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Moot Proposition

The commencement of the nineteenth century can be regarded as the beginning of the positivist movement. Independent India inherited the best administrative machinery among all developing nations, along with a highly moral and dedicated public service. However, at the same time there is a moral notion in Indian society that love marriages or inter caste marriages are not feasible enough and hence should not take place.

India has one of the fastest growing youth populations in the world. In spite of India's status for regarding women, treating woman as a goddess, the past speaks that women were mistreated in various spheres of life across religions, regions and communities. Except for a few revolutionary activities, the situation hanged about more or less the same in the ancient, medieval, and early modern times.

Three-quarters of the population of India still resides in rural areas where the problems related to girl child are predominant. Contrary to this, female foeticide seems to be more in urban areas owing to the technical advances. Despite the hue and cry about women liberation, the census gives the shocking sex ratio of 900:1000 among urban population showing the ground reality. Laws combating these concerns remain on papers alone. Regardless of existing stringent laws against fetal sex determination and gender specific foeticide, the State of affairs is completely different. Illegal abortions are overpowering.

Thousands of girls all over India are denied education, although a long list of legislations exist to avoid any kind of discriminations or inequalities towards women. The root cause of gender inequality in Indian society lies in its patriarchy system since men dominate, oppress and exploit women. Women's exploitation is an age old cultural phenomenon of Indian society viz. discrimination of a girl child, child marriage, dowry system, etc., continued to exist even after independence of India. The unfortunate part of gender inequality in our society is that the women too, through, continued socio-cultural conditioning, have accepted their subordinate position to men and they are also part and parcel of same patriarchal system.

Extreme poverty and lack of education are also some of the reasons for women's low status in society and it derives countless women to work in low paying domestic service, organized prostitution or as migrant laborers. Women are not only getting unequal pay for equal or more work but also they are being offered only low skill jobs for which lower wages are paid. This has become a major form of inequality on the basis of gender. In wake of this Literacy Rate for Women is 54% in comparison to man having Literacy Rate of 76%.

Under the existing cultural and social ethos of India a married girl / woman is no longer considered to be part of the family of her birth, instead she has become part of the family of the groom. Hence, after marriage the woman leaves her parental home and lives with her husband's family, where she is required to assume all household labour and domestic responsibilities.

Indian law demands a formal criminal investigation when a newly married woman dies within the home within 7 years of marriage. According to Indian National Crime Record Bureau, there were 8,239 dowry death cases, 1,285 cases of attempted dowry deaths, and another 4,890 cases with pending investigations in 2009. The punishment for dowry deaths is a term of 7 years, which may extend to life imprisonment. Indian law clearly distinguishes the offence of dowry deaths from the offence of murder, for which a death sentence might be declared.

The Constitution of India is considered to be grundnorm of the Country which grants fundamental right to citizen of the country viz. Right to Equality, Right to live with human dignity, Right against any kind of discrimination etc.

There are innumerable Non-Governmental Organizations are set up in nation and working for women empowerment. Women Freedom Union (WFU), one amongst these organization, raised its concern about discrimination against the women in so far as Section 497 of Indian Penal Code confers upon the husband the right to prosecute the adultery but it does not confer any right on the wife to prosecute the husband who has committed adultery with another woman. WFU raising said concern filed the Writ Petition before Hon'ble Supreme Court of India challenging constitutional validity of Section 497 of the Indian Penal Code and Section 198 of the Code of Criminal Procedure being in violation of Article 14, 15 and 21 of Constitution of India.

On 23.02.2018, Hon'ble Supreme Court passed its judgment dismissing the Writ Petition. The Court held that:

"Since Section 497 does not contain a provision that she must be impleaded as a necessary party to the prosecution or that she would be entitled to be heard, the section is said to be bad. The right of hearing is a concomitant of the principles of natural justice, though not in all situations. Therefore, the fact that a provision for hearing the wife is not contained in Section 497 cannot render the Section unconstitutional."

Being aggrieved by the judgment passed by Hon'ble Supreme Court, WFU filed review Petition on the ground that said judgment experiences errors apparent on the face of the record as liberty envisaged under the Indian Constitution will be in peril.

The said review petition was allowed by the Hon'ble Supreme Court. The Court held that Section 497 of the Indian Penal Code and Section 198 of the Code of Criminal Procedure are unconstitutional. The Court held that:

"[Section 497](#) of the I.P.C. was framed in the historical context that the infidelity of the wife should not be punished because of the plight of women in this country during the 1860"s. Women were married while they were still children, and often neglected while still young, sharing the attention of a husband with several rivals. This situation is not true 155 years after the provision was framed. With the passage of time, education, development in civil-political rights and socio-economic conditions, the situation has undergone a sea change. The historical background in which [Section 497](#), was framed, is no longer relevant in contemporary society. It would be unrealistic to proceed on the basis that even in a consensual sexual relationship, a married woman, who knowingly and voluntarily enters into a sexual relationship with another married man, is a "victim", and the male offender is the "seducer"."

The Court further decriminalized the adultery observing that "Treating adultery an offence, we are disposed to think, would tantamount to the State entering into a real private realm. Under the existing provision, the husband is treated as an aggrieved person and the wife is ignored as a victim. "In this regard Court further held that:

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"That the ostensible object of Section 497, being to protect and preserve the sanctity of marriage, is not in fact the object of Section 497 at all. The sanctity of marriage can be utterly destroyed by a married man having sexual intercourse with an unmarried woman or a widow. Also, if the husband consents or connives at such sexual intercourse, the offence is not committed, thereby showing that it is not sanctity of marriage which is sought to be protected and preserved, but a proprietary right of a husband. Secondly, no deterrent effect has been shown to exist, or ever to have existed, which may be a legitimate consideration for a State enacting criminal law. Also, manifest arbitrariness is writ large even in cases where the offender happens to be a married woman whose marriage has broken down, as a result of which she no longer cohabits with her husband, and may in fact, have obtained a decree for judicial separation against her husband, preparatory to a divorce being granted. If, during this period, she has sex with another man, the other man is immediately guilty of the offence."

Being aggrieved by the judgment passed by the Hon'ble Supreme Court in a review petition, the Union of India has preferred Curative Petition. The some of the grounds raised by the Union of India are as follows:

- It was argued on behalf of the Union of India that Section 497 is valid on the ground of affirmative action.
- All discriminations in favour of women are saved by Article 15(3), and hence were exempted from punishment.
- That Section 497 does not account for instances where the husband has sexual relations outside his marriage would not render it unconstitutional.
- It was further submitted that the sanctity of family life and the right to marriage are fundamental rights comprehended in the right to life under Article 21. An outsider who violates and injures these rights must be deterred and punished in accordance with criminal law.
- It was finally suggested that if this Court finds any part of this Section violative of the Constitutional provisions, the Court should read down that part, in so far as it is violative of the Constitution but retain the provision.
- The main purpose of enacting Indian Penal Code, 1860 is to curb crime by way of deterrence provided in the code, but declaring Section 497 as unconstitutional by Apex Court of the country, will not only promote deceitful and immoral activity on ground of equality between man and woman but will also create chaos in society.

Participants are requested to draft Memorandum for both sides. The legal issues are required to be framed by Participants. Participants are allowed to include additional relevant grounds, as grounds mentioned hereinabove are for illustrative purpose only. The Indian laws are applicable to the facts of present case.

Please note that said moot problem is just for the purpose of conducting moot court competition for developing skills of law students and does not have any resemblance to any individual, society, institution or company.