

Adultery Judgement and its impact in India

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Abstract- This paper tries to find the impact that the Adultery Judgement pronounced by the Honourable Supreme Court of India has been able to impact the people on the bond of marriage. For this, the judgement was analysed after which a questionnaire was made to a distinct set of age groups. Then the answers of the questionnaire were analysed, and a conclusion as to the final output of this analysis was created.

Index Terms- Adultery, Supreme Court of India, Section 497, Indian Penal Code

I. INTRODUCTION

The adultery judgement passed by the Supreme Court of India on 27th September 2018 has been one of the most controversial judgements passed in India in the past decade. The judgement brought the question of law and morality, and it had its fair share of approval and criticism throughout the country. The main idea of the case, the repelling of Section 497 of the Indian Penal Code, has gone through the phase of three previous judgements and has been dissected in our country, both from a social and legal stand.

Before we delve into the judgement and its impact in our nation, it is necessary to understand Section 497 of the IPC:

“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 a case, the wife shall not be punishable as an abettor.”

From this definition, we can materialise that Adultery is an offence committed when a man has illicit sexual intercourse with another man’s wife without the consent of that man. With this brief introduction, we shall start our analysis.

II. BACKGROUND OF THE CASE

This judgement was delivered for the case *Joseph Shine Vs Union of India*, held in front of a five-judge bench of Supreme Court. This case was filed in August 2017 by Mr Joseph Shine, an Indian cum Italian businessman. In his affidavit, Mr Shine had stated the following remark:

"Married women are not a special case for the purpose of prosecution for adultery. They are not in any way situated differently than men,"

The birth of adultery was not through the English Common Law but was from the Bible. The Bible explicitly mentions that any man who enters into sexual intercourse with any other women after marriage is a sinner. Hence, in 1860, when the British Crown was ruling India, the Adultery Law was sanctioned as the British had taken the Bible’s principle in the Indian Penal Code.

This appeal had the magnanimity in its wordings of the affidavit to question the draconian law contained in Section 497 of Indian Penal Code which was questioned by the government. They stated that if this law were to be diluted, then it would destroy the sanctity in marriage but later when the judgement came out, they instead accepted.

III. STATEMENT OF THE PROBLEM:

We have chosen this topic because Section 497 had been in existence for 158 years and has been accepted by society. This stance has now changed dramatically. With Section 377 also being declared void, India is currently in a societal imbalance. Hence the authors felt that this would be the right time to find out the opinions of the people regarding this law and whether they are ready to accept it or not, even though the Supreme Court has stated that Adultery can be used as a ground for divorce, which seems to contradict its verdict as the court seems to accept Adultery as a moral wrong.

IV. OBJECTIVE

Our objective is to see whether the judiciary has been able to satisfy the specific needs of the common public of India through this judgement. In other words, the article is an attempt to check the compatibility of the judgement with our country and the impact it has created within its citizens.

V. SURVEY QUESTIONNAIRE

In order to get the opinions of the general public, we created a survey regarding the judgement. The survey was intended to reach out to individuals between the ages of 18-50. Sixty such

individuals have shared their opinions with us, anonymously, and we have used it to peruse our research. The survey contained seventeen questions, which has been mentioned below with its options:

Q1) Which age group do you belong to?

- A. 18-25
- B. 25-35
- C. 35-45
- D. 45-50

Q2) What is your gender?

- A. Male
- B. Female
- C. Other

Q3) What is your opinion on the judgement?

- A. I have a positive opinion
- B. I have a negative opinion
- C. I am not sure

Q4) How did you come to know about the judgement?

- A. Newspaper
- B. Television
- C. Social Media

Q5) Does this judgement promote gender equality?

- A. Yes
- B. No
- C. No opinion

Q6) What is your opinion about extramarital affair?

- A. It is the right of a person
- B. It is against moral values and ethics
- C. No opinion

Q7) Do you believe the judgement is in context with our country?

- A. Yes
- B. No
- C. No opinion

Q8) Do you support the judgement?

