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# Causes and Impacts of Adultery on the Disruption of the Family System of Bangladesh; A Critical Analysis on the Section 497 of the Penal Code, 1860

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## ABSTRACT

*This critical analysis delves into the multifaceted issue of adultery in the context of Bangladesh and its profound impacts on the disruption of the family system. Section 497 of the Penal Code, 1860, which deals with adultery, serves as the focal point for examining both the legal framework and the social dynamics surrounding this phenomenon. The paper explores the societal causes, including gender inequalities, changing social norms, and economic pressures, which can lead to marital infidelity. Furthermore, it investigates the role of technology and social media in facilitating and exacerbating adultery. The study then scrutinizes the legal aspects of adultery in Bangladesh, particularly Section 497 of the Penal Code, 1860. It assesses the effectiveness of this legal provision in addressing adultery-related issues and its alignment with contemporary societal values and gender equity. Moving forward, the paper investigates the profound impacts of adultery on the family system of Bangladesh. It examines the emotional, psychological, and economic repercussions on spouses and children, as well as the wider community. In conclusion, this critical analysis provides insights into the causes and impacts of adultery within the family system of Bangladesh. It underscores the need for a comprehensive examination of Section 497 of the Penal Code, 1860, and its relevance in the evolving social and legal landscape. The paper also suggests potential policy reforms and interventions to mitigate the disruptive effects of adultery on families in Bangladesh.*

**Keywords:** Adultery, Infidelity, Extra-marital affairs, Disruption.

## I. INTRODUCTION

Adultery, both as a matter of societal concern and a legal issue, has attracted considerable global interest. When considering Bangladesh, the subject of adultery becomes notably

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intricate due to the cultural and legal aspects influencing family dynamics. This review of existing literature delves into the origins and consequences of adultery within the family framework in Bangladesh, with a thorough examination of Section 497 of the Penal Code from 1860.

### **(A) Concept of Adultery**

Adultery,<sup>4</sup> also known as extramarital relations or infidelity, refers to a consensual sexual or romantic relationship between a married person and someone who is not their spouse. It involves a breach of the commitment and fidelity expected within the confines of a marital relationship. Adultery is generally considered a violation of the social and emotional trust that spouses place in each other, and it can have significant consequences for marriages and families. Laws and cultural attitudes regarding adultery vary from one society to another and can range from being a civil offense to a moral transgression.

It is sexual infidelity to one's spouse. It originally referred only to sex between a woman who was married and a person other than her spouse.<sup>5</sup> In certain nations, adultery is considered a criminal offense. The interplay between laws regarding adultery and those concerning rape can create specific challenges in societies that are particularly attuned to the sexual activities of married individuals.<sup>6</sup>

The distinction between these offenses lies in the fact that adultery is a voluntary act, whereas rape is not. The term "adultery" has its roots in Abrahamic traditions, even though the idea existed before the emergence of Judaism and can be observed in various other cultures. While the specific definitions and penalties associated with adultery may differ across different religions, cultures, and legal systems, the fundamental concept bears similarities in Judaism, Christianity, and Islam, and a parallel concept can also be found in Hinduism.

In traditional English common law, adultery was regarded as a felony. While the precise legal definition of "adultery" varies across different legal systems, the central theme is engaging in sexual relations outside the bounds of marriage in some form. Both fornication and adultery fall under the Arabic term 'zina,' which encompasses any forbidden act, whether it involves sexual intercourse or even a glance, conversation, touch, or desire that is linked to or could lead

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<sup>4</sup> 'Adultery', Britannica, T. Editors of Encyclopaedia (2023, November 10). Adultery. Encyclopedia Britannica. <https://www.britannica.com/topic/adultery>, as said; 'Whoever as sexual intercourse with a person who is and whom he knows or has a 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 punished as an abettor'.

<sup>5</sup> 'Definition of Adultery', available at <http://dictionary.reference.com/browse/adultery>

<sup>6</sup> For example, Pakistan and Saudi Arabia.

to illicit sexual relations. In the legal context, 'zina' carries a more specific meaning due to its legal ramifications. Legally, 'zina' refers to voluntary sexual intercourse occurring outside of marriage. Consequently, any sexual relationship meeting this definition is legally considered 'zina' and may incur significant legal penalties.

According to Bangladeshi Law, if a man engages in sexual intercourse with a woman whom he knows or has reason to believe is the wife of another man, without the consent or connivance of that man, such an act, not amounting to the offense of rape, constitutes the crime of adultery. The punishment for this offense may include imprisonment for a period of up to five years, a fine, or both. In such cases, the wife is not held accountable as an abettor.<sup>7</sup> The objective of this law is to penalize those who disrupt the sanctity of marriage,<sup>8</sup> and the legislature also views interference in the sacred institution of marriage as a criminal act. It is widely accepted that the man is typically seen as the instigator in cases of adultery, and this behavior is considered both anti-social and illegal by law-abiding citizens with a strong moral compass, as they do not condone such actions taking place in their vicinity.

### **(B) Research Questions**

**This report tries to answer the following queries:**

1. What are the socio-cultural factors contributing to the prevalence of adultery in Bangladesh?
2. How does adultery affect the emotional well-being of individuals within a family unit in Bangladesh?
3. What role do economic factors play in influencing the occurrence of adultery in Bangladeshi families?
4. Are there differences in the perception of adultery based on gender, age, or socio-economic status in Bangladesh?
5. How does the legal framework in Bangladesh address issues related to adultery, and to what extent is it effective in preventing or mitigating its impact on families?
6. What are the coping mechanisms adopted by families in Bangladesh to deal with the consequences of adultery?

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<sup>7</sup> Section 497, the Penal Code, 1860.

<sup>8</sup> Bag, Amartya. 2010. 'Adultery and the Indian Penal Code; Analyzing the Gender Neutrality of the Law', available at <http://papers.ssrn.com/sol3/papers.cfm?abstractjd=1627649> ; V. Revathi v Union of India, AIR 1988 SC 835; See also, Ministry of Home Affairs, Government of India, Committee on Reforms of Criminal Justice System 190 (2003)

**Critical Analysis on Section 497 of the Penal Code, 1860:**

1. What is the historical context and evolution of Section 497 of the Penal Code, 1860 in Bangladesh?
2. To what extent does Section 497 reflect or challenge the societal norms and values regarding adultery in Bangladesh?
3. How has Section 497 been interpreted and applied in legal cases related to adultery in Bangladesh?
4. What are the criticisms and controversies surrounding Section 497, and how have these influenced legal discourse in Bangladesh?

**(C) Objectives****1. Investigating the Sociocultural Factors:**

To explore the cultural and social factors in Bangladesh that contribute to the prevalence of adultery.

**2. Examining the Legal Framework:** To conduct a detailed analysis of Section 497 of the Penal Code, 1860. And to evaluate the historical context and rationale behind the formulation of this section. Examine the implications of the legal provisions on adultery in the context of family disruption.

**3. Assessing the Impact on Family Dynamics:** To investigate the effects of adultery on the family structure in Bangladesh. Examine how adultery may lead to breakdowns in communication, trust, and overall family cohesion. Explore the emotional and psychological impacts on spouses and children within the family system.

**4. Exploring Gender Dynamics:** To analyse the gender-specific implications of adultery in Bangladesh. To investigate how societal expectations and legal provisions may disproportionately affect individuals based on gender.

**5. Evaluating Legal and Social Remedies:** To assess the effectiveness of existing legal measures, including Section 497, in addressing the issue of adultery. To explore potential reforms or alternative legal approaches to better address the complexities surrounding adultery.

**6. Propose Policy Recommendations:** Based on the findings, to propose policy recommendations for addressing adultery-related family disruptions in Bangladesh. And to consider both legal reforms and social interventions to create a comprehensive approach.

**(D) Literature Review**

Marriage represents the union between a man and a woman who agree to live together as spouses.<sup>9</sup> It traditionally serves as a means to fulfil fundamental sexual needs; however, contemporary trends show an increase in sexual relations outside the confines of marriage.<sup>10</sup> According to the Durex Global Sex Survey, 22% of respondents worldwide acknowledged engaging in extramarital sex.<sup>11</sup> Kinsey's studies indicate that 50% of males and 26% of females have had extramarital affairs at least once in their lifetime, with varying estimates ranging from 26–50% for men and 21–38% for women.<sup>12</sup>

Studies in the United States reveal that approximately 10–15% of women and 20–25% of men, based on nationally representative samples, admitted to extramarital affairs during the 1990s.<sup>13</sup> Adultery, a well-known form of extramarital sex, is often considered morally reprehensible due to the involvement of deception, betrayal, broken promises, and emotional pain.<sup>14</sup> The link between adultery and divorce is evident, as divorce rates have risen, notably in the United States, where the rate increased from 2.5 per 1000 population in 1966 to a peak of 5.3 in 1981.<sup>15</sup> Notably, about 150,000 individuals have been prosecuted annually for adultery since the 1980s.

