

## WILL THE STEP OF 'DECRIMINALISATION OF ADULTERY' TAKE US TOWARDS BUILDING A PROMISING ABODE FOR THE COUNTRYMEN

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### *Abstract*

*The new law of adultery which became effective by virtue of the Joseph Shine case showcased a new phase of the institution of marriages in India. This new law decriminalised adultery and freed the citizens of India to have consensual relationships with individuals of their choice, and shall not be liable for the offence of 'Adultery' as was envisaged earlier under Section 497 of The Indian Penal Code. This article focuses on the interrelation and interdependence of Section 497 of The Indian Penal Code and Section 198(2) of The Code of Criminal procedure, thereby discussing their loopholes. The judicial take upon the validity of these provisions prior to the new law have also been discussed. Further the intention of the legislature and the courts have been enumerated in the light of recommendations made by various National committees regarding the said section. The author also puts light upon the prospective consequences of this new law and comes to a conclusion as to whether or not this law is appropriate of the country, and finally concludes by providing suggestions or prospective amendments.*

**Keywords:** *Adultery, Decriminalisation, Gender Discrimination, Gender Neutrality, Individualism, Aggrieved, Cognizance*

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## INTRODUCTION

*“The great marriages are partnerships. It cannot be a great marriage without being a partnership.”*

—*Helen Mirren*

The diversity of cultures found in India undoubtedly gives it an edge, whereby it becomes indispensable to highlight an issue which to say is ‘secular’ by nature. The issue of ‘Adultery’ has always been a concern for almost all countries around the world. Section 497 of the Indian Penal Code, 1860 envisages adultery to be an offence whereby a criminal prosecution is liable to be initiated against the male counterpart of the act. To begin with, the section deals with a situation wherein an act of sexual intercourse is being committed with a person who the other person has reason to believe or knows to be the wife of another man, the commission of such act, taking place without the consent or connivance of the man who is the husband of such person, also such act not amounting to the offence of rape, shall amount to the offence of Adultery. However, it is to be noted that only the male counterpart of such an act can be made liable and in no case can the female counterpart be prosecuted, even as an abettor.

The history or the background is quite evident to show that the time this section was made, India was not an Independent nation and hence all statutes bearing to those times are the giving of British-dominant rule. And so, this section is no exception. Upon bare reading of the section, it is easily identifiable that women in such cases are not made party to the offence. The same shall be pondered upon and discussed in detail in the upcoming parts of the article.

## THE OLDEN LAW

*Is Section 497 Inherently Discriminatory?*

Having taken a glimpse of the said section, it is evident from the its words that the male counterpart of the act can be made liable for the offence as already mentioned above. This leaves the doors open for thoughts that in spite of being a participant and playing a full-fledged role in the commission of the said act, why is then the female counterpart left untouched by the curtains of criminal conspiracy, if the male counterpart, on the other hand, is being made liable absolutely. This very situation gives birth to a paradox that in the time where we talk of the ‘*Right to Equality and Equal Protection of Laws*’<sup>1</sup> and the ‘*Right against Discrimination*’<sup>2</sup>, is having such a legislation whereby a clear cut unparalleled distinction has been drawn to hold liable one offender and evacuate another for the same offence merely on the basis of ‘gender’ not discriminatory? Is a woman not capable to cheat? Is she not capable of being prosecuted for any other offence either? Can she never have a malafide intention?