- A. Yes, it is a great change for our country
- B. No, the judgement undermines our culture
- C. I do not have an opinion

Q9) Do you think that adultery is more patriarchal in our country?

- A. Yes
- B. No
- C. Not sure

Q10) Do you think the divorce rate will increase after this judgement?

- A. Yes, it will increase
- B. No, the divorce rate will decrease
- C. No, the divorce rate will stabilise
- D. It does not affect the divorce rate

Q11) Will the judgement affect family relations?

- A. Yes
- B. No
- C. Maybe

Q12) Is cheating by personation a violation?

- A. Yes, it is a serious violation
- B. No, it is not a crime

Q13) Why only men? Is it a good idea to convict married women as well as for adultery?

- A. Yes
- B. No

Q14) Do you think that sexual privacy has been installed after this judgement?

- A. Yes, it has been installed.
- B. No, the judgement has not helped.
- C. No opinion

Q15) Do you believe that the rate of adultery will decrease after the judgement was passed?

- A. Yes, it will decrease
- B. No, it will increase
- C. No opinion

Q16) Does the judgement uphold the sanctity of marriage?

- A. Yes
- B. No

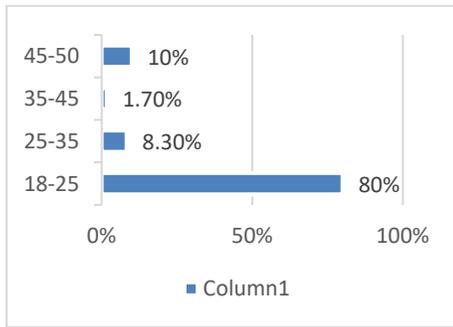
Q17) Since Adultery is no longer a crime, is it OK for it to be ground for divorce?

- A. Yes, it still is a violation of ethics and human morals.
- B. No, as it is not a crime anymore.

VI. ANALYSIS OF THE SURVEY

We have analysed the answers given by the sixty individuals in a summation for all the seventeen questions along with bar graphs for a better understanding.

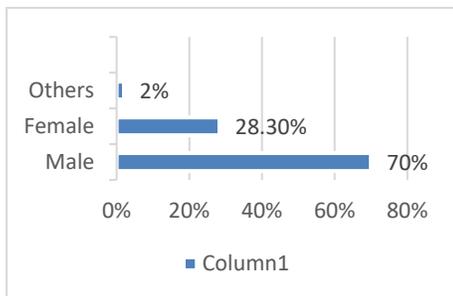
Q1) Which age group do you belong to?



- A. 18-25 (80%)
- B. 25-35 (8.3%)
- C. 35-45 (1.7%)
- D. 45-50 (10%)

Most of the participants of the survey were of the ages 18-25. This group accounts for 80% of the 60 individuals. The lowest number of participants were from the age group of 35-45, which accounted for a mere 1.7%, whereby the main objective of our project has been achieved through the responses.

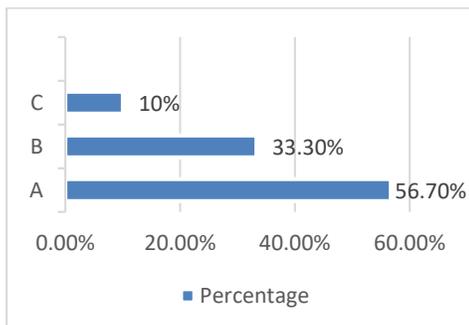
Q2) What is your gender?



- A. Male 70%
- B. Female 28.3%
- C. Others 2%

Most of our participant were men. They accounted for 70%. Women accounted for 28.3%, and others were 2%.

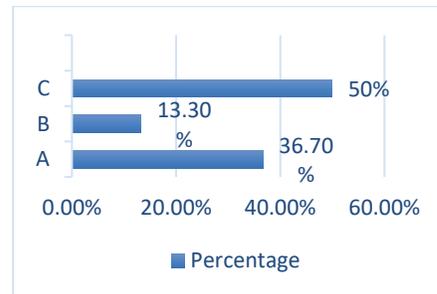
Q3) What is your opinion on the judgement?



