

AS INTRODUCED IN THE RAJYA SABHA
ON 4TH DECEMBER, 2009

Bill No. XXXII of 2009

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2009

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BILL

further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2009.

Short title and
commencement.

(2) It shall come into force at once.

2. In Section 497 of the Indian Penal Code, 1860,—

Amendment
of section 497
of Act 45 of
1860.

5

(i) for the words “wife of another man, without the consent or connivance of that man”, the words “wife of another man, with or without the consent or connivance of that man”, shall be substituted;

(ii) for the words “the wife shall not be punishable” the words “the wife shall also be punishable” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Though Section 497 has been there for nearly one and a half century, the very idea that husband may give consent to his wife to have sexual intercourse with another man is obnoxious and highly immoral. Therefore, it is necessary to amend the said provision to the effect that sexual intercourse by a man with the wife of another with or without consent is adultery and is punishable as provided under Section 497.

As far as exempting the woman who indulges in sexual intercourse with a man who is not her husband, who is also a married man, does not provide a remedy to the aggrieved woman namely, the wife of the man who commits adultery, against the woman who indulges in adultery with the former's husband. In fact, the Law Commission in its 42nd report by majority had clearly held that there was no justification to allow the woman who is a party to the adultery to go unpunished. Relevant portion of the said recommendation reads:—

“20.18. After much discussion and careful consideration, we are of the opinion that the exemption, of the wife from punishment under section 497 should be removed, that the maximum punishment of five years' imprisonment prescribed in the section is unreal and not called for in any circumstance and should be reduced to two years, and that with these modifications, the offence of adultery should remain in the Penal Code. It is accordingly recommended—that the section may be revised, as follows:

497. *Adultery*—If a man has sexual intercourse with a woman 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, the man and the woman are guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

The recommendations of the Law Commission is reasonable. Otherwise, as it presently stands, a woman who is a victim of adultery committed by another woman has no remedy as she has to prosecute her own husband and not the woman who has indulged in adultery with her husband. It is, therefore, proposed to amend the Indian Penal Code suitably to meet the objective.

Hence this Bill.

M. RAMA JOIS

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

497. *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, 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.

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(Shri M. Rama Jois, M.P.)