



## **CASE COMMENT: JOSEPH SHINE V. UNION OF INDIA: A PATH TO DECRIMINALIZING ADULTERY AND UPHOLDING GENDER EQUALITY**

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### **INTRODUCTION**

The Right to Equality is one of the most fundamental rights guaranteed to all citizens under the Indian Constitution, enshrined in Articles 14 and 15. Article 14 states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India,"<sup>1</sup> while Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.<sup>2</sup> Additionally, Article 21 guarantees the Right to Life and Personal Liberty, which has been expansively interpreted by the Courts to include the right to dignity, privacy, and personal autonomy.<sup>3</sup>

However, these constitutional guarantees remained compromised by Section 497 of the Indian Penal Code, 1860, which criminalised adultery in a manner that was inherently gender-biased and discriminatory. This provision treated women as the property of their husbands and perpetuated patriarchal notions that undermined women's autonomy and dignity.<sup>4</sup>

The case of Joseph Shine v. Union of India is a landmark judgment that struck down Section 497 of the IPC after it had existed for 158 years. This judgment not only decriminalized adultery but also reaffirmed the constitutional principles of gender equality, individual autonomy, and the right to privacy.<sup>5</sup> It stands as a testament to the evolving interpretation of constitutional morality and the judiciary's role in dismantling archaic laws that no longer reflect contemporary values.

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<sup>1</sup> Constitution of India 1950, art 14

<sup>2</sup> Constitution of India 1950, art 15

<sup>3</sup> Constitution of India 1950, art 21

<sup>4</sup> Indian Penal Code 1860, s 497

<sup>5</sup> Joseph Shine v. Union of India, (2019) 3 SCC 39

## **HISTORICAL BACKGROUND OF THE CASE**

Joseph Shine, a hotelier of Indian origin residing in Italy and a non-resident of Kerala, was deeply affected when a close friend from Kerala committed suicide after being falsely accused of rape by a female co-worker. This tragic incident prompted Joseph Shine to examine the discriminatory nature of laws that treated individuals unequally based on gender.

In December 2017, Joseph Shine filed a writ petition under Article 32 of the Constitution before the Hon'ble Supreme Court, challenging the constitutional validity of Section 497 of the Indian Penal Code, 1860, and Section 198(2) of the Code of Criminal Procedure, 1973. Section 497 criminalised adultery but held only men liable for the offence, with punishment extending up to five years of imprisonment. The provision stated that if a man had sexual intercourse with the wife of another man without the husband's consent or connivance, he would be guilty of adultery.<sup>6</sup> Notably, women were exempted from prosecution entirely, and the law did not apply when a married man had relations with an unmarried woman.

Section 198(2) of the CrPC further compounded this discrimination by providing that only the husband of the woman could file a complaint in cases of adultery. The wife had no legal standing to prosecute her husband for infidelity.<sup>7</sup>

The petition contended that these provisions violated Articles 14 (Right to Equality), 15 (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty) of the Constitution. A three-judge bench initially heard the matter and then referred it to a five-judge Constitution Bench comprising Chief Justice Dipak Misra and Justices R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud, and Indu Malhotra.

## **JUDGEMENT AND RATIONALE GIVEN BY THE HON'BLE SUPREME COURT**

On 27th September 2018, the Hon'ble Supreme Court delivered a unanimous verdict declaring Section 497 of the IPC unconstitutional and violative of Articles 14, 15, and 21 of the Constitution. The Court also struck down Section 198(2) of the CrPC to the extent it applied to Section 497. This landmark judgement decriminalized adultery and transformed it from a criminal offence into a civil matter that could serve as grounds for divorce.

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<sup>6</sup> Indian Penal Code 1860, s 497

<sup>7</sup> Code of Criminal Procedure 1973, s 198(2)

The Chief Justice Dipak Misra asserted, "Adultery may be immoral, but it is not a criminal offence." Justice Indu Malhotra stated, "A husband is not the master of his wife." The court in this case highlighted the importance of freedom of choice & personal autonomy.<sup>8</sup>

## **REASONS GIVEN BY THE HON'BLE APEX COURT FOR THE CONCLUSION DRAWN**

**Violation of Article 14 - Right to Equality:** The Court held that Section 497 was manifestly arbitrary and violated the Right to Equality. The provision created an irrational classification by punishing only men for adultery while exempting women entirely. This classification had no reasonable basis and failed the test of intelligible differentia. The law treated women not as autonomous individuals but as victims who were "seduced" by men, thereby denying them agency and personhood.

Chief Justice Dipak Misra, in his judgment, categorically stated that wives are not the property of their husbands and husbands are not their masters. The Court emphasised that Section 497 deprived women of their autonomy, dignity, and privacy.

**Article 15 - Prohibition of Discrimination:** Section 497 discriminated based on sex by holding only men criminally liable for adultery. While it appeared to provide "protective discrimination" to women by exempting them from prosecution, the Court rejected this argument. The provision was not based on any biological or functional differences between men and women that would justify differential treatment. Instead, it perpetuated gender stereotypes by assuming that women lacked sexual autonomy and were incapable of making independent choices.

