

EXTRA-MARITAL AFFAIR: CRUELTY OR INFIDELITY?

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Abstract

‘Marriage’ in Indian context symbolises a bond rather sacred and ceremonious. It vows two individuals, together, towards a permanent unison and embracement of intimacy to be shared among them until death. However, this school of thought has been rather disregarded and overshadowed by one’s own ideologies and levels of comfort in the said marriage by negotiating the traditional ideas while weighing in their individual concerns. In today’s society, infidelity and cruelty vis-a-vis are one of the leading causes for marital disruption and divorce. It is observed that two out of three marriages fail due to the above. The main question lies ‘Can a marriage survive an extra marital affair?’ And ‘whether a spouse is primarily responsible for circumstance leading to an affair?’

This paper attempts to examine several aspects of the association between extra-marital affairs, adulterous living and its disruption into the marriage. It also attempts to make clear the concepts of cruelty coupled with infidelity and its legal consequence through judicial interpretations and judgements. Is the Court of judicature lenient when it comes to husbands fault grounds? Or does a woman under the garb of feminism and chastity have the power to twist a case into her favour? These questions shall be addressed through a theoretical analysis of the same.

Key words: marital disruption, adulterous living, lenient, judicial interpretations, theoretical analysis

Extra marital affair: Cruelty or infidelity?

Marriage signifies a sacramental or contractual bond between two individuals tied under the vow of a matrimonial union. In diversity of religions, it is marriage that has been always given a pious

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position. The soul of this worldly phenomenon is commitment. However, in the present scenario of the world dishonouring marriage by being involved in an affair outside marriage is very commonly practised. This amounts to both a religious as well a moral wrong. It is observed that at least 6 out of 10 men and women who have been married for 30 years have at least 1 encounter outside marriage. But, are extra-marital affairs just infidelity or cruelty too?

Partner swapping though a taboo in India is quite a well-known fact these days. People who are adopting to such means have taken a larger proportion with time. Although wrapped under the cover of values, these options have trickled into small towns as well. As we are adapting to the western culture rapidly the people have at large are letting go of their Indian values and adopting the dark side of the westerners. As a matter of fact, people resort to **infidelity** as a resort to having some fun or a one-night stand per se. A large number of causes can be listed down to define the same.

- Erratic shift of jobs that makes it nearly impossible for the spouses to spend time together resulting in partner swapping without guilt.
- Wife's refusal to understand the problems of husband and late working hours, hence denying sexual intercourse.
- Men's desire to explore women from various backgrounds and use as a sex-toy.
- Lack of interest in having sexual intercourse with husband.
- Addiction to drugs and alcohol increasing the need of sexual activity.

Infidelity per se is characterized into different types.

It can be a mere affair outside marriage due to neglecting of the marital relationship.

A sexual affair wherein one partner may have sexual intercourse outside the relationship however without any emotional relationship.

A cyber affair, i.e., infidelity committed through sex chats online or engaging in some form of pornography.

An emotional affair whereby one of the spouse becomes emotionally attached to another person deeply. Such a kind of

affair throws a negative impact on the matrimonial relationship as it detaches one spouse from the other platonically.

Infidelity can also rise where both emotional attachment as well as sexual intimacy are present in an affair, usually such kind of infidelity end up ultimately in divorce.

Majority of people failing to understand the root cause of such problems in their marriage often resort to such decadent acts. Such acts of infidelity often amount to cheating by involving in activities of sexual intercourse, in the ambit commonly known as ‘adultery.’

Adultery under Section 497 of IPC¹ states that, 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 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, with fine, or with. In such a case, wife shall not be punished as abettor.

If adultery would be a matrimonial offences, the husband would not have the freedom to indulge in extra-marital sexual relations with unmarried women & nor the consent of the husband of the wife when she had sexual intercourse with any men would make any difference. The existence of Section 497 has no apparent effect on society also there are a number of nations like Austria, Netherlands, Belgium, Finland and Sweden where adultery is decriminalized.