- A. I have a positive opinion (56.7%)
- B. I have a negative opinion (33.3%)
- C. I'm not sure (10%)

The respondents mostly had a positive opinion regarding the judgement. 56.7% of the respondents stated that they were having a good opinion with the judgement, whereas 33.3% of the respondents had a negative opinion. However, we would like to point out the 10% who were not sure. This is the category which we were inferring previously. This group of people are not sure and are conflicted. They are not able to come up with a concise conclusion, mostly being influenced by social norms and ethical cultures.

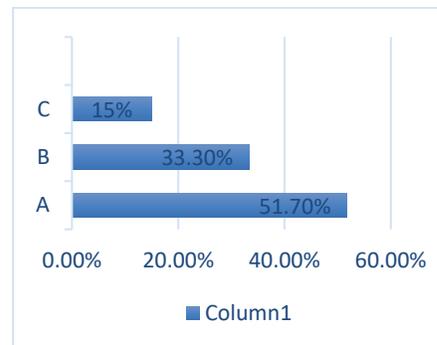
Q4) How did you come to know about the judgement?



- A. Newspaper (36.7%)
- B. Television (13.3%)
- C. Social Media (50%)

Most of the individuals had come to know about the judgement from social media. 50% of the 60 individuals, i.e. 30 individuals came to know about the judgement from the social media. This can be easily inferred, since 80% of the respondents were of the ages 18-25, and they are incredibly active in the social media front.

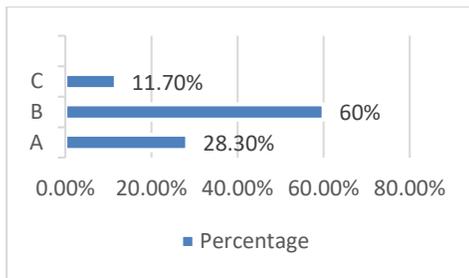
Q5) Does this judgement promote gender equality?



- A. Yes (51.7%)
- B. No (33.3%)
- C. No opinion (15%)

Gender Equality is one of the main questions raised by the judiciary when it came to Section 497. Hence it is an integral part of our survey. 51.7% agreed that the judgement promoted gender equality, whereas 33.3% opposed this view. However, 15% said that they had no opinion, which clearly states that they either did not want to answer the question or they were not aware of the nuances of the case.

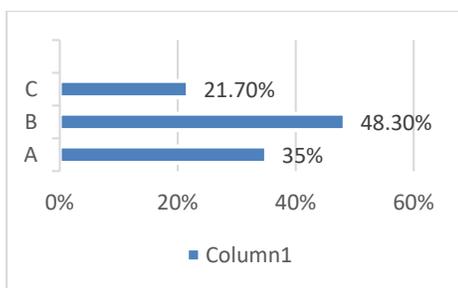
Q6) What is your opinion about extramarital affair?



- A. It is the right of a person (28.3%)
- B. It is against moral values and ethics (60%)
- C. No opinion (11.7%)

An extramarital affair is after all the main crux of the whole case. Whether it constitutes to adultery or not is the prime question. 28.3% of the individuals stated that it is the right of a person to choose. It is his free will. This set of individuals believe in the modernity of the society. They desire to break old social norms which, according to their understanding and belief, are not compatible with the 21st century. However, 60% of the individuals believe that extramarital affair is against moral values and ethics. Currently, society stands on this ground. Religious beliefs also play a vital role for these individuals. Another stand this group might take is that cheating on your life partner is a wound you are inflicting upon him/her. Hence it is wrong. 11.7% have stated that they have no opinion regarding extramarital affairs. This could imply that in the wake of the judgement, they are still unable to decide which is the correct choice for society as a whole.

Q7) Do you believe that the judgement is in context with our country?

