

ILLICIT ASPECTS OF MARITAL AFFAIRS IN INDIA WITH RESPECT TO LEGALITY

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Abstract

Extra-marital affairs are usually the most ignorant and concealed side of the society. Although it is more common in men it has also been seen with instances of women but at a lower scale due to the patriarchy system that the country has been following for years. It is very important to discuss the rights and the consequences of the violation of marital rights. The question of cruelty or infidelity is similar to the question of immorality or illegality. Although the answer for the latter one may differ from person to person because morality is subjective; however, the answer is 'yes'. Focusing more on the feminist jurisprudence there are high rates of divorce cases wherein under section 497 of the Indian Penal Code there have been cases with regard to adultery. Further the paper will focus on legal grounds of the constitution and the case laws that have been precedents to the issue of cruelty and infidelity in cases of a marriage. Humanitarian grounds shall also be seen further and the necessity of such laws will be put up in an arc of light by the constitution. This Research shall instinctively also discuss the rights of women who are downtrodden and need help with respect to moral rights, natural rights, fundamental rights, legal rights, civil rights and political rights. There are certain NGO's that help such women to get off the clutches of an abusive relationship that disrespects her integrity. India has been under the blanket of cultural group mainly dominated by the male leaders called the 'karta' hence there had never been anyone to keep a check on the head of the family itself. Thus, this led to a social disorganisation and social unrests after the lessons of modernization and westernization which were seen during the time of pre-independence which included abolition of the *sati* practise and post-independence changes by Jat-Pat Todak Mandal. These unrests were on a public level but there were also unrests on a private level against women that were marital rape, domestic violence, etc. which stayed behind the four walls of the house; adultery being one of them. Hence, further the research shall

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discuss the credibility of cruelty and infidelity with lawful remedies, case studies and legal aspects of rights to constitutional remedies, right against exploitation, right to freedom sine all these rights are justifiable in nature.

Key words: adultery, Indian Penal Code, human rights, constitutional law, credibility of cruelty and infidelity, lawful remedies, legal aspect

Things fall apart; the centre cannot hold, mere anarchy is loosed upon the world....

- W.B. Yeats¹

Man is a social animal. He always desires to live in humane society and conditions which can protect him from abuse and exploitation by any fellow beings, be it external or internal threats. The practice of abuse of human beings by their fellow beings is as old as the human civilization due to the preordained fact of survival of the fittest.

The abuse starts when the character and the conduct of the human beings and living in peace and harmony are not governed by human values. A non-fatal and harmonious relationship between individuals of the society is possible when the human values are held high in self-esteem and dignity by one and all with the respected integrity deserved. Human values do not just play an important role in formation of a meaningful society but also enrich the quality by nourishing lives that is being lived by the people. Some universal values are-love, hope, charity, compassion, faith, recognition, dignity of labour, truthfulness, fidelity, etc. To prominent theories that shall predominate the human lives are-the Natural Theory and the Social Utility Theory. The Social Utility Theory unlike the Natural Theory has six rights, viz. moral rights, natural rights, fundamental rights, legal rights, civil and political rights and economic cultural rights.

There is no denying in the fact that female human beings in India are treated as goods or commodities. There have been excess crimes being committed against the women in India stem from our age old attitude of treating women as commodities rather than as human being. The intervening centuries have hardly made any difference. Therefore, the wise founding fathers of the Constitution of India were fully aware of the fact that Indian women need

¹ *The Second Coming.*

special protection to make their survival possible in every institution.

The very crux of the extra-marital affairs leading to divorce and broken families come from the social evils from the society. The evils here are poverty, illiteracy, unemployment, etc. From the aspect of sex and law which at times redefines the dealing with the aspects of the cruelty and infidelity including adultery as a vital part of divorce rates rising in India.

The present paper-*The Illicit Aspects of Extra-marital Affairs in India with respect to Legality* suggests the evolution and the impact of the issues faced during a marriage with a spouse having an extra-marital affair. The parameters of the sub-theme-*Extra Marital Affair: Cruelty or Infidelity* shall hence bring in the arc the legal and the humanitarian aspects with the social preconceived notions.

