

'EXTRA-MARITAL AFFAIR: CRUELTY OR INFIDELITY?'

Mr. Ashish Pathak*

Introduction

Extra marital affair in a society has never been considered to be something which has to be appreciated or respected. Every human being on this earth has been given the power of thinking by god but this thinking has to be positive and prolific. Marriage is a step taken by humans of opposite sex which involves the elements of mutual trust, confidence and affection. When any of these is broken, the balance of a family gets disturbed and it effects the psychological and emotional process of a human being.

Men and women are wired differently. In case of a woman's brain, sex and love are wired together, while in men, love means love and sex means sex. They are rarely confused between the two¹. Extra Marital Affair, as the name itself suggests is something that is present which wasn't needed. The parties in a marriage take the excuse that they were not happy and psychologically disturbed, but these reasons cannot give them the right to have an affair with someone who is not in a 'legal' relation² with them. The balance between needs and desires has to be clearly understood and executed. The former covers the concept of marriage while the latter gives invitation to an affair outside the wedlock. So, it is important for a person to have a control upon his/her desires in order to ensure the proper bonding of his/her family. Divorce, or judicial separation is an option available to a person who is not satisfied or happy with his/her partner. But, extra marital relation actually dilutes the effect of mutual trust between two individuals and that's why the offences of bigamy, adultery etc. have been included in Indian Criminal Law. It would be improper to say that

* Assistant Professor, Amity University, Haryana.

¹ Words of Ramon Lamba, Life Coach, *available at* <http://timesofindia.indiatimes.com/life-style/relationships/love-sex/why-extra-marital-affairs-could-be-right/articleshow/48019416.cms>

² 'Legal Relation' signifies a relation involving fiduciary relation between parties or any relation which is not an offence in I.P.C. like adultery, bigamy etc.

cruelty or infidelity have only a nexus with this, rather both of them are a part of this social evil.

Indian laws have tried to define the term 'Cruelty' in a simple and plain manner under Section 498 A of the Indian Penal Code, 1860 which reads:

Cruelty means:

- Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health.
- Harassment of the woman where such harassment is with a view to coercing her on any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

It is to be noted that the term 'cruelty' has been interpreted in order to help a woman fighting a case against her husband or in laws under the above mentioned section. But, a glimpse of this terminology will prove the fact that cruelty in a general sense is something related to 'being unfaithful', 'violating trust' and playing with someone's self-respect. The circumstances in a case may point out that it was need of the hour that parties should have been separated, but it can be done through any legal process involving divorce by mutual consent or judicial separation through a decree of the Court. Having a relation with another person outside the wedlock is simply travelling on two boats in a river.

Another provision which has the ingredient of defining the concept of 'Extra Marital' relation is Section 497 I.P.C which talks of 'Adultery'. It is an offence against the husband which punishes the person who commits sexual intercourse with the wife of a man. These laws, simply reflect the fact that framers of Criminal Law were in no mood to leave any scope for a person to have any kind of relation outside his/her marriage. Questions can be raised that why the married woman doesn't get the punishment but the controversy has already rested by the Supreme Court in the case of *State v. K. Sridhar*³ stating that only man can be punished for the offence of adultery. Though, having a relation outside the marriage cannot be accepted but it is

³ 2000 Cr. LJ 328 (Kant).

important to know the reasons why a person decides to cheat his/her spouse. Some of them are discussed below:

- **Not attached emotionally**

As already said, psychological strength is the biggest strength given to a human being by god. Every human wants love, care and affection and when any of these elements are missing, problems start building in a human's life. Emotional disconnect arises when either of the spouse plays with the emotions of the other. When a man or a woman give less time to each other, there communication becomes suspended and because of this they cannot share their feelings with each other. This absence of communication creates a vacuum which is more often than not, filled by an 'outsider'. Emotional disconnect has to be ended by spouses themselves in order to protect the sanctity and importance of their marriage.

- **Either of the spouses being physically incompetent**

Impotence can sometimes effect the relation of partners with each other. Sexual desires are common on part of both man and woman. But, as already said, there has to be a difference between desires and needs. It is necessary for the spouses to preserve the purity of their relation irrespective of the fact that either of the spouse is not sexually competent, then only the menace of extra marital affair can be defeated.

