



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## **WHY ADULTERY WAS STRUCK OFF FROM INDIAN PENAL CODE AND WHAT ARE THE VIEWS OF HOUSE PANEL NOW?**

### **Introduction**

This blog primarily focuses on the discussion of legality of adultery under Indian Penal Code, 1860. Earlier it was struck off, we will dive into the reasons why it was struck off? And what was its position before and after 2018. And we will discuss what are the views of the house panel now on the legal perspective of bringing back adultery as an offence. Also, can the Supreme Court decision be undone by the Parliament?

### **What was adultery position until 2018?**

Until 2018, the Indian Penal Code (IPC) contained section 497, which defined adultery as a criminal offence that attracted up to five years in prison or a fine or both. However, only men could be punished under section 497, not women.

The section read 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 such case the wife shall not be punishable as an abettor”.

### **What is the current legal position of adultery?**

In the case of “Joseph Shine vs Union of India”(September 27,2018), a five-judge bench of the Supreme Court led by then Chief Justice of India (CJI) Dipak Misra and comprising current CJI DY Chandrachud, and justices AM Khanwilkar, RF Nariman, and Indu Malhotra, unanimously struck down Section 497 of the IPC on the grounds that included discrimination.

### **What was the problem with that section?**

The discriminatory nature of Section 497, and its “manifest arbitrariness” in punishing only men for adultery, was just one of the grounds on which the court has struck down the provision. The judgment went much farther.

The Bench also ruled that this section is the violative of Article 14,15, and 21 of the Indian Constitution.

It also said that the husband is neither master of his wife, nor does he have legal sovereignty over her.

Also, the court ruled that adultery “does not fit into the concept of crime”. Also the court said that “we may repeat at the cost of repetition that if it is treated as crime, there would be immense intrusion into the extreme privacy of the matrimonial sphere. It is better to left adultery as a ground of divorce only.

### **What has the House Panel recommended now?**

The report on the Bharatiya Nyaya Sanhita 2023, which was adopted by the committee on November 10, said that the adultery should be reinstated as a criminal offence ,but it should be made gender neutral - that is,both for men and women should be punished for it. The Panel said that this section only penalised the married man and reduced the married woman to be property of her husband . In essence, the panel

said that section 497 was struck down on grounds of discrimination, and making it gender-neutral would address this deficiency.

### **Can the Supreme Court decision of decriminalizing adultery be undone by the parliament?**

No, the ruling of the supreme court is the law of the land. Parliament simply cannot pass a law that contradicts the ruling of the Supreme Court. However, it can pass a law that removes the basis of the court's judgment. Such a law can be both retrospective and prospective.

In the case of *“Madras Bar Association vs Union of India (2021), a SC bench of justices* said that “The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the court at the time of rendering its judgement. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed”.

### **Conclusion**

In conclusion, it can be concluded the removal of adultery as a criminal offence from the Indian Penal Code signifies a shift towards recognizing individual autonomy and adapting to changing societal norms. The House Panel's current discussion indicate an ongoing effort to strike a balance between personal freedom and the sanctity of marriage in contemporary India. If it criminalize adultery again, then it would be done keeping in mind all the factors that were the reason behind making it decriminalize.