In Bangladesh, a similar trend in rising divorce rates is observed, with statistics from Dhaka City Corporation showing a total of 52,000 divorces from 2010 to 2016.<sup>16</sup> While adultery is no longer a criminal offense in most Western countries, legal consequences may still arise, especially in divorce cases. Notably, Austria and Switzerland are the only Western countries that criminalize adultery.<sup>17</sup>

In contrast, several Western countries, including Denmark (1930), Sweden (1937), Japan (1947), Germany (1969), and France (1975), have abolished the criminalization of adultery. Far Eastern countries such as China, Japan, and North Korea do not criminalize adultery. However, in Muslim countries following Shariah law, adultery remains a criminal offense, and

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<sup>9</sup> Nwoye, A. (1991). *Marriage and family counselling*. Fab Education Books.

<sup>10</sup> Wiederman, M. W. (1997). Extramarital sex: Prevalence and correlates in a national survey. *Journal of Sex Research*, 34(2), 167-174.

<sup>11</sup> Durex. (2005). *the global sex survey*.

<sup>12</sup> Choi, K. H., Catania, J. A., & Dolcini, M. M. (1994). Extra marital sex and HIV risk behavior among US adults: results from the National AIDS behavioral survey. *AM J public health*.

<sup>13</sup> Lauman, E., Gagnon, J., Michael, R., & Michaels, S. (1994). *The social organization of sexuality: Sexual practices in the United States*. Chicago: University of Chicago press.

<sup>14</sup> Das, T. K., Alam, M. F., Bhattacharyya, R., & Pervin, A. (2015). Causes and contexts of domestic violence: Tales of help-seeking married women in Sylhet, Bangladesh. *Asian Social Work and Policy Review*, 9(2), 163-176.

<sup>15</sup> Ma, Q., & Clarke, D. R. (1995). Size dependent hardness of silver single crystals. *Journal of Materials Research*, 10(4), 853-863.

<sup>16</sup> bdnews24.com, 10.06.2015

<sup>17</sup> Swiss Penal code Retrieved from <https://www.admin.ch/ch/e/rs/3/311.0.en.pdf&sa>

punishment may include stoning.<sup>18</sup> While India and Bangladesh historically shared similar laws and punishments for adultery, the Supreme Court of India recently ruled that adultery is not a crime in their country.<sup>19</sup> Consequently, adultery remains a criminal offense in Bangladesh and other Muslim-populated countries.

Based on the results of several national-level surveys, it has been observed that 56% of married male partners engage in adultery.<sup>20</sup> Maccabe has proposed a hypothesis suggesting that prioritizing individual fulfilment over the fulfilment of basic needs for maintaining both intimacy and responsible companionship is more likely to lead to marital breakdown and the abandonment of shared responsibilities.<sup>21</sup> Moreover, there is a notable correlation in this region between an individual's inclination to seek sympathetic attention and engaging in adultery, a correlation that is not observed in other regions.<sup>22</sup>

In Bangladesh, there is a disturbing rise in violent crimes such as murder and rape, predominantly associated with adultery. Particularly, adultery stands out as a primary catalyst for spousal homicides.<sup>23</sup> Numerous studies have delved into aspects of law, punishment, and the root causes of adultery, also exploring its status as a crime worldwide. While our country's newspapers occasionally report on violent crimes stemming from adultery, there is a notable absence of specific research on the current situation and repercussions of adultery within our borders.

In Bangladesh, unlike Middle Eastern Muslim societies but likely in line with other South Asian cultures, the consequences for married women engaging in extramarital affairs are more severe than those for premarital sex. According to Khan and Arefeen (1989), married men in Bangladesh may have extramarital relations with local women seeking additional financial support, gifts, those discontent or hostile in their marriages, or whose husbands are frequently away. Some men also resort to visiting prostitutes when working alone in urban areas. Seema Amin (2012) noted the euphemistic use of the term 'affair' in Bangladesh, where, despite the increasing prevalence of extramarital relationships and divorces, the term 'affair' is still employed for any romantic or sexual relationship. This underscores the enduring influence of conservative cultural norms, where romance and particularly sexual 'affairs' exist in a realm of

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<sup>18</sup> Religioustolerance. (2015, February 26). Punishment for adultery in Islam. Retrieved from [www.religioustolerance.com](http://www.religioustolerance.com)

<sup>19</sup> The Guardian, 27.09.2018

<sup>20</sup> Tsapelas I, Fisher HE, Aron A. Infidelity: when, where, why. IN WR Cupach and BH Spitzberg, the Dark Side of Close Relationships II, New York: Routledge; 2010: 175-196.

<sup>21</sup> McCabe MP. Marriage: every bride's ambition satisfied? *Sexual and Relationship Therapy*. 2004; 19(2):131-2.

<sup>22</sup> Clark S. Extra-marital sexual partnerships and male friendships in rural Malawi. *Demographic Res*. 2010; 22:1-28.

<sup>23</sup> Kalerkantha, 12 June 2017

silence.

A pilot study by ICDDR, B (2006) conducted in urban and rural areas of Bangladesh<sup>24</sup> found that 17.5% of respondents had engaged in pre- or extramarital vaginal/anal sex in the past year. Specifically, 9.9% had sex with female sex workers, 8.6% with casual female partners, and 2.2% with males. The survey revealed higher levels of non-marital sex, with nearly 27% of never-married men and 13% of ever-married men reporting such activity in the past year compared to previous survey reports ranging from 8-24%. However, sub-national surveys indicated varying percentages, such as 47% and 56%, making national representation challenging for HIV modeling.

Societal norms in Bangladesh actively discourage and often deny the existence of sexual relations outside marriage. With almost 90% of the population being Muslim and the majority of the remaining 10% being Hindu, both religions strongly condemn extramarital sexual activity and overt expressions of sexuality. Women, in particular, face societal judgment, and behaviors perceived as too open in their interactions with men can lead to condemnation as immoral. Muslim society, in particular, has historically observed purdah (veil), expecting women to seclude themselves from unrelated men. Concerns about women's reputations have contributed to early marriages, with the majority of girls marrying in their early teens until recently.

Z. Sachedina (1990) pointed out that Islam, in contrast to Christianity and Hinduism, places no strictures on men enjoying sex within marriage, considering it one of life's positive aspects.

This study aims to address this gap by focusing on the contemporary landscape of adultery and its profound consequences in Bangladesh. Essentially, this research contributes significantly to the discourse surrounding adultery in the country.

### **(E) Rationale**

The methodology outlined in section 1.6 indicates a notable gap in understanding the current state of adultery in Bangladesh and its impact on the family system. There is a lack of comprehensive and foundational research in this particular domain. Despite being a valuable contribution to the subject, the study faces limitations due to challenges in sourcing information related to the practical scenario and the reluctance of those affected to share their perspectives. This impedes a thorough exploration of the issue.

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<sup>24</sup> Dhaka metropolitan, Chittagong metropolitan, and Bogra town) and three rural areas (Faridpur, Rajshahi, and Cox's Bazar districts) of Bangladesh



### **(F) Methodology**

The study adopts a qualitative methodology and incorporates a quantitative strategy for data collection from a representative sample of the population. The research drew support from primary and secondary sources, encompassing laws, acts, books, journals, etc. The foundation of this research lies in an analytical examination of laws, facts, and circumstances, which was considered indispensable for the success of the study. This analytical study approach was consistently applied throughout the entire research process.

### **(G) Limitation and Scope**

This report plays a pivotal role in understanding the tangible repercussions of adultery on the disruption of the family system in Bangladesh. Offering a comprehensive analysis, the paper incorporates a substantial amount of information that stands to benefit its readers. Despite the significant value of this study due to its thorough exploration of the topic, it does have limitations, particularly in terms of accessing all pertinent sources. Furthermore, the scarcity of literature on this subject poses challenges in obtaining comprehensive information about the topic. The intricacies of the issue have not been thoroughly examined by previous authors or researchers, making it difficult to undertake a comprehensive study. Gathering data for this report presented challenges, but the delivery of an error-free analysis were ensured.