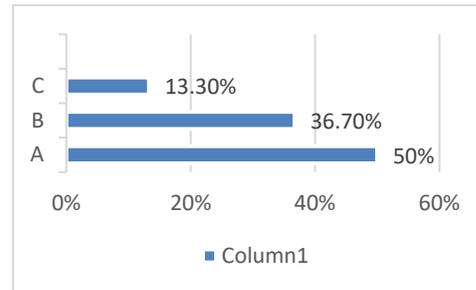


- A. Yes (35%)
- B. No (48.3%)
- C. No opinion (21.7%)

This is one of the most critical questions we framed for this survey as it is one of the reasons for this research. 35% said that the judgement is in context with our country. This group is ready for a change. The question being set for the current period, this group advocates immediate change. The 48.3% who said no either believe that this is not the time for such a judgement or they believe that the judgement itself is wrong. The complexity of the question assures that some individuals will have conflicting views and standpoints. Hence, we also received a group of individuals,

(21.7%), who were not sure whether India is ready for this judgement or not.

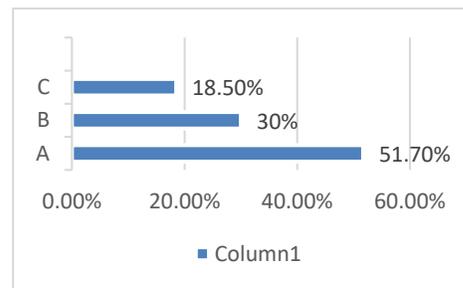
Q8) Do you support the judgement?



- A. Yes, it is a great change for our country (50%)
- B. No, the judgement undermines our culture (36.7%)
- C. I do not have an opinion (13.3%)

The participants of the survey mostly supported the judgement. 50% of the individuals agreed with the stance of the Supreme Court, whereas 36.7% disagreed. 13.3% were not sure whether or not to support the judgement.

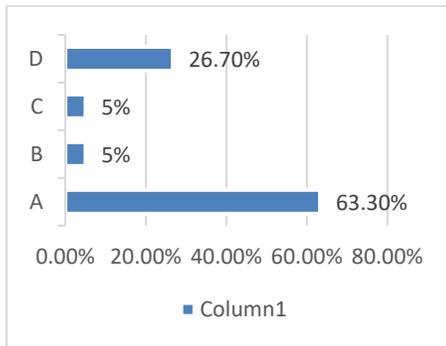
Q9) Do you think that adultery is more patriarchal in our country?



- A. Yes (51.7%)
- B. No (30%)
- C. Not sure (18.5%)

This is one of the questions which we thought that most people would not be able to answer as there is no specific proof for any of the answers. However, we received positive and negative answers. 51.7% of the individuals believe that men indulge more in extramarital affairs than women, whereas 30% of the individuals contradict this stand. Only 18.5% of the respondents were not sure. This could be the group which agrees upon the fact that there is no legitimate method to find a suitable answer for the question.

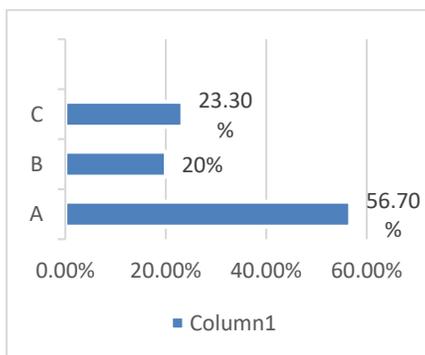
Q10) Do you think the divorce rate will increase after the judgement?



- A. Yes, it will increase (63.3%)
- B. No, the divorce rate will decrease (5%)
- C. No, the divorce rate will stabilise (5%)
- D. It does not affect the divorce rate (26.7%)

We raised this question as in the judgement, the Chief Justice of India, Hon'ble Mr Justice Dipak Misra mentioned that Adultery could be used as a ground for divorce. Hence, we wanted to know the public opinion. 63.3% of individuals believe that the divorce rate will increase. These individuals may be of the notion that since adultery is no longer a crime, it is bound to increase and therefore, the divorce rate will also increase. In total, 10% of the individuals believe that the divorce rate will not increase. Out of this 10%, 5% say that the divorce rate will decrease whereas the other 5% say that the divorce rate will stabilise. 26.7% of the individuals state that the judgement will not affect the divorce rate. This is an interesting standpoint as it could mean that people who want to indulge in an extramarital affair will do it anyway, whether it is a crime or not. Several judicial cases seem to prove this point like *Nanavati v. The State of Maharashtra, 1959*.

