

Decriminalisation Of Adultery: A Socio-Legal Impact Analysis

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Abstract: Companionship and stability are the basic requirements of a human being and to satisfy the same the institution of marriage came into being. Marriage has always been given a sacrosanct status by Indian society which has never allowed people to see its gloomy effects. One such evil effects include the offence of Adultery. The Adultery is an offence committed by a married person when he /she enters into sexual relation outside the marital tie. Adultery as a crime around the world had been decriminalized long back in various countries but few still consider it as an offence. Amongst such countries one was India, until recently when Indian judiciary while exercising its great intellect and power as a protector of constitution decriminalised infidelity under Indian Laws on the grounds of being violative of various fundamental rights enshrined in the Constitution of India in one of the writ petition filed before the bench in Joseph shine v. Union of India. The researcher will be trying to analyse that how far this decriminalisation will be beneficial for Indian society focussing on the loopholes of the section 497 I.P.C. and the societal impact of decriminalisation.

Keywords: Decriminalisation, Indian Laws, Fundamental Rights, Constitution of India.

Introduction: Women rights can be discussed from various dimensions like political, cultural or economic and focussing these dimensions there have been movements aimed at establishing equal rights and legal protection for women. From sociological point of view, feminism focuses on analysing the impediments faced by women and the grounds on which such restrictions were imposed upon them when they claimed the right to equality. And this discrimination between the genders is an anomaly that goes back at least 4,000 years. Although the mode in which it has been observed varies among different cultures and perceptions and also change undoubtedly through history, its endurance has led to the evolution of the concept of patriarchy.¹ Patriarchy has been a

¹Lumen Learning, Feminist theory available at: <https://courses.lumenlearning.com/alamo-sociology/chapter/reading-feminist-theory/> (Last visited on September 12,2019)

dominant concept in India and this dominance has been endured by women in every phase of life including marriage.

Companionship and stability are the basic requirements of a human being and to satisfy the same the institution of marriage came into being. Marriage has always been given a sacrosanct status by Indian society which has never allowed people to see its gloomy effects. There are various issues related to marriage which are averse to its sacrosanct status like dowry harassment, sexual assault by husband, physical assault by husband and in-laws or any other. One among such offences related to marriage is Adultery and Indian provision penalising Adultery is a true example of Patriarchal concept laid down by feminists in their theories.

The dictionary meaning of 'Adultery' is, "voluntary sexual intercourse between a married person and someone other than his or her lawful spouse". Criminal law of India i.e. Indian penal code (I.P.C) was drafted long back in 1860 during British rule and the same law made adultery an offence under section 497. Since then Adultery had been one of the most absurd crimes in India.

Section 497 I.P.C, 1860 says,

"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."

This law clearly states that if a man has physical relationship with a woman whom he is aware to be the wedded wife of other person will be said to have committed an offence of adultery if such sexual contact is not with the permission or consent of the husband of such lady. So as per the law if the husband permits another man to have intimate relations with his wife then that man will not be liable for the offence of adultery. This clearly depicts the dominance of men over women and the predominance of patriarchal notion.

There have been many suggestions heretofore under various law commission reports to make the offence of infidelity gender neutral i.e. to punish the women who is involved equally in the act of infidelity. The forty second law commission report in 1971 and Justice Mali math Committee in 2003 had suggested the same but these suggestions were never implemented. The Provision criminalising adultery could be seen from the lens of various school of thoughts like from the angle of morality or feminism or breach of contract of marriage. But if we analyse all the thought schools none can backup or support the criminalisation of adultery.

From the perspective of morality, one can make the adultery wrong on the basis of the commitment towards the sacred relationship of marriage which demands trust and having sexual relationship outside the marriage is against the moral values. But doing moral wrong cannot be punished under any law. Law and morality are two different things. What may be morally wrong it is not compulsory that the same should be wrong legally also. Morality depends on person to person, what is morally wrong for one might not be morally wrong for other unlike law. The Act which is legally wrong is wrong for all. So, the proponent of morality cannot justify criminalisation of the offence of adultery.