This was one of the leading contentions the honourable Supreme Court of India relied on while deciding the case of *Joseph Shine v. Union of India*<sup>3</sup> wherein the Petitioner, Joseph Shine, a non-resident Keralite filed a Public Interest Litigation (hereinafter referred to as “the PIL”) challenging the constitutional validity of Section 497 IPC read with Section 198(2) of The Code of Criminal Procedure (hereinafter referred to as “CrPC”). The facets of the same shall be discussed throughout various layers of the article as it unfurls. It cannot certainly be denied that the law of Adultery prevails on the notion inspired by the Victorian law whereby a woman was considered her “*Man’s Property*”, which is evident from the verdict of the honourable court mentioning- “*And, it is time to say that a husband is not the master.*”<sup>4</sup>

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<sup>1</sup> Article 14, The Constitution of India

<sup>2</sup> Article 15, The Constitution of India

<sup>3</sup> AIR 2018 SC 1676

<sup>4</sup> *Ibid*

Furthermore, it is to be noted that the offence of ‘Adultery’ shall only be counted in cases where the adulteress is the wife of another man, meaning that the female counterpart of such relationship is ‘married’. It is clear prima facie that section 497 does not envisage the situation wherein the female counterpart is unmarried. So considering cases in which the husband is in an adulterous relationship with an unmarried woman, we find the law totally silent over this aspect. This evidently made such adulterous couples escape the liability under this section wherein the woman to such relationship is unmarried as the section clearly states- ‘*knows or has a reason to believe her to be the wife of another man*’.

#### *Relation between Section 497 IPC and Section 198(2) CrPC*

In the PIL, as already enumerated, the challenge was with regard to Section 497 IPC read with Section 198(2) CrPC. To know the relation between the two is quite interesting, and simultaneously perplexing. Having proven the discrepancy in the Section 497 IPC in terms of gender discrimination between the parties to the same act constituted an offence, it is time to look into the intricacies of Section 198 CrPC.

Chapter XIV of the Code holds multifarious cases in which a court can take cognizance of such cases, whereof Section 198 is a part. Section 198 sub-section (1) envisages court to take cognizance only of those cases wherein some person aggrieved by an offence against marriage files complaint, hereby implying that any person, though not direct party, may file complaint on behalf of the aggrieved person if the matter falls within the purview of either of the provisos to the sub-section. Section 198(2) continues that with regard to the sub-section (1), no person other than the husband shall be ‘*deemed*’ to be aggrieved of the offence of adultery under section 497 IPC. It becomes pertinent to mention here that as the current chapter deals with the taking of cognizance by courts, in the present situation, only the husband of the ‘adulterous’ wife has the sole right to file complaint against the man made

liable under section 497 IPC. In no case, can the wife of the man liable for the offence of adultery can approach a court under section 198(2) CrPC, which again amounts to nothing but depriving the wife of the adulterous husband to seek remedy under the realm of law. The term “deemed” has relevance in the section as per which there shall lay no other thought other than what is engraved in the words of law with regard to this section.<sup>5</sup>

### *Man v. Man: Evacuating Females Altogether*

If probed vigilantly, we shall observe that the whole situation arising out of the umbrella consisting Section 497 IPC and Section 198(2) CrPC gives rise to a male domination situation, what we can undoubtedly identify as the ‘Man v. Man’ game. To elucidate this facet, consider two couples- Couple A and Couple B. Assume that the wife in Couple A, here WA and the husband of Couple B, here HB get into an adulterous relationship. Now, in this case, HB can be made liable for the offence of adultery exclusively, WA being absolutely untouched by the cuffs of court, which in turn means that only a man can be held liable. On the other hand, the criminal case can only be initiated by the husband of WA. The same is not available at the option of the wife of HB, who is nonetheless and in reality “aggrieved” by such act as well. The law does not provide any remedy for such a wife. The only remedy she has is to seek divorce whereof “adultery” has been a ground for granting a divorce decree. And so, once again these provisions have failed upholding the right to equality and the right against discrimination as guaranteed by the Constitution of India.