Over the period of two centuries, subtle shifts in economics, politics, and reproductive patterns gradually detached the married couple from the bedrock of institutions, laws and customs that had encased them in rigid roles.² The cruelty or infidelity which is believed has prevailed in India for the past few years is because of the ignorance since very little do the women know about their rights because of which there have been on a rise in the problems of women in India in the coming years. There have been myths with regard to females who are virgins can cure diseases like AIDS etc., the intercourse with them shall cure various other ailments that also include some sexually transmitted ailments. This also leads to force marriages and then eventually extra-marital affair. In Indian villages like Rajasthan young girls of Bedia, Nat and Kanjar communities are pushed to child marriages to support the entire family which in modern days is lading to adultery, marital rape, extra marital affairs, etc.

“As a matter of routine, every woman should be apprised of the fact that, as per law, they are entitled to all articles, movable or immovable received during their marriage and can even claim maintenance. Though they may have family support or may be in immense emotional trauma, they should step forward to seek maintenance for themselves and for their child from the court. It is important for them to keep themselves apprised about the finances of their husband, including details like tax payments, bank accounts and monthly bills,” says Advocate Sudershani Ray, a renowned matrimonial lawyer in Delhi. While the legal founder

² Stephanie Coontz, *Marriage: A history of how love conquered marriage*.

of Legal Advice Platform, a legal site, *Lawrato.com* says, “Most women who seek to escape a failed marriage are afraid to take legal action. Only when the situation becomes unbearable do they act; many just give up and go back to their parents. To ensure comfort and trust, most women prefer to consult female lawyers for matrimonial issues,” shares Rohan Mahajan.

There are rights that a woman should be aware of, after marriage while seeking a divorce on the grounds of adultery or extra-marital affair of the spouse. Stridhan means woman’s property.³ Right to stridhan is the right which every woman acquires all the gifts and money given to her before and after marriage. The ownership rights to stridhan belong to the spouse (wife), even if it is placed in the sole custody of her husband or her in-laws. The Kerala High Court in *Pachi Krishnamma v. Kumaran Krishnan*⁴ observed that the share a woman got on partition would be her absolute property on account of her pre-existing right to maintenance enlarged to an absolute title to property by virtue of section 14(1) right to committed relationship: A Hindu husband cannot have an extra-marital affair or marry another girl unless he has divorced his wife legally according to the Hindu Marriage Act. A husband can be charged of adultery if he is in a relationship with another married woman which is legally valid ground for divorce according to various precedents. The wife of the man has the legal right to file for divorce on the grounds of his extra-marital relationship. Right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means according to the Code of Criminal Procedure, 1973 (2 of 1974),⁵ right to residence is the most major and the most ignored or probably unknown right that waits in its ambiguity to be known. A wife has the right to reside in the matrimonial household or residence where her husband resides, which is irrespective of whether it is an ancestral house a self-acquired house, a rented house or a joint family house. Section 14 lays down that any property that a Hindu wife inherits from any relation after the commencement of the Act will be a part of her very own absolute property. On her death (the wife) it will devolve on her heirs under the provisions of sections 15 and 16 of the Hindu Succession Act. If any property has been inherited by

³ MITAKSHARA II ix, 2.

⁴ AIR 1982 Ker 137.

⁵ Maintenance under Hindu, Muslim and Parsi Law.

her before the commencement of the Act and if it is in her possession then that property also became her absolute property.⁶

Right to both the American and the Indian courts seem to have laid emphasis on the word 'dignity' as used in Article 1 of UNDRHR, which declares: "All human beings are born free and equal in dignity and rights". In *Francis Coralie v. Territory of Delhi*, The Supreme Court took his exegesis of Article 21 further and observed explicitly:

"But the question arises is whether the right to life is limited only to the protection of the limb or faculty or does it go further and embraces something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely, moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter' include the right to the basic necessities of life and also the right to carry on such functions and activities as constitutes the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute as deprivation pro-tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would on this view, be prohibited, by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorizes and procedure can lead to such torture or cruel inhuman or degrading treatment can ever stand the test of unconstitutional and void as being violate of Article 14 and Article 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or rule, Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to established by the law itself and therefore when a person is lawfully imprisoned, the right

⁶ Vibha Sirothiya, *Stridhan and womans' estate under section 14 of the Hindu Succession Act, 1956*.

