

General Studies-2; Topic – Mechanisms, laws, institutions and Bodies constituted for the protection and betterment of the vulnerable sections.

Adultery Law in India

1) Introduction

- The apex court is hearing a petition challenging the constitutionality of Section 497 IPC which incorporates provisions for the adultery law.
- Adultery means voluntary sexual intercourse of a married person other than with spouse. The legal definition of adultery however varies from country to country.
- In India the offence of adultery is punishable under Section 497 of IPC.
- Adultery amounts to breach of trust between a married couple.

2) Adultery Law in India

- The law in India is a colonial creation, formulated 158 years ago.
- Section 497 IPC reads as: Adultery.—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.
- Section 497 says that the woman in an adulterous relationship will not be considered an abettor.
- Section 198 (1) and (2) of the Code of Criminal Procedure deems that only a husband can be an aggrieved party in offences against marriage like adultery and only he can go to court.
- A man who enters into a sexual relationship with a married woman without the knowledge or connivance of her husband is guilty of adultery and can be punished with a jail term of up to five years.
- If a married man has an affair with an unmarried woman, there is no adultery.
- The law does not confer any right on women to prosecute the adulterous husband, or the woman with whom the husband has indulged in sexual intercourse with.
- The husband solely has been permitted to prosecute the adulterer.
- The statutory provision reflects how women are considered mere “possession” and “property” of the husband.
- The Indian law on adultery is an articulation of patriarchy.
- Modern India cannot afford to have such gender bias in its laws.

3) Centre's Arguments

- A provision of law dealing with adultery (Section 497 of the Indian Penal Code) should remain a criminal offence.
- It opposed a petition before the Supreme Court that seeks to amend the provision to make men and women equally liable.
- Striking down Section 497 of IPC and Section 198(2) of CrPc will prove to be detrimental to the intrinsic Indian ethos which gives paramount importance to the institution and sanctity of marriage.
- The provision “supports, safeguards and protects the institution of marriage”.

4) International Practice

- Many countries across the world do not treat adultery as an offence any longer.
- All European countries have decriminalised adultery, and so have many parts of Latin America.
- 20 states of the USA have retained adultery as an offence.

5) Arguments against Adultery Law

- Section 497 of IPC is unconstitutional as it discriminated against men and violated Article 14, 15 and 21.
- It is “unjust, illegal and arbitrary and violative of citizens’ fundamental rights”.
- Adultery is not considered a criminal offence towards women in India and has been in limelight for being discriminatory towards men.
- The section does not confer any right on the women to prosecute the adulterous husband or the woman with whom the husband has indulged in sexual intercourse with.
- The husband solely has been permitted to prosecute the adulterer.
- In three earlier judgments in 1954, 1985 and in 1988, the court had upheld the the constitutional validity of Section 497 of IPC.
- Now the provision seemed “quite archaic, especially when there is societal progress”.
- Sexual relations with a widow, sex worker or an unmarried woman does not attract Section 497 of IPC.
- Adultery caused mental and physical injury to the spouse, the children and the family.
- An extra-marital affair becomes non-punishable if the woman's husband stands by her adulterous relationship with another married person.
- So there is no 'collective good' in Section 497 of IPC.

6) Recommendations

- In 1971, the Fifth Law Commission recommended making the law gender-neutral and reducing the prison term from five to two years.
- In 2003, the Malimath Committee said that Section 497 should penalise anyone who has sex with "the spouse of any other person".
- In 2006, the National Commission for Women recommend that adultery be decriminalised.
- In 2012, a United Nations Working Group on laws that discriminate against women wanted countries that treat adultery as a crime, to repeal such laws.

7) Way Forward

- Marriage should sustain on the strength of mutual trust, respect and love, not out of fear of a jail term.
- Modernising the law on adultery is essential to live up to the commitment to equality offered by the Constitution.
- It is time to revisit all archaic laws in India.
- The principle of equality before the law requires the revision of the law on adultery by including both partners within its scope.
- To change the social outlook in a patriarchal society, it is necessary that laws are designed to protect and empower women.
- Most of the countries have decriminalised adultery. It is time for India to make it a civil offense.