

# Critical Analysis of Joseph Shine Judgement of 2018 On Adultry

Pooja Saharan, BA LLB, 5th Year, School of Law, Mody University, Lakshmangarh, Rajasthan (India)  
[poojasaharan0509@gmail.com](mailto:poojasaharan0509@gmail.com)

## Abstract

The Supreme Court struck down Section 497 of the IPC as unconstitutional, being violative of Articles 14, 15 and 21 and held that Section 198(2) of the CrPC was unconstitutional to the extent that it was applicable to Section 497, IPC.

**Keywords: Adultry Judgment Analysis, Joseph Shine 2018**

## Introduction:

The Indian Penal Code's Section 497 defines the meaning of adultery. Which states that - anyone who engages in sexual activity without the agreement or complicity of another man with a person who is, or whom he knows or has cause to believe to be, the wife of another man. Such sexual activity constitutes adultery rather than rape and is punishable by either type of imprisonment for a time that may reach up to five years, a fine, or both.

It was considered that in this situation, the wife was not subjected to an abettor penalty. Despite being the subject of multiple court cases in the past, Section 497 was always upheld as legal by the Supreme Court of India. But on September 27, 2018, the Supreme Court struck down the 158-year-old Victorian Morality Law, against Adultery in 'Joseph Shine v. Union of India'. This case had first PIL against adultery law in India.

Joseph Shine who was a non-Kerala resident who questioned the legality of Section 497, of the Indian Penal Code, filed a petition pertaining to the issue. This ruling invalidates all previous rulings that supported the criminality of adultery. Even though adultery is now legal, society still considers it as unethical in existence. The foundation of marriage is the mutual trust between the husband and wife, or partners. As a result the Honourable Supreme Court of India, does not meddle in the private and moral affairs of individuals. Adultery is currently exclusively regarded as a civil violation, and the only available as a remedy for ground of divorce.

## Case: Joseph Shine V Union Of India

Bench Of Supreme Court: Chief Justice Dipak Mishra, Justice A. Khanwilkar, Justice R. F. Nariman, Justice D. Y. Chandrachud, And Justice Indu Malhotra Citation: 2018 Sc 1676 Decided On: 27 September 2018[1]

## Section 497 of Indian Penal Code defines adultery as:

Engaging in sexual intercourse with a person who is married to someone else, without the consent or connivance of the spouse, constitutes the offense of adultery. This act, while not meeting the criteria for the offense of rape, is considered a punishable offense. The punishment for adultery may include imprisonment for up to five years, a fine, or both. It is important to note that the spouse who is involved in the extramarital relationship shall not be held liable as an abettor in this particular case.[2]

## Background Of Adultery Law In India (Precedents)

The constitutionality in IPC Sections 497 has previously been called into doubt on a number of occasions of various Judgements:

### Yusuf Abdul v. State of Bombay 1954

The clause in question has been argued to violate both Articles 14 and 15 of the Constitution of India. In the case of Yusuf Abdul v. State of Bombay, the Supreme Court upheld the legality of Section 497 by emphasizing that neither a man nor a woman can initiate legal proceedings against their unfaithful spouses. Only the other party in the relationship, specifically the offended husband, can pursue prosecution in such cases. The court concluded that Section 497 does not infringe upon any of the fundamental rights enshrined in the Constitution and, therefore, it is not invalid or void under Article 13 of the constitution.

### Sowmithri Vishnu v Union of India, 1985

In the case of Smt. "Sowmithri Vishnu v. Union of India," it was contended that Section 497 of the Indian Penal Code violates Articles 14 and 15 of the Constitution due to its arbitrary differentiation between men and women.

It gives the husband the right to be an adulterer, and it gives the wife no rights for bringing charges against the person her husband had an affair with.

It gives the husband the authority to commit adultery, but it gives the wife no rights to pursue legal action against her husband for having an extramarital affair which is discriminatory. The court noted that after hearing the arguments from both sides, it refused the writ petition submitted by Sowmithri Vishnu, holding that while the petitioner's concerns have a great emotional appeal, they lack a solid legal foundation. The court determined that adultery is a crime that, by its very nature, can only be committed by a man and not a woman.

#### **V. Revathi v Union of India, 1988**

The Supreme Court characterized adultery laws as a "shield rather than a sword" in their perspective. They determined that the existing legislation, which limited its application to men, did not violate any constitutional rights. In its ruling, the court upheld the constitutionality of Section 497, along with Section 198 of the Criminal Procedure Code (CrPC), stating that it was non-discriminatory. The law prohibited both husbands and wives from seeking legal action against each other for adultery. Its purpose was to penalize individuals outside of the marital relationship who attempted to violate the sanctity of marriage. Consequently, the court argued that the legislation, far from being discriminatory against women, actually worked in their favor by safeguarding the institution of marriage..