- **Career related issues**

It can be said that career plays an important role in overall development of a person's personality. But, sometimes this hunger or greed I should say, creates problems for the family. There are instances where either of the spouse indulges in extra marital affair with his or her boss in order to get promotion or salary hike. This cannot be justified as there has to be balance between family and career. Career is important for everyone in the society, but it should not be framed by putting family at stake. It is not hidden that if either of the spouse is indulged in a relation with someone who should not be a part of it, children suffer as frequent episodes of quarrels, anxiety etc. take place instead of peace and affection.

- **Marriage gone wrong**

Anything which disturbs family peace and stability may be because of a marriage which was against the wishes of either of the spouse. Sometimes, parents of the girl or boy marry them against the wishes of each other. It not only affects the balance of relations but also dilutes the feeling of care and affection for each other. This has to be kept in mind that there has to be meeting of minds in order to run a family. Marriages that don't involve free consent of parties prove to be unsuccessful as there is no *consensus ad idem*⁴ on part of the spouses.

- **Having different priorities in life**

It is generally said that a person should be ambitious and not over ambitious. Ambitious personalities tend to find a way to their success, but it is over ambition which takes a person on the wrong path. For e.g., if a wife wants to be in a profession which is full of struggle and the husband is against it, the former tries to hide her activities with the partner which can take form of having an extra marital affair ahead in order to pursue her dreams. I didn't mean to say that it is wrong for a woman or a man to be ambitious in her or his life but there has to be coordination of everything including the family, profession as well as moral values.

These are various reasons as per my understanding which play an important role in ensuring the defeat of a person's values and prompting him/her to go outside the wedlock and having an affair with someone else. It is to be noted that spouses have to decide the future of their own as well as their children, so before taking any step they have to keep everything in their minds which is going to affect their marital life.

It will be wrong to say that having an extra marital affair is only cruelty or infidelity. These are two terms that are small while deciding the impact of this social evil. Rather, I would say that both these terms are only ingredients of this evil. One who decides to be in an extra marital affair not only commits cruelty with the spouse but also is infidel towards the partner. A couple has to decide their future and

⁴ Meeting of minds.

it should not be decided on the basis of ensuring a 'fake' career.

It can be said that following steps can be taken in order to ensure a healthy relationship between the spouses:

- **Ensuring a nexus between career and family**

A proper balance between the two 'needs' can very well play an important role in ensuring a successful relation between the spouses. Both have to understand the importance of 'being together' and a proper coordination will enable them to respect their relation. Differences arise when there is a conflict between thought processes and it can affect the relation negatively.

- **Respecting each other's proper decisions**

Proper decisions mean those steps taken by a person which ensure family's stability and protection. As already said, an ambitious person will always try to be successful in his/her life which is acceptable, but an over ambitious person will try to manage things in a manner which cannot be sometimes, accepted. A decision which is improper for a person may be proper for the other, but both of them have to come to a definite conclusion which is beneficial for them as well as the family without disrespecting each other's respect. Good decisions taken by any of the spouse should always be appreciated and encouraged by the other. It charges the other person with positive energy as well as confidence and plays an important role in maintaining a healthy relationship between the partners.

- **Giving time to each other**

This is one of the most important essential which has to be kept in mind while defining a relation. Husband and wife are made for each other and therefore they should find adequate time for each other. This time decides the bond of their relation and requires no boundaries or limitations. Problems and issues can only be solved once the spouses start giving time to each other. It builds the sense of confidence as well as affection amongst them, which plays an important role in strengthening their relationship.

- **Resolving their disputes in an amicable manner**

If there is a dispute over any issue, it should be solved in a peaceful manner. Any decision which has the ability to influence the relationship between the spouses, should be taken in a manner which is suitable to both of them. Harsh words and abusive language should be avoided in order to nourish the path of family. If any person within the family commits a mistake, its effect should be diluted by maintaining peace and resolving the matter through means that are acceptable in a society.

If these steps are taken, then the sanctity as well as respect of the spouses can be protected and preserved.

Societies have been quite vocal on this issue over a period of time. Western Countries have the tendency to 'adjust' and 'manage', but Indian society is still reluctant to accept any kind of relation which is outside the wedlock. This has to be appreciated that we haven't accepted this social evil as a part of our life. Simply speaking, Indian is a country which is a land of 'Maa Sita' who has been well known for her sanctity and purity. But, there are some instances where spouses cross the 'Laxman Rekha' and create problems for themselves as well as the other members of the family. The Indian cinema has also tried to reflect the effects of this evil as movies like Murder etc. have displayed the aftermaths of an extra-marital affair. The tendency to find 'love' outside the marriage has to be finished and it will be better for the spouses to go for divorce if they are not able to adjust their mutual relations.

