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OF LOVE AND LAW: WHY INDIA MUST REJECT ALIENATION OF AFFECTION: A CRITICAL EXAMINATION OF TORT'S RELEVANCE IN LIGHT OF PRIVACY, AUTONOMY AND JUDICIAL PRECEDENCE

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ABSTRACT

The tort of alienation of affection bedded out of the Anglo-American Common Law. The tort allows a spouse to sue the third party for malevolently interfering with once's marital life. The heart balm is still remains virtually unknow in the Indian legal landscape, despite it being recognized by a few U.S jurisdictions. The paper critically examines philosophical foundation, historical development and its precarious compliance with constitutional and social structure of contemporary India. Through an analysis of judicial precedents, evidentiary complication coupled with constitutional values—specifically the right of privacy, personal autonomy and dignity. The paper argues such a tort is antiquated and retrogressive. The passage of this law is also discouraged in the wake of decriminalization of adultery, rise of judicial restraint in marital disputes and increasing misuse of matrimonial laws like Section 498AIPC. The paper highlights the intrinsic of human relationships and instead of a confrontational litigation suggest Alternative Dispute Mechanism as more constructive and empathetic path. Sequentially at the end it comes to a conclusion that the tort, neither practically nor theoretically, is suited to current Indian jurisprudence.

INTRODUCTION

"Let mutual fidelity continue until death; this may be considered as the highest dharma of the husband and wife." (Manusmriti, Chapter 9, Verse 101)⁶⁰¹

Marriages, as the saying goes, are "made in heaven." However, in a cyberage era where relationships are increasingly impacted by unpredictable storms, this seems uncertain and unreal. Manusmriti described marriage as a sacred bond demanding lifelong fidelity, whereas Rigvedic hymns envisioned marriage as a joint journey in dharma. These traditional

views emphasize that affection and emotional commitment are central to marriage. Although martial ties may not be as strong in modern societies as they once were, the underlying idea of the union of two people into a "holy union" still revolves around emotional dependency, financial commitments, and social reputation. Despite this, the idea of martial sanctity remained deeply embedded in ancient Indian thought. In milieu, it is increasingly relevant to explore legal remedies such as the tort of alienation of affection in modern times, as it seeks to address the emotional harm caused by malicious interference in such relationships.

This paper seeks to analyze the origin and development of the tort of alienation of affection, and evaluates its relevance and

⁶⁰¹
<https://eweb.furman.edu/~ateipen/ReligionA45/protected/manusmriti.htm>

applicability in the context of modern Indian relationships, including live-ins, especially in the light of evolving personal autonomy and privacy rights. The tort of alienation of affection, traditionally rooted in English and American common law, has been extensively criticized in academic literature for its patriarchal origins and declining relevance in modern legal systems. Scholars in jurisdictions, such as the United States, have debated its continued existence, with several states abolishing the tort altogether, citing concerns over personal autonomy and outdated notions of spousal ownership. In the Indian context, however, legal commentary on this tort remains sparse and largely confined to brief judicial references, such as *Anil Kumar v. Maya*⁶⁰², where the Supreme Court acknowledged its civil nature but did not elaborate on its scope. Notably, there is little analysis of how such a tort might apply in contemporary Indian society, particularly in view of emerging relationship models, such as live-in partnerships and the expanding constitutional protection of personal liberty and privacy. This paper seeks to fill that gap by critically examining the viability and relevance of the tort of alienation of affection in modern India, drawing from comparative jurisprudence and evolving social values.

Origin of the Tort:

The roots of this civil action lie in Teutonic tribes, where a husband can take revenge on his wife's lover⁶⁰³. In these societies, alienation of attachment and unlawful conversation resulted from the belief that a husband owned his wife and was entitled to compensation for a lost property interest in her sexual faithfulness. The early English common-law system assumed this reasoning through the writs of ravishment and abduction, which "permitted the wife to be listed as one of the husband's chattels."⁶⁰⁴ He