#### **W. Kalyani V. State Through Inspector Of Police And Another, 2011**

During this particular case, the Supreme Court took note of the criticism that Section 497 of the Indian Penal Code (IPC) faced, as it was seen as promoting strong sexism by essentially treating a married woman as her husband's property. Another point of criticism was that only men could be prosecuted and punished for adultery, while wives could not even be held liable as accessories. The constitutionality of Sections 497 of the IPC and 198 of the Criminal Procedure Code (CrPC) was called into question during the proceedings. However, it is important to mention that the validity of Section 497, which grants immunity to women from accusations and prosecution for adultery solely based on their gender, was not under consideration in this specific case.[3]

#### **Facts Of The Case**

Joseph Shine, a hotelier, raised questions about the legality of Section 497 of the Indian Penal Code, which was primarily aimed at safeguarding Indian men from reprisals by vengeful spouses for engaging in extramarital relationships. The petition gained further significance when a tragic incident occurred in Kerala, where a close friend of Shine tragically took his own life after being falsely accused of rape by a female co-worker. Section 497 is deeply troubling, as it not only perpetuates sexual injustice but also represents a troubling manifestation of patriotic masculinity, authoritarianism, and imperialism. The traditional paradigm underlying Section 497 is no longer applicable or suitable in the modern world.

#### **Contentions Presented:**

In the writ, the petitioner argued that the section criminalises adultery merely based on sex classification and lacks any justification. The wife's approval is not important. It therefore violates Article 14 of the Constitution. According to the petitioner, the clause has been predicated the notion that a wife is considered as her husband's property.

The clause states that if the husband agrees or conspires, adultery is not committed. The adultery provision violates Article 15 since it only permits men to be prosecuted for the crime, which constitutes gender discrimination.

The petitioner claims that the rule violates a woman's dignity since it disregards her sexual autonomy and self-determination. It goes against Article 21. Sections 497 of the IPC and 198 of the Crpc (prosecution for offence against, marriage) must be repealed.

According to the respondents, adultery is a crime that ruins family connections, hence deterrence measures ought to be in place to safeguard the institution of marriage. The effects of adultery on the spouse, kids, and community are felt at large. It is a crime carried out by a third party who is aware of the marriage's sacredness. The discriminatory nature of the clause is protected by Article 15(3), which gives the state the authority to pass special laws for

women and children. They ask the court to uphold the remainder of the clause but to disregard the part that was ruled to be unlawful.

Is Indian penal code Section 497 unconstitutional? (Interpretation by Court)  
Judgement

The court had noted that a few "Societal presumptions" form the foundation of law. The court has invalidated the statute in four different rulings and ruled that a husband cannot be his wife's master.

The following rulings were made:

Section 497 is outdated and unconstitutional.

Adultery is no longer considered a crime.

**A random act is Section 497.**

The right of an individual to make decisions regarding his or her sexual orientation is one of the most private aspects of their lives and should be shielded from criticism and legal action.

Crimes that are subject to punishment must include harm to the general populace rather than a single victim.

There cannot be patriarchal monarchy, husband rule over wife, or male domination in the community.

The right to live in dignity also includes the freedom from public criticism and, unless absolutely necessary, punishment by the state. If a civil remedy is available to accomplish the goal, that should be enforced. Why use a punitive sentence if the civil sanction may accomplish the same thing?

Criminal law should be consistent with constitutional morality because the prohibition against adultery maintains the institution of marriage, which requires that one spouse cede their sexual autonomy to the other.[4]

### **Comment**

The debate regarding whether "adultery" should be regarded as a valid reason for divorce or as a criminal offense subject to legal punishment continues to persist. One viewpoint argues that the family is the fundamental building block of society, and any disruption to it would have detrimental consequences for stability and progress. Thus, upholding the institution of marriage is deemed to be in the best interest of the entire State.

Despite being a private act between consenting adults, adultery is considered a crime with victims. It violates the sanctity of marriage and infringes upon a spouse's right to expect faithfulness from their partner. The impact of adultery extends beyond the individuals involved, affecting the family unit and the overall well-being of children and society at large. Its destructive nature undermines the development and stability of families, thereby warranting societal concern.

Consequently, the act of adultery should be subject to legal consequences. Echoing the words of John Stuart Mill, he argued that the legal subordination of one gender to another is inherently unjust and a major hindrance to human progress. Mill advocated for the establishment of a system based on complete equality, where no power imbalances or privileges exist on either side. Applying this principle to adultery, it becomes evident that holding individuals accountable for their actions, regardless of gender, aligns with the pursuit of a fair and egalitarian society. By ensuring that the repercussions for adultery are applied uniformly, the goal of promoting equal treatment and fostering societal improvement can be advanced. Throughout history, the institution of marriage has been subject to regulation by the state.