There lie various personal laws in India with respect to extra-marital affair:

- **The Hindu Marriage Act, 1955 and the Special Marriage Act, 1954:**

Under Section 13(1) of HMA and Section 27(1)(a) of SMA, any marriage can be dissolved by decree of divorce on filing of petition on the grounds that the wife or husband has, after solemnisation of the marriage had voluntary sexual intercourse with any person other than the spouse.

- **Judicial Separation:**

A petition can be filed in the court to obtain a decree of judicial separation on the grounds of adultery committed

¹ Indian Penal Code, 1860.

by either husband or wife. After obtaining the decree there is no need for cohabitation² between the spouses and within one year the spouse can file a petition for dissolution of marriage.³

- **Muslim Personal Laws:**

The husband can divorce the wife by using the term ‘talaq’ translated as repudiation or simply divorce. He does so by simply announcing to his wife that he repudiates her. This also depends upon the sect of husband (shia or sunni). The wife under Section 2 (viii) (b) of the Dissolution of Muslim Marriage Act, 1939 can file for divorce if the husband associates with women of evil repute or leads an infamous life or as falsely accused the wife of adultery can be a ground under Lian.

- **Christian Law:**

Divorce is regulated under The Divorce Act, 1869 in India. Section 10(1)(i) states: Any marriage solemnised, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001/ may on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnisation of the marriage, the respondent has committed adultery.

Judicial Separation:

A petition can be filed under Section 22 of the Divorce Act, on the ground that adultery has been committed by your spouse.

- **Parsi Law:**

The statutory provisions are provided under The Parsi Marriage and Divorce Act, 1936. Under Section 32(d) of the Act, adultery is a ground for divorce if filed within a period of two years if the plaintiff came to know about the fact.

Judicial Separation:

Section 34(d) of the Act makes it a ground for divorce as well as for judicial separation and a decree can be obtained.

² Section 10 Hindu Marriage Act, 1955 and Section 23 Special Marriage Act, 1954.

³ Section 13(1A) (i) Hindu Marriage Act, 1955 and Section 27 (2)(i) Special Marriage Act, 1954.

- **The Code of Criminal Procedure, 1973 (CrPc):**

A wife is not entitled to get maintenance from the husband if she lives in adultery.⁴

If a person entices the wife away with an intent to commit adultery with her and does so, he may be separately charged with, and convicted of offences under Sections 498⁵ and 497 of the Indian Penal Code⁶.

In the case of **V. Revathi v. Union of India**⁷, the Court held that the man was the seducer and not the woman, the aforementioned law is striking in its pursuit to punish only the ‘outsiders’ in the marriage- in this case the male adulterer.

In **Sowmithri Vishnu v. Union of India**⁸, the petitioner whose lover was prosecuted for adultery contended that the law was gender biased. Despite being an equal party in the offence, the woman was a ‘victim’ and she was exempted from punishment suggesting that the woman committing adultery is incapable of rational thought and therefore has no agency.

It is observed that cruelty in fact in the next step after adultery by the spouse. It is one form of inhuman treatment that causes mental suffering and also endangers the life of another. Cruelty maybe in the form of physical as well as mental torture by either the husband or the wife. Though most commonly it is the women who are subjected to harassment by the husbands it is important to note that the torture against husband by wife is increasing day by day. According to Section 498-A of the Indian Penal Code, the wife and her parental family can charge any or all of the husband’s family of physical or mental cruelty but genuineness of the case has to be looked into by the courts as the nature of this section stands to be cognizable, non-compoundable and non-bailable altogether.

⁴ Section 125(4) of Code of Criminal Procedure, 1973.

⁵ Section 498 of IPC reads as, Whoever takes or entices away any woman who is and whom he knows or has the reason to believe to be the wife of any woman who is and whom he has reason to believe to be the wife of any other person, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

⁶ Section 220(4)(c) of the Code of Criminal Procedure.

⁷ AIR 835, 1988.

⁸ AIR 1618, 1985 SCR Supl. (1)741.