In a long-term relationship, we become frozen in our role, caught in a repetitive loop. Everything seems boringly predictable. An affair offers a clean slate and a refreshing unpredictability, a newness. When we get into them, we are often pleased, surprised, relieved or thrilled to find that in this affair we show up as very different from the person we are in the marriage. We are funnier, sexier, smarter, wiser and pleasing to ourselves. It is easy to maintain illusions, even of oneself. Romance is a breeze when carried out in secret, fleeting meetings with little time to for real life to intrude. And it is a space where we have not even shared the full real T. It is actually, stage one of romance and is nothing

short of perfect. You are heard, understood, appreciated and wanted. It is a confidence builder⁵.

But, this romance and excitement brings all kinds of problems as well. As already said, this term has something 'extra' which wasn't needed. It can give you temporary pleasure, but not permanent. The quest to find happiness and love has to be done within the wedlock. The reasons may be numerous, but an attempt to carve out something, has to be done by the spouses themselves and that too within their domains by respecting their mutual relation.

Often, it's marital disharmony that leads to extra-marital affairs. In arranged marriages, the spouses may not click, and look for options elsewhere. A liberal media and generally more openness with the opposite sex, such as colleagues, bring people closer emotionally and sexually⁶. But, the question cannot be answered only taking cruelty or infidelity in mind. Of course, both of these elements are present and have their own impact, but simply these two don't define the concept in detail.

Laws related to cruelty have been very well defined and interpreted in I.P.C. But, needless to emphasise that the framers of the Code have tilted the balance in favour of the females while deciding this concept. They have overemphasised the 'patriarchal' society of India and therefore various amendments related to Cruelty, directly or indirectly have been done in I.P.C. keeping the status of women in mind. Cruelty has an impact upon both the spouses when there is an extra marital affair of any party. Meaning thereby, the sufferer as well as the person indulging in extra marital affair, both have to face the consequences. Needless to emphasise that infidelity can be said to be a 'moral wrong' as well as 'legal wrong'. It can be said to include those circumstances as well which prompt a person to take this unfair decision disrespecting their mutual relation and confidence. One can say that infidelity and cruelty are the same thing as far as extra marital affairs are concerned, but my perspective is that the former includes an element of morality (which is missing in an extra marital affair) while

⁵ Raksha Bharadi, *'The Power of An Extra-Marital Affair'*, available at <http://m.huffingtonpost.in/bonobology>.

⁶ Words of Dr. Himanshu Saxena, Psychiatrist, available at <http://timesofindia.indiatimes.com/life-style/relationships/love-sex/Is-it-worth-having-an-extra-marital-affair/articleshow/11153863.cms>.

the latter includes morality as well as legality. Legality, because the term cruelty has been interpreted and included by the framers in Criminal Law whereas infidelity has not been used. The laws related to cruelty cannot be ignored but have to be interpreted in a manner to suit the needs of society as a whole. The laws have to be framed in such a manner that is applicable to everyone in an equal and impartial manner. Adultery is an offence against the husband, but only the male abettor is punished and not the wife of the husband. This has been upheld and supported by the Supreme Court as well which simply dilutes the balance of the nature of this offence as well as punishment. It is need of the hour that wife should also be punished in the same manner in which a man committing adultery is punished. 'Cruelty' has to be interpreted in a manner which is impartial. Though the offence is against the husband, but his wife also remains in the same 'scenario' in which the culprit was. Cruelty is done against the husband but his wife is also a partner in crime so she needs to be punished also if she was having consent in the offence.

Needless to say that, Courts as well as the Legislature have to find a way in establishing principles and laws which are equally applicable to everyone. Extra marital affair cannot be said to be a healthy practice whatsoever the reasons may be, but the laws and rules should be applicable to everyone in a particular case. Of course, the impact of every law upon the society is unique, but more or less every law tries to maintain peace and order in the society apart from punishing the offender. Both Section 497 as well as 498 A of the I.P.C. have defined the term 'Cruelty' only by taking the 'helplessness' of women. This is acceptable, but making any law or defining any concept taking female or male only at a time cannot be justified and that too in Indian circumstances. Extra marital affair creates an imbalance in the family which has a deterrent effect upon the spouses as well as the children. So, it is need of the hour that certain amendments should be done in I.P.C. in order to protect, preserve and nourish the concept of 'impartiality' and the society including both men and women should take steps to dilute and finish their disputes in order to protect their family and respect in society.