



REVISITING ADULTRY AS A GROUND OF DIVORCE UNDER HINDU MARRIAGE ACT, 1955

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Creating a feministic liability in Adultery in a male chauvinistic society is akin to rewrite the dictates of Manusmriti. But whoso committeth Adultery with a woman lacketh understanding: He doeth it, destroys his own soul. A wound and dishonour shall he get; and his reproach shall not be wiped away.¹ Adultery is a threefold evil. It sullies the body of the women. It torments the women in her mind. It impliedly states that the sole responsibility for this grave sin is of the male partner. If the marriage is not thought of in terms of sexual property but in terms of a free partnership between persons of equal status, then irremediable breakdown of the relationship should be the real test of dissolution rather than the matrimonial guilt or misconduct.² The paper is aimed at analysing in depth the ground of divorce. “When Chastity of wife is under an attack, the Court depends upon circumstantial evidences. The over-emphasis upon these evidences may result in a serious miscarriage of Justice.”³ Henceforth, it gets clear Adultery is an offence against women under Indian Penal Code, 1860⁴. The

question arises about the eclipsical provision of the Hindu Personal Laws and the Indian Penal Code. This Article has attempted to articulate these controversies from the legal point of view in contemporary India addressing the question of legal dilemma that whether the legal regulation of Adultery in either laws is relevant or not?

“As between the husband and the wife social good will be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. They can either condone the offence in a spirit of 'forgive and forget' or live together happily again.”⁵

- Justice M Thakker

1. Introduction

Adultery also known as infidelity or extra marital affair is certainly a moral crime and is thought out a sin by almost all religions. Hinduism does not support adulterous liaison. Individuals who get involved in treacherous or illegitimate relationship have to face a lot of public disrespect and societal humiliation. The contemplation of evidently, is that the wife who is involved in an illicit relationship with another man is the victim not the author of the crime.⁶ Though the laws of India uphold the sacredness of the matrimonial tie and punish the intruders there remains many lacunas and loop holes, the Hindu Marriage Act, 1955 is one of them.

¹ See The Holy Bible (proverb – 6/32-33)

² Subhash Chandra Singh, Lecturer, Faculty of Law, Kashi Vidyapith, Varanasi-2; A.I.R 1994 Journ. Vol. p. 105.

³ Ibid., 106.

⁴ Sec. 497.

⁵ V. Revathi v. Union Of India 1988 SCR (3) 73.

⁶ Soumithri Vishnu v. Union of India & Anr. AIR 1985 SC.



Though the society has undergone many historical, political, and economical and value based developments surprisingly the condition of women remains stagnant up to a mark where it is unable to reach the same footing as that of male. The purpose of this research paper is to review and revisit the legislative provision of adultery under Section 497 of Indian Penal Code, 1860 and Section 13(1)(i) of Hindu Marriage Act, 1955 which are in controversy among themselves and making analysis on the issue and the judicial standing regarding it. Hence, there is a need to revisit and review the present provisions of Hindu Marriage Act, 1955 and bring necessary changes. This research paper is designed to achieve the following targets-

- To represent the existing provision of adultery under Hindu Marriage Act, 1955.
- The reason for which the women should not be charged for adultery.
- To address the dictates of Manu – “Exemption of feministic liability in adultery.”
- Various opinions of Apex Court in lieu of exempting effeminate arrears favouring Articles 14 & 15(3) of the Indian Constitution.
- To recommend the necessary amendment which the researcher deems fit in the backdrop of 21st century.

2. Concept : Meaning of adultery

It is commonly accepted that the active participant is a man who is seducer and not the women. And it is considered as an anti social and illegal act by any peace lover and citizen of good morals who would not like anyone to be indulged in such acts before

their nose.⁷ Women are treated as a victim not the author of the crime because women are starved of the love and affection of their husband. They are still considered as beauty manikins, advertising models and emotionless objects in hands of the male dominating society.

2.1 Definition-

Voluntary sexual intercourse of a married man with women other than his wife or of married women with men other than his husband.⁸ When someone who is married has sex with someone who is not their husband or wife.⁹ Adultery is consensual sexual intercourse between a married people. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of someone. Adultery is the wilful violation of the marriage bed. Adultery is the offence of incontinence by married person.¹¹ Adultery is voluntary sexual intercourse between a married person and a person who is not his or her spouse.¹²

3. Historical background

3.1 Origin-Adultery which finds its root in ‘adulterate’ means “to make something impure”.

3.2 Ancient -

3.2.1 What Hinduism says ?

⁷ V.Revathi v. Union of India, AIR 1988 SC 835; Hatim Khan v. State, AIR 1963 J&K 56.

⁸ Webster’s encyclopaedic dictionary, p.11.

⁹ Longman word wise dictionary(2ed.),p.11.

¹⁰ Gita Bai v. Fattu, AIR 1966 M.P.130; Don Henderson v. D. Henderson, AIR 1970 Mad 104.