The Supreme Court has laid down certain requirements with respect to cruelty:

- In a situation wherein actual, mental agony, pain, suffering as would make it impossible for the parties to cohabit together comes under the ambit of cruelty.
- In a situation wherein the wronged party cannot be asked to put up with or continue to live with the other party.
- Mere coldness or lack of affection does not amount to cruelty per se however rudeness in language, neglect, showing indifference makes matrimonial life difficult.
- Commission of abuse, unjustifiable conduct affecting the mental and physical health of the other spouse or cause reasonable apprehension of fear that is grave and weighty.
- If husband submits himself to operation of sterilization without consent and knowledge of wife and wife undergoes vasectomy or abortion without knowledge of husband then such an act of the spouse may lead to mental cruelty.
- Marriages wherein there has been a long period of continuous separation and it can be concluded that the matrimonial bond is beyond repair such a marriage becomes a fiction though support by a legal tie and refusal by spouse to serve that tie amounts to cruelty by the spouse.

However, it shall be noted that it is not only the husband in all cases who is the offender but also the wife who is responsible for harassment of the husband. The grounds amounting to cruelty to husbands are stated as follows:

- Misuse of Dowry Laws, Domestic Violence Act and Sec '498-A' of IPC by wife against husband and in-laws through lodging of a false complaint.
- Desertion by wife which means wife deliberately intending for separation and to bring cohabitation permanently to an end.
- Commission of adultery by wife i.e. having sexual relationship with a person other than the spouse in the course of marriage.
- Opting out for second marriage by wife without the application of divorce.
- Threatening to leave the matrimonial home and showing suicidal tendencies.
- Cruelty on part of wife by throwing constant tantrums, doing disturbing acts and refusing to cook proper food.

- Abusing of husband by way of insulting in presence of in-laws or that of office colleges.
- Refusal of sexual intercourse with husband without any sufficient reason as to denial of it.
- Lowering of self-reputation of the husband by use of derogatory language in presence of family members and colleges.
- Lodging of FIR against husband and in-laws by malice and false intent.
- Bad conduct and misbehaviour by wife pressuring the husband to leave matrimonial home, insisting for separate residence, causing mental stress on daily basis and behaving disrespectfully towards husband and in-laws as well.
- Mental disorder, insanity and unsoundness of mind, impotency of wife, forming of illicit relationship with another man and wife suffering from filarial are also some of the grounds for cruelty under law.

In the case of **Anil Bharadwaj v. Nimlesh Bharadwaj**,⁹ it was held that a wife who refuses to have sexual intercourse with the husband without giving any reason was proved as a sufficient ground which amounts to cruelty against husband.

Also in **Mrs. Deepalakshmi Saehia Zingade v. Sachi Ramesh Rao Zingade**¹⁰, in this case the petitioner also wife filed a false proceeding against husband on the ground of husband having illicit relationship. It was proved false in the court of law and was considered to be cruelty against the husband.

Therefore, it is to be noted that the ugly trend of falsely implicating the spouse with a view to harass and blackmail the innocent spouse or the relatives is increasing rapidly and there lies a need for a strict law to be passed by the parliament in order to protect the institution of marriage and thereby punish those women who engage in misguiding the court by filing of false reports and complaints. Thus, justice should be undoubtedly and primarily be achieved.

Now the question arises whether the Supreme Court acts lenient when it comes to husband's adultery vis-à-vis cruelty?

⁹ AIR 1987 Del. 111.

¹⁰ AIR 2010 Bom. 16.

In the case of ***K.V. Prakash Babu v. State of Karnataka***,¹¹ the wife of the accused committed suicide within seven years of marriage and the husband was accused not only of abetting her suicide under Section 306 of the IPC but was also alleged to have committed ‘cruelty’ under Section 498-A of IPC. The Karnataka High Court convicted him for both these offences but however he was acquitted by the Supreme Court. What is not known to the public at large in this judgement is that a considerate number of witness stated that the accused was having an extra-marital affair and this fact was ignored by the Supreme Court while announcing of judgement. In another case of ***Ghusabhai Raisangbhai Chorasiya v. State of Gujarat***, the facts similar to the aforementioned previous case wherein the wife’s suicide because of the extra-marital affair by husband could not be proved and thus he was not held guilt of abetting her suicide and of cruelty. If such situations the judgement of the courts is held to be rather insensitive which fails to recognise the humiliation faced by women in situations where husbands engage in extra-marital affairs. Caught in the realm of the Indian patriarchal society, it is a woman who is always blamed in such circumstances and faulted on the basis of not being able to satisfy husband. The lack of rational thinking and comprehensive ability of understanding her plight is often neglected by the society at large.