to cannot move about freely by going live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner or detentiu is bound to suffer attenuation obviously to the extent to which it is incapable of enjoyment by the reason of incarceration. The prisoner or the detentiu obviously cannot move freely by going outside the prison walls nor can he socialize at his free will with persons outside the jail because then a cell would make no sense at all. But, as part of the right to live with human dignity and therefore as a necessary component of the right to live with dignity and therefore as a necessary component of right to live, he would be entitled to have interviews with the members of his family and friends and no prison regulations or procedure shall be laid down by prison regulations, regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is unreasonable, fair and just.”⁷

A study of one hundred consecutive female burns (aged 15-40) admissions into the Department of Plastic Surgery, Madurai Medical College and Government Rajaji Hospital, Madurai revealed 70% to be suicidal, 25% accidental, 3% homicidal and 2% non-classifiable in nature, the important causes were grouped under psychiatric disorders (23%), physical illness (15%), and marital and interpersonal problems (51%).⁸ The details hence here would create a wide vision to analyze the area with a little to margin of facts deciding the marital life of woman and cruelty in their own contexts. The advanced technique of ‘Psychological Autopsy’ was utilized for the data collection and to reconstruct the anatomy of suicide, hence these given are the broad guidelines for the prevention of suicide from the indicated marital problems. This study of the *Indian Psychiatry Journal* reveals the marital problems lead to most of such cases that is 51% which include the problems of dowry, in-laws harassment, marital rape, etc. The problem of extra marital affair being one of the major causes that lead to tampering the physical and the mental health of the being amounting to cruelty by the spouse.

Section 14(1) of the Hindu Succession Act, 1956 has qualified retrospective application, it converts only those woman’s estates into full estates over which she has possession when the Act came into force, it does not apply to those woman’s estates over which the Hindu female has no possession when the Act came into force;

⁷ Anant Kalse, *CPA life and personal liberty- a precious fundamental right*.

⁸ INDIAN JOURNAL OF PSYCHIATRY, 1989 Jan-Mar; 31(1): 43-50.

in such a case old Hindu Law continues to apply and section 14(2) of the Hindu Succession Act, 1956 uses the words “any other instrument”. Applying the principle of *ejusdem generis*, these words should be read along with the preceding words, “acquired by way of gift or under a will” and would thus, mean the instruments under which title to property has been conveyed to the Hindu female.⁹

Coming to it being cruelty or infidelity, “extra-marital relationship, *per se*, or as such would not come within the ambit of section 198-A Indian Penal Code (cruelty to wife.) It would be illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence,” said the bench headed by Justice Dipak Misra, setting aside a Karnataka High Court judgment that sent a man to jail for three years. The apex court hence set aside the order of the lower courts and set another new precedent. “To explicate, solely because the husband is involved in an extramarital relationship and there is some suspicion in the mind of wife, cannot be regarded as mental cruelty, which would attract mental cruelty for satisfying the ingredients of section 306 Indian Penal Code (abetment to suicide),” the bench said. “It can surely be a ground for divorce.” The facts of the above case consisted of a number of suicides which involved the suicide of the wife and the alleged paramour of the convicted. Section 306 of the Indian Penal Code states, “If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Moving forward to section 497 of the Indian Penal Code states, “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.”¹⁰

Concluding the research it can be stated that there are various remedies for women with regard to extra-marital affair being a ground of divorce are evidently available. Considering the topic of research it is both cruelty on humanitarian grounds but partially since all women are not financially or emotionally connected to

⁹ Chinamma v. Lingamma, AIR 1972 Mysore 333.

¹⁰ Indian Penal Code § 497.

the marriage institution and are capable to live a healthy life by them. Infidelity on the legal grounds is adulteration which is not accepted socially, culturally, politically or legally by the court of law. There are various sections under the Hindu Marriage Act, Hindu Succession act, etc. that deal with problem of adultery. Dr. Ambedkar in a conference of Depressed Classes of Women at Nagpur, India in 1942 said, “Let every girl who marries stand by her husband, claims to be her husband’s friend and equal, and refuse to be his slave.” This promotion of equality in the consistent speeches and the articles of the Constitution that there has been cruelty in the pre-independence period but the commission of adultery or an extra-marital affair is the part of infidelity in the current scenario which should more less be treated in the same way since both of the social evils affect the women of the society.