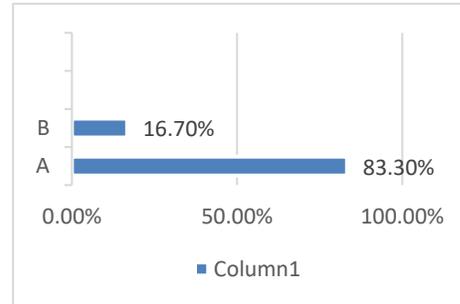
Q11) Will the judgement affect family relations?



- A. Yes (56.7%)
- B. No (20%)
- C. Maybe (23.3%)

This question was raised based on social and familial conditions. 56.7% of the individuals believe that the judgement will strain the familial relationships, whereas 20% do not believe so. However, 23.3% of the respondents believe that it may or may not strain the familial relations. It could mean that it is up to the people whether to allow the firm idea of the judgement to affect their relations with their family and loved ones.

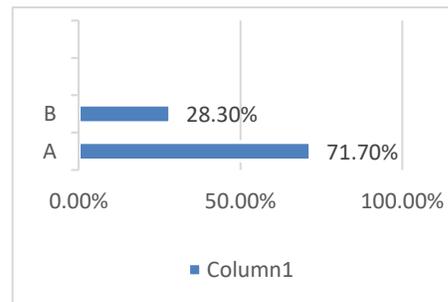
Q12) Is cheating by personation a violation?



- A. Yes, it is a serious violation (83.3%)
- B. No, it is not a crime (16.7%)

Cheating by personation means to act as another person and attempt to take advantage of the woman. Hence, 83.3% of the respondents believe that it is a violation of the woman's rights. Surprisingly, however, 16.7% believe that it is not a crime.

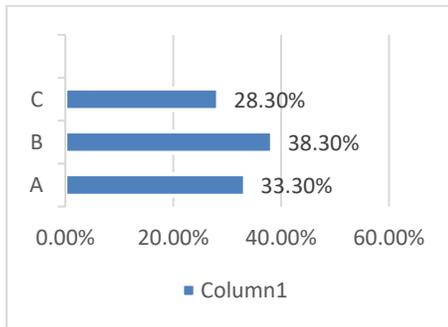
Q13) Why only men? Is it a good idea to convict married women as well for adultery?



- A. Yes (71.7%)
- B. No (28.3%)

The question raised was posed as an alternative solution to the problem of adultery. 71.7% of the individuals accepted this solution and believe that convicting women for the crime of adultery is a good idea, whereas 28.3% contradict this stand. This could mean that this set of individuals believe that adultery itself is not a crime, and hence, men and women alike should not be convicted for it.

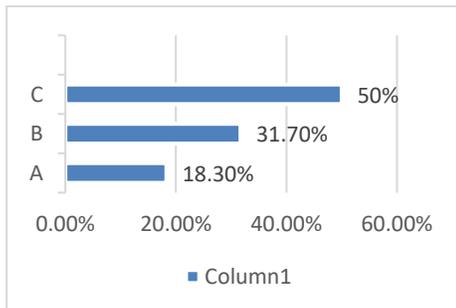
Q14) Do you think that sexual privacy has been installed after this judgement?



- A. Yes, it has been installed (33.3%)
- B. No. the judgement has not helped (38.3%)
- C. No Opinion (28.3%)

This is a question where we saw that all the answers were received in almost equal proportion. In this context, sexual privacy refers to the right of a person to choose with whom he has a sexual relationship. 33.3% of the individuals state that the judgement has helped achieve sexual privacy; 38.3% state that the judgement hasn't; 28.3% of the respondents don't have a conclusive opinion, which could mean that they don't see how the judgement affects the concept of sexual privacy.