Under both the sections, the fundamental purpose of law has failed, which is to regard a man and a woman as equals. Of course, formulation legislations for the upliftment of women is

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<sup>5</sup> Section 4, The Indian Evidence Act, 1872 (1 of 1872)

permitted in under the Constitution of India<sup>6</sup>, but to deprive them from accessing a remedy which is available to a man is simply gender discrimination and is against constitutional morality. It cannot be denied that the said section was a result of Victorian law which had to be done away with anyway. But, an important question arises- *Was striking down the law altogether the ONLY way?*

#### *The Judicial take over the years*

The Supreme Court of India, in the case of *Yusuf Abdul Aziz v. State of Bombay*<sup>7</sup>, heard the plea of Mr Yusuf Abdul Aziz who was charged under section 497 IPC for the offence of adultery and who raised a question upon the constitutional validity of the said section in contravention to Article 14 and Article 15, based on a sole categorisation on account of gender of the parties. However, in due course, the honourable court held that Section 497 IPC does not violate either Article 14 or Article 15 as the categorisation on the basis of Sex is totally 'sound' does not amount to any sort of discrimination. Moreover, Article 15(3) of the Constitution of India also holds Sex categorisation as valid. Further, the court said that because section 497 IPC does not make women accountable for the offence of adultery, women can easily escape their liability which gives them free license to get indulged in out of marriage relationships without having fear of being made liable.

In the case of *Sowmithri Vishnu v. Union of India*<sup>8</sup> wherein the petition was filed by a school teacher who worked in Madras, in view to challenging the constitutional validity of section 497 on the basis of these reasoning, first, that even though the woman is untouched by the law in regard to the offence of adultery, yet there undoubtedly lies a constant social stigma to be undesirable faced by such women, and second, such woman may not be able to speak up

<sup>6</sup> Article 15, The Constitution of India

<sup>7</sup> AIR 1951 Bom 470

<sup>8</sup> 1954 SCR 930; 1985 Supp SCC 137

for the protection of her own interest if she is not made party to prosecution, the Supreme Court relied on the *Yusuf Abdul Aziz verdict*<sup>9</sup> and even hopped a step further by stating that it is only the women who are the victims and whereas men can only be seducers, women cannot. It further stated that there lies no hope for women to be brought within the purview of section 497 IPC. This verdict of the court was highly criticised bearing to the fact that women can never be culprits and men can never be innocent. This was nothing but mere standardisation of concepts that do not exist in reality. By one way, the court kicked out the possible of 'consensual sex' altogether.

With regard to Section 198(2) CrPC, in the case *V. Revathi v. Union of India*<sup>10</sup>, a petition was filed in the court challenging the validity of Section 198(2) read with section 198(1) CrPC regarding the 'disability' of the wife of the adulterous husband to initiate legal proceedings in the court of law against the act of her unfaithful husband. The said petition claimed whereas the husband of the adulteress wife is entitled under the said section to initiate proceedings against the adulterer, in the light of the same, the wife of the adulterer must not be bereft of the entitlement to bring legal case in action against the adulterer, her husband. The petitioner claimed that such a provision is against the Constitution and leads to "obnoxious discrimination"<sup>11</sup>. However, the Apex court upheld the constitutionality of the said section and remarked that both these sections, ie, section 497 IPC and section 198(2) CrPC go well 'hand in hand'. It further stated that any "outsider" who intervenes into the sanctity of an existing matrimonial relationship of a husband and his wife by establishing an illicit connection with one of the spouses is liable to be punished. However, all this can take place with a rider being attached to it that in no case can a woman be made liable for such an

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<sup>9</sup> Supra note 7

<sup>10</sup> (1988) 2 SCC 72

<sup>11</sup> K.I. Vibhute, *Adultery in the Indian Penal Code: Need for a Gender Equality Perspective*, (2001) 6 SCC (Jour) 16

offence.

## **THE NEW LAW**

### *The Apex Court Verdict*

The Apex court, in its latest judgment concerning the Law of Adultery, completely struck down the existing law and hence, now the offence of Adultery stands decriminalised and no more shall the act amount to a criminal offence<sup>12</sup> The reason that the court relied upon was that in no way can one sex supersede another one, that is to say, for committing the same act one of the parties to such an act shall be made criminally liable and the other one, absolved absolutely, the reason whereof being a sole unreasonable categorisation on the basis of gender, which goes against the modern concept of ‘equality’ and thereby justice. The court further observed that throughout the criminal law, the concept of ‘gender neutrality’ is maintained, however, the same seems absent with regard to the provision envisaged under Section 497 IPC. It contended that women in all cases are looked as ‘victims’ because of the obvious societal presumption. However, this view stands no longer correct and is liable to be rectified.