Moving towards the feminist school, the adultery and the provision of section 497 has been said to be a section which was completely destroying the freedom of women and which has only made her a chattel in hands of her husband and other male members of her family. Feminist ideology have always been to work for women empowerment, equality rights and uplifting the social status of women and this Indian provision is contradicting completely the main ideology of feminism because as per the interpretation of this provision women do not even have right to decide regarding her sexual relationships. Neither is having a right to raise a voice if any wrong has been done by her husband under this section i.e. If husband has committed adultery. As per feminist this provision completely violates the fundamental rights of female, but even this school cannot justify the punishment given to male involved in this act not retribution female involved.

Considering the aspect of breach of contract, the one who purports this idea that the marriage is a contract between two individuals and any act done against such a deal will be considered to be the breach of contract. So, the act of adultery is violation of terms of

marriage contract and the one who breaches the same is liable for paying damages. But this thought process also cannot justify the criminalisation of Adultery as in the case of the breach of contract one can only claim for damages and the breach can be done by any party and both the parties have similar rights. Unlike section 497 of I.P.C which tries only men for the offence.

This absurd law which has made women only a toy in hands of her husband is almost 158-year-old colonial era rule related to infidelity. The era in which woman was kept at the mercy of her husband and other male members of the family, and she was not even given the authority to even speak in front of the male members of the family. As per the status of woman during that time British authorities drafted this law of adultery which gives the superiority to husband even in regards to decide regarding wife's sexual relationship. The Supreme Court of India recently held this age-old law to be unconstitutional in *Joseph Shine v. Union of India*.² on the basis of being violative of various articles of Indian constitution like article 14 i.e. :

“Equality before law : The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”³,

Article 15(1),

“Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”⁴

And article 21:

“Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law”⁵

²WP(Cr.) 194/2017

³The Constitution of India, art. 14

⁴The Constitution of India, art. 15(1)

⁵The Constitution of India, art. 21

Declaring Adultery unconstitutional is a great manoeuvre of our judiciary depicting that judiciary is accepting new changes and need of the society. The law of adultery was ages old which does not go hand in hand with current position of women. There was an immense need to bring this law to an end as there was a persisting disarray in deciding as in what constitutes an offence of infidelity because there is a great difference between the literal and legal meaning of adultery. Where the literal meaning says adultery is a crime committed by either spouse, the legal definition as per Indian law is that only men can prosecute and can be prosecuted for adultery. Neither the lady involved in infidelity nor the wife of man involved in such act can charge her husband for this offence.

Many of the countries across the globe has decriminalised Infidelity long back. As regards to Indian law of Adultery three aspects can be talked about. First, as discussed by Hon'ble Supreme Court in Joseph shine case⁶ that husband is given power to give consent for wife to have sexual relationship with other man. Second, discrimination between man and a woman for the same offence i.e. man is punished for adultery but the woman involved is not penalised. And Last, the wife of the Man charged for the offence of adultery has not given any right nor has been considered by law makers. All these aspects can be discussed in detail to decide how far decriminalization is beneficial for women of India.

Adultery: Provisions across the Globe-

Once monogamy was acknowledged as the rule in Britain between the fourth and fifth centuries, infidelity came to be perceived as a grave wrong that hampered with a husband's "rights" over his wife. The encumbrance of criminal sanctions on infidelity was also broadly based on perceptions about sexual morality which obtained the force of law in Christian Europe during the Middle Ages.⁷ In his Commentaries on the Laws of England, William Blackstone wrote that under the common law, "the very being or legal existence of the woman [was] suspended during the marriage, or at least [was] incorporated and consolidated into that of the husband: under whose wing, protection and cover, she performed everything."⁸ In return for care and security, the wife owed her husband

⁶ *Ibid.*

⁷ Dr Dhananjaya Y Chandrachud, J, *Joseph shine v UOI*, pg 18

⁸ William Blackstone, *Commentaries on the Laws of England*. Vol. I (1765), at pages 442 445

