



# Jus Corpus Law Journal

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## Case Commentary: Joseph Shine vs Union of India

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### INTRODUCTION

<sup>1</sup>Adultery laws in India screamed paternalism and male chauvinism for ages. Adultery has always been considered immoral and illicit against the institution of marriage. Even in Manusmriti, Dharmashastras and Christianity, it is a sin and was punished with banishment. The 150-year-old law remained the same for a long time, even in independent India, until it was challenged in several cases. Under section 497<sup>2</sup> of the Indian Penal Code (IPC), ‘Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to rape, is guilty of the offence of adultery.’ The apex court in *Yusuf Abdul v the State of Bombay*<sup>3</sup>, *Sowmithri Vishnu v Union of India*<sup>4</sup>, and *V. Revathi v Union of India*<sup>5</sup> reiterated that adultery was ‘a shield rather than a sword’ and regarded that the law did not violate any constitutional provisions. Until 2017, before the case of Joseph Shine vs

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<sup>1</sup> *Joseph Shine v Union of India* (2019) 3 SCC 39

<sup>2</sup> Indian Penal Code, 1860, s 497

<sup>3</sup> *Yusuf Abdul Aziz v The State of Bombay* (1954) SCR 930

<sup>4</sup> *Sowmithri Vishnu v Union of India* (1985), AIR 1618

<sup>5</sup> *V. Revathi v Union of India* (1988), AIR 835

Union of India, the Supreme Court's stand stayed the same. The judges unanimously concluded that the law was archaic and violated fundamental rights on several grounds. It struck down the same, which has lost its relevance in the changing societal norms, hence overruling its previous judgements.

## **FACTUAL BACKGROUND**

Mr. Joseph Shine filed a writ petition under Article 32<sup>6</sup> of the constitution challenged Section 497 of the IPC read along with section 198<sup>7</sup> of the CPC, claiming it to be violative of article 14, 15, and 21<sup>8</sup> as it was discriminatory on the grounds of sex and encroached on the right to dignity and personal choice of an individual.

The main objective petition was to protect men from being punished for being in extramarital relationships maliciously by women and their husbands. Further, the section had gaping loopholes and was an egregious propagation of unfairness and patriarchy. The offence largely rests on the sick idea that women are the property of men and also trivializes the sexual autonomy of women. The petitioner contended that criminalizing adultery only based on gender is not rational. The wife's consent was almost immaterial because she was treated more like the victim than an adulteress, thereby nullifying her rights. The only allowed the prosecution of men and only by the aggrieved party that is the husband. However, the vice versa was not applicable. Women did not have the right to criminally charge the extramarital relationship of their husband since it was commonly accepted that only a man could be a seducer, although times are changing as ruled in the *Sowmithri Vishnu v Union of India* case. Section 497 also emphasized the conniving or consent of the husband that negated the woman's free will and looked down upon her as an object whose rights could be transferred.

## **ISSUES FRAMED BY THE COURT**

After taking note of the allegations of the petitioners and responses filed on behalf of the Union of India, the Supreme Court identified the following issues for consideration:

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<sup>6</sup> Constitution of India, 1950, art. 32

<sup>7</sup> Code of Criminal Procedure, 1974, s 198

<sup>8</sup> Constitution of India, 1950, art. 14, 15, and 21

- I. If the provision for adultery is arbitrary and biased under Article 14<sup>9</sup>?
- II. Whether the condition for adultery fosters the stereotype of women being men's possessions and distinguishing based on gender under Article 15<sup>10</sup>?
- III. Is the dignity of a woman being compromised by refusing her sexual independence and right to self-determination?
- IV. If criminalizing adultery is intrusion by law in the personal realm of someone?

### **THE DECISION OF THE SUPREME COURT ALONG WITH ITS REASONING**

The four questions of law identified by the Supreme Court were analyzed in separate sections of the final judgment. The decision and reasoning given by the Supreme Court concerning each of the issues are summarized below:

#### ***Issue No. I: If the provision for adultery is arbitrary and biased under Article 14?***

The court observed that such a classification is unjust, arbitrary, and holds no pertinence in the present times. The subordination of one partner to the other is insensitivity in itself. It treats the wife as property since it was not an offense if the husband consented. This invalidates the rights of the wife, reducing her to a non-person. The law is against equality as it only gave the husbands the right to prosecute the wife's paramour but did not give wives the same to do with their husband's mistress. Any civilization treating women like objects without dignity and equality sets us back by decades.

#### ***Issue No. II: Whether the condition for adultery fosters the stereotype of women being men's possessions and distinguishing based on gender under Article 15?***

This section of the IPC shielded women from being punished as adultresses and offenders. It propagated stereotypes and infringed the discrimination clause under Article 15. It creeps

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<sup>9</sup> Constitution of India, 1950, art. 14

<sup>10</sup> Constitution of India, 1950, art. 15

injustice into the system by making women mere chattels of their spouse who could not give consent and deprived of autonomy and privacy.

*Issue No. III: Is the dignity of a woman being compromised by refusing her sexual independence and right to self-determination?*

The right to make personal choices is a fundamental right. As citizens of equal status, women have the right to determine whom they want to be intimate with. This falls under the right to life, an integral part of Article 21. Treating a woman as a victim because she was sexually involved out of wedlock is ignominious to her dignity and pride. 'Enforcement of forced fidelity' grossly violates the right to sexual autonomy.

*Issue No. IV: If criminalizing adultery is intrusion by law in the personal realm of someone?*

Adultery is a victimless crime entered into by two consenting adults. Criminalizing is tantamount to the judiciary entering into the private realm of the people. The court felt that section 497 of IPC was based on "societal presumptions" that almost negated the free will of the individuals in the matrimonial sphere. It was of the view that the dignity of women should be ensured in the total sense. The sanctity of a marriage lies in trust between the couple. Court failed to see how making adultery a crime against society made sense. It is the choice of the partners to see how they should deal with and so adultery is still a civil offense and a ground for divorce.

### **CRITICAL ANALYSIS OF THE JUDGMENT AND CONCLUDING REMARKS**

The right to make choices about sexuality falls under most private spheres of individuals; stripping those of their dignity would render rights embedded in the constitution null and void, and hence it must be protected from public censure. The present law forces the wife to surrender her sexual autonomy to her husband. Though adultery is no longer a penal provision, if the aggrieved party commits suicide because of the same, then it can be treated as an abetment to suicide. This law was created when male dominance and patriarchy were prominent, and many educated people felt that the law had to be amended, keeping in mind

the progression of societal culture. The law commission suggested penalizing the offense equally for both the sexes, but the legislature did not take active steps towards the same, but the judiciary has played a proactive role in clearing out the chief hindrances of the judicial system, updating it from time to time. Any provision that slaughters a person's core identity and dignity must be done away with.