## **II. LEGAL FRAMEWORK OF ADULTERY**

### **(A) Comparative study**

Some countries worldwide view adultery as a non-criminal act, while others consider it a valid reason for divorce. Japan classified adultery as a crime until 1947, and South Korea maintained this classification until 2015. Presently, the People's Republic of China does not deem adultery a crime but acknowledges it as grounds for divorce.<sup>25</sup> Efforts to decriminalize adultery in the Philippines are currently under consideration.<sup>26</sup>

In contrast, numerous European countries have eliminated adultery as a criminal offense, with Italy (1969), Malta (1973), Luxembourg (1974), France (1975), Spain (1978), Portugal (1982), Greece (1983), and Belgium (1987) being among the last to do so.<sup>27</sup> Most Communist countries do not consider adultery a crime. Turkey debated introducing a gender-neutral adultery law in 2004. Until the 1990s, many Latin American countries prohibited adultery, but subsequently, several, including Paraguay (1990), Chile (1994), Argentina (1995), Nicaragua (1996), Brazil

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<sup>25</sup> Marriage Law of the People's Republic of China, Article 32

<sup>26</sup> Philippine e-Legal Forum, 2001

<sup>27</sup> Kuk C, 2002

(2005), and Haiti (2005), decriminalized it.

The Federal Criminal Code of Mexico repealed its adultery law in 2011.<sup>28</sup> Australia does not categorize adultery as a crime; federal law enacted in 1994 deems sexual conduct between consenting adults as a private matter throughout the country.<sup>29</sup> In the United States, adultery laws differ between states, with 24 states still considering it a criminal offense as of 2017,<sup>30</sup> though prosecutions are infrequent, primarily concentrated in conservative states, particularly in the South.

Conversely, some countries, such as Austria and Switzerland, regard adultery as a criminal offense.<sup>31</sup> In Muslim countries applying Shariah law for criminal justice, adultery is considered a severe crime, often punishable by death, with stoning being the prescribed method.<sup>32</sup> In Pakistan, adultery is a crime under the Hudood Ordinance, carrying a penalty of death.

### **(B) Legal Definitions of Adultery**

- Legal definitions of adultery vary globally. In traditional English common law, adultery differs across jurisdictions, with a common thread being that engaging in sexual relations outside of marriage is a significant violation.<sup>33</sup>
- New York defines an adulterer as a person engaging in sexual intercourse with another person while having a living spouse, while North Carolina considers adultery as lewd and lascivious association, bedding, and cohabitation between a man and woman.<sup>34</sup>
- In Canada, the Divorce Act refers to extramarital relations with someone of the opposite sex. Conversely.
- In Bangladesh, adultery is the sexual intercourse of a man with a married woman without the consent of her husband, qualifying as a non-cognizable, non-bailable criminal offense.<sup>35</sup>

### **(C) Section 497 of the Penal Code, 1860**

Section 497 of the Penal Code, 1860, in Bangladesh deals with the offense of adultery. Here's an overview of the key provisions of Section 497:

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<sup>28</sup> Jane, S., Jaquette, S. L. *Women and Democracy: Latin America and central and eastern europe*

<sup>29</sup> Human rights (Sexual conduct) act 1994.

<sup>30</sup> New York Penal Law Section no. 255

<sup>31</sup> Austrian Penal Code, Art. 194, and Swiss Penal Code, Art. 214

<sup>32</sup> Religious tolerance. (2015, February 26). Punishment for adultery in Islam. Retrieved from [www.religioustolerance.com](http://www.religioustolerance.com)

<sup>33</sup> Moya

<sup>34</sup> North Carolina Statute, 184

<sup>35</sup> The Penal Code, 1860; Section 497

**Section 497: Adultery**

**Adultery Defined:** The section defines adultery as a voluntary sexual intercourse by a person with someone other than his or her spouse when the spouse is living.

**Participants in the Offense:** The offense of adultery is considered to be committed only by a man who engages in sexual intercourse with the wife of another man without the latter's consent.

**Consent Exception:** The offense of adultery does not apply if the husband of the woman gives his consent or connives in the act.

**Punishment:** Whoever commits adultery shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

**Exception for the Woman:** The woman engaging in adultery is not subject to punishment as an abettor.

**Abetment of Adultery:** If a man commits adultery with the wife of another man, and such wife is not an accomplice in the offense, the man shall be punished for abetting adultery.

**Private Complaint Required:** No person other than the husband of the woman shall be deemed to be aggrieved by any offense punishable under this section.

**Compoundable Offense:** The offense of adultery is compoundable, meaning that it can be compromised between the parties involved.

**Gender-Specific:** Notably, the section is gender-specific, punishing only a man for engaging in adultery with the wife of another man.

**Public vs. Private Prosecution:** The offense is not considered a public offense; only the husband of the woman is deemed to be aggrieved, and the prosecution typically requires a private complaint.

**(D) Decoding the Provision**

Apparently there are five essentials of this Section

- a. The accused must have sexual intercourse with the wife of another man
- b. The woman must be lawfully married to another man
- c. The accused had the knowledge or reason to believe the woman was lawfully married to another man
- d. The husband of the woman in question did not consent to such intercourse

e. The sexual intercourse did not amount to rape

Adultery, a criminal offense in Bangladesh under Section 497 of The Penal Code, 1860, is considered an infringement on the husband's rights over his married wife. This offense is committed by a third person against the husband in relation to his wife, and only the man can be held liable for it. Notably, engaging in sexual intercourse with an unmarried woman, a widow, a divorcee, or a woman whose husband has given consent does not constitute adultery. However, it is not a requirement that the other person be married.<sup>36</sup>

This report contends that the scope of the law should extend beyond holding only men accountable under the Code, arguing that wives should also be considered guilty of adultery. Because both male and female of a marriage are responsible for this degrading crime which leads to the disruption of a family and bring nightmares to the children of the spouses. Currently, the law stipulates that adultery is solely committed by a man (third party) who engages in sexual relations with the wife of another man without the husband's consent. Women cannot be punished, even as abettors.

The participation in this offense is limited to a married woman and a third person. The woman is viewed as a consenting party who actively engages in sexual intercourse voluntarily, likely driven by desire, love, and affection.<sup>37</sup> An issue arising from this section is that the wife of another man cannot file a case against the man, creating a significant problem that the section fails to address. This omission also raises concerns about a violation of the gender neutrality clause outlined in the constitution, as the section does not provide any recourse for a woman whose husband has committed adultery with another woman.

### **(E) Constitutional inconsistency of the provision**

#### **a. Inconsistency with the constitution**

The contention which can be presented at first is that the section 497 of the PC is Unconstitutional as it violates Articles 27, 28, 31 and 34 of Bangladesh constitution.

One of the primary constitutional concerns raised against Section 497 is the issue of gender equality. The Constitution of Bangladesh expressly guarantees equality before the law and prohibits discrimination on the basis of gender (Article 27), which asserts that "All citizens are equal before the law and are entitled to equal protection of the law." However, Section 497 of the Penal Code specifically targets male offenders in cases of adultery, leaving the female party exempt from punishment, creating an inherent gender bias. This selective approach raises

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<sup>36</sup> Nurul Haq Bahadur v. Bibi Sakina and others, 1985 BLD 269

<sup>37</sup> Samraj Nadar v. Abraham Nadachi, AIR 1970 Mad. 434, 457

constitutional questions about the principle of equal protection under the law and challenges the commitment to gender equality enshrined in the Constitution. However, it is evident that the legislature is engaging in gender-based discrimination under the guise of providing 'protective discrimination' for women. Section 497 of the Penal Code, 1860, unequivocally violates the equality clause within the Constitution of the People's Republic of Bangladesh.

Additionally, the provision's requirement for a private complaint by the husband as the aggrieved party raises questions about access to justice and due process. The Constitution of Bangladesh guarantees the right to a fair trial and equal protection of the law (Article 31), yet the exclusive right of the husband to file a complaint limits the broader societal interest in addressing offenses that may affect the family or community as a whole.

Article 27 stipulates that all citizens are equal under the law and are entitled to equal protection of the law, while Article 28(2) asserts that women should have equal rights with men in all aspects of state and public life. Essentially, these provisions imply that every law enacted by the state should apply uniformly to all individuals. The question arises as to whether Section 497 operates impartially for all individuals. Post the commencement of the Constitution of Bangladesh, Section 497 of the Penal Code contradicts the spirit of equality embedded in the Constitution.

In defiance of Articles 27 and 28(1) of the Constitution, Section 497 exhibits inequality between men and women by holding only men accountable for adultery. This gender bias stems from the fact that it prohibits the wife from prosecuting the woman involved in adultery with her husband, while it allows the husband to prosecute the man engaged in adultery with his wife. The law portrays women solely as victims and not as perpetrators of the crime,<sup>38</sup> thereby, as argued, giving connivance to women and discriminating against men based solely on gender.<sup>39</sup> Additionally, the Criminal Procedure Code lacks a provision for hearing the wife regarding an offense under Section 497 of the Penal Code. This absence of a statutory provision is also seen as an instance of gender discrimination, contravening the constitutional guarantee of gender equality.

Section 497 requires a private complaint by the husband as the aggrieved party, limiting access to justice and due process. This has been challenged in light of the broader constitutional

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<sup>38</sup> Shams, Shamsuddin. (Ed.). 1991. *Women Law and Social Change*, New Delhi, Ashish Publishing House, at p. 291; AIR 1985 SC at 1621; See above note 10.

