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CASE COMMENTARY: JOSEPH SHINE V. UNION OF INDIA

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Case name: Joseph Shine v. Union of India

Citations: (2019) 3 SCC 39, AIR 2018 SC 4898

Court: Supreme Court of India

Decided On: 27 September, 2018

Bench: Chief Justice Dipak Misra, Rohinton Fali Nariman, A.M. Khanwilkar, D.Y.

Chandrachud, Indu Malhotra

Abstract:

Indian constitutional law underwent a sea change with the Joseph Shine v. Union of India verdict, particularly concerning accordance with gender equity and individual autonomy. The constitutionality of Section 497 of the Indian Penal Code, 1860 and Section 198(2) of the Code of Criminal Procedure, 1973, which together rendered adultery criminal in a gender-specific form, was analysed in this case. The petitioner argued that the rules proved discriminatory since they punished males for having consenting sexual relations with married women while treating them as passive participants and effectively as their husbands' property. A five-judge Supreme Court Constitution Bench unanimously dismissed Section 497, citing violations of Articles 14, 15, and 21. The Court reasoned that because the Act was clearly arbitrary and predicated on patriarchal assumptions, it violated women's dignity and equal treatment. It stated that the Constitution grants women equal autonomy and averts judicial systems that subjugate them in marriages. The ruling supported the idea that private exchanges between consenting adults should fall within the protected area of privacy, as recognised in previous rulings on the entitlement to life and personal liberty. The Court clarified that, despite its decriminalisation, adultery remains a civil wrong and a legitimate basis for matrimonial remedies such as divorce. This ruling signifies a shift from ethics-based criminality to rights-based constitutional interpretation, upholding the principles of dignity, autonomy, and substantive equality in present-day Indian law.

Keywords:

Adultery, Fundamental Rights, Sexual Autonomy, Dignity, Supreme Court, Constitutional Provisions.

Introduction:

Adultery has historically been associated with patriarchal and male-dominated cultural norms in India, where men are criminally responsible for having sex with another man's spouse, but the woman is spared. Furthermore, the legislation stated that if the husband engaged in or approved of the behaviour, it would no longer be regarded as adultery. This legal system viewed adultery as a moral offence that may be perpetrated by a man who is married or a woman, based on outdated conventions. However, it mostly portrayed women as victims who were tricked by men into performing such acts. Adultery in India, according to critics, infringes core values involving equality, non-discrimination, and the right to live in dignity. The aforementioned laws have also been criticised for violating women's private rights and discriminating against them. Notably, because adultery is discriminatory and infringes on people's rights, it is illegal in approximately 60 countries, including South Korea, South Africa, Uganda, and Japan. Even the author of the Indian Penal Code, Lord Macaulay, disputed that adultery should be considered a criminal offence, arguing that it would be preferred to treat it as a mere civil wrong. Due to changing social norms and more individual freedom, recent decisions have spread the concept of fundamental rights. In keeping with these developments, a historic ruling recently overturned India's 158-year-old adultery law. This ruling marks a turning point in legal history by acknowledging the waning applicability of outdated laws in contemporary society and reflecting changing social and moral standards.

Facts of the Case:

Joseph Shine, the complainant in *Joseph Shine v. Union of India*, is an Indian hotelier who lives in Italy and is not a resident of Kerala. The petitioner's close friend in Kerala killed himself after a female coworker unjustly and cruelly accused him of rape. This allegedly led the petitioner to file a writ petition under Article 32 contesting the legality of Section 198(2) of the Code of Criminal Procedure 1973 (CrPC) and Section 497 of the Indian Penal Code, which dealt with the crime of adultery.

If an offence under Section 497 or Section 498 of the IPC is committed, the husband of the person accused of adultery would be considered to have been wronged. Articles 14, 15, and 21

of the Constitution grant all Indian citizens certain rights, which are violated by these sections. He contended that since Article 14 of the Indian Constitution upholds equality, these provisions are gender biased, a hazardous weapon, and a violation of equality.¹

Issues:

1. Does Article 14's adultery provision constitute discrimination and arbitrariness?
2. Is Section 497 of the IPC illegal or constitutionally valid?
3. Does Article 15's provision for adultery promote the idea that women are men's property and discriminate against women based on gender by stating that a conduct is no longer illegal if the spouse has given their consent?
4. Does depriving a woman of her sexual autonomy and right to self-determination undermine her dignity?
5. Does making adultery illegal constitute a legal invasion of someone's privacy?
6. Should laws about adultery be gender-neutral?
7. Should Section 497 be modified to make it possible for a woman to allege her husband of adultery?
8. Should the offender's wife have the ability to protest about her husband's violation of the sanctity of their marriage?

