



# The Story Of Adultery In India – Facts And Perspective

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## ABSTRACT

Marriage, love and relationships are wearing out with time. The timeless beauty of love has been replaced with the untimely breaking up of relationships. Currently, one of the major drawbacks of a relationship is extramarital affair which eventually leads to the untying of the marriage. Extramarital affairs are taking over society on a very large scale. A few surveys conducted by various statistics show that more than 50% of married men and women admit to having feelings for other people or to have extra marital affairs.

## INTRODUCTION

The term 'adultery' derives from the Latin word Adulterare and it has an Abrahamic origin as well. The prevalence of adultery has grappled society since ancient times. Historically, adultery has been considered an inconsiderable offense. Setting a sexual relation with a person beyond the marriage wedlock is immoral and that brings destruction to the society. India is a country that has always had and continues to have a rich cultural and religious history. From ancient times only, the definition of the institution of marriage is considered a very pure bond and sexual intercourse forms the basis of the marriage. The knot of marriage governs the man and the woman to implant a sexual relationship that sustains society. Hence, sexual infidelity practiced by a person in any Indian society breaks the normative discipline as well as a generalized sense of morality that the institution of marriage calls for. In ancient India, anyone caught being engaged in any adulterous activity has records of being ostracised from society. Any practice that influences immorality and disregards the entire meaning of an institution never has a space in it.

## WHAT'S THE RELIGIOUS SAY?

Different religions express broad views on their grounds. According to traditional Hindu viewpoints, adultery degrades family values and leads to social unrest. Marriage is a sacrament and not just a legal union and Hinduism believes that it lasts for seven subsequent lives which requires firm faith between the man and the woman where loyalty is the pillar of the relationship. They put up the perspective that they should have sexual bonds only with their spouses. Then again, in Islam, fornication, adultery, and rape are all prohibited acts and are regarded as Zina. Zina is charged with a crime in the Quran because of the sanctions set out by God. In Zina, penalties are hand amputation, crucifixion, public whipping, and public stoning to death. The Quran says a person who commits adultery shall be put to death by stoning. When we look at the Bible, adultery is a sin that both males and females should die for committing it. Adultery is viewed as immoral, unethical and gross for society. According to Buddhism, having sex outside of marriage is a sin that causes further suffering. Now, the third of the five essential injunctions from which one must abstain in Buddhism is adultery. And then, Judaism, one of the oldest religions holds the view that both adulterers and adulteresses are subject to the death sentence. These give us a very broad and rigidly strict perspective of religions. We get the perk of how impermissible and unacceptable adultery has been, not just in Indian society but also in various religious beliefs. But above all, the jurisdiction has a downright different set of views on this, they have a completely different say. Rising over every normative discipline the authority is obliged to the

modernity and rights of humans on an equal status, upholding the freedom of every human from the constitutional point of view.

### ***ADULTERY, ARTICLE 497 AND ITS DECRIMINALISATION***

The constitution of India was framed to ensure the right to equality for all citizens and prohibits anything that is in contravention of that. The reference of today's topic to the Indian constitution is quite basic. The primary cause behind the shamelessness and fearlessness of people enrolled in extramarital affairs and adultery is the legal consequences of such deeds. The act of adultery was declared no more an offense and is non-punishable. Before 2018, the legal provision concerning adultery i.e. section 497 of the Indian Penal Code (IPC) stated that the crime of adultery entails engaging in sexual activity with a person who is and whom he knows or has reason to believe to be the wife of another man, which does not amount to the crime of rape. This activity is punishable by either type of imprisonment for a term that may extend to five years by a fine or by both. In this case, the wife's complicity won't result in punishment. The provision stipulated inequality between both genders entangled in the offense. It violated articles 14, 15(1) and 21 of the Indian constitution.

The first time any question on the constitutionality of adultery was raised on the ground of violation of Articles 14 and 15(1) of the Indian constitution before the Hon'ble Supreme Court in the year 1954 in the case of Yusuf Abdul Aziz v. Bombay in which a four judges bench upheld it to be a reasonable classification. Again, the same question was raised before the Hon'ble Supreme Court in the year 1985 in the case of Sowmithri Vishnu V. Union of India, where it was held that Section 497 of the Indian Penal Code (IPC) would remain in place to punish a limited number of adulterous relationships. The same was reiterated in the case of W. Kalyani V. State Tr. Inspector of Police & Anr on 1st December 2011. And finally, in the Joseph Shine V. Union of India case of 2018 a five-judge bench ruled that section 497 of the Indian Penal Code and 198(2) of the Criminal Procedure Code were unconstitutional as it was against the essence of Article 14, 15(1) and 21 of the Indian Constitution. In simple words, under section 497 of the IPC, if a husband was caught being engaged in adultery, the wife had all the right to file a complaint against the husband which counted for his eligibility to be punishable, but there was no provision to convict the lady who was equally contributing to the adulterous behavior. Similarly, the husband of a woman had no right to prosecute his wife if she was in some adulterous relationship with another man but he could do in the case of the man she was with. This entire legal concept of adultery in terms of punishment appeared to be gender biased and archaic which led to the deletion of the entire set of provisions that held adultery to be a punishable offense. However, an offense has been included in the Bharatiya Nyaya Sanhita (BNS) by way of Section 84 which penalizes a man for enticing the wife of another man so that she may have illicit intercourse with any person. But again, it happens to be gender biased, centred on punishing the man only.

### ***ADULTERY: IT'S DOMESTIC IMPACT AND AS A GROUND OF DIVORCE***

Every issue has a domestic and emotional impact and so is the case with extramarital affairs as well. When a husband cheats on his wife and vice versa, the impact on the better half is very huge and life-wrecking. A large portion of wives in the population is cent percent dependent on their husbands for a livelihood. In those cases when he cheats on her and she is knowledgeable about it, she has no option but to ignore it. She pays the prize by not fighting for herself for a livelihood and is deliberately exploited by her husband. Likewise, even though the men are employed in almost all cases, nobody deserves to be cheated and that finally directs towards breaking up of the marriage. Hence, divorce cases are rising in the country of which, 16% are because of adultery as stated in a research paper in the National Journal of Community Medicine. As though adultery is decriminalized but it's still a ground for divorce. However, divorce is not the ultimate solution for every couple. A lot of them care about the impact of their separation on their children. And again, as discussed, in case the wife is cheated on, divorce for an unemployed wife is not feasible in middle-class households because of the chances of receiving meagre alimony from the husband. Parents are the ideal people in every child's life and when they see them getting indulged in these kinds of foul activities, it leaves a horrible impact on them as well as their childhood becomes extremely traumatic and this trace never vanishes. Hence, somehow, spreading awareness through various campaigns, educational workshops or even integrating value

lessons on the sanctity of marriage can go a long way in tackling this evil. After all, for these happenings in a particular society, the society is answerable as well.

### **CONCLUSION**

Beyond everything, when morality fails along with human ethics, there is a high command, an authority that has all the power to bring in fair changes, considering the constitution and rights of every citizen, i.e. a statute. A statute that not only penalizes this evil menace of adultery but also delivers justice. Justice awaits every innocent partner and suffering family; justice brings back the normative discipline and finally brings back society to the light.