## **IS THE NEW LAW IN HARMONY WITH THE INDIAN ETHOS?**

Every niche, every state, every country holds a distinct identity which cannot be separated from it, something without which the entity shall lose its identity forever. India, being a country of diverse cultures has its roots in the ancient texts of the Puranas and Upanishads which have always glorified marriage or *Vivah* as a sacrament. The various ceremonies or *riti* which are performed at the time of marriage are completely based on Vedic wisdom, be it *satpadi*, *phere*, *kanyadaan*, etc. The vows taken by the bride and the groom are taken in front

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<sup>12</sup> Supra note 3



of the sacred fire which is considered Lord *Visnu* himself.

Now, with this new law which emerged as the decriminalisation of adultery, the author firmly believes that mockery is being made of this rich culture of ours. By giving absolute freedom to the couple, can we ever expect our culture to sustain? Now even if they take sacred vows, would they ever care about their spouse or children or would even think once before entering into an adulterous relationship?

## **INTENTION OF LEGISLATURE**

As our nation moved from a Police State to a Welfare State, we see law entering every phase of our lives. Earlier, the affair of marriage used to be a private affair and the State used to have minimal interference. However, the new enactments show that the Law has turned omnipotent and can be found in every part of our lives. This verdict of the apex court prompts questions upon the very intention of the legislature while formulating laws with regard to marriage. Following are a few enactments to this regard:

### *Hindu Marriage Act, 1955*

It cannot be denied that the roots of Hindu Laws can be traced back in the *Vedic* texts of *Sanatana Dharma*. There are provisions envisaged under the act whose primary purpose is to maintain the sanctity of marriages and preventing them from falling apart. Section 9 of the act envisages 'Restitution of Conjugal Rights'. As per this, if a spouse withdraws from the society of the other, without any reasonable cause, the court, if satisfied, may pass a decree of restitution of conjugal rights whereby the couple shall lead life together and shall start afresh.<sup>13</sup> Even before passing a decree of divorce<sup>14</sup>, the courts endeavour passing orders for

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<sup>13</sup> Section 9, The Hindu Marriage Act, 1955 (25 of 1955)

<sup>14</sup> Section 13, The Hindu Marriage Act, 1955 (25 of 1955)

judicial separation<sup>15</sup> to maintain a ray of hope that the couple might get back together somewhere in future. The concept of ‘Cooling period’ is also backed by the same perspective.<sup>16</sup>

### *Muslim Women (Protection of Rights on Marriage) Act, 2019*

This act was made effective by the Indian Parliament after the Apex court of India held the act of pronouncing divorce on the Muslim wives by their Muslim husbands by way of uttering “Talaq” thrice in the *Shayara Bano case*.<sup>17</sup> Under Muslim law this practice was prevalent and was referred to as ‘Talaq-ul-Biddat’. This act was made effective in order to ensure that no more atrocities on Muslim women are done in the name of divorce. Again, the intention of legislature is to maintain the marital relationship of Muslim husband and wife and not to let the husband evade this responsibility by mere pronouncement of a syllable thrice.

### *Provisions for Maintenance*

The Criminal Procedure Code envisages the provision for maintenance of wives who are not able to maintain themselves or earn for their livelihood. In such a case the husband is liable to maintain his wife even after he has legally divorced the wife.<sup>18</sup> Similar provisions could be seen in the Hindu Laws as well.<sup>19</sup>

## **INTENTION OF THE COURTS**

The intention of the courts in India is no different than to prevent marriages from falling apart

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<sup>15</sup> Section 10, The Hindu Marriage Act, 1955 (25 of 1955)

<sup>16</sup> Section 13B, The Hindu Marriage Act, 1955 (25 of 1955)

