

Bill No. XXVI of 2018

THE CRIMINAL LAW (AMENDMENT) BILL, 2018

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BILL

further to amend the Indian Penal Code, 1860 and Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2018.

Short, title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

5 of 1860.

2. For section 497 of the Indian Penal Code 1860, the following section shall be substituted, namely:—

Amendment of section 497.

10 “497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the spouse of another person, 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.”.

Amendment of
section 198.

3. In section 198 of the Code of Criminal Procedure, 1973,—

2 of 1974.

(i) in sub-section (2), the words and figure “section 497 or” shall be omitted.

(ii) after sub-section (2), the following shall be inserted, namely:—

(3) “For the purposes of sub-section (1), no person other than the spouse shall be deemed to be aggrieved by any offence punishable under 497 of the said Code.”

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STATEMENT OF OBJECT AND REASONS

The provisions with regard to the offence relating to marriage seek to protect the sanctity of marital ties in society. Section 497 of the Indian Penal Code (IPC) is such a provision that criminalizes adulterous relationships. The IPC which was drafted in 1860 was based on archaic notions of morality that existed in those periods where women were seen to be inferior to men. In particular, married women were considered to be the property of the husband. These notions of morality and marital relations manifested itself as penal provisions in the code.

Such laws, violative of equality and based on an age old sense of morality need to be changed. Section 497 of the IPC exists in violation of the basic principles of equality as well as of human dignity. Under the section, it is only the husband who can prosecute another man for having an adulterous relationship with his wife. The wife is seen as a property in the dispute matter and is absolved from any liabilities in the matter. Furthermore, the section also provides for an illicit sexual relationship to be legal if the husband has consented to the wife's sexual relationship with another man. The wife's sexuality and actions are subjected to the will of the husband by means of this section. The section fails to provide women with the necessary right to send their husbands to court on the grounds of adulterous relationship.

These patriarchal concepts which exist in the statute controlling the behaviour of women must be removed. The sanctity of marriage is to be maintained through the means of gender equality and not on discriminatory grounds. The section cannot be said to be in protection of women when it views women as mere objects of possession in the hands of their husbands. It is necessary to bring about changes in such old laws to protect the autonomy and dignity of women in a social institution such as marriage.

The Supreme Court had in the case of *Sowmithri Vishnu v. Union of India* (1985) while dealing with the constitutional validity of the Section stated that it is for the legislature to decide the policy of law with respect to adultery. A three judge bench of the Supreme Court while dealing with a petition regarding section 497 (*Joseph Shine v. Union of India*) had opined in its order the absence of gender equality in the criminal provision and stated that the time has come for society to realise that a women is equal to a man in every field.

Hence, the present Bill, accordingly, seeks to amend section 497 of the Indian Penal Code and the Section 198 of the code of Criminal Procedure, 1973.

V. VIJAYASAI REDDY

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

(45 OF 1860)

* * * * *

Adultery.

497. 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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EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

198. (1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Prosecution for offences against marriage.

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, accordingly to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf:

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by and offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

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RAJYA SABHA

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further to amend the Indian Penal Code, 1860 and Code of Criminal Procedure, 1973.

(Shri V. Vijayasai Reddy, M.P.)