might have used this writ to get his wife back if she had been taken against her will or had been willingly abandoned. Under these writs, the wife was property, and if a man trespassed another man's wife, the adulterer was held accountable for the harm as if he had broken into the plaintiff's property without authorization or stolen the plaintiff's animals. One of the first instances of this concept was recorded in the case of *Winsmore v. Greenbank* (1745)⁶⁰⁵, where the court recognized a husband's ability to sue for the loss of his wife's society due to the unlawful influence of another. It was not until the seventeenth century that there were actual civil adultery suits. The civil actions were based on the rules and procedures governing "master/servant relations,"⁶⁰⁶ which provide that a party may be held civilly liable for "enticing" a servant away from the master or physically injuring the servant, thus causing the servant to lose services. As a result, women were promoted from property to indentured servants. Although England later banned comparable torts due to changing social norms and opposition to treating spouses like property, the theory gained popularity in the US. The stark upliftment from chattel to servants ultimately found way into American societies and courts. However, it was not until the twentieth century that by giving women access to marital services and interpreting the behaviors as protections for marital intimacy, courts were able to bring about a transformation, turning the tort into its heyday form. The civil action now pertained fundamentally and exclusively on the "loss of consortium"⁶⁰⁷ caused by third parties' intermeddling. In *Karch v. Karch* (1947)⁶⁰⁸, and *Hoye v. In Hoye* (1955)⁶⁰⁹, U.S. courts refined the tort's elements, which included establishing genuine affection, wrongdoing, and causation. Some states, including North Carolina, have

⁶⁰² AIR 2010 SUPREME COURT 229

⁶⁰³ Hey, That', That's My Wife- The Tort of Alienation of Aff t of Alienation of Affection in action in Missouri - Thornbur Missouri - Thornburg v. Federal Expr al Express Corp. ess Corp. Bruce V. Nguyen

⁶⁰⁴ THE QUESTIONABLE CONSTITUTIONALITY OF CURTAILING CUCKOLDING: ALIENATION-OF-AFFECTION AND CRIMINAL-CONVERSATION TORT'S H. HUNTER BRUTON

⁶⁰⁵ *Winsmore v. Greenbank*, (1745) 125 Eng. Rep. 1330, 1330–31; Willes 578, 578–

⁶⁰⁶ Hey, That', That's My Wif s My Wife - The T e - The Tort of Alienation of Aff t of Alienation of Affection in action in Missouri - Thornbur Missouri - Thornburg v. Federal Expr al Express Corp. ess Corp. Bruce V. Nguyen

⁶⁰⁷ <https://blog.iplayers.in/torts-relating-to-marital-rights/>

⁶⁰⁸ 18 N.W.2d 410,311 Mich. 158

⁶⁰⁹ 329 P.2d 474,52 Wn.2d 830

maintained the tort because of privacy and abuse issues, whereas other states have abolished it, as shown in *McCutchen v. McCutchen* (1994)⁶¹⁰. The courts claim that the torts reimbursed a husband or wife who could not legally compel their spouse to show affection and attention, but a spouse might sue someone else if they violated their right to marital services. Worries about inheritance, the legality of children, and other husband-centric matters were supplanted by the idea that the two torts were a "means to preserve marital harmony by deterring wrongful interference"⁶¹¹. The new role of these torts is to safeguard marriage as a social institution.

Heart Balm Torts in the Indian Legal Landscape: Its Judicial Treatment

Indian jurisprudence on the Anglo-American tort of alienation of affection remains largely obscure. Although acknowledged by the apex court, references have merely passed and lack substantive legal development. In contrast, at least seven states in the United States continue to recognize the right of a spouse to sue a third party, often referred to as "the other person," for wrongful and malicious interference with their marital relationship⁶¹². However, the Indian legal system has remained reluctant to incorporate such personal torts into its framework. Nonetheless, there have been a few noteworthy judicial instances that signal a tentative recognition of the tort's principles. One of the earliest episodes was seen in pre-independent India when the Allahabad High Court in *Sobha Ram v. Tika Ram* (1936)⁶¹³ upheld a husband's right to sue a third party who had enticed away his wife. The court recognized this as a deprivation of the consortium as legitimate cause of action and acknowledged such a behavior. Although the judgment reflected the gendered assumptions of its era, it established a foundational principle: that third-party

interference in spousal relations could attract civil liability, thereby acknowledging a form of the "tort of enticement."