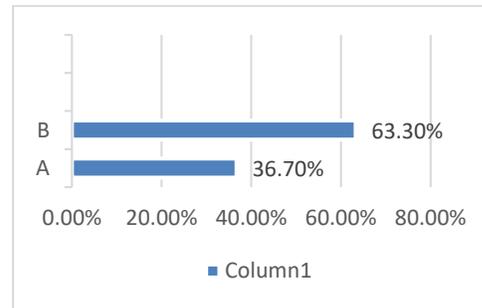
Q15) Do you believe that the rate of adultery will decrease after the judgement was passed?



- A. Yes, it will decrease (18.3%)
- B. No, it will increase (31.7%)
- C. No opinion (50%)

The determination of the rate of adultery, although technically not possible, can be averaged to a certain level. This is the reason for us to ask this question. The responses we received were, to a certain extent, divergent. 18.3% of the participants believe that the rate of adultery will decrease. It is possible that this group sees the optimistic points of the judgement and hence believe that women will be treated with more respect after the judgement. 31.7% of the respondents believe that the rate of adultery will increase. This set of individuals see the other aspect of the judgement. Since adultery is no longer a crime, they believe that people will be motivated to indulge in extramarital affairs. However, 50% of the individuals do not have an opinion, which could mean that they see both the aspects and are not sure which will precede first.

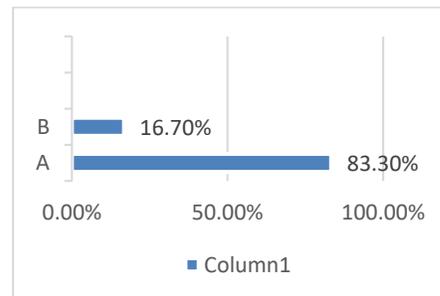
Q16) Does the judgement uphold the sanctity of marriage?



- A. Yes (36.7%)
- B. No (63.3%)

In India, marriages are considered as one of the most important events in a person's life. Hence, the significance of marriages in India is quite high. We considered this question to be one of the crucial questions of the survey. 36.7% of the individuals say that the judgement upholds the sanctity of marriage. This viewpoint can be taken on the following ground: Men and women are equals. They should respect each other and support each other equally in their marital life. Hence, the judgement upholds the value of a woman, thereby restoring her dignity. However, 63.3% of the participants believe that the judgement does not uphold the sanctity of marriage. Their stand could be that as Adultery is no longer a crime, it encourages people to indulge in extramarital affairs. This is in complete contradiction with the basic idea of marriage.

Q17) Since Adultery is no longer a crime, is it OK for it to be a ground for divorce?



- A. Yes, it still is a violation of ethics and human morals (83.3%)
- B. No, as it is not a crime anymore (16.7%)

This question was raised based on the statement given by the then Chief Justice of India, The Hon'ble Mr Justice Dipak Misra. 83.3% of the participants believe that it is a ground for divorce as it violated ethical and moral values. This group takes the factor of morality into account. They see the social aspect of the judgement. However, the other 16.7% believe that it should not be a ground for divorce as it is not a crime anymore. This is a technical and legal aspect that is being taken by this group of people.

VII. JUDICIAL ANALYSIS

A bench of five judges passed the judgement: The Hon'ble Chief Justice of India Mr Dipak Misra, The Hon'ble Mr Justice R. F. Nariman, The Hon'ble Mr Justice A. M. Khanwilkar, The

Hon'ble Dr Justice D. Y. Chandrachud and The Hon'ble Ms Justice Indu Malhotra. The judgement was unanimously passed by all five judges, thereby striking down Section 497.

One of the points raised by the Supreme Court is that Section 198 of IPC gives only the husband the right to file a case against the man involved in the act of adultery. Hence, this section merely reinforces the archaic thinking and sexual stereotyping that a woman belongs to a man, and a woman cannot have her thoughts and opinions.