¹¹ Concise law dictionary (3ed.),p.35.

¹² The new oxford American dictionary, p. 22.



In Hindu Shastras Adultery is considered as a serious breach of Dharma, Hinduism consider marriage highly sanctified relationship. Hinduism is not based on a particular scripture or wisdom of a lone spiritualist; instead it is a set of values and customs which have evolved over a span of time. Its ethnicity have been derived from varied religious activities developed in the Indian sub-continent that has common ideology, ethics and belief which represents its central dogma. Hinduism is an elaborate fusion of assorted religious trends and can be viewed from three major prospective viz., Vedas, Upanishads, Epics and Puranas.

3.2.2 Manusmriti-

Manusmriti was the eternal code of conduct for ancient Indians and the general public followed it religiously which say: - “Day and night woman must be kept in dependence by the males (of) their (families), and, if they attach themselves to sensual enjoyments, they must be kept under one’s control.”

The principle settled both by law and logic is that a sensible person shall abstain from impregnating the wife of another. It has been stated in RULE 134 of CHAPTER IV, that adultery is the highest sin and curtails longevity of the adulterer.¹³ The hymn is evidence that adultery is not uncommon. A women even after her pollution from adultery, becomes pure after her husband accepts her for his union. As a general rule the women become outright pure after they have menstruated. RULE 108 OF CHAPTER V. The women have the privilege of being restored to their status

even after adultery. The husband has the legal right to condone adultery. This power to condone is associated with guardianship since chances of adultery are more probable during wedded life, and the other guardians, namely a father and a son can also condone, or implore his father to condone the misdeed of the women.¹⁴ Adultery is said to be the highest moral quandary, rampant in any society in any age, as the fancied foible among men and women.¹⁵ Adultery is a three-fold evil. It sullies the body of the women. It torments the women in her mind. It offends the husband of the women. As for the body it is purified just on her ensuing menstruation [RULE 108 OF CHAPTER V]. As for her moral compunction, the same can be relieved by penances followed by chanting of hymns [RULE 21 OF CHAPTER IX]. The person most offended by this guilt, is the husband, and it is, therefore, within his right to condone it and the offence is deemed to be condoned if the husband, thereafter, accepts her for sexual intercourse [RULE 20 OF CHAPTER IX].¹⁶

3.2.3 Vishnu Purana-

A man should not think incontinently of another’s wife, much less address her to that end for such a man will be reborn in a future like a creeping insect. He who commits adultery is punished both here and hereafter, for his days in this world are cut short and when dead he falls into hell.¹⁷

3.2.4 Ramayana –

Ancient Hindu society was not free from the problem of adultery. Hindu mythology has a

¹³ Rule against sowing seed in another’s soil.

¹⁴ Hymn or restoring purity.

¹⁵ Advice to reconcile.

¹⁶ Husband can condone adultery.

¹⁷ Vishnu Purana.



number of stories illustrating the manner in which got themselves often indulged in adulterous thoughts and actions. LORD RAMA banished his wife Seeta into the forest on the mere allegations of possible adultery.

3.2.5 Hindu divinities -

The stories depicting the libidinous activities of Hindu divinities such as INDRA and AGNI with the wives of virtuous Rishis are well known.

3.3 Modern –

3.3.1 Hindu Marriage Act, 1955-

Has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse:

3.3.2 Indian Penal Code, 1860 –

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.

Feministic protection enshrined in Part III of the Indian Constitution –

Article 14-

Which talks about equality before law and equal protection of law which together aims to maintain equality of status as enshrined in the Preamble of the Indian constitution. Where equal protection of laws implies “Equality of treatment in equal

circumstances”.¹⁸ One dominant idea common to both the strands of Article 14 is that of Equal Justice.¹⁹The rule is like that the like should be treated alike and not unlike should be treated alike.²⁰The varying needs of different classes of persons often require separate treatment.²¹In fact identical treatment in unequal circumstances would amount to inequality.

Test of reasonable classification -The differentia must have a rational relation to the object sought to be achieved by the Act.²²

Article 15 clause 3-

Women and children required special treatment on account of their very nature. It empowers to State to make special provisions for them. The reason is that women’s physical structure and the performance of material functions place her at a disadvantage in the struggle well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race. When law comes within the prohibition of Article 15 it cannot be validated by recourse to Article 14 by applying the principles of reasonable classification.²³

¹⁸ Dicey – Law of the Constitution, p.49(10th ed.)

¹⁹ Sheoshanker v. State of M.P.,AIR 1951 Nagpur 53 (FB).See also Dicey, Law of the Constitution p.47 (1939)

²⁰ Dr. V. N.Shukla- Constitution of India, p.27(5th ed.)

²¹ Chiranjit Lal v. Union of India, AIR 1951 SC 41, per Das, J.: State of Bombay v. F.N.Balsara, AIR 1951 SC 318, per Fazal Ali, J.: Kedar Nath v. State of West Bengal ,AIR 1953 SC 404.

