

Adultery: takes a  
sympathetic and  
charitable view of



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Adultery: Adultery is an offence for which the law in India punishes not women. What led to this discrimination in this country is not the fact that woman had a sex different from that of men, but that women in this country were so situated that special legislation was required in order to protect them, and it was from this point of view that one finds in Section 497 a position in law which takes a sympathetic and charitable view of the weakness of women in this country. A man commits adultery, if he— (1) Has sexual intercourse with a woman; (2) Whom he knows or has reason to believe to be the wife of another man; (3) Without the consent or connivance of such other man; (4) Such sexual intercourse not amounting to the offence of rape. The punishment for adultery is imprisonment upto five years or fine or both. (Section 497). The wife is not punishable as an abettor. Under the Indian Penal Code, a married wife cannot commit adultery or its abetment. The law of adultery gives her an absolute exemption. In Yusuf Abdul Aziz v. State of Bombay, where the constitutionality of Section 497 was challenged as violating Articles 14 and 15 of the Constitution, the Supreme Court held that the argument overlooked provisions of Section 15(3) which permitted State to make special provision for women. Section 14 is general and must be read with other provisions which set out the ambit of fundamental rights. Sex is sound classification and although there can be no discrimination in general on that ground, the condition itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in Section 497. The vires of the section were again challenged in Sowmithri Vishnu v. Union of India, 2, and the Supreme Court took the opportunity to examine the position afresh particularly in the light of

the alleged social transformation in the behavioural pattern of women in matters of sex.

Upholding the validity of the provision the Court observed: " We cannot accept that in defining the offence of adultery so as to restrict the class offenders to men, any constitutional provision is infringed. It is commonly accepted that it is the man who is the seducer and not the woman. This position may have undergone some change over the years but it is for the Legislature to consider whether Section 497 should be amended appropriately so as to take note of the ' transformation' which the society has undergone. The Law Commission in its 42nd Report, 1971, recommended the retention of Section 497 in its present form with the modification that, even the wife, who has sexual relations with a person other than her husband, should be made punishable for adultery. The suggested modification was not accepted by the Legislature.

The Supreme Court accepted that there can be two opinions on the desirability of retaining a provision like the one contained in Section 497, but refused to strike down that section on the ground that it is desirable to delete it. The alleged transformation in feminine attitudes may engage the attention of the law-makers when the reform of penal law is undertaken." Commenting on this section as it stands at present, the Supreme Court in the case of V. Revathi v. Union of India observed that Section 417 of the Penal Code is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus, the law permits neither the husband of the offending wife to prosecute his wife, nor does the law permit the wife to prosecute the offending husband for <https://assignbuster.com/adultery-takes-a-sympathetic-and-charitable-view-of/>

being disloyal to her. ' Thus, both the husband and wife are disabled from striking each other with the weapon of criminal law'. In another case, the elopement took place in 1957 when the first complaint resulted in acquittal.

The husband came with a second complaint eight years after. The parties lived in the same village and their houses were separated only by 500 feet or so. During all this period, the wife lived with the accused and also used to appear in the public. The complainant had turned her out of the house and married another woman. In these circumstances there was connivance on his part with the adultery. The consent or connivance of the husband shall be of no avail where the sexual intercourse in question amounts to rape as where the girl is under sixteen years of age. No Court shall take cognizance of the offence of adultery without complaint by the husband or in his absence by one having care of the woman on his behalf and if the husband is a minor or a lunatic or an infirm person, any other person may file complaint with the permission of the Court (vide Section 198, Cr.

P. C., 1973). Adultery, whether a continuing offence: Every act of sexual intercourse with a married wife amounts to an offence of adultery. If a person has sexual intercourse with a married woman several times, it cannot be said that offence is continuing in nature. The Nagpur High Court did not agree with Bombay High Court.

In the opinion of Nagpur High Court if the complainant is same and offence is same only time is different, the successive prosecution is undesirable. In the case of State v. Bhomvaria, the complainant's consent or connivance at the accused's sexual intercourse with his wife will be a proper justification about

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the offence of adultery. Ingredients: In order to constitute the offence of adultery, the prosecution must prove— (1) Sexual intercourse by a man with a woman who is and whom he knows or has reason to believe to be the wife of another person; (2) Such sexual intercourse must be without the consent or connivance of the husband; (3) Such sexual intercourse must not amount to rape.