More recently, the Supreme Court of *Anil Kumar v. Maya* (2009) explicitly referred to the tort of the alienation of affection, observing that such claims may be pursued under civil law in appropriate circumstances. This was followed by the case of *Pinakin Mahipatray Rawal v. State of Gujarat* (2013)⁶¹⁴ where the supreme court resonated the proposition where one spouse could sue the "Home wrecker" for loss of consortium but did not extrapolate further. Thus, it refrains from laying down a clear test or doctrinal structure for application. Despite the brevity of its treatment, the judgment indicates judicial awareness of the tort's theoretical existence within Indian tort law.

These sporadic references demonstrate a cautious judicial attitude toward recognizing relational torts in India. The lack of a statutory framework and the potential overlap with the constitutional values of privacy and personal autonomy may explain the judiciary's restraint. Nonetheless, these cases form an important part of the discourse on whether Indian tort law can address emotional and relational injuries stemming from third-party interference in intimate relationships.

Applicability and limitations in the legal context of India

This was the historic case of *Lombardi v. Bockholt*⁶¹⁵ where the Connecticut Supreme Court laid down the key essential required to successfully litigate the in tort of alienation. These essentials being (Thompson):

1. **A valid marriage:** The tort requires proof of a valid marriage at the time of alleged interference. This means that the parties must have been legally married, according to the laws of the relevant jurisdiction. Without a valid marriage, there is no basis for the alienation of affection claims. The existence of a legally

⁶¹⁰ No. COA03-1630.

⁶¹¹ *The Suit of Alienation of Affections: Can Its Existence Be Justified Today* Gregory L. Thompson

⁶¹² (<https://www.arnoldsmithlaw.com/heart-balm-torts-alienation-of-affection.html>, n.d.)

⁶¹³ AIR 1935 ALLAHABAD 855

⁶¹⁴ 2013 (10) SCC 48

⁶¹⁵ 167 Conn. 392, 355 A.2d 270 (1974)

recognized marriage is a fundamental requirement for the cause of action to exist.

2. **Defendant's wrongful conduct:** The defendant must have engaged in wrongful conduct such as enticing the spouse. This conduct must be directed at disrupting the marital relationship and alienating the affection of the spouse. Examples of wrongful conduct may include engaging in an affair with the spouse, persuading the spouse to leave the marriage, or interfering with marital relationships. The defendant's actions must be intentional and directed towards harming the marriage. It is the conduct which should be predominant source of such alienation. This means that the defendant's actions must be a significant factor causing the spouse to lose affection for the plaintiff.

The Supreme Court of India in the Case of **Pinakin Mahipatray Rawal v. State of Gujarat**⁶¹⁶ while examining the culpability of a husband in a wife's suicide, observed that holding a person can be held liable for the action of alienation only when there is any active participation, initiation, or encouragement on the part of the defendant. Acts that lead to the loss of affection must be wrongful, deliberate, designed and calculated to entice the affection of one spouse away from the other, in order to support a cause of action for alienation of affection.

Thus, the above case indicates the alignment of the Indian judiciary's view with that of Western jurisprudence when it comes to the same action.

3. **Causation: Connection between conduct and accusation:** The defendant's action must be a *raison d'être* mainspring of the alienation of affection. This means that there must be a clear and unbroken chain of causation between the defendant's conduct and the plaintiff's loss of affection.

The plaintiff must bespeak that the defendant's actions were a primary factor causing

alienation. The causal connection must be direct and not based on speculation or conjectures. The plaintiff must demonstrate defendant's meddling caused the marriage to deteriorate. This may involve showing that the spouse became distant, emotionally withdrawn, or ultimately left the marriage because of the defendant's actions.

The **Madras High Court** in most recently in the case of **Issac Packiyaraj vs. The State Represented By October 23, 2018**⁶¹⁷, while quoting, Pinakin Mahipatray Rawal v. The State of Gujarat (2013) held for a successful prosecution of such an action for alienation of affection, the loss of marital relationships, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but there must be clear evidence to show active participation, initiation, or encouragement on the part of a third party that he/she must have played a substantial part in inducing or causing one spouse. Mere acts, associations, and liking do not become tortuous.

Challenges: It is difficult and demanding in and of itself to prove the necessary elements in a court of law for the successful prosecution of this civil liability. Particularly in the current environment, when the courts are mainly cautious and chary of allegations made by either side in matrimonial disputes, the given rise in falsity of cases under section 498A is on the rise.