**Violation of Article 21 - Right to Life and Personal Liberty:** The Court recognised that Article 21 includes the right to dignity, privacy, and personal autonomy. Sexual autonomy and the ability to make choices about one's intimate relationships are essential aspects of human personality and dignity. Section 497 violated these rights by treating married women as subordinate to their husbands and denying them sexual agency.

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<sup>8</sup> Joseph Shine v. Union of India, (2019) 3 SCC 39

The judgment emphasised that human sexuality and sexual autonomy are intrinsic to one's identity. By criminalising adultery in the manner it did, Section 497 intruded into the extreme privacy of the matrimonial sphere, which the State has no business entering.

**The Arbitrary Nature of Section 497:** The Court highlighted several arbitrary features of Section 497 that rendered it unconstitutional:

**Husband's Consent as a Defence:** The provision stated that if the husband consented to or connived in his wife's affair, the act would not constitute adultery. This revealed that the law was designed not to protect the sanctity of marriage but to preserve the proprietary rights of the husband over his wife.

**No Right for the Wife:** The law did not permit a wife to file a complaint against her husband for adultery. This one-sided approach demonstrated that the provision was rooted in patriarchal assumptions rather than principles of equality.

**Incomplete Coverage:** Section 497 did not cover cases where a married man had sexual relations with an unmarried woman, further exposing the arbitrary nature of the provision.

**Adultery as a Civil Wrong, not a Criminal Offence:** The Court observed that adultery does not fit within the concept of crime. While it constitutes a breach of marital trust and can have significant emotional consequences, criminalising it would result in excessive State intrusion into the private lives of individuals. The Court held that adultery should be treated as a civil wrong and remain a valid ground for divorce, but it should not invite criminal prosecution and imprisonment.

The judgment drew a clear distinction between the State's legitimate interest in regulating conduct that affects society at large and matters that belong to the private sphere of personal relationships. Criminal law is meant to address conduct that threatens public order and social welfare, whereas adultery is fundamentally a personal matter between spouses.

**Overruling of Previous Judgements:** The Supreme Court overruled its earlier decisions in *Yusuf Abdul Aziz v. State of Bombay* (1954),<sup>9</sup> *Sowmithri Vishnu v. Union of India* (1985),<sup>10</sup> and *V. Revathi v. Union of India* (1988),<sup>11</sup> which had upheld the constitutionality of Section

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<sup>9</sup> *Yusuf Abdul Aziz v. State of Bombay*, (1954) 1 SCC 341

<sup>10</sup> *Sowmithri Vishnu v. Union of India*, 1985 Supp SCC 137

<sup>11</sup> *V. Revathi v. Union of India*, (1988) 2 SCC 72

497. The Court held that these decisions were based on outdated and patriarchal views that are inconsistent with contemporary constitutional values. The evolving interpretation of constitutional morality demanded a fresh look at laws that perpetuated gender inequality and denied individual autonomy.

### **CRITICAL ANALYSIS OF THE JUDGEMENT**

**A Victory for Gender Equality and Individual Autonomy:** The Joseph Shine judgment represents a watershed moment in Indian constitutional jurisprudence. By striking down Section 497, the Court affirmed that women are equal partners in marriage, not chattels or property. The judgment recognised that both men and women possess sexual autonomy and that the law cannot treat one gender as morally superior or inferior to the other.

This decision aligns with the broader global trend of decriminalizing adultery. Countries such as South Korea, South Africa, Uganda, and Japan had already struck down similar laws because they violated gender equality and the right to privacy. The judgment places India among progressive jurisdictions that respect individual autonomy and dignity.

**Constitutionality Morality Over Social Morality:** One of the most significant aspects of the judgment is its emphasis on constitutional morality over majoritarian or traditional social morality. The Court recognised that while adultery may still be considered unethical or immoral by societal standards, this does not justify criminalising it. Constitutional values of equality, dignity, and personal liberty must prevail over outdated social norms that are rooted in patriarchy and male chauvinism.

The judgment reiterates that the Constitution is a living document that must be interpreted in light of evolving social realities. Laws that were enacted in the colonial era, based on Victorian morality, cannot continue to govern a modern, democratic society committed to equality and human rights.

**Recognition of Sexual Privacy as a Fundamental Right:** The Joseph Shine judgment builds upon the Supreme Court's earlier decision in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017),<sup>12</sup> which recognised the right to privacy as a fundamental right under Article 21. By

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<sup>12</sup> K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1

holding that sexual autonomy and intimate choices fall within the protected sphere of privacy, the Court extended constitutional protection to an individual's most personal decisions.

This recognition is particularly important in the context of marriage, which has traditionally been viewed as an institution subject to extensive State and societal regulation. The judgment affirms that even within marriage, individuals retain their autonomy and the right to make choices about their intimate relationships without unwarranted State interference.