<sup>39</sup> The term "connivance" implies knowledge of, and acquiescence in the act. Toleration of the extramarital relation of his wife by the husband also amounts to connivance. It is not merely negligence or inattention but a voluntary blindness to the intimacy. Connivance of the husband is made necessary, for the offence of adultery is intended to preserve his bed unsullied, and if he elected otherwise, the law cannot help him against himself. See *In re C.S. Subramaniam*, AIR 1953 Mad 422.

guarantee of the right to a fair trial and equal protection of the law (Article 31). Section 497 of the penal code grants the authority to initiate criminal proceedings against an offense in which an individual has no personal involvement, except for the fact that their spouse is implicated in the offense.

This arrangement raises confusion as it seemingly provides unilateral power to a man to determine whether an act constitutes an offense. In essence, the determination of an act being an offense relies solely on the husband's discretion. If he deems an act to be adultery within the definition outlined in Section 497, he can proceed with initiating legal action. Many critics argue that this provision opens the door for potential misuse, allowing a husband to manipulate his wife into engaging in a sexual relationship with another man, only to later use the situation as leverage for financial gain. In such cases, the third party involved may find it challenging to file a complaint due to potential social repercussions and the difficulty of proving that the husband consented to the arrangement.

Section 497's criminalization of consensual sexual relations between adults raises concerns about the right to privacy guaranteed under Article 32 of the Constitution. Critics argue that individuals have a fundamental right to engage in private, consensual relationships without the intrusion of criminal law. The provision's interference with personal liberty becomes a constitutional concern.

### **b. Judicial Standings as to the inconsistency**

The legal landscape of Bangladesh, as defined by the Penal Code of 1860, particularly Section 497, has sparked debates and criticisms for its perceived violation of constitutional provisions outlined in the Constitution of the People's Republic of Bangladesh. This section, which deals with the offense of adultery, has been called into question on several grounds that seem to clash with the fundamental principles enshrined in the nation's constitution.

The initial crucial debate on the constitutional validity of section 497 took place in the case of *Yusuf Abdul Aziz v The State of Bombay and Hussein Bhoj Laljee*.<sup>40</sup> In this case, the challenge was raised that section 497 was in violation of Articles 14 and 15 of the Indian Constitution, akin to Articles 27 and 28 of the Bangladesh constitution.

Questions arose whether this section conflicted with Article 14,<sup>41</sup> ensuring the right to 'equality before the law,' given that it excluded the female adulterer from punishment while penalizing

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<sup>40</sup> AIR 1954 SC 321.

<sup>41</sup> Avik Ghatak, 'Section 497 (Adultery) of the Indian Penal Code - The MYTH and the REALITY' online journal: LAWYERSCLUBINDIA <http://www.lawyersclubindia.com/articles/Section-497-Adultery-of-the-Indian-Penal-Code-The-MYTH-and-the-REALITY-4876.asp> accessed 25.09.2013

her male counterpart.

The Supreme Court of India asserted that Article 14 is a general provision and should be interpreted in conjunction with other provisions that outline exceptions to fundamental rights. Concerns were dispelled due to the presence of Article 15(3) of the Constitution, which allows the state to make special provisions for women and children. While the petitioners argued that this provision was intended solely for the benefit of women and not to grant a license for committing or abetting a crime, the Court disagreed.<sup>42</sup> It concluded that Article 14 and 15, when read together, validate the contested clause in section 497 of the Indian Penal Code.<sup>43</sup>

In the case of *Sowmithri Vishnu v Union of India*,<sup>44</sup> the Supreme Court held that section 497 did not violate Articles 14 or 15 of the Indian Constitution on grounds that;

1. The court reasoned that the section allowed the husband to prosecute the adulterer but did not grant the wife the right to prosecute the woman involved with her husband. The court considered this a matter of legal policy, not a violation of constitutional provisions.
2. Furthermore, the court held that section 497 did not empower the wife to prosecute her husband for adultery, as the law viewed her as a victim rather than an offender.
3. Section 497 does not cover situations where a husband engages in sexual relations with an unmarried woman, allowing husbands, in essence, a legal license to have extramarital affairs with unmarried women. The Court clarified that the law does not grant men the freedom to engage in illicit relationships with unmarried women; rather, it designates a specific type of extramarital relationship as an offense, considering it to be the most prevalent. It is the responsibility of lawmakers to update penal laws in accordance with contemporary standards, ensuring they align with Articles 14 and 15 of the Constitution of India.<sup>45</sup>

The case of *V. Revathi v Union of India*<sup>46</sup> questioned the constitutional validity of Criminal Procedure Code sections 198(1) and 198(2). The petitioner argued that since the law permitted a husband to prosecute his disloyal wife, the wife should also have the right to prosecute her disloyal husband. The court upheld the constitutionality of section 497 and section 198(2), stating that the law did not allow either spouse to prosecute the other under criminal law. The court considered this a form of "reverse discrimination" in favor of women, with no

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<sup>42</sup> *Yusuf Abdul Aziz v The State of Bombay and Hussein bhoj Laljee* AIR 1954 SC 321.

<sup>43</sup> *ibid* 321

<sup>44</sup> *Sowmithri Vishnu v Union of India* AIR 1985 SC 1618.

<sup>45</sup> *ibid* at 1620-1621.

<sup>46</sup> *V. Revathi v Union of India* AIR 1988 SC 835.

discrimination against women in prohibiting them from prosecuting their husbands.

### **III. CAUSES OF ADULTERY; GLOBAL AND DOMESTIC PERSPECTIVE**

Adultery encompasses the unfaithfulness (physical, emotional, mental) of a married individual, undermining the trust that forms the bedrock of spousal relationships. Trust plays a pivotal role in sustaining a long-term commitment between partners. If an extramarital relationship persists without resolution of trust issues, it can significantly harm marriages, potentially leading to divorce. In the past, factors such as poverty and dowry disputes were primary causes of family discord. However, contemporary concerns increasingly revolve around the extramarital affairs of spouses, which have become a significant worry for society.

#### **(A) General factors**

Individuals turn to extramarital affairs for various reasons. According to information gathered from numerous newspaper reports and documents, one significant cause is the lack of emotional connection between spouses. Marriage is intended to foster emotional attachment, where couples depend on each other for comfort, care, understanding, and cooperation. It requires consideration of each other's interests, work, hobbies, and activities, along with elements like love, compassion, understanding, and communication. Failure to express feelings, desires, and expectations can negatively impact the marriage, prompting partners to seek emotional bonding and solace outside the marital relationship.

Religion and religious practices can also play a role in extramarital affairs. Couples with a strong religious foundation, especially those practicing Islam, are less likely to engage in infidelity. Religion, emphasizing morality and a sense of responsibility, contributes to a happy marital life. Numerous examples highlight how religious individuals often treat their spouses with kindness. Studies consistently show an inverse relationship between religious practices and extramarital affairs.

Financially independent women in higher positions of power may also be prone to infidelity. It is observed that women, like men, faced with demanding jobs and financial stability, make different decisions about their faithfulness. Financial independence emerges as a predominant factor influencing women to engage in extramarital affairs.

Another contributing factor is mass media, particularly television, which has a widespread and influential reach. The largely unregulated electronic media in Bangladesh has resulted in an uncontrolled influx of cultural programs, adversely affecting the values of Bangladeshi citizens regardless of age or gender.



## **(B) Essential causes**

Here are the essential causes of the adultery.

### **a) Marriage**

Marriage is defined as the state of being united with a person of the opposite sex in a consensual and legally recognized contractual relationship.<sup>47</sup> Formalized arranged marriages often entail a range of experiences that require careful navigation, involving patience and a thorough understanding of various dynamics, which can sometimes pose challenges.

Furthermore, individuals who choose to marry in their early 20s are likely to have achieved a certain level of stability and social standing by the time they reach their mid-30s.<sup>48</sup> Interestingly, an aspect worth noting is the potential lack of teenage relationship experiences among those who marry early. This perceived absence of youthful romantic encounters might make individuals more prone to engaging in extramarital affairs, as the curiosity or desire for such experiences could persist into their adult lives. The inherent lack of caution associated with a limited romantic history may contribute to a greater vulnerability to extramarital relationships.<sup>49</sup>

### **b) Married for the Wrong Reasons**

Entering into marriage for the wrong reasons, such as societal and familial pressures, has been identified as a significant contributor to adultery. The societal expectation of settling down and conforming to traditional norms often exerts immense pressure on individuals, leading them to make decisions about marriage without thorough consideration. In such cases, the emphasis might be more on meeting external expectations rather than building a strong foundation for a healthy relationship.<sup>50</sup>

Furthermore, the phenomenon of agreeing to marriage without truly getting to know one's partner is another aspect that can contribute to the prevalence of extramarital affairs. In a rush to conform to societal norms or due to familial expectations, individuals might overlook the

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<sup>47</sup> Baron D. The highest dictionary in the land? The Supreme Court and the definition of "marriage". *The Web of Language and Technology* 2013. Available at <https://illinois.edu/blog/view/25/93323>. Accessed on 4 February 2017.