Some of these legal barriers are:

- Subjectivity in Emotional Harm and Attachment

Emotional ties, love, and affection are inherently subjective and ephemeral in nature. Anecdotal claims are insufficient to prove their existence, significance, and loss in court, because they frequently lack objective standards.

- **Burden of causation is high:**

According to lawsuits, the collapse of marital intimacy must be directly

⁶¹⁶ 2013 (10) SCC 48

⁶¹⁷ Cl.OP(MD)No.4601 of 201

caused by third parties' actions. It could be challenging for courts to distinguish between marital problems such as incompatibility, poor communication, financial strain, and third-party behavior.

- **Showcase the Malice or Intent of the Third Party:**

Usually, the tort requires proof that the person who interfered with the marriage did so with a malicious intent. This necessitates proof of intentional behavior, which is rarely accessible without clear-cut declarations, admissions, or eyewitness accounts.

- **Lack of Concrete Evidence:**

Unlike physical harm or contract violations, emotional alienation frequently leaves no physical evidence. Social media posts, text messages, and monitoring may simply infer interactions, rather than intent or causality.

- **Reluctance to Intrude on Marital Privacy:**

Courts are reluctant to delve into personal details of marriage. When judges weigh legal claims against the right to privacy, the burden of proof increases (particularly after the Puttaswamy case in India).

- **The Obstacle of Establishing a "Loving and Stable Marriage":**

The first component often fails if the defendant can show that there is no attachment or that marriage is already problematic before they become involved.

When implementation issues in the foreground are juxtaposed with the Indian background, the lack of a clear legislative framework and the judiciary's cautious approach to personal torts creates a particularly troubling image. The path of the heart balm is made even more arduous and fragile by the court's increasing reluctance to consider claims based on subjective emotional harm without strong, verifiable evidence because of growing concerns about the alleged abuse of Section

498A IPC, which is evident in cases such as Dara Lakshmi Narayana v. State of

Telangana, SLP (Criminal) No.16239, 2024. Furthermore, courts are hesitant to pry into a couple's personal affairs, particularly when doing so could result in a deluge of emotionally motivated, but unfounded accusations. This brings us to the third part of the paper, which is motivated by this privacy concern, and forces us to question how much an injured spouse can bring the other spouse and the "home-wrecker" into the bounds of the law, especially considering the courts' growing reluctance to intervene in civil proceedings. In an already overworked civil system, litigants must thereby prove causality and overcome judge skepticism.

Constitutional concerns: The right to privacy, personal autonomy, and adultery

One of the implied presumptions in the prosecution of this tort is the existence of both marital bliss and a valid marriage until the "home-wrecker." Although in this constantly evolving and "changing within a click world," human interactions, intimacy, partnerships, and family structures are also dynamically altering, as is the right to privacy and personal autonomy. Rigid matrimonial customs have given way to more flexible arrangements, such as live-in relationships, delayed marriages, and non-heteronormative unions, as a result of growing urbanization, economic independence, and individual liberty. This trend is reflected in the judicial acceptance of such relationships, such as the Supreme Court's recognition in the Indra Sarma v. V.K.V. Sarma (2013)⁶¹⁸ stated that live-in relationships fall under the category of domestic partnerships. It is a backdrop of in this information age landscape that the relevance and practicality of torts like alienation of affection become questionable.

Privacy and Personal Autonomy

In an anchor capitalistic world, where ideas of a less interfering state are gaining popularity, an

⁶¹⁸ 2013 AIR SCW 6783

action that subjects families to scrutinize the world seems a mishap idea. Constitutional privacy law has concentrated on limiting government intrusion into personal lives and decision-making. The watershed moment in this context was the judgement of Justice K.S.: Puttaswamy (Retd.) v. Union of India (2017)⁶¹⁹, where the apex court made it clear that the legal system should not intrude the personal, emotional, and sexual choices of individuals unless there is a compelling state interest, and the intrusion satisfies the test of necessity and proportionality.

Intimate relationships, communications, and emotional behaviour may be excessively examined as a result of using a personal tort that allows one spouse to sue a third party for allegedly disrupting their marriage. This could violate basic privacy norms. Dramatically unbalancing arguments in favor of the potential applicability of the heart balm in the context of India.