Contentions/Arguments:

Petitioner:

1. In addition to discussing other features of Section 497 that tended to infringe fundamental rights, the petitioner's counsel claimed that the law was passed during the British era and is completely irrelevant in the present.
2. The representative of the petitioner argued that the clause criminalises adultery only based on gender classification, which has no logical basis for opposition. Article 14 of the Constitution is violated if the wife's permission is irrelevant.
3. The adultery provision violates Article 15 by giving only men the ability to prosecute adultery, which is discriminatory based on gender.
4. The petitioner argued that the clause is unlawful because it violates a woman's sexual autonomy and self-determination, undermining her dignity. It violates Article 21.

¹<https://www.lawctopus.com/academike/case-comment-joseph-shine-vs-union-of-india/>

5. It was contended that the law punished males for adultery, but it did not take any action against women. A woman could not submit a complaint for adultery against her husband under the Section since there was no legal provision to that effect.

Respondent:

1. The respondents' counsel argued that deterrence should be in place to preserve the sacred institution of marriage because adultery is illegal and having sex outside of marriage damages family ties.
2. According to the respondents, adultery has an impact on the spouse, kids, and society at large. Destroying the sanctity of marriage is a crime perpetrated by an outsider with full understanding.
3. Article 15(3), which gives the state the authority to enact legislation specifically for women and children, protects against discrimination by the provision.
4. Additionally, the attorney argued that there were reasonable limitations where the public interest was at risk and that the Right to Privacy and Personal Liberty under Article 21 of the Indian Constitution was not absolute. A person who is having sex with another married person outside of their marriage is not protected by the Right to Privacy clause.²

Judgment/Decision:

- In *Joseph Shine v. Union of India*, the Supreme Court of India issued a unanimous ruling. No judges disagreed with the case. The ruling was issued by a five-judge panel comprising Chief Justice Dipak Misra and Justices Rohinton Fali Nariman, D.Y. Chandrachud, Indu Malhotra, and A.M. Khanwilkar.
- The judges' decision to reject Section 497 of the IPC reflects their unified agreement that it was unlawful.³
- The offence is predicated on the idea that women are the husband's property, and adultery is regarded as theft of his property, since it states that the husband's cooperation or collusion would not constitute an offence.

² <https://ls.iledu.in/wp-content/uploads/2023/08/V1I1100.pdf>

³ Case Commentary: *Joseph Shine v. Union of India*, 2.3 JCLJ (2022) 690

- The clause merely penalises the third party and does not consider the wife to be an offender. This clause disadvantages married women by discriminating against them based on their sex.
- CJI Deepak Mishra's ruling began with words demonstrating that husbands are not their masters and wives are not their property. Furthermore, by highlighting US Supreme Court precedent, Justice D.Y. Chandrachud demonstrated how adultery affected the right to privacy.
- He emphasised that our constitutional order, which upholds each person's intrinsic dignity and autonomy, has no space for sexism and patriarchal views regarding a woman's sexual control.
- In discussing the importance of sexual autonomy as a component of individual liberty, he cited the case of *Navtej Singh Johar v. Union of India*. He emphasised that the right to sexual privacy was a natural right that was essential to liberty and dignity and highlighted the humiliation felt by a person when "deep acts beyond their own sphere" were deemed illegal owing to obsolete social norms.
- In addition, Justice D.Y. Chandrachud cited the *K.S. Puttaswamy v. Union of India* case and stressed that the clause must reflect women's status as equal parties in the institution of marriage, entitled to constitutional guarantees of privacy and dignity, and that a life of dignity required that the "inner recesses of the human personality".
- In his ruling, he emphasised the importance of sexual autonomy as a fundamental essential to life and individual freedom under Article 21. In his ruling, he emphasised how Section 497 denied women their autonomy, privacy, dignity, and sexual freedom.
- Although this clause seeks to uphold the integrity of marriage, we must acknowledge that adultery is committed due to a pre-existing disruption of the marriage bond. Other matrimonial offences, such as violations of Section 306, 498-A, 304-B, 494, the Protection of Women from Domestic Violence Act, 2005, or Section 125 CrPC, are related to the extinction of a married woman's life and punish her husband and family.⁴
- By recognising the idea of marriage, which subverts actual equality, Section 497 is seen as an infringement on the wife's right to life and personal freedom. Adopting the penal code's penalties from a gender-based perspective on a man and a woman's relationship undermines equality.