²² K.Thimmappa v. Chairman , Central Board of Directors, SBI AIR 2001 SC 467.

²³ Kathi Ranning v. State of Saurashtra, AIR 1952 SC 123.



4. Judicial opinion –

Adultery is an invasion on the right of the husband over his wife. In other words, it is an offence against sanctity of the matrimonial home and an act which is committed by a man.²⁴ It consists in having carnal knowledge of married women²⁵ with knowledge of that fact, without the consent or connivance of her husband.²⁶

In Yusuf Abdul Aziz,²⁷ The Supreme Court observed that section 497, Indian Penal Code is not ultra virus under article 14, 15 & 21 of the Constitution on the ground that it is only the man, who is held liable for adultery and not the wife with whom adultery is committed. The wife is saved and is not punished as an abettor. Held sex is a reasonable and sound classification accepted by the Constitution, which provides that state can make special provisions for women and children vide Article 15 clause 3 of the Constitution. The reason for not punishing a wife has been summarised by the framers of the code in the following words-

“Though we well know that the dearest interest of the human race are closely connected with the chastity of woman and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this

country which may well lead humane man to pause before he determines to punish the infidelity of wives. We are not so visionary as to think of attacking by law, an evil so deeply rooted in the manners of the people of this country as polygamy... but while it exists, while it continues to produce its never failing effects on the happiness and respectability of women, we are not incline to throw into a scale, already too much depressed, the additional weight of the penal law.”²⁸

In Soumithri Vishnu case:

Supreme Court looked into the meaning and purpose of law more closely. It said, “it is commonly accepted that it is a man who is seducer and not the women”. It is also said that –“the contemplation of the law evidently, is that the wife who is involved in an illicit relationship with another man is a victim and not the author of the crime.” And that adultery is –“an offence against the sanctity of matrimonial home, an act which is committed by a man as is generally is.” The Court went on to say –“The legislature is entitled to deal with the evil where it is seen most and man seducing the wife of another.”²⁹

The alleged transformation in feminine attitudes, for good or for bad, may justly engage the attention of the law-makers when the reform of penal law is undertaken. If the paramour of a married woman can be guilty of adultery, why can an unmarried girl who has sexual relations with a married man not

²⁴ Olga Thelma Gomes v. Mark Gomes, AIR 1959 Cal 451.

²⁵ Dalip Singh, AIR 1949 All 237.

²⁶ M’Clarence v .M. Raicheal, AIR 1964 Mys 67.

²⁷ Yusuf Abdul Aziz v. State of Bombay, 1954 Cr LJ 886 (SC): 1954 SCR 930: AIR 1954 SC 321; Soumithri Vishnu v. Union of India, AIR 1985 SC 1618: 1985 CAR 1996 (SC): 1985 Cr LJ 30 (SC): 1985 SCALE 960 (SC); V. Revathi v. Unoin of India AIR 1988 SC 835.

²⁸ Draft Penal Code, Note, p. 175. See supra n. 35, p. 1933-34.

²⁹ Soumithri Vishnu v. Union of India, AIR 1985 SC 1618.



be guilty of adultery? That is the grievance of the petitioner.

In V. Revathi case-

The Court held that that Section 497 of the Indian 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 being disloyal to her. Thus both the husband and the wife are disabled from striking each other with the weapon of criminal law.³⁰

5. Concluding Remarks –

Taking into view of the Hindu literature, controversial provisions and a plethora of judicial opinions and the present social status of woman, we may not include the female liability in adultery and making her one of the party to it. Although, the condition of women is somewhat enhanced, but it has till now not reached to the equal footing as that of males. So the law makes the women more vulnerable in society and also deprives them of legal protection. The object of making adultery an offence and restricting it was to deter man from having sexual relations with the wives of other men and to restrain them from taking advantage of the women who starved of the love and affection of their husbands.

6. Suggestions-

We live in a society where far from prosecution even an allegation of woman's unfaithfulness is sufficient to reap havoc in

her life. It is in unequivocal terms with other religious law like – in Hindu Law punishment is given to women also but in other personal laws the condition is not so, whereby Hindu women would suffer a grave injustice. Women till today suffered as a citizen of third world country and are also a victim to the patriarchal society.

Macaulay by taking into the view the societal actions has given the protection to the women and yet legislature has not amended it as it is relevant till now. So, Hindu personal law is needed to be amended. In case women are punishable for adultery would become heaven for all husbands and in-laws wanting to get rid of their wives and daughter-in-law at the cost of the women's social status. Once a women's reputation is ruined she will become an easy prey for the abuse by other men. The legislature must understand that what is equal cannot be equalised by changing definition. Making the provision which make a woman lose her reputation in Indian society is like killing the soul of the person while keeping only the body alive in no case should such a murder be allowed.

³⁰ V. Revathi v. Union of India, AIR 1988 SC 835.