Rapidly changing nature and ideas of a tradition's marriage

India is a nation entrenched in longstanding traditions and customs. However, the homogenization of ideas through inevitable globalization has spouted ideas such as live-in and weekend marriages. Thus, the essence of emotional and shared companionship is soon giving way to a contract or a pact-based partnership. Therefore, doing away from traditional and valid marriage, thus defeating one of the essentials, needed to proceed with the action of alienation. More importantly, the apex court, through a series of judgments, has further assured the choice of partnership as fluid and flexible. In the case of Navtej Singh, Johar v. Union of India (2018)⁶²⁰, the court keeping the lines of Puttaswaney judgement, held that intimacy and choice in personal relationships are protected by the right to privacy and dignity. It was also on the same track as in the case of Shafin Jahan v. Asokan

K.M. (2018) (Hadiya case)⁶²¹, the court elucidates choice of spouse or partner is a core facet of privacy and liberty, even if opposed by the family or society.

The above two judgments concretize the concept of consensual choice of consenting adults nudging them towards nontraditional unions. The shift from marriage an "institution" where families arranged union prevail to "relationship" where adults are asserting their right to choose their partner, whether in form of martial tie or otherwise, has significantly shaken the traditional marriage which is a presumption for successful enforcement of tort of alienation. Marriage does not serve the same purpose it has always served: "Historians have observed a marked difference in the cultural purpose of marriage in the past two centuries: the rise of companionate marriage,

in which spouses are expected to satisfy each other's' emotional needs⁶²²." Marriage is now more about personal emotional fulfilment and companionship. This does not mean that the concept of family has "dissolved..... It is simply a demand for a more elastic definition of legitimate marriage.⁶²³" This elasticity indicates that marriage "has become less tethered to procreation and more bound up in fulfilment"⁶²⁴.

Decriminalization of Adultery: Redefining the notions of fidelity and exclusivity

The Supreme Court in the historic case of Joshep Shine (Joshep Shine v Union Of India) unanimously struck Section 497 IPC (adultery) as unconstitutional under Articles 14, 15 and 21. The Court's reasoning was centered on individual autonomy, equality, and privacy. Justice Chandrachud emphasized that "the right to sexual autonomy and privacy is a constitutional right." The majority noted that

⁶²¹ AIR ONLINE 2018 SC 1136

⁶²² THE QUESTIONABLE CONSTITUTIONALITY OF CURTAILING CUCKOLDING: ALIENATION-OF-AFFECTION AND CRIMINAL-CONVERSATION TORTS H. HUNTER BRUTON†

⁶²³ THE QUESTIONABLE CONSTITUTIONALITY OF CURTAILING CUCKOLDING: ALIENATION-OF-AFFECTION AND CRIMINAL-CONVERSATION TORTS H. HUNTER BRUTON†

⁶²⁴ THE QUESTIONABLE CONSTITUTIONALITY OF CURTAILING CUCKOLDING: ALIENATION-OF-AFFECTION AND CRIMINAL-CONVERSATION TORTS H. HUNTER BRUTON†

⁶¹⁹ AIR 2017 SUPREME COURT 4161

⁶²⁰ AIR 2018 SUPREME COURT 4321

adultery laws historically protected a husband's an archaic, patriarchal notion that proprietary interest wife "proprietary" interest in his wife – an archaic, patriarchal notion that "does not square with the constitutional morality" of gender equality⁶²⁵. In essence, the Court held that consensual adult relationships inside marriage are a private moral matter, not warranting state punishment.

The alienation of affection tort's logic appears to be in conflict with the constitutional precepts affirmed in Joshep Shine judgement. The tort's two primary objectives are to preserve marital harmony and compensate for the abandoned spouse's loss of consortium. However, Joshep Shine judgement places a higher priority on each person's privacy and liberty, including the right to consenting spouses to engage in extramarital sex. Lawsuits for alienation would hold other parties responsible for infringing upon a spouse's affections, which are naturally seen as a marital "asset." According to critics, Joshep Shine judgement rejected this approach because it sees marriage as a corporate interest, and is therefore unlawful. As an illustration, one critic notes that imposing tort responsibility on a third party "assumes marriage as a 'property' or 'specific interest' protected by tort law," which is incompatible with individual liberty and "let spouses sue third parties for damages." The viewpoint holds that marriage shouldn't impose obligations on strangers, and that the law shouldn't "give any moral message" by controlling private relationships. Making extramarital affairs subject to civil accountability may violate the constitution's protection of consensual intimacy as an inviolable personal space, which is consistent with Shine's privacy argument.