<sup>48</sup> The Times of India. Twelve reasons why people have extramarital affairs. *Huffington Post* 2015. Available from: <http://timesofindia.indiatimes.com/life-style/relationships/love-sex/12-reasons-why-people-have-extramaritalaffairs/articleshow/47418028.cms>. Accessed on 7 February 2017.

<sup>49</sup> National Healthy Marriage Resource Center 2008-2017. Too young to get married? See what the experts say. Available at <http://www.two-ofus.org/educational-content/articles/too-young-to-get-married-see-what-the-experts-say/index.aspx>. Accessed on 2 February 2017.

<sup>50</sup> The Times of India. Twelve reasons why people have extramarital affairs. *Huffington Post* 2015. Available from: <http://timesofindia.indiatimes.com/life-style/relationships/love-sex/12-reasons-why-people-have-extramaritalaffairs/articleshow/47418028.cms>. Accessed on 7 February 2017.

crucial process of understanding their potential life partner. This lack of genuine connection and familiarity with each other's values, interests, and personalities can create a void within the marriage, making individuals more susceptible to seeking fulfilment outside the relationship.

A crucial factor that can contribute to extramarital relationships is the prioritization of individual desires over the collective well-being of the marriage. When one or both partners place a high priority on personal satisfaction, constantly seeking the best for themselves, it can lead to a sense of discontent within the marriage. This individualistic approach may result in the neglect of the relationship, paving the way for external attractions that seem to meet unfulfilled needs.

Despite the justifications individuals may have for entering into marriage for the wrong reasons, the consequences often manifest as emotional emptiness within the relationship. This void becomes a breeding ground for attractions to others who seem to fulfil the unmet expectations. The individuals involved may find themselves drawn to someone else who appears to provide the emotional connection and satisfaction lacking in their marriage, ultimately leading to the dissolution of their previous relationship.

### **c) Sexual Desires**

Sexual desires can be identified as a significant catalyst for adultery, playing a pivotal role in the dynamics of intimate relationships. Sex, being a powerful union of love and passion between two individuals, holds a central position in the intricate fabric of human connections. However, as time progresses, the novelty of sexual experiences within a relationship may diminish, potentially leading to monotony. In cases where there is a noticeable absence of desire, passion, and romance, individuals may find themselves compelled to seek these elements elsewhere.

The intricate interplay of emotional and physical components in a relationship makes sexual satisfaction a vital aspect of maintaining a strong bond. When the intensity of desire diminishes within a marital relationship, it can create a void that some individuals may seek to fill by engaging in extramarital affairs. This phenomenon is particularly prevalent among individuals with lower self-control and a profound sense of dissatisfaction in their sexual desires.

The allure of an extramarital relationship, in such instances, may stem from the perceived excitement and fulfilment that an individual believes is lacking in their primary relationship. The quest for passion, novelty, and a sense of connection can drive individuals towards seeking intimate connections outside their marriage. It is essential to recognize that these actions are often rooted in a deep-seated need for emotional and physical fulfillment, and the pursuit of

extramarital relationships may be an attempt to address these unmet desires.

By fostering open communication, understanding, and a commitment to maintaining the spark in a relationship, couples can work together to navigate the challenges that may arise and ensure the longevity of their bond.<sup>51</sup>

#### **d) Becoming Parents**

Becoming parents constitutes a significant life transition that can potentially contribute to instances of adultery. The arrival of a new child brings about rapid and tangible changes, impacting various aspects of life, including the distribution of responsibilities, alterations in priority order, and the need to re-evaluate time management. This period ushers in a new environment, demanding considerable efforts, particularly from the mother, as she juggles the complexities of childcare alongside pre-existing responsibilities.

In the midst of these changes, there emerges a dynamic where the male partner may, at times, feel a sense of deprivation, experiencing a reduced emphasis on his importance and attention within the relationship. This perceived neglect or diminished focus on the husband's needs may lead him to seek validation and connection outside the marriage, potentially resulting in extramarital affairs. The challenges and demands of parenthood can create a scenario where the emotional needs of one partner, often the father, may not be met to the extent he desires.

This dynamic highlights the importance of open communication, mutual understanding, and emotional support within a marriage, particularly during the transformative phase of becoming parents. Recognizing and addressing the emotional needs of both partners can mitigate the risk of one seeking fulfilment outside the marriage. Additionally, fostering an environment of shared responsibilities, where both partners feel valued and understood, can contribute to the overall health and stability of the marital relationship amidst the complexities of parenthood.<sup>52</sup>

#### **e) Career Advancement**

Career advancement can exert a significant influence on marital fidelity, serving as a multifaceted catalyst for extramarital affairs. The complex interplay between professional aspirations and personal relationships adds a layer of complexity to the dynamics of modern marriages. In this context, the discourse surrounding career choices and financial stability emerges as a poignant and, at times, disheartening reality.

The pursuit of career goals often introduces a source of tension into the marital sphere. As

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<sup>51</sup> Ibid 48

<sup>52</sup> Ibid 46

individuals strive for career advancement, the demands of their professional lives may infringe upon the time and energy available for their spouses. The ensuing discord over career-related decisions can create a palpable strain on the relationship, potentially paving the way for extramarital affairs as an outlet for unmet emotional needs.

Financial considerations, intertwined with career trajectories, constitute another dimension of this intricate issue. The economic solvency of a married couple plays a pivotal role in shaping the quality of their relationship. Financial instability can lead to mismanagement of family finances, triggering persistent disagreements that erode the foundation of marital harmony. The perpetual wrangling over financial matters not only jeopardizes the economic well-being of the couple but also corrodes the emotional bond that underpins a healthy marriage.

The long-term repercussions of these challenges are profound, contributing to a scenario marked by severe conflict, intrinsic remorse, and wavering loyalty. The constant pressure on the financial stability of the married couple engenders a climate of uncertainty and unrest. The erosion of mutual cognitive understanding, exacerbated by the strain of conflicting career pursuits and financial struggles, manifests in the form of acute marital distress.

#### **f) Social Networks**

The rise of adultery in Bangladesh can be attributed to the influence of social networks. The ease of access and the anonymity provided by online dating platforms have contributed to a growing number of spouses seeking romantic connections outside of marriage. This trend is becoming increasingly prevalent, as evidenced by a recent survey conducted by the American Academy of Matrimonial Lawyers (AAML).<sup>53</sup>

Over the last five years, an alarming scenario has unfolded, with 81% of the nation's top divorce attorneys, as revealed by the AAML survey,<sup>54</sup> pointing to the easy availability of individual identity and contact on social media as a significant factor contributing to the rapid increase in divorce rates. Notably, Facebook emerges as the primary catalyst in this phenomenon, with a staggering 66% contribution to the online evidence cited in divorce cases, according to the original source.

The impact of social media on marital relationships is profound, with platforms like Facebook providing a space where married individuals can freely express themselves and actively seek

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<sup>53</sup> Smith A, Anderson M. Five facts about online dating. Pew Research Center 2016. Available at <http://www.pewresearch.org/facttank/2016/02/29/5-facts-about-online-dating/>. Accessed on 1 February 2017.

<sup>54</sup> American Academy of Matrimonial Lawyers (AAML) 2010. Big Surge in Social Networking Evidence Says Survey of Nation's Top Divorce Lawyers. Available at <http://www.aaml.org/about-the-academy/press/press-releases/e-discovery/>. Accessed on 5 February 2017.

extramarital relationships. Beyond Facebook, numerous other social websites offer similar opportunities for individuals to engage in relationships outside the bounds of their marriages.

This evolving trend underscores the transformative role of social networks in shaping personal relationships and influencing the dynamics of marriages. The virtual realm, with its inherent anonymity and accessibility, has become a significant player in the complex landscape of human connections, raising critical questions about the intersection of technology, personal boundaries, and the societal impact of online interactions on the institution of marriage in Bangladesh.

### **g) The inter-play of self-esteem problems**

Self-esteem issues contribute significantly to the occurrence of adultery in Bangladesh. The concept of self-esteem involves an individual's perception and assessment of their own worth and capabilities. Maintaining a healthy level of self-esteem is crucial for sound personal judgment and decision-making. In the context of marriage, the perceived lack of recognition or appreciation can be a powerful trigger for engaging in extramarital affairs.

The feeling of being unloved or undervalued by one's spouse can lead to a profound sense of deprivation. This emotional void may be driven by a genuine need for companionship and love, essential elements in a marital relationship. The psychological impact of such deprivation is tangible and has real consequences on an individual's mental well-being.