Under the ambit of Section 498-A mental cruelty is also regarded as one form of cruelty however the court has needlessly whittled down the scope of the section along with its intended effect. The court has erred in obtaining a practical approach in the matters relating to women crisis by unfaithful behaviour of husband & also blindfolded itself to recognize the psychological and emotional impact caused to women under the garb of marriages. What stands to be more appalling is that women alleged to have extra-marital affairs are accused to have abetted the husband’s death and it was hereby declared in the judgement that, ‘The imputation of sustained unchaste conduct and the activities of the wife, if true, the possibility of the deceased committing suicide stands to be an extreme step in an unbearable anguished state of mind and thereby cannot be wholly excluded.’ It has been observed that the law focuses more on the pain of husband being cheated than that of the wife.

¹¹ 2016 SCC 1363.

Therapy for infidelity & cruelty

With a view to maintaining a matrimonial relationship both the spouses need to resort to some measures and work together to protect the same:

In most cases, a therapist acts as a supportive listener and can help the spouses determine the root cause of their problems and set goals for the relationship. It helps the couple maintain the relationship and better their level of communication, trust and commitment with each other.

Undergoing therapy also helps clarify and understand the true nature of their relationship and acts as a means of open evaluation for the same. With this the spouses can list out their strengths and weaknesses. In case of existence of some unhealthy patterns such as emotional abuse, torture, repeated affairs etc., the therapist needs to address these issues and find solutions to the same. Through this initiative it helps to gain an overall new perspective for the spouse to start afresh altogether.

Even in extreme cases wherein the spouses have decided to put an end to the marriage the role of a therapist stands vital. This helps in discussing feelings, betrayal, neglect and anger. The role of a therapist is to assist the spouses and help cope up with the trauma of such loss of partner. Many a times, the spouse feels regret for the course of actions undertaken by him/her and realizes the mistake committed. Thus, in such cases it is the therapist who looks after the communication of feelings and mannerism to ensure that such situations do not arise again. Therefore, the sacramental bond of a marital relationship needs to be preserved and worked upon each day by the spouses to preserve its motto of being an eternal union.

Concluding analysis

Therefore, it can be stated that though it is difficult to distinguish the consequence of extra-marital affairs this lies clear evidence that such an act stands detrimental for the marriage. Engaging in extra-marital sex can also lead to an increase in the risk of HIV and STI transmission for husbands and wives which propel men to seek sexual liaisons outside the matrimonial relationship thereby further increasing risk factor. Results have stated that irregular use of condoms with sex workers causes a higher rate of risk than that of those men who are with women who are not sex workers. Also, it is essential to have data on both members of a matrimonial relationship so as to derive variables using logistic

regression of extra-marital affairs between men and women. Another factor is age discordance between the husband and wife (husband older and married to younger woman) accounts to about 23.2% and is amongst the highest rates as in such situations one may not be prepared or mature enough for a sexual relationship.

Another reason for engaging into extra-marital sex activities would be the consumption of alcohol daily or weekly basis as this mainly arises by visiting beers bars and illegal brewers of country alcohol which particularly stand to be locations for finding women. Education also plays an important as it can be seen that such kind of affairs are mainly found between the backward uneducated sectors of the society. Domestic violence to wife is yet another cause that originates from husband's extra-marital affairs. Many of the cases are such that the emotional and critical abuse starts from the first day of the marriage itself. Extra-marital sex is that indicator causing difficulties in marriage in the aspects of social, economic psychological and sexual interaction between the spouses.

Hereafter, it is concluded that for every matrimonial relationship to flourish in the long run it is important for both the spouses to work constantly to build the same and maintain harmony and an atmosphere of peace in the home. *Marriage is said to be an eternal union and every couple shall work to preserve the same.*

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