<sup>17</sup> *Shyara Bano v. Union of India* (2017) 9 SCC 1

<sup>18</sup> Section 125, The Code of Criminal Procedure, 1973 (2 of 1974)

<sup>19</sup> Section 25, The Hindu Marriage Act, 1955 (25 of 1955)

and preserving their sanctity. The same can be realised when instead of passing a decree of divorce right away, courts often pass a decree of judicial separation first, as already mentioned in the previous section. Special Family Courts have been formulated to deal with such sensitive family affairs cautiously. Moreover, the courts also opt techniques like those of mediation and conciliation whereby they also counsel the couple and strive to make them agree to a common platform where after they may lead a happy and healthy life together. All these attempts made by the courts are sufficient to showcase the intention to preserve marital relationships. They pass a decree of divorce only when all other means to preserve marriage are exhausted.

With this, the intention of both, the legislature as well as the courts in India, is clear, that they both endeavour preserving the sanctity of marriages. However, in the current scenario now, what would the courts or even the legislature even do when witnessing marriages getting torn off because of multifarious illicit affairs? In all the discussion, nowhere have children been mentioned, who are the most important stakeholders in any marital relationship. Why have they not been paid enough consideration deciding the case? By letting both the spouses free for 'out-of-marriage' connections, the children born out of such marital relationships shall be affected the most. What would remain the future of such children whose future, mind and career have all been put on stake?

### **WHERE DOES THE PROBLEM LIE?**

The actual problem lies in '*Gender Discrimination*', as even admitted by the Apex court while deciding the case. This concept of gender discrimination is undoubtedly against the constitutional provisions of Article 14 and Article 15. Almost all provisions prevalent in the country are based on the concept of what is known as '*Gender Neutrality*'. Gender neutrality refers to being indiscriminately over anyone, or devoid of any sort of biasness or partiality.

Nonetheless we see certain provisions in the Constitution provisioning for special legislations for certain sections of society such as women and children, but in all these instances, the intention behind the legislature was such that these few sections have not been that the foremen when it comes to leading constitutional engagements.<sup>20</sup>

The provision regarding the law of adultery too demands for 'gender neutralisation'. The Apex court, however, considered it correct to struck down the law in question, which as per the author, was not the correct approach. What the section truly demanded was an amendment in order to make the same as gender neutral from being gender bias. Before diving into the prospective amendments which could have been considered so as to achieve this desired goal, the author would first like to discuss the relevant authorities bearing this perspective, i.e. Law Commission of India Report of 1971 (42<sup>nd</sup> Report) and Malimath Committee on the Criminal Reforms of 2003.

Both these commissions were of the opinion to make Section 497 IPC 'gender neutral' by way of amendments.<sup>21</sup> Nowhere did the indicate striking off the said provision altogether. And hence, here we can observe that the aforementioned commissions made recommendations for this provision to be made free from bias, leading to treating both the parties as equally liable for the act they had active participation in.

## **CONSEQUENCES OF THE NEW LAW**

The author does not see the new law of adultery doing any good to the Indian culture and ethos besides providing mere momentary sexual gratification to the couples associating coming of different marital relationships. In the rosy image of the current scenario, we forgot

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<sup>20</sup> Article 15(3), The Constitution of India

<sup>21</sup> Decriminalisation of Adultery, Available at: <https://blog.nextias.com/decriminalisation-of-adultery> (Accessed on April 20, 2020)

to ponder upon its long term effects which can severely impact the country's future generations.

### *Rise in the Divorce Rate*

It is not out of the context to mention here that this new law, having become effective, shall invite divorce cases at a higher rate. The reason for the same being that the ground of adultery as one of the grounds of divorce has not been struck down yet. Moreover, there is practically no other option available to the wife of the adulterer except filing a petition for divorce in the court of law. The idea of decriminalising adultery emanates from Western countries whose the divorce rate, after decriminalisation of adultery, has reached up to 52% and still seems to be at a rise.<sup>22</sup> Therefore, it cannot be denied that in order to curb India from following the same path, there is a strong need to preserve the institution of marriage, with one of the steps being restricting extra-marital affairs.