“consortium” of legal restrictions, which included sexual intercourse.⁹ Since adultery impeded with the husband’s exclusionary rights, it was contemplated to be the “topmost possible intrusion of property,” similar to theft.¹⁰

Many countries in Europe once had laws making Adultery iniquity, but most were abrogated in the 1970s and 1980s. Amongst the last countries who had decriminalised infidelity were Austria, in 1997, and Romania, in 2006. The Law of adultery is not different across the globe. Common law also recognises the concept of Adultery. But UK did not make it a penal offence rather it is a mere ground for divorce unlike India. Infidelity is one of the major grounds for seeking divorce and to prove irretrievable breakdown of Marriage.

In United States the offence of adultery was considered to be wrong since the colonial era, against morality and chastity, attracting both civil and criminal consequences. Women has always been treated as her husband’s property so any wrong that is done by wife against her husband by getting sexually intimated with another man was said to be an offence which was having capital punishment at that time. But due to the undue advantages that were taken by this soon it was recommended to decriminalize adultery in 1962.

However, moral aversion to infidelity lived on in the law. Many countries not only retained their criminal adultery sanctions, but also initiated civil penalties for the act.¹¹ Women involved in adulterous act has violated husbands right and the moral wrong that has been done to him is been paid by the man who was involved with his wife in the act. As time progressed, courts steered away from viewing sexual purity and the rights of husbands to their wives as legitimate causes of action, so over forty states instated statutory bars against these “amatory claims” (commonly known as Heart Balm Acts) against a spouse’s paramour. Nonetheless, the contemplation of adultery as an injury to a spouse is still relevant in the US legal system. Some states, such as North Carolina, still allow amatory claims or claims of negligent or intentional infliction of emotional distress to address a spouse’s adultery, in which the adulterous spouse can be held liable for damages as well. The laws are now

⁹ Vera Bergelson, *Rethinking Rape-By-Fraud in Legal Perspectives on State Power: Consent and Control* (Chris Ashford, Alan Reed and Nicola Wake, eds.) (2016), at page 161

¹⁰ *R v. Mawgridge*, (1707) Kel. 119

¹¹ Alyssa Miller, “Punishing Passion: A Comparative Analysis of Adultery Laws in the United States of America and Taiwan and their Effects on Women”, 41(2)*Fordham Intern. L. J.*, 429 (2018)

defended as a “device to preserve marital stability,” rather than a way to protect the chastity of women.¹²

Even in states that disallow such claims, courts have repeatedly acknowledged the emotional harm experienced from adultery. Thus, penalties for adulterous spouses represented a “victim-oriented approach” to addressing these injuries. Though the definition of adultery varies slightly in each jurisdiction, it is a ground for divorce in thirty of the thirty-two states that continue to recognize a fault-based system. Adultery as a ground for fault divorce was not originally designed to punish a guilty spouse, but to be a “sanctioned excuse from one’s marriage vows” when an adulterous spouse breached the marriage contract and failed to meet his/her responsibilities as a marital partner.¹³

UN expert group on women’s human rights says that Adultery should not be a criminal offence at all and in order to make a probe to it and do further research in identifying ways to eliminate existing discrimination in law and practice United Nations Human Right Council (UNHRC) had established the Working Group on the issue of discrimination against women in law and in practice in 2010 so that they can help States to ensure greater empowerment and autonomy for women in all fields. As per the opinion of experts making fornication between consenting adults a crime is an infringement of their privacy rights and also infraction of the International Covenant on Civil and Political Rights. They have urged all the countries who are criminalizing Adultery to decriminalise the same. And in order to achieve this goal the high commission of UNHRC i.e. situated in Geneva has send letters of communication to 33 countries including India and Muslim nations like Afghanistan, Pakistan, Iraq, Iran and others on 16th November, 2017 requesting them to decriminalize adultery as it is antipodal to Human Rights and discriminatory against women.