⁴ Affirmative Action Under Article 15(3): Reassessing the Meaning of "Special Provisions" For Women, 32.2 NLSI Rev 242 (2020)

- According to Article 21 of the Indian Constitution, sexual autonomy is a type of personal liberty. Respect and trust are two fundamental components of a marriage. Only when both partners treat each other with equality and decency can respect for sexual autonomy be developed. Because it states that women cannot freely consent to sexual conduct in a court ruling that views them as a sexual property of their husband.
- Adultery is no longer punishable by law. Adultery is a private matter, but a crime is committed against society as a whole. Since adultery would otherwise violate the very private realm of marriage, it does not fall under the definition of criminal activity. Adultery, however, might be regarded as a civil wrong and a legitimate reason for divorce.

Conclusion:

The Court holds that criminalising adultery is problematic in and of itself, in addition to the way the current statute does it. Even if adultery is rendered gender neutral, it is not considered a crime. Therefore, it warned against doing so even in the future by proposing a legislative revision. The Court brought up two issues in this regard. First, any legislation that would try to make it illegal would penalise people who are not happy in their marriages because it would become arbitrary and would be unable to discern between situations in which adultery is the root cause of a failed marriage and those in which it is a result. However, this division is made feasible by omitting de facto broken marriages, as is the case with Section 376-B, which makes marital rape illegal in situations when a marriage has broken down. Second, even if a gender-neutral rule de facto might protect equality and dignity, it would seriously violate a married couple's privacy. It implies that it may be illegal if the government can develop methods, such as a type of forensic laparoscopy, to guarantee the security and privacy of a married couple's house. The Court has done a great job upholding the constitutional commitment to gender fairness, but it seems to be influenced by that notion.⁵With the ruling in *Joseph Shine v. Union of India*, Indian criminal and constitutional law saw a dramatic change from colonial-era legal morality to a contemporary, rights-based framework. In addition to decriminalizing adultery, the Supreme Court's decision to overturn Section 497 of the Indian Penal Code eliminated a legal provision that was firmly based on gender inequity and patriarchal presumptions. The court's decision maintains the Constitution's role as a dynamic, revolutionary instrument meant

⁵ Case Comment: *Sushma & Others v. The Commissioner of Police* W.P. No. 7284 of 2021, 13 RMLNLUJ (2021) 238

to challenge rather than maintain authoritarian social practices. A firm adherence to substantive equality forms a cornerstone of the ruling. The Court unequivocally declared that Section 497 violated Articles 14 and 15 by creating a spurious and discriminatory classification. The law's underlying premise—that a woman is effectively property belonging to her husband and is incapable of giving her own consent—was deemed unconstitutional and demeaning. By recognising women as autonomous individuals with equal agency, the Court not only nullified the section but also set a broader precedent against laws that perpetuate gender stereotypes. This reasoning reveals an intricate knowledge of equality that transcends formal equitability and addresses structural injustice embedded in norms of law. The verdict expanded the scope of the fundamental right to life and personal liberty by enclosing intimate relationships inside a protected realm of privacy. It underlines that voluntary adult relationships cannot be criminalised by the state, as doing so would violate individual liberties and dignity. By saying that criminal legislation should not be used to enforce moral compliance, the Court distinguished clearly between private integrity and harm to the public. The decision also offers a critical examination of the institution of wedlock. Instead of viewing marriage as a site of domination and inferiority, the Court reinterprets it as a partnership built on the principles of equality, respect for one another, and mutual liberty. There exists substantial antagonism to the notion that marriage grants one spouse ownership or authority over the other's choices. This point of view is essential for altering public opinion and reconciling legal theories with modern views of human freedom and gender equity. Most significantly, the Court maintained objectivity by emphasising unequivocally that adultery is still significant in civil law. Even though it is no longer illegal, it is still a legitimate basis for divorce and could have legal ramifications in cases of marital discord⁶. By acknowledging this distinction, individuals are spared the harsh consequences of criminal punishment and the sacred status of marriage has been protected within the civil framework. In summary, the Joseph Shine decision is a landmark judgement that constitutional morality takes supremacy before social norms. It affirms the principles of equality, respect, and liberty while rejecting outmoded notions that jeopardise individual rights. As a precedent, it ensures that the legal system continues to adjust to changing social conditions and substantially adds to the gradual growth of basic rights in India. In the end, the ruling decriminalises adultery and redefines the relationship among morality, the rule of law, and human freedom in a democratic republic.

Unconstitutionality of Legislation for Being Obsolete, Outdated, and Outlived, 2022 SCC Online Blog Exp 46⁶

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