 affidavit to back Section 497 of the IPC.

The Supreme Court stated that women's needn't be enclosed as Associate in nursing aggrieved party within the name of constructing the law even two-handed.

The Supreme Court stated that men were not allowed to prosecute their wives for the offence of adultery so as to safeguard the quality of wedding. For an equivalent reason, women's could be allowed to prosecute their husbands. The judgement preserved the offence of extra-marital affair as a criminal offence committed by a person against another man.

The Supreme Court additionally rejected the argument that unwedded women's ought to be brought under the range of the fornication law.

The Supreme Court stated the transportation of such associate degree women's within the orbit of fornication law beneath Section 497 would mean a crusade by a women's against another women's. The paradox associated with fornication law remained unresolved.

The next landmark case of **V REVATHY VS UNION OF ASIAN COUNTRY & ORS.** was on criminal conversation law, the Supreme Court held that not as well as women's in prosecution of criminal conversation cases promoted "social good". It offered the couple an equal opportunity to "re-make up" and maintain the quality of wedding intact. The Supreme Court ascertained that criminal conversation law was a "shield instead of a sword".

The court held that the present criminal conversation law didn't infringe upon any constitutional provision by limiting the range of Section 497 to men. Besides the

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3 Supreme Court judgments, there have been a lot of vital legal views in reference to Criminal conference law.

The Law Commission of Asian country Report of 1971 (42nd report) and also the Malimath Committee on the Legal Code Reforms of 2003 counselled change to the criminal conversation law. Each argued to create Section 497 of the IPC gender neutral.

While the judgment is absolute to have a sweeping impact upon marriages in India, the adverse fallout cannot be neglected. In an exceedingly country beset with rising divorce rates and cases of marital infidelity, the decriminalization of Adultery can critically endanger the institution of marriage. Not solely will it run the chance of fostering extra-marital affairs, the emergence of divorce because the resolution can change state the break-up of marriages, resulting little kids within the lurch.

Joseph Shine being an intervener within the petition before the Supreme Court, I powerfully opposed the decriminalization of Adultery sought-after by the Petitioner. Rather, we have a tendency to pray that solely Section 198 of the Code of Criminal Procedure, 1973, which prohibits wives from filing adultery, be stuck down and should be made gender neutral. Section 198 of the Code of Criminal Procedure, 1973 violates Article 14 of the Constitution of India because it was unable to exhibit the reasonable classification and hence was found arbitrary in favour of the husband. Section 198 of Code of Criminal Procedure, 1973 created arbitrary classification, firstly between the aggrieved husband and aggrieved wife, and secondly between married and un-married women, it thereby violating Article 14 (Right to Equality) of the Constitution of India.

Another thought provoking argument is that Section 198 of Code of Criminal Procedure, 1973 also violated Article 15 of the Indian Constitution, which prohibits gender based discrimination. It also hostiles Right to Life guaranteed under Article 21 of the Indian Constitution. It is a deteriorating provision that demonstrates the failure of the State to provide equal justice under Directive

Principles of State Policies. Needless to feature, the heteronormative nature of Section 497 of Indian Penal Code, 1860 was an opened loophole wilfully exploited by married and unfaithful men to the impairment of their wives.

No wedding or alliance will exclude one's right over one's own body. Therefore, whereas the law on adultery because it is now-a-days within the IPC is discriminatory on the basis of sex;

The terribly existence of adultery within the criminal statute is offensive of the basic right to life and to measure with dignity. Little doubt that law, because it stands, is insufficient.



Navin Kumar Jaggi ●  
on 03 January 2019



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 DR RAVINDRA CHAUHAN  16 February 2019  
sir plz tell me the changed ruling for section 497 which is given by supreme court is correct or not

 vk bhardwaj  03 January 2019  
good article thanks

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