Indian Legal Scenario related to Adultery:

Indian law for adultery is tendentious. It not only discriminates between man and woman involved in infidelity but also subdue the position of woman by giving her husband right to take sexual decisions for her. If we interpret the Indian law for Adultery i.e. section 497 I.P.C still involves sexually with her without the assent of that man then he has perpetrated an

¹²*Ibid.* at 430

¹³*Ibid.* at 431

offence of adultery. In other words, we can say that if a man had fornication with the approval of the husband of the woman involved then it will not be called as adultery. This is such an eccentric norm as it leads to the interpretation that a woman is subject to her husband's decision be it on social platform or personal aspect. But in 21st century, where Right to Privacy has been declared to be one of the fundamental rights¹⁴ by Hon'ble Supreme Court, the decision regarding sexual relationship is also a matter of an individual's privacy and with whom one wants to involve sexually will be one's own decision not anyone else's. In Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India and Ors¹⁵ the larger bench of Apex court observed: then it clearly states that if a man who is aware that the woman is another man's wedded wife

"298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to

¹⁴ Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India and Ors, (2017) 10 SCC 641

¹⁵ *Ibid.*

freedom of thought, the freedom to believe in what is right, and the freedom of self-determination.”

This clearly shows that right on person's body and mind is his/her private affairs and he/she has a right to live with dignity.

As already stated, one can see the provision of adultery from these aspects. First, that it is against the women as it gives excess rights to husband to take decisions for her and other, that it is favouring women as the punishment is only for the man involved in sexual act and women is said to be only a victim. Many of the Indian laws are women centric i.e. there are many laws in India which are favouring women a lot which are often misused by women these days for example Domestic violence act, 2005. Section 497 of I.P.C i.e. law of Adultery can also be said to be one of such law where in the women involved in the act of adulterous act is completely kept out of the purview of crime. The lady is considered to be a victim in the case of adultery instead of being a culprit. This Provision is clearly violative of Article 14¹⁶ and 15(1)¹⁷ of Indian Constitution which states that everyone is equal irrespective of sex, class, religion or race and the law itself discriminates between man and a woman for the offence they have committed together.

The constitutional validity of section 497 I.P.C has been challenged in many cases and Women's rights activists have conjointly from time to time has opposed this provision. The first time this question was raised in Yusuf Abdul Aziz v. State of Bombay and Husseinbhoj Laljee¹⁸. The main issue involved in this case was that Section 497 of the IPC is ultra vires Articles 14 and 15 of the Constitution of India. The Court held that Article 14 is general and must be referred with the other legal provisions which set out the scope of fundamental rights and further clear that there is no restriction in the Article 15(3) which provides for:

“Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
(3) Nothing in this article shall prevent the State from making any special provision for women and children”¹⁹

¹⁶Supra note 1

¹⁷Supra note 2

¹⁸ AIR 1954,Bom 470

¹⁹The Constitution of India, art.15(3)

And it is not agreeable that a provision which prohibits punishment is tantamount to a license to commit the offence of which punishment has been prohibited. Articles 14 and 15 read together validate the impugned clause in Section 497 of the IPC.²⁰

In another case *V. Revathi v. Union of India*²¹ the question related to constitutional validity of section 198 (1) and 198 (2) CRPC i.e.

198. Prosecution for offences against marriage.

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:"

(2) For the purposes of sub- section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code: Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

was challenged by a wife by filling a petition under article 32 of the constitution of India which gives a right to an individual to file a writ petition in the Apex Court whenever there is a violation of his/her fundamental rights.²² According to the petitioner these provisions are violative of Article 14 of the constitution as these do not give right to a woman to file a criminal case against her husband who has committed adultery but gives right to husband to do so. The Apex court in this case relied on *Sowmithri Vishnu v. Union of India* and another²³ three judge bench decision which says that neither husband nor wife can use this criminal weapon against each other, this weapon is to punish that outsider who intruded into the sacred relationship of marriage and broke its sanctity. So, neither husband can prosecute wife nor can wife do so, hence it is not violative of Article 14 of Constitution of India.