It is pertinent to mention, numerous programs are running across the United States of America (hereinafter referred to as "the USA"), commonly referred to as '*Marital Education Programs*' with the purpose of strengthening the institution of marriage as nearly half of the population would end up getting divorced. One of such programs is "*Prevention and Relationship Enhancement Program*" (PREP) with a view to assist couples work on their team building, problem solving, imbibing values such as forgiveness and kindness which hold paramountcy in any marital relationship. This program was initiated by Dr Markman along with his associates. As a result, the couple who joined this course faced less negative interactions, underwent joys and times together and had comparatively less knots than those

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<sup>22</sup> Laws Related to Adultery in India, Available at: <https://blog.iplayers.in/legalising-adultery-in-india/> (Accessed on April 30, 2020)

who did not.<sup>23</sup>

Another such initiative in the USA in the form of a program is known as “*Practical Application of Intimate Relationship Skills*” (PAIRS) designed by Lori Gorden. This program takes into view why and how an individual reacts in his marital relationship, keeping in view the past of that individual. It would now be wrong to suggest that the past life of an individual plays a crucial role in moulding him into his present shape. This program serves the needs of various target groups, be it single parents, healthcare workers, military personnel to name a few. The primary focus lies on moving towards acting together and building confidence in each other.<sup>24</sup>

The interesting fact that remains is that despite adultery being a criminal offence in many of the States in the USA, as nearly as 21 States, there can be seen a large number of divorce cases which keeps rising every year.<sup>25</sup>

#### *Distribution of Free License*

The idea, as already discussed in the above sections, is that this very decision of decriminalising adultery, in one way or the other, provides free license to prospective couples coming in association in out-of-marriage relationships to associate freely now, without the fear of being prosecuted for the act. It sounds fine as long as it concerns those two individuals in an adulterous relationship. However, as soon as it comes to their families, especially their spouses and children, the impacts could be severe, which could even lead up to mental trauma or nervous shock, needless to mention it can destroy happy lives.

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<sup>23</sup> Marital Education Programs Help Keep Couples Together, Available at: <https://www.apa.org/research/action/marital> (Accessed on May 1, 2020)

<sup>24</sup> Ibid

<sup>25</sup> U.S.A. Laws on Infidelity and Adultery, Available at: <https://infidelityrecoveryinstitute.com/u-s-a-laws-on-infidelity-and-adultery/> (Accessed on May 4, 2020)

*Upbringing and Mental Wellbeing of Children*

In the entire act, children born out such marital relations shall be impacted the most, adversely. It is extremely crucial for the child to get love and affection from both his parents, especially at such a tender age when he is too young to understand and undergo these incomprehensible changes. The children must have been given special consideration while deciding the case as their mental nourishment can only be done if both the spouses, with full enthusiasm and commitment, work on a positive upbringing of the child. If we do not take care diligently, instead of building a better future generation, we shall be, knowingly, ruining the nation's bright future. Such acts can gravely affect the young kids' minds, their schooling, their career, and thereby their entire lives.

*Diluting the Sanctity of Marriages in the Name of 'Individualism'*

At no point could it be denied that by decriminalizing adultery, the institution of marriage has become vulnerable. Defending the validity of the provision, the then central Government contend before the honourable court that '*Diluting the law of Adultery would affect the sanctity of marriages.*'<sup>26</sup>

The term *individualism* can be defined as the tendency of an individual to be self-reliant and free to pursue his endeavour without restriction. In a way, the individual rights of a person are given paramountcy in all aspects. As per Mark S. Weiner, "*the modern self that lies at the centre of liberal democratic practice developed only after a long historical process of dialectical negation and synthesis.*"<sup>27</sup>