The mosaic of all these decisions, when combined with the prevailing public trend, inevitably indicates a move away from traditional marriage, which is a sacramental and inflexible bond, and toward a partnership based on equality and respect for one another

that is equally open to dissolution and change. Emphasizing that engaging with a third party outside of a marriage is a decision and does not require police enforcement, this shows that individuals with a reasonable understanding find unnecessary intrusion into private relationships undesirable. Consequently, they are illegal and immoral. It is crucial to emphasize that the alienation tort remains ambiguous.

A misfit in Indian law: The case of alienation of affection

- **The shifting purpose of the tort:** Protecting a man's property interest in his wife was one of the main motivations for its enactment. Today, it is difficult to find a valid cause to uphold tort based on this reasoning. In the eyes of law, women are no longer viewed as their husbands' property or as less valuable than themselves. As strides toward equality between men and women have been made⁶²⁶, women now have the legal right to sue tortious wrongdoers whose acts cost a wife her husband's affection. Nevertheless, it is anachronistic to think that a person has a property interest in their partner and their affections. This raises a crucial question: In a culture that prioritizes privacy and independence over antiquated marital authority, can such torts have any justifiable compensation or deterrent function?
- **Contradiction with the objective of Martial Perspective:** Another one of the most often cited defenses of this tort nowadays is the preservation of the institution of marriage. Nonetheless, there are several possible reasons for this. The goal of the tort in the first place will be defeated because it is unlikely that publicity surrounding what amounts

⁶²⁵ AIR 2018 SUPREME COURT 4898

⁶²⁶ Hey, That', That's My Wife's My Wife - The Tort of Alienation of Affection in Missouri - Thornburg Missouri - Thornburg v. Federal Express Corp. Bruce V. Nguyen

to a personal action will improve the marital bond of married parties. In actuality, the resulting stress is more likely to harm the marriage than to keep it intact.

Second, because these actions are usually conducted after marriage has already deteriorated beyond repair, retaliation is usually the motivation behind the aforementioned tort. It is believed that torts do not protect against marriage. Rather, it "fosters bitterness and promotes vexatious lawsuits as well as blackmail and extortion."⁶²⁷ An alienation of affection litigation that is successful ultimately only leads to the plaintiff's "sale of his or her spouse's affections."

Third, India's steadily rising divorce rate raises additional questions regarding the need to enforce a tort based on lifetime marital fidelity. If maintaining the tort of alienation of emotion is meant to preserve marriages, one could question why divorce is allowed in the first place. The *Shafin Jahan v. Asokan K.M.* (2018)⁶²⁸ verdict minimized the state's role by specifically acknowledging the "right to marry once one's own choice." In actuality, the potential application of heart balm remedies does not infringe upon an individual's right to choose whether to engage in personal relationships.

- **Social and ethical challenges in India:** The constitutional role of morality in regulating sexuality and marital decisions is questionable. In a society like India, one's reputation essential part of one's dignity. Under Article 21 of the Constitution of India the Supreme Court upheld its status as a prized asset in the case of *Subramanian*

*Swamy vs Union of India*⁶²⁹. Given this circumstance, the tort of alienation for attachment raises significant societal and moral questions.

First, instances of affectional alienation can seriously upend families, resulting in strained relationships, financial as well as emotional distress. The adversarial aspects of the legal system may exacerbate existing family conflicts. Disruption caused by alienation of attachment may have long-term effects on all family members.

Second, children may suffer from emotional distress and relationship damage. Children who experience alienation from attachment may experience emotional distress, and relationships may suffer as a result. Children may experience confusion, anger, and depression, in addition to finding it difficult to understand the conflicts between their parents. Children's emotional well-being is crucial under these circumstances.

Thirdly, the lawsuits demand that the plaintiff "acknowledge in public the private information that caused the marriage to fail." Marriage is not effectively maintained by the inherently hostile stance adopted in court cases involving private and intimate issues.