²⁰ Maumita Bhattacharjee, Offence Of Adultery In India- A Study available at: <file:///F:/research/adultery/offence%20of%20adultery%20-%20a%20study.pdf> (Last visited on May 20, 2019)

²¹ AIR 1988 SC 835

²² The Constitution of India, art. 32

²³ (1985) Supp SCC 137 : AIR 1985 SC 1618

The matter came up again after years in front of Apex court in 2018 in Joseph Shine v. Union of India²⁴ in which the hon'ble court overruled all previous judgements and made the offence of infidelity unconstitutional. The Apex Court said that Section 497 I.P.C is violative of constitutional provisions giving equality rights to women. As stated by Dipak Misra, CJI:

“22. We may now proceed to test the provision on the touchstone of the aforesaid principles. On a reading of the provision, it is demonstrable that women are treated as subordinate to men inasmuch as it lays down that when there is connivance or consent of the man, there is no offence. This treats the woman as a chattel. It treats her as the property of man and totally subservient to the will of the master. It is a reflection of the social dominance that was prevalent when the penal provision was drafted.”

But the question is that the reason given by the court for declaring the provisions related to Adultery as unconstitutional is justified or not? How far can we say that the Section 497 I.P.C was not correct only because it gave husband more right over wife, it gave husband right to decide about wife's sexual relations? Is it justified to decriminalize Adultery? What will be the impact on social life of people? As per the legal aspects we have seen that adultery as a crime was against the women and was violating right to equality enshrined to every individual, but we cannot ignore the societal impact of this decriminalisation. The country where marriage is considered to be a sacred union of two souls, having a relationship outside such marriage ruptures the entire sacrament of this union. To some extent Section 497 was preventing sacramental structure of marriages. It was forbidding males to have relationship with a married woman. Even though we have seen that Indian provision of adultery is biased and is not covering many aspects but we cannot deny that decriminalizing adultery has now removed that fear of punishment from the mind of people and now they will not think twice before having sexual relationship outside the sacred union or will not hesitate breaking others relationship.

Another angle that is touched by the judiciary is the right of the wife of that man who goes outside the marriage and breaks the trust. She is having only an option of divorce but she is not having a right to sue that other lady or her husband for that matter. As the matter was

²⁴ *Supra* note 4

taken by the court in *Sowmithri Vishnu v. Union of India* and another²⁵ but it talks about prosecuting husband and wife that they cannot sue each other. The section is to punish the outsider who entered into the solemn relationship and broke its purity. Here if we are punishing an outsider male the similar offence has been done by a female against the wife of that man, then why she is not given the same right to prosecute that lady who broke her marriage??punishing a man but not a woman who stands at same place is again violative of Article 14. The only difference is that at this point two discrimination is being done. One against the man who is an adulterer and other is the wife of the man who is having relationship with another women. Considering this aspect, the then chief justice of India Dipak Mishra, CJI in *Joseph Shine v. Union of India*²⁶ observed:

“Section 198 CrPC deals with a — “person aggrieved”. Sub-section (2) of Section 198²⁷ treats the husband of the woman as deemed to be aggrieved by an offence committed under Section 497 IPC and in the absence of husband, some person who had care of the woman on his behalf at the time when such offence was committed with the leave of the court. It does not consider the wife of the adulterer as an aggrieved person. The offence and the deeming definition of an aggrieved person, as we find, is absolutely and manifestly arbitrary as it does not even appear to be rational and it can be stated with emphasis that it confers a licence on the husband to deal with the wife as he likes which is extremely excessive and disproportionate.”