Addressing self-esteem problems requires a balanced understanding of one's own worth and capabilities. It goes beyond mere acknowledgment; individuals must cultivate a positive conscience to counteract the potential threat of involvement in extramarital affairs. This involves recognizing and affirming one's value, fostering self-love, and seeking ways to communicate and address emotional needs within the marriage.<sup>55</sup>

In the context of Bangladesh, where cultural norms and societal expectations often influence the dynamics of relationships, the impact of self-esteem on marital fidelity is particularly noteworthy. Cultivating a positive sense of self-worth becomes essential in navigating the complexities of personal relationships, ensuring a stronger foundation for marital happiness and fidelity. Recognizing the role of self-esteem in the context of adultery underscores the importance of holistic approaches to mental well-being within the cultural and relational framework of Bangladesh.

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<sup>55</sup> Ashwini A. Causes and Effects of Infidelity. Infojug 2008. Available at <http://www.infojug.com/family-articles/causes-and-effects-of-infidelity.html> . Accessed on 11 February 2017.

### **h) No Common Interest between Spouses**

The prevalence of adultery in Bangladesh is often attributed to the absence of common interests between spouses. In the intricate fabric of conjugal relationships, the pivotal role of negotiation and respect for each other's choices becomes indispensable for fostering a peaceful coexistence while fulfilling the responsibilities inherent in married life. The importance of recognizing this fundamental truth cannot be overstated, as any failure to do so can lead to a distortion of mutual interests and a significant reduction in the time couples spend together. This, in turn, creates a fertile ground for the development of extramarital affairs over time.

In the context of marriage, the lack of shared interests can be a substantial challenge, as it may lead to a growing sense of disconnection between partners. Common interests serve as a bond that enhances communication, understanding, and shared experiences. Without these shared pursuits, couples may find themselves leading parallel lives, with diminishing opportunities for meaningful interaction.<sup>56</sup>

The dynamics of conjugal life necessitate continuous negotiation and a willingness to appreciate and accommodate each other's preferences, hobbies, and passions. When spouses fail to recognize the importance of this ongoing negotiation, a rift can emerge, and personal time may be allocated in ways that diverge significantly. This divergence not only compromises the quality of the relationship but also creates a void that individuals may seek to fill through extramarital connections.

In order to mitigate the risk of adultery, fostering a culture of open communication, mutual respect, and active engagement with each other's interests is crucial. Couples need to invest time and effort in understanding and participating in the activities that bring joy and fulfillment to their partners. This investment in shared experiences can serve as a powerful antidote to the potential erosion of the marital bond, promoting a harmonious and fulfilling conjugal life.

### **i) Other reasons**

Other factors instigating individual tendency of searching for compassionate love are as follows:

1. Opportunity to live together even after being committed in a marriage;
2. Midlife crisis as a period of psychological stress occurring in middle age (this shapes individual thought to be triggered by a physical, occupational, or domestic event);

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<sup>56</sup> The Times of India. Twelve reasons why people have extramarital affairs. Huffington Post 2015. Available from: <http://timesofindia.indiatimes.com/life-style/relationships/love-sex/12-reasons-why-people-have-extramari-talaffairs/articleshow/47418028.cms> . Accessed on 7 February 2017.

3. Concerns related to natural deterioration of physical condition (this can cause significant and sometimes unwanted accidental changes in life).

In conclusion, the complex landscape of adultery in Bangladesh is shaped by a myriad of factors that reflect the intricate dynamics of modern relationships. While societal norms, economic disparities, and the influence of media can contribute to the prevalence of extramarital affairs, it is essential to recognize the nuanced interplay of individual, cultural, and interpersonal elements.

#### **IV. IMPACTS OF ADULTERY ON THE DISRUPTION OF FAMILY SYSTEM IN BANGLADESH**

##### **(A) General Discussion**

The impacts and effects are outcomes of a specific action or situation, often ones that are negative or inconvenient. Adultery stands out as one of the most detrimental occurrences within a marriage, undermining the foundation established with a partner in an intensely personal manner. Engaging in adultery leads to infidelity, which can be likened to the demise of essential elements in a relationship, such as trust and affection. It is comparable to a form of death, signifying the loss of everything invested in the marriage. Once individuals become convinced that they married the wrong person, thoughts of divorce may take root and intensify. Deceived by the affair, many find themselves in a situation where they are unsure of how they ended up there and lack a clear path for resolution.<sup>57</sup>

Undoubtedly, adultery profoundly impacts marriages in a negative way. Furthermore, it frequently manifests in extreme violence, including instances of murder, involving the woman, her lover, or both, often committed by her husband. In contemporary society, many countries have outlawed domestic violence stemming from adultery. From a local perspective, common repercussions of adultery encompass murder, divorce, and abandonment of spouses, violent behavior towards women, domestic violence, flogging, and the increased risk of sexually transmitted diseases.

##### **(B) Adultery Leading To Violent Crimes**

When individuals become entangled in illicit relationships, a pervasive moral blindness often sets in, blurring the lines between right and wrong. In this moral fog, the paramount concern becomes personal benefit, with little regard for the profound impact on their families and children. Adultery, in essence, breeds an environment of extreme selfishness, where individuals

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<sup>57</sup> The daily Jugantor, 4 April, 2018

are willing to sacrifice the values of familial bonds for the sake of their clandestine connections. This erosion of empathy and consideration for others is a common hallmark of adultery, where the pursuit of personal satisfaction overrides ethical considerations.

The gravity of this moral disconnect is starkly illustrated by the unsettling notion that resorting to violence, even the extreme act of taking someone's life, can be perceived as an acceptable means to protect and sustain these forbidden liaisons. The erosion of moral boundaries reaches a point where the heinous act of murder becomes normalized, all in the name of preserving an illicit relationship.

Within the narrative surrounding adultery, women are often depicted as bearing a disproportionate share of blame.<sup>58</sup> The portrayal of adultery as a force that renders women heartless and self-centered is a troubling narrative, perpetuating stereotypes that associate women with moral degradation. This perception extends to their involvement in various violent crimes aimed at maintaining these forbidden relationships. Shockingly, instances of mothers resorting to the unthinkable act of killing their own children to safeguard their extramarital affairs have become distressingly common, painting a bleak picture of the moral decay that adultery can instigate.

Furthermore, the deleterious impact of adultery extends beyond personal relationships to encompass broader societal dynamics. News reports are replete with stories of individuals going to extreme lengths, such as murdering their husbands and family members, all in the name of personal happiness.<sup>59</sup> This pattern of extreme violence is presented as a grim reality, a direct consequence of the corrosive influence of adultery on individual moral compasses and societal norms.

The term "adultery" emerges as a powerful catalyst for a range of violent crimes, creating a disturbing nexus between personal relationships and societal violence. This connection is reflected in a litany of incidents, including murders, honor killings, acid attacks, and domestic violence.<sup>60</sup> The profound societal implications of engaging in extramarital relationships are evident in the alarming frequency with which such incidents are reported, highlighting the urgent need for a nuanced understanding and collective efforts to address the root causes of this complex and multifaceted issue.

On a daily basis, numerous news reports highlight instances where spouses resort to extreme

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<sup>58</sup> Prothom Alo, 29 April, 2018

<sup>59</sup> bdnews24, 22 May, 2018

<sup>60</sup> Prothom Alo English Desk, 11 Apr 2021, Man killed over extramarital affair in Chattogram



measures, including the tragic act of killing or inflicting brutal physical harm upon each other, often stemming from issues related to adultery.<sup>61</sup>

This disconcerting trend underscores the pervasive impact of infidelity on marital relationships, pushing couples to the brink of violence. The frequency of such incidents depicted in news stories serves as a stark reminder of the profound emotional turmoil and societal repercussions associated with marital infidelity. It reflects a disturbing reality where conflicts arising from adultery escalate to a level of intensity that results in severe harm, both emotionally and physically, within the confines of marital relationships.<sup>62</sup>

These news reports shed light on the urgency of addressing the complex dynamics surrounding infidelity, emphasizing the need for comprehensive efforts to prevent and mitigate the destructive consequences that can unfold within the realm of intimate partnerships. As society grapples with the aftermath of these distressing incidents, there arises a collective responsibility to foster awareness, understanding, and support mechanisms to navigate the complexities of relationships strained by issues of trust and fidelity.

