# IPC Section 497: Adultery.

## IPC Section 497: Adultery (Struck Down) – A Historical Perspective  
  
It is crucial to begin by stating that Section 497 of the Indian Penal Code (IPC), which dealt with adultery, has been struck down by the Supreme Court of India in the case of \*Joseph Shine v. Union of India\* (2018). Therefore, adultery is no longer a criminal offence in India. However, it is essential to understand the historical context and the now-decriminalized provision for a comprehensive understanding of the legal landscape. This explanation will provide a historical perspective on Section 497, covering its former definition, essential ingredients, punishment, constitutional challenges, and the reasoning behind its eventual decriminalization.  
  
\*\*Former Definition:\*\*  
  
Section 497 of the IPC, before being struck down, stated: "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. In such case the wife shall not be punishable as an abettor."  
  
\*\*Essential Ingredients (as per the struck-down provision):\*\*  
  
The now-decriminalized Section 497 had the following essential ingredients:  
  
1. \*\*Sexual Intercourse:\*\* The provision required sexual intercourse between a man and a married woman.  
  
2. \*\*Knowledge of the Woman's Marital Status:\*\* The man must have known or had reason to believe that the woman was married to another man.  
  
3. \*\*Lack of Husband's Consent or Connivance:\*\* The sexual intercourse must have occurred without the consent or connivance of the woman's husband. “Connivance” implied the husband’s willing consent or passive acquiescence to the adulterous relationship.  
  
4. \*\*Exclusion of Rape:\*\* The sexual intercourse should not amount to the offence of rape. This meant the woman must have participated in the intercourse voluntarily.  
  
5. \*\*Only Man Punishable:\*\* A striking feature of this section was that only the man involved in the adulterous relationship could be punished. The married woman was exempt from criminal liability, even as an abettor.  
  
  
\*\*Punishment (as per the struck-down provision):\*\*  
  
The punishment for adultery under the now-defunct Section 497 was imprisonment of either description (rigorous or simple) for a term which may extend to five years, or with fine, or with both.  
  
\*\*Constitutional Challenges and Decriminalization:\*\*  
  
Section 497 faced numerous constitutional challenges over the years, primarily focusing on its discriminatory nature and its violation of fundamental rights. The key arguments against the provision included:  
  
\* \*\*Gender Discrimination:\*\* The section treated men and women unequally. Only the man could be prosecuted, while the woman was completely exempt from criminal liability. This was seen as violating Article 14 of the Constitution, which guarantees equality before the law.  
\* \*\*Treating Women as Property:\*\* Critics argued that the section treated women as the property of their husbands, as the offence was defined in terms of the husband's consent and the woman had no agency in the matter.  
\* \*\*Violation of Privacy and Dignity:\*\* It was argued that the section intruded upon the privacy and dignity of individuals by criminalizing consensual sexual relationships.  
\* \*\*Arbitrary and Discriminatory:\*\* The requirement of the husband's consent was seen as arbitrary and discriminatory, as it allowed the husband to determine the legality of his wife's sexual conduct.  
  
  
In \*Joseph Shine v. Union of India\*, the Supreme Court ultimately struck down Section 497, declaring it unconstitutional. The Court held that the provision was archaic, arbitrary, and violated the dignity of women. It emphasized that adultery could be a ground for civil action, such as divorce, but it should not be a criminal offence. The Court recognized that women are not chattel and have the right to sexual autonomy.  
  
  
\*\*Reasoning behind Decriminalization:\*\*  
  
The Supreme Court's decision to decriminalize adultery was based on several key factors:  
  
\* \*\*Equality and Dignity of Women:\*\* The Court recognized the inherent inequality and discriminatory nature of the provision, emphasizing that women should be treated as equals and not as their husband's property.  
\* \*\*Right to Privacy and Autonomy:\*\* The Court acknowledged the importance of individual autonomy and privacy in matters of personal relationships.  
\* \*\*Changing Social Mores:\*\* The Court recognized that societal attitudes towards adultery had evolved, and criminalizing consensual sexual relationships between adults was no longer justifiable.  
\* \*\*Focus on Civil Remedies:\*\* The Court clarified that adultery could still be a ground for civil action like divorce, allowing aggrieved parties to seek redressal through civil law.  
  
  
  
\*\*Current Status:\*\*  
  
Adultery is no longer a criminal offence in India. However, it remains a ground for divorce under various personal laws.  
  
  
\*\*Conclusion:\*\*  
  
While now defunct, understanding the historical context of Section 497 is crucial. Its examination highlights the evolution of legal thought and the recognition of women's rights and individual autonomy. The striking down of this section marks a significant step towards gender equality and the decriminalization of consensual adult relationships.