Conclusion: Adultery is seen from the perspective of betrayal done towards the sacred relation of marriage. In the words of Vladimir Nabokov, Adultery “is a most conventional way to rise above the conventional.” In other words, it can be said that it is the most common belief of Indian society that one should not betray his or her partner by indulging into any intimate relation with other person but the concept of adultery compels society to relook this traditional belief. The decisions in respect to sexual intimacy cannot be regulated by any law or societal pressure. This is an individual’s right to privacy and in context of same decriminalisation of the provision related to Adultery can be justified. One cannot overlook the theory which says that role of state should be limited when it comes to personal life of

²⁵ *Supra* note 23

²⁶ *Supra* note 4

²⁷ *Supra* note 21

people. Regulating Personal decisions in civil society and excess interference can affect the trust of society on state. So far as societal behaviour is guided by state it is acceptable and people adhere to same but too much intrusion is excessive personal decisions like sexual decisions may bring out the revolting behaviour of society.

Moreover, the Indian provision in this regard can be said to be commensurate to subservience of women when our constitution is giving equality rights to all. Adultery law is the product of that era when polygamy was preeminent and wives were dependent only on their husbands. But with changes in time and need this law was never reformed until judiciary's recent acumen. The reasoning given by the apex court to support its verdict is that as per the constitution of India it is fully justified. Decriminalising adultery to an extent of discrimination against women is a considerable action of our judiciary but if we think from societal perspective this can lead to devastate the sacred concept of Indian marriage system. By removing criminal prosecution from adultery, the judiciary has contributed in a negative manner towards society.

So far as decriminalising adultery is supported by the view that it is favourable for women, one can say that this has ameliorated the female gender partially as they can now take their own decisions and are not subject to any kind of dominance but on the other, this has to an extent questioned the sanctity of institution of marriage. It's not that the concept of adultery is completely exhausted after the judgement, it's just that it is no more a criminal offence but one can still claim civil remedy against adultery. The court has not removed adultery as a ground of divorce u/s 13(1)(i) of Hindu marriage act, 1955. The provision under Hindu marriage act is gender neutral as in both husband and wife can ask for divorce if any of the spouse indulges in sexual intercourse outside marriage. The concept of Adultery under IPC and Hindu marriage act is quite different as under section 497 IPC, Sexual intercourse with a married woman without consent of husband is a criminal offence whereas Section 13(1)(i) of Hindu marriage act do not use term "Adultery" on the first note. Secondly this section only gives a gender-neutral right to a person whose spouse has sexual intercourse outside marriage to seek divorce as a civil remedy.

The question that still pertains is that whether giving civil remedy for adultery can prevent the sacred notion of marriage concept as per Hindu tradition per se? Giving right to divorce

is not forbidding an individual from indulging into such acts, it is only giving an option to the victim spouse to move out of marriage. In other way we can also say that decriminalisation has now given an option to the one violating marital obligation that he/she can freely have relations with other person also and in case the spouse came to know about the relation he/she can escape only by giving divorce. If every individual will have such attitude then the notion of marriage and its sanctity will be affected greatly. So, we cannot deny that criminalisation of Adultery to an extent was preventing sacred concept of marriage.

In addition, this section completely overlooks the newly emerging concepts in India i.e. Live-in relationships and same sex marriages. Declaring section 377 I.P.C unconstitutional to the extent of consensual same sex intercourse between adults²⁸ our judiciary has given acceptance to same sex marriages, but infidelity in same sex marriages is a crime or not Indian laws are silent on this notion. Similarly, in case of Live-in relationships whether adultery can be committed or not there is no clarity and there is need to look for these answers which could not be found under section 497 I.P.C.

To sum up we can say that decriminalising has only iron out one of the three aspects, but the other two has been cold-shouldered by the judiciary. To make adultery an effective law and not a biased one there should have been an amendment in the section by making it gender neutral and giving rights to both husband and wife of adulterer man and adulterer woman to prosecute them and them both should be punished for having intimacy outside the wedlock. Judiciary has done what was appropriate according to them now it is time for the legislature to bring an amendment considering the important factors related to gender equality and sanctity of marriage.

²⁸ *Navej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, W. P. (CrI.) No. 76 of 2016 (Supreme Court of India)