### **(C) Impacts of Adultery on Divorce**

Adultery is a global phenomenon that has been linked to an increased divorce rate worldwide. While statistics on the prevalence of extramarital affairs vary, it is widely acknowledged that a significant percentage of both men and women engage in such behavior during their married lives, contributing to the erosion of marital trust and stability. For instance, in the United States, divorce rates climbed steadily from 2.5 per 1000 population in 1966 to a peak of 5.3 in 1981, reflecting the societal impact of infidelity.<sup>63</sup>

Hong Kong has also witnessed a significant legal response to adultery, with approximately 150,000 individuals prosecuted annually for this offense since the 1980s.<sup>64</sup> Similarly, in India, adultery is identified as a prominent cause of the rising divorce rate, with around 28.3% of marriages breaking down due to extramarital affairs.<sup>65</sup>

Bangladesh is not exempt from this global trend, as evidenced by increasing divorce rates attributed to adultery. According to statistics from the Dhaka City Corporation covering the years 2010-2016, a total of 52,000 divorces occurred, with adultery identified as a fundamental

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<sup>61</sup> Prothom Alo English Desk, 26 Feb 2022; One killed for 'involvement in extra-marital affair' in Gazipur

<sup>62</sup> Akram, Saleh.(2017). A gender justice or injustice in case of adultery, Law journal BD,07

<sup>63</sup> Ma, Q., & Clarke, D. R. (1995). Size dependent hardness of silver single crystals. *Journal of Materials Research*, 10(4), 853-863.

<sup>64</sup> Nwoye, A. (1991). *Marriage and family counselling*. Fab Education Books

<sup>65</sup> Bindhu, Vasudevan., Geetha , Devi., Anitha Bhaskar., & Binu, Areeka.(2015). Causes of divorce: A descriptive study from central Kerala, *Journal of evolution of medical and dental sciences*, 4, 3418-3426,

cause.<sup>66</sup> While adultery may no longer be an absolute deal-breaker in many marriages, it consistently ranks as one of the primary reasons couples decide to pursue divorce, contributing to a rising trend in divorce rates worldwide.<sup>67</sup> The breakdown of trust, unfaithfulness, and cheating are identified as underlying causes of adultery, with divorce being the consequential outcome of these marital challenges.

The impact of adultery is not limited to the spousal relationship alone; it extends to the well-being of children within these families. Research from *Divorce Magazine* suggests that approximately 45-50 percent of married women and 50-60 percent of married men engage in extramarital affairs. In the United States, the American Psychological Association (APA) reports that infidelity contributes to 20-40 percent of divorces, with 42 percent of divorced individuals reporting involvement in more than one affair.<sup>68</sup> A Gallup poll further highlights the profound repercussions of adultery on marital stability, indicating that a significant majority of partners (62 percent) would opt for divorce if they discovered their spouse was engaged in an extramarital affair, underlining the enduring significance of adultery as a primary catalyst for divorce globally.

Adultery, with its intricate web of emotional, social, and legal consequences, plays a substantial role in the rising divorce rates observed in Bangladesh. In this conservative society where family values are paramount, the impact of marital infidelity can be particularly profound. Adultery often serves as a catalyst for the breakdown of trust, the cornerstone of any successful marriage.

When one partner engages in extramarital affairs, the betrayal is felt deeply by the spouse, leading to an erosion of trust that can be irreparable. The cultural stigma associated with adultery in Bangladesh intensifies the emotional turmoil, making it challenging for couples to navigate the aftermath. The societal expectation of marital fidelity places immense pressure on individuals to uphold their commitment, and the discovery of an affair can result in severe social judgment.

Moreover, the legal landscape in Bangladesh reflects a stern stance against adultery. While legal consequences might not be as pervasive as in some other countries, the societal norms often dictate that extramarital affairs are unacceptable. In some cases, the legal implications can extend to divorce proceedings, where adultery may be cited as grounds for the dissolution

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<sup>66</sup> bdnews24.com, 10 June 2015

<sup>67</sup> Chen, N. (2012). *Extramarital Affairs in the Workplace*. Retrieved from <http://extension.missouri.edu/jackson/documents/Articles/Relationships/ExtramaritalAffairsintheWorkplace/>

<sup>68</sup> APA report, 2010

of the marriage.

#### **(D) On Domestic Violence**

Adultery can be a distressing precursor to domestic violence, creating a toxic cycle of betrayal, anger, and aggression within a relationship. The revelation of an extramarital affair often shatters the foundation of trust and intimacy, triggering intense emotional responses. In some cases, the betrayed partner may experience profound feelings of hurt, humiliation, and inadequacy, leading to an overwhelming sense of resentment.

As these negative emotions fester, they can manifest in acts of domestic violence. The betrayed partner may resort to physical or emotional abuse as a misguided attempt to regain control, dominance, or to express their own pain. The sense of betrayal coupled with feelings of powerlessness can culminate in explosive and harmful behaviors within the confines of the home.

Conversely, the partner engaged in the extramarital affair may also become a victim of domestic violence. The guilt, shame, and fear of retaliation can provoke aggressive reactions from the betrayed partner, resulting in a cycle of violence that further complicates the already strained relationship.<sup>69</sup>

The link between adultery and domestic violence underscores the intricate interplay of emotions and power dynamics within intimate relationships. Breaking this cycle requires open communication, empathy, and, in many cases, professional intervention to address the root causes of the infidelity and the ensuing violence, fostering a healthier and more secure environment for both partners.

Regrettably, this report testifies that usually in Bangladeshi culture, a married man and his family members remain vigilant about wife's infidelity or any pre-or extramarital affair. Seemingly, a research shows that wife also develops suspicion over her husband's affairs and remains scared of his second or any secret marriage.<sup>70</sup> Adultery is one of the very much important causes for violence against women. According to another study main reason behind Violence against Women was dowry (32.72%), familial conflict (32.54%), and sexual assault (19.16%), extramarital relation (11.20%), others (3.06%).<sup>71</sup> So this paper is right to say that

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<sup>69</sup> Charny IW, Parnass S. The impact of extramarital relationships on the continuation of marriages. *Journal of Sex & Marital Therapy*. 1995;21(2):100-15.

<sup>70</sup> Das, T. K., Alam, M. F., Bhattacharyya, R., & Pervin, A. (2015). Causes and contexts of domestic violence: Tales of help-seeking married women in Sylhet, Bangladesh. *Asian Social Work and Policy Review*, 9(2), 163-176.

<sup>71</sup> Khan, N. T., Begum, A., Chowdhury, T. M. J., Das, B. K., Shahid, F., Kabir, S., & Begum, M. (2017). Violence against women in Bangladesh. *Delta Medical College Journal*, 5(1), 25-29.

Adultery occurs domestic violence.

### **(E) Increases Number of Deserted Women**

Abandonment has been observed throughout history, but the trend of husbands deserting or leaving their wives has become increasingly prevalent over the past decade, particularly in South Asian and other developing nations worldwide. Cultural, religious, and social values sometimes contribute to the phenomenon of family desertion.

In certain cases, these values permit a man to maintain a relationship with another woman while keeping his first wife at home or to remarry and subsequently abandon his initial wife and her children easily. Bangladesh, being predominantly Muslim, adheres to Muslim marriage laws and Islamic religious law, known as "shariah," which allows for polygamy. Desertion cases are often rooted in extramarital relationships or adultery on the part of the husband, with half of the respondents in a study claiming that they were abandoned due to their husbands' involvement in adultery or extramarital affairs.<sup>72</sup>

### **(F) Transmitted diseases**

In the contemporary world, sexually transmitted diseases pose a significant health risk and represent a looming threat to the well-being of the global population. These diseases, with their severe consequences such as blindness, insanity, and death, underscore the urgent need for addressing the uncontrolled spread of infections. The escalating prevalence of sexually transmitted diseases signals a profound issue in societal sexual behaviors. Adultery, premarital sex, and various forms of sexual perversion are identified as the primary causes of these diseases [23].

Remarkably, the largest demographic groups affected by these diseases include young people, homosexuals, and nations in the developing world.<sup>73</sup> This alarming trend indicates a troubling aspect of contemporary society where sexual gratification often becomes the dominant factor influencing decision-making processes and colors various aspects of human behavior.<sup>74</sup>

### **(G) Impacts on Children**

Children experience the most profound impact when their parents engage in extramarital affairs, even if the affairs are successfully kept secret. Therapists and sociologists have

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<sup>72</sup> Ahmed, Neaz., Ahmmed, Faisal. (2015). Problems and challenges of deserted women in Bangladesh: an observational study. *Journal of International Social Issues*, 3, 1-11

<sup>73</sup> Choi, K. H., Catania, J. A., & Dolcini, M. M. (1994). Extra marital sex and HIV risk behavior among US adults: results from the National AIDS behavioral survey. *AM J public health*.

<sup>74</sup> Hirsch, A. R. (2009). *Making the second ghetto: Race and housing in Chicago 1940-1960*. University of Chicago Press

observed that during an affair, children can sense that a parent is channeling emotional energy outside the family. Consequently, these children may develop feelings of anxiety, fear, or a sense of rejection, assuming they have done something wrong.