- **Compensatory claims and question of legal justifiability:** Any compensating justification for these tort rests more comfortably on a compensatory theory: the defendant has harmed someone and that person needs compensation. Loss of consortium or emotional harm to the spouse and, in some situations, the children of the marriage must be the basis for compensation, which must be related to the harm and the interest stated by the courts justifying the torts. Claiming that an adulterer's acts damaged some abstract ideas of marriage ignores the reality that marriages are only connections between people. Furthermore, as "infidelity may be

⁶²⁷ Hey, That', That's My Wif s My Wife - The T e - The Tort of Alienation of Aff t of Alienation of Affection in ection in Missouri - Thornbur Missouri - Thornburg v. Federal Expr al Express Corp. ess Corp. Bruce V. Nguyen
⁶²⁸ AIRONLINE 2018 SC 1136

⁶²⁹ [2016] 3 S.C.R. 865

the result, not the cause, of marital difficulties," attempting to make up for the harm to "marriage" leads to complex causality issues. Adultery is usually unintentional when a third party does not view civil damage as a possible result of their activities. If adulterers act only out of emotion and disregard the possibility of tort losses as a result of their behavior, the state has no rightful interest in protecting these torts as a deterrence. According to this reasoning, the "deterrent effect, which was never great, is today swamped by the costs and uncertainties that they impose on the judicial system." This holds true independently of the activity's goal or prior knowledge of the torts, even if it is claimed that they discourage it. Parties commonly use or threaten to use criminal conversation or alienation-of-affection claims, which carry a possible damage award of millions of thousands, to coerce an opposing party into making compromises during divorce. Thus, the possibility of malice-driven suits cannot be ruled out.

CONCLUSION: Drawing the line: Why should law remain out of the heart?

"The law may govern conduct, but it cannot legislate the heart; to turn affection into a legal claim is to misunderstand both love and justice."

In the legal landscape of Indian society, where human values are shaped by constitutional values of dignity, equality, privacy, and autonomy, there is little or no space for a tort that barges into the premises of personal choices pertaining to affection and emotional connections. Rooted in the relics of an era by the tort where the spouse was both treated and viewed as either a commodity or chattel, such ideas are misshaped and misplaced in nascent India. Apart from moral and ethical considerations, the prevailing trends in the Indian legal environment do not contribute towards a conducive paraphernalia for the implementation of this tort. Especially in the

wake of the rising falsity of cases pertaining to section 498A, the Indian judiciary has rightly grown wary of overreaching the personal domain of marital relationships.

Attempting to revive a tort that depends on assigning legal blame for a relationship's dissolution not only misunderstands the complex, intimate nature of human relationships but also opens the door for extortion, moral policing, and emotionally damaging legal proceedings. In a country that is already beset by a backlogged court system and unstable marriage traditions, acknowledging such a tort would be regressive rather than reparative. In India, heart balm remedies motivated by guilt, control, or revenge are unnecessary. It necessitates a legal framework that upholds individual freedom, encourages emotional growth, and recognizes that a split isn't necessarily the consequence of a legal mistake. The law needs to know when to back off, and when it comes to love, that boundary needs to be properly followed. While the future of the heart balm might be blurry and uncertain but actions which result into interference with a happy marriage cannot go unnoticed. Instead of relying on archaic legal remedies, the focus should shift toward **Alternative Dispute Resolution (ADR)** mechanisms—such as mediation and family counselling—which prioritize healing, confidentiality, and mutual resolution over adversarial litigation. Counselling and mediation can help settle disputes involving attachment alienation more amicably. These strategies can help the parties communicate better, understand each other's perspectives, and find solutions that satisfy everyone. The use of alternative dispute resolution methods can promote healing and reconciliation. These strategies can be used by parties to resolve conflicts and patch up disagreements. Alternative dispute resolution methods can help parties settle disagreements and restore relationships by providing a safe and supportive environment for discussion and bargaining. These strategies can be particularly helpful in

family conflict situations where the goal is to preserve relationships rather than assign blame. The potential for relationship rehabilitation is one of the primary benefits of alternative dispute resolution. ADR methods offer a far more humane and effective framework for resolving emotional and interpersonal disputes, particularly in the context of marital breakdowns, where dignity and emotional wellbeing must be safeguarded above all.

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