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<sup>26</sup> Supra note 3

<sup>27</sup> Mark S. Weiner, *The Legal Foundations of Individualism*, Eighth Annual Telos Conference, Held on (February 15-16, 2014 in New York City), Available at: <http://www.telospress.com/the-legal-foundations-of-individualism/> (Accessed on May 4, 2020)

It is known that the recent verdict in the “*Triple Talaq Case*”<sup>28</sup> was widely accepted by the countrymen including people belonging to the religion wherein the said tradition was prevalent since ages. The argument was whether a Muslim man, in the name of his individual will or ‘individualism’, hampers the rights of his wife. In that case, the court upheld that such practices are entitled to be demolished having regards to the equal rights of the Muslim wives. Therefore, it is understood that we can only exercise our rights till the time they do not hamper the rights of other people.

Going by the logic of ‘*Individualism*’, it is wrong on the part of a Muslim husband, who ‘relying upon his individual will’, gives instant divorce to his wife and frees her from the bondage. The court considered this act wrong on account that Muslim wife’s basic human rights were being snatched away in one go, leaving her hopeless. The same way, we must acknowledge that it shall be correct to consider the individual will of the people who got indulged in an adulterous relationship, claiming it to be their individual choice. As by them doing such an act, the rights of various other people are violated. For instance, their spouse, who has to his credit the ‘*Right to Live a Dignified Life*’<sup>29</sup> which is an inherent part of Article 21 guaranteed to him by the Constitution, is left with no remedy except for seeking divorce. This, in no case, shall be an effective move for preserving families in the country.

## **PROSPECTIVE AMENDMENTS OR SUGGESTIONS**

The author does not see the new law of adultery, which is no different than ‘*no law of adultery at all*’, going in synchronisation with the Indian culture and ethos, in furtherance of the reasons mentioned above, which might not seem a great issue to be worried for at the moment, but undoubtedly hold a strong significance in the long run and is worthy to be

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<sup>28</sup> Supra note 17

<sup>29</sup> *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180



concerned for. As per the author, the following could have been taken into consideration by the honourable court before striking down the law of adultery altogether:

1. What the Section 497 IPC really demands for is the facet of *gender neutrality*. The same could have been achieved by making women as equally liable as their male counterparts or the adulterer. The Apex court, while deciding the validity of the said provision, contended that “the husband is not the master of husband”. Going by this, if on one hand, we consider that women have their identity as individuals, then why were they put across a veil when it came to prosecution for adultery? The ideal approach would have been counting both the parties as ‘equals’.
2. Under Section 198(2) CrPC, the wife of the adulterer too must have been deemed to be counted as “aggrieved”, and should have been provided with *locus standi* to initiate criminal proceedings against her husband and the adulteress.
3. The olden law did not amount to an offence if the extra marital relationship took place with an ‘unmarried woman’. However, unmarried women too should have been made accountable for the act as good as a married woman. Ultimately, the purpose of this section was to curb such practices of extra-marital relationships.
4. There are two core objectives of any law:
  - a. To punish the offender
  - b. To act as a deterrent

In the present scenario, instead of treating females as an ‘equal’ in terms of prosecution and punishment, the sword has been given to the males as well, what to speak of acting as a deterrent for prospective offenders. Hence, freeing the spouses completely is not an option

that the author sees as effective.

## CONCLUSION

Every law must strengthen the institution and sanctity of marriage and the law which does not, needs rectification. The judiciary as well as the legislation have always played a vital role in striving to preserve marriages from falling apart and keeping them intact. *Srimad Bhagawatam*<sup>30</sup> enwraps a beautiful verse explaining this very concept:

*punas ca yacamanaya*

*jata-rupam adat prabhuh*

*tato 'nr tam madam kamam*

*rajo vairam ca pancamam*

This verse purports that illicit affairs or extra marital relationships dilute the sanctity of marriages and destroys families. Therefore, the new law adultery shall provide no good to the Indian society and is certainly liable for appropriate amendments as enumerated by the author in the above sections.

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<sup>30</sup> The Srimad Bhagavatam, verse 1.17.39