**Rejection of “Protective Discrimination”:** The judgment firmly rejected the argument that Section 497 provided "protective discrimination" to women. While protective discrimination is constitutionally permissible when it seeks to uplift disadvantaged groups and address historical inequalities, the Court found that Section 497 did not serve this purpose. Instead of empowering women, the provision perpetuated their subordination by denying them agency and treating them as incapable of moral or sexual autonomy.

The Court observed that true equality requires recognising women as individuals with the same rights, freedoms, and responsibilities as men. Laws that infantilise women or treat them as needing protection from their own choices are inherently paternalistic and violate the principle of substantive equality.

**Legislative Failure and the Need for Gender-Neutral Laws:** The Joseph Shine case highlights the failure of the legislature to reform archaic laws that no longer reflect contemporary values. Section 497 had been criticised for decades by legal scholars, women's rights activists, and even Lord Macaulay, the principal drafter of the Indian Penal Code, who had expressed reservations about including adultery as a criminal offence. Despite these criticisms, the provision remained on the statute books for over a century and a half.

This judgment underscores the importance of legislative vigilance and the need for periodic review of laws to ensure they are consistent with constitutional principles. It also highlights the role of the judiciary in striking down unconstitutional provisions when the legislature fails to act.

**Implications for Military Personnel:** It is important to note that in 2023, the Supreme Court clarified that the decriminalisation of adultery does not apply to military personnel. The Court upheld the Government's argument that members of the armed forces constitute a distinct class

under Article 33 of the Constitution.<sup>13</sup> and are subject to special laws such as the Army Act, 1950,<sup>14</sup> which continues to treat adultery as an offence within the military context.<sup>15</sup>

This clarification reflects the Court's recognition that certain professions, particularly those involving national security and discipline, may require stricter codes of conduct that would not apply to civilians.

**A Call for Comprehensive Reform:** While the judgment represents a significant step forward, it also highlights the need for comprehensive legal reform in areas related to family law, marriage, and personal relationships. The decriminalisation of adultery raises important questions about the grounds for divorce, the rights of spouses, and the legal remedies available in cases of marital infidelity.

The legislature must now consider enacting laws that provide for gender-neutral treatment of matrimonial offences and ensure that both parties in a marriage have equal rights and remedies. This includes reconsidering other provisions in personal laws that continue to discriminate based on gender.

## CONCLUSION

The Joseph Shine v. Union of India judgment stands as a landmark decision in the annals of Indian constitutional law. By striking down Section 497 of the IPC, the Supreme Court upheld the principles of gender equality, individual autonomy, and the right to privacy. The judgment represents a bold step toward dismantling patriarchal structures embedded in Indian law and affirming that women are not the property of their husbands but equal partners with their own agency and dignity.

This decision joins other progressive judgments, such as Justice K.S. Puttaswamy (Retd.) v. Union of India (2017),<sup>16</sup> which recognised privacy as a fundamental right, and Navtej Singh Johar v. Union of India (2018),<sup>17</sup> which decriminalised consensual homosexual relations, in shaping a constitutional jurisprudence that is responsive to contemporary values and committed

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<sup>13</sup> Constitution of India 1950, art 21

<sup>14</sup> Army Act, 1950

<sup>15</sup> Joseph Shine v. Union of India, (2024) 2 SCC 334

<sup>16</sup> K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1

<sup>17</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

to protecting individual freedoms. Justice D.Y. Chandrachud claimed, "Society has no business to intrude into the private realm of consenting adults."<sup>18</sup>

However, the aftermath of the judgment also reveals the challenges of implementation and the persistence of patriarchal attitudes in society. The decriminalisation of adultery has sparked debates about its impact on the institution of marriage and family values. While some have expressed concerns that removing the criminal sanction might weaken marital bonds, others have argued that the judgment strengthens marriages by recognising them as partnerships based on mutual respect and autonomy rather than coercion and fear of criminal prosecution.

Ultimately, the Joseph Shine judgment serves as a powerful reminder that constitutional values must evolve with changing times. Laws that were enacted in the colonial era, based on Victorian morality and patriarchal assumptions, cannot continue to govern a modern, democratic society. The judgment affirms that the Constitution is a living document that must be interpreted in light of contemporary realities and that the role of the judiciary is not merely to apply the law mechanically but to ensure that it serves the cause of justice, equality, and human dignity.

The case also underscores the importance of public interest litigation as a tool for challenging unconstitutional laws and protecting fundamental rights. It demonstrates that even a single individual, motivated by a sense of justice and a desire to challenge systemic discrimination, can bring about transformative change through the judicial process.

In conclusion, the Joseph Shine v. Union of India judgment marks a defining moment in India's journey toward true gender equality and individual freedom. It represents a victory not only for women but for all citizens who value liberty, dignity, and equality. As India continues to evolve as a modern democracy, this judgment will serve as an important precedent for dismantling other discriminatory laws and building a legal framework that truly reflects the values enshrined in the Constitution.

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<sup>18</sup> *Ibid*