In our less-educated and socially conscious country, when families break apart due to adultery, children find themselves in a challenging situation. They often lack the necessary economic and emotional support for their well-being. The absence of family bonds contributes to an identity crisis, and this void is considered a significant factor in juvenile delinquency, as reported by *The Daily Prothom Alo* on April 19, 2018.<sup>75</sup>

Children from broken families often grapple with frustration, leading them to engage in various forms of violent activities. Moreover, experts have discovered that these children are more likely to replicate such behaviors in their own relationships when they marry. Clinical evidence and recent studies indicate that subtle changes in the behavior of an adulterous parent can disturb children, irrespective of whether the truth is eventually revealed, and even if the children are too young to comprehend the complexity of the situation.

#### **(H) Violence between Partners**

Violence occurring within a couple engaged in adultery is a notable concern. Individuals in marital relationships who become involved with other partners may face violence within these extramarital connections.<sup>76</sup> Due to the clandestine and often illegal nature of adultery in many societies, instances of intimate partner violence in such situations may be underreported. Even when reported, prosecution may not always follow, and in certain jurisdictions, this form of violence might not fall under the purview of specific domestic violence laws.<sup>77</sup>

The diverse negative consequences stemming from extramarital affairs dismantle the bedrock of mutual trust and faith within social, familial, and personal relationships.<sup>78</sup> This irreparable erosion of trust and faith in enduring relationships stands as the primary catalyst for the swift rise in Bangladesh's divorce rate. Failing to address and counteract this decline is akin to a self-destructive path, as the collapse of any societal value or norm can progressively take on epidemic proportions.<sup>79</sup>

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<sup>75</sup> *The daily Prothom Alo*, 19 April, 2018

<sup>76</sup> Gu, G., Yuan, J., Wills, M., & Kasper, S. (2007). Prostate cancer cells with stem cell characteristics reconstitute the original human tumor in vivo. *Cancer research*, 67(10), 4807-4815.

<sup>77</sup> Durex. (2005). *The global sex survey*. Retrieved from <http://www.durex.co.nz/about-durex/globalsexsurvey/>

<sup>78</sup> Charny IW, Parnass S. The impact of extramarital relationships on the continuation of marriages. *Journal of Sex & Marital Therapy*. 1995;21(2):100-15.

<sup>79</sup> Faysal MM. Causes of increasing divorce rate: In the context of World & Bangladesh. Available at [https://www.academia.edu/13667272/Causes\\_of\\_increasing\\_divorce\\_rate\\_In\\_the\\_context\\_of\\_World\\_and\\_Bangladesh](https://www.academia.edu/13667272/Causes_of_increasing_divorce_rate_In_the_context_of_World_and_Bangladesh). Accessed on 12 February 2017.

## V. RECOMMENDATION AND CONCLUDING REMARKS

### (A) Recommendation and guidelines

- 1. Public Awareness Campaigns:** Launching widespread educational campaigns to inform the public about the consequences of adultery on family stability.
- 2. Values-Based Education:** Integrating values education into school curricula, emphasizing the importance of commitment and communication in relationships.
- 3. Legal Reforms:** Reviewing and updating laws related to adultery, promoting fair and supportive measures for affected families.<sup>80</sup>
- 4. Accessible Counselling Services:** Increasing the availability and accessibility of counselling services for couples facing marital challenges.
- 5. Community Engagement:** Involving community leaders and influencers to promote fidelity and discourage adultery through various platforms.
- 6. Gender Equality Initiatives:** Supporting initiatives that empower both men and women, addressing power imbalances that may contribute to adultery.
- 7. Family Counselling Programs:** Establishing and promoting programs that focus on improving communication, conflict resolution, and trust-building within families.<sup>81</sup>
- 8. Media Responsibility:** Encouraging responsible media reporting to avoid sensationalism and stigmatization of individuals involved in adultery.
- 9. Workplace Support:** Advocating for workplace policies that promote a healthy work-life balance to reduce stressors affecting relationships.<sup>82</sup>
- 10. Alternative Dispute Resolution:** Promoting the use of alternative dispute resolution methods, such as mediation, to address marital conflicts outside the legal system.<sup>83</sup>
- 11. Support Groups:** Creating and facilitating support groups where individuals and couples can share experiences and seek guidance.<sup>84</sup>
- 12. Religious Counselling:** Collaborating with religious institutions to provide counselling

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<sup>80</sup> V. Revathi v. Union of India & others 1988 Cri. L. J. 921 SC [AIR 1988 SC 835] (M. P. Thakkar and Murari Mohan Dutt JJ Divn Bench) [paras 2 pg. 923].

<sup>81</sup> Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

<sup>82</sup> MODEL PENAL CODE, AMERICAN LAW INSTITUTE § 213.6 note on adultery and fornication at 439 (Proposed Official Draft 1962)

<sup>83</sup> Navtej Singh Johar & Ors. v. Union of India Thr. Secretary Ministry of Law and Justice, W.P.(CrI.) No. 76/2016.

<sup>84</sup> Ruth A. Miller, *The Limits of Bodily Integrity: Abortion, Adultery, And Rape Legislation In Comparative Perspective* at 122-23 (Ashgate 2007)

services that align with faith-based principles.

- 13. Early Intervention Programs:** Implementing programs aimed at identifying and addressing relationship issues at an early stage.<sup>85</sup>
- 14. Affordable Mental Health Services:** Ensuring the affordability of mental health services, including counselling, to cater to families from diverse socioeconomic backgrounds.
- 15. Parenting Education:** Providing resources and workshops on effective parenting to strengthen family bonds and reduce stressors.
- 16. Mobile Counselling Apps:** Exploring the development of mobile applications that offer discreet and accessible counselling services for couples.
- 17. Peer Mentorship Programs:** Establishing peer mentorship programs where experienced couples mentor those facing challenges in their relationships.
- 18. Community Forums:** Organizing regular community forums and discussions on family values, encouraging open dialogue on relationship issues.
- 19. Encourage Apology and Forgiveness:** Promoting the importance of sincere apologies and forgiveness as crucial components of rebuilding trust within families.
- 20. Policy Advocacy:** Advocating for policies that protect and support families, addressing the root causes of adultery and relationship breakdowns.

Implementing a combination of these recommendations can contribute to a more holistic and effective approach in mitigating the negative impacts of adultery on the family system in Bangladesh.

### **(B) Concluding Remarks**

In conclusion, the causes and impacts of adultery on the disruption of the family system in Bangladesh are complex and multifaceted. Adultery, often stemming from various societal, economic, and cultural factors, can have profound consequences on the stability and cohesion of families.<sup>86</sup> The erosion of trust, emotional turmoil, and the breakdown of communication within marital relationships are some of the immediate effects. Additionally, the socio-cultural context of Bangladesh, with its emphasis on family values and societal norms, further amplifies the repercussions of adultery.

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<sup>85</sup> Sureshchandra Vadilal Shah vs Shantilal Shankarlal And Anr 1968 CriLJ 117, (1967) GLR 290 [Para 4]

<sup>86</sup> Smt. Sowmithri Vishnu vs Union Of India & Anr : 1985 AIR 1618, 1985 SCR Supl. (1) 741.

The impact of adultery extends beyond the immediate family unit, affecting children, extended family members, and the broader community.<sup>87</sup> Children may experience emotional distress, insecurity, and a compromised sense of family stability,<sup>88</sup> which can have lasting effects on their well-being and development. Furthermore, the stigma attached to adultery in conservative societies like Bangladesh can lead to social stigmatization and judgment, exacerbating the challenges faced by individuals involved.

Efforts to address the disruption caused by adultery in the family system should consider a holistic approach,<sup>89</sup> encompassing both preventative measures and support mechanisms for affected individuals. Strengthening marital education, promoting open communication, and addressing the root causes of marital dissatisfaction can contribute to preventing adultery. Additionally, offering counselling and support services for individuals and families grappling with the aftermath of adultery can facilitate healing and restoration.<sup>90</sup>

Ultimately, recognizing and addressing the complex interplay of factors contributing to adultery is essential for developing effective strategies to preserve the fabric of family life in Bangladesh. By fostering a more understanding and supportive societal environment, it is possible to mitigate the impacts of adultery on the family system and work towards creating a healthier, more resilient social fabric.<sup>91</sup>

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<sup>87</sup> V. Revathi v. UOI & Ors .1988) 2 SCC 72.

<sup>88</sup> W. Kalyani v. State (2012) 1 SCC 358

<sup>89</sup> Smt. Sowmithri Vishnu vs Union Of India & Anr : 1985 AIR 1618, 1985 SCR Supl. (1) 741. SUPRA THIS TOO

<sup>90</sup> Joseph Shine v Union of India, Writ Petition (CrL.) No, 194 of 2017

<sup>91</sup> Justice K.S. Puttaswamy v. Union of India) (2017) 10 SCC 1.



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