This section also violates Article 14 and Article 15 of the Constitution of India. Article 14 of the Constitution says that "*The State shall not deny to any person equality before the law or the equal protection of the law within the territory of India.*" This implies that men and women are equal. Hence, going by this spirit, if the man involved in adultery is punished, then the woman should also be punished. Alternatively, if the woman involved in adultery is not punished, then the man should also not be punished. If the husband is given the right to file a case against the man who commits adultery with his wife, then the woman should also be given the right to file a case against a woman who commits adultery with her husband.

Article 15 of the Constitution states that "*The State shall not discriminate against any citizen on grounds merely of religion, race, caste, sex, place of birth, or any of them.*" Going by this spirit, Section 497 of IPC discriminates against men. The man involved in adultery is punished with five years of imprisonment, while the woman who involves in the act with full consent is set free because she cannot be considered as an abettor. Hence, by Article 15, if the man is punished, then the woman should also be punished. If the woman is set free, then the man should also be set free. If in case a man commits consensual sexual intercourse with a woman, with the consent of her husband is not considered as adultery, then it should also be the case when a woman commits consensual sexual intercourse with a man, with the consent of his wife, it would not amount to adultery.

If a married man who has consensual sexual intercourse with an unmarried woman is not committing adultery, then a married woman who has sexual intercourse with an unmarried man should also not be committing adultery.

The Supreme Court felt that laws should be gender-neutral. Hence, it pointed out that Section 497 of IPC merely makes a woman a victim and thus "creates a dent on the individual independent identity of the woman."

The judges have mentioned several critical points in the case. According to Chief Justice Dipak Misra and Justice Khanwalkar, the adultery law is manifestly arbitrary, and it creates a dent on the individuality of women. The judges also mentioned that the mere adultery law could not be considered as a crime. However, they agreed upon the fact that it can be a ground for divorce. Finally, to sum it up, the judges stated that a man having an extramarital relationship with a married woman is no longer a criminal offence.

Justice R. F. Nariman stated that the adultery law makes the man the seducer and the women being the victim and henceforth shall not exist. He further added that Section 497 of the Indian Penal Code is violative and hence should be squashed.

Justice D. Y. Chandrachud stated that Section 497 deprives a woman of autonomy and dignity. He also mentioned that Society attributes impossible attributes to a woman and that raising a woman to such a pedestal is one of such attributes. He severely criticised Section 497 as a woman loses her voice, autonomy after entering marriage and manifest arbitrariness is writ large in Section 497.

Finally, Justice Indu Malhotra stated that Section 497 forces women to live under the shadow of their husbands and hence should be disbanded. She also mentioned that the section institutionalises discrimination and hence should be abolished. She further added that a state could not interfere by punishing a man alone, which in itself is discrimination.

VIII. FINDINGS

[1] The analysis of the survey made it abundantly clear that the judgement is still young. People are yet to form their opinions regarding adultery.

[2] Being a social process, it is bound to take its course of time.

[3] However, the survey also shows us that the people who are clear with their opinions believe that this judgement is a positive addition to our nation.

[4] Most of the respondents were happy with the verdict passed by the Supreme Court of India and believe that women should not be treated as mere objects.

[5] They also agree that even if adultery is not a crime, it still is a violation of marital values and hence should be a ground for divorce.

[6] The respondents have answered the questions from a social and legal perspective and contend that Section 497 was immoral.

IX. CONCLUSION

In conclusion, we would like to give our view on the Adultery Law and its Judgement. The Adultery law had a cynical nature from a man's perspective. It discredited the value of women and made them puppets in a man's hence. Hence, we wholeheartedly support the verdict of the Supreme Court of India. When it comes to our society, it will take time to adjust itself. However, on the whole, the abolition of Section 497 shall be one of the highlights of 2018 and the case law shall be a precedent to several other cases coming in the future.

ACKNOWLEDGEMENT

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always by our side and have us constant support whenever we needed.

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