Various aspects of marriage have been governed by legal frameworks, demonstrating the state's involvement in ensuring the orderly functioning of this fundamental social institution. The state has enacted laws pertaining to the recognition of marriages, determining the age at which individuals can enter into a marriage, and establishing rights related to inheritance, succession, and property division. Additionally, the state has intervened in matters concerning separation, alimony, and the enforcement of conjugal rights. Furthermore, regulations have been put in place to govern surrogacy, adoption, child custody, guardianship, partition, parental responsibility, and the

overall welfare of children. Although these areas involve private interests, they have significant implications for society and the general welfare of the public. As a result, the state plays a crucial role in ensuring the proper functioning and well-being of individuals and families within the institution of marriage.

Adultery affects children's development and moral development in addition to endangering the marriage between two consenting adults. As a result, the State has a justifiable public interest in declaring it a crime.

Contrarily, other people believe that adultery is a marital sin that should solely result in civil punishment. A crime must be committed against society as a whole in order to qualify for criminal penalties; it cannot just be committed against one specific victim.

When a particular behaviour is deemed illegal, it signifies a recognition of its negative impact on society, warranting condemnation and the use of criminal sanctions to prevent it. However, the freedom of individuals to express their sexuality in the most intimate realms of their lives should be safeguarded from criticism through criminal punishment. Any interference by the State, under the guise of acting in the individual's best interest, would infringe upon the autonomy of individuals to make deeply personal decisions. In cases where there is a public dimension to the violation, such as offenses against state security or similar matters, criminal sanctions may be deemed necessary. Such crimes against the public sphere target the community at large rather than a specific individual. Adultery, undoubtedly, carries moral reprehensibility concerning the spouse and the family. The question arises as to whether society as a whole exhibits sufficient harm to warrant its inclusion within the scope of the criminal code. It is only when the behavior directly impacts society that the element of public condemnation becomes justifiable, allowing for criminal repercussions that may supersede individual rights. In reality, where a crime carries a prison sentence, a considerably stronger defence is needed. In terms of the criminalization of offences, the State must take a limited stance. Keeping in mind the respect for a person's autonomy to make own decisions.

The right to live in dignity includes the freedom from public criticism and punishment by the government, unless it is absolutely necessary. The State must take into account whether the civil remedy will accomplish its goals before deciding what conduct merits state intervention through criminal sanctions. When a wrongdoing has an adequate civil remedy, the State may not need to take criminal action.[5]

### **Conclusion**

In the era of twenty-first century, liberalism and equality have taken hold throughout the world. Reforms to the legislation are necessary to get rid of laws that discriminate against any gender. With the passage of time, many Indian laws have lost their relevance as with new times comes new laws. Adultery was one of them, and had to be eliminated. It not only devalues a woman's dignity but also discriminates against men and women so, this was included as an offence when society was rife with patriarchy and paternalism.

In the past, society regarded women as being confined to domestic roles, lacking the same freedoms and opportunities as men. However, times have changed, and women are no longer overshadowed by men. Given that adultery is a private matter, it should not be treated as a criminal offense, as it infringes upon the right to privacy.

Interfering with an individual's privacy is against the law, and the section in question fails to meet legal standards. Moreover, it contradicts the principles of safeguarding liberty and dignity enshrined in the constitution. In its ruling, the Supreme Court declared adultery to be discriminatory, although it acknowledged that it can still be grounds for divorce.

The court's historic decision was rooted in the preservation of human dignity, recognizing that civil remedies like divorce exist as alternatives to punishment. By overturning the antiquated rule that treated women as the property of their husbands, the Supreme Court deemed Section 497 unconstitutional. Consequently, the clause is repealed as it is unenforceable in viewing women as mere possessions of their spouses.

**References:**

- Case Comment- Joseph Shine V Union Of India by Ayushi Arya SOM Law College Available at : <http://vidhiparivartan.co.in/wp-content/uploads/2018/06/Paper-3>.
- "Definition of Adultery" under section 497 of IPC Available at: <https://blog.ipleaders.in/case-analysis-joseph-shine-v-union-india>
- "Joseph Shine vs. Union of India" A Case Study" by Siddhant Maniktala of Amity Law School Amity University, Noida Available at : <http://www.penacclaims.com/wp-content/uploads/2018/12/Siddhant-Manik.pdf>
- Case Comment- Joseph Shine V Union Of India by Ayushi Arya SOM Law College Available at : <http://vidhiparivartan.co.in/wp-content/uploads/2017/06/Paper-3.pdf>
- "Joseph Shine Vs. Union Of India" A Comment by Shweta and Taseef Ahmad at in National Law School Journal Volume 14 Issue 1 on 1-1-2018