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Case Comment: Joseph Shine vs. Union of India (2019)

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Citation :Joseph Shine v. Union of India, (2019) 3 SCC 39

Court: Supreme Court of India

Date of Judgment: September 27, 2018

Bench: Chief Justice Dipak Misra, Justice A.M.

Khanwilkar, Justice D.Y. Chandrachud, Justice R. Banumathi, and Justice Indira Banerjee.

Background

The case of Joseph Shine vs. Union of India<sup>1</sup> primarily concerned the constitutional validity of Section 497 of the Indian Penal Code (IPC), which criminalized adultery. Section 497, as it stood before the judgment, stated that a man could be punished for committing adultery with a married woman, but the woman involved in the act could not be punished. This provision, which was originally enacted in the 19th century, had been a subject of debate for many years, as it raised serious concerns about gender equality, individual autonomy, and the rights of women.

Joseph Shine, a non-resident Indian (NRI), challenged the constitutional validity of Section 497, arguing that it was discriminatory and violated the fundamental rights guaranteed under Articles 14<sup>2</sup> (Right to Equality), 15<sup>3</sup> (Prohibition of Discrimination), and 21<sup>4</sup> (Right to Life and Personal Liberty) of the Indian Constitution.

Case Brief

The Supreme Court struck down Section 497 of the IPC on the grounds that it violated Articles 14, 15 and 21 of the Constitution. The five Judge Bench unanimously, in four concurring judgments, held that the law was archaic, arbitrary and paternalistic, and infringed upon a woman's autonomy, dignity, and privacy. Section 198(2) of the CrPC which allowed only a husband to bring a prosecution under Section 497 of the IPC was also struck down as unconstitutional. This decision overruled the Court's previous decisions in *Yusuf Abdul Aziz vs. State of Bombay*<sup>5</sup>, *Sowmithri Vishnu vs. Union of India*<sup>6</sup> and *Vishnu Revathi vs. Union of India*<sup>7</sup> where the constitutional validity of Section 497 was upheld.

The various judgments discussed the developments in the right to privacy in some detail, referring to *K.S. Puttaswamy vs. Union of India*<sup>8</sup> to affirm the need to protect sexual autonomy and the privacy of the matrimonial sphere. The Court held that while there might be negative effects of the failure of parties to a marriage to be faithful to each other, it would be left to the parties to decide how to proceed, whether by resorting to divorce or otherwise, and introducing criminal sanctions would serve no purpose.

### Issues Involved

The key legal issues before the Supreme Court were:

1. Whether Section 497 of the IPC is unconstitutional for being discriminatory and violating Articles 14, 15, and 21 of the Constitution?
2. Whether the provision treats women as objects of male dominance and undermines their agency and equality before the law?
3. Whether the provision for adultery is arbitrary and discriminatory under Article 14?
4. .Whether Section 497 of the IPC is constitutionally valid or unconstitutional?
5. Whether the provision for adultery encourages the stereotype of women being the property of men and discriminates on a gender basis under Article 15 as if the husband has consented to such an act, then such an act will no longer be considered an offence?
6. .Whether the dignity of a woman is compromised by the denial of her sexual autonomy and right to self-determination?
7. .Whether criminalizing adultery is intrusion by law in the private realm of an individual?
8. Whether adultery laws should be made gender-neutral? As per Section 497, there is no legal provision claiming that a woman can lodge a complaint against her husband who has committed adultery; should that be amended?

### **Arguments**

#### **Petitioner (Joseph Shine)**

- The petitioner contended that Section 497 was archaic, outdated, and inconsistent with contemporary constitutional principles, especially regarding gender equality.
- It was argued that the provision discriminated against women by treating them as passive participants in the act of adultery, without any legal agency or autonomy.
- The petitioner also highlighted that Section 497 violated the right to privacy and liberty guaranteed under Article 21, as it interfered with individual choices and relationships.

### **Respondent (Union of India)**

- The Union of India, represented by the Attorney General, argued that Section 497 had a long-standing legal history and that it had a protective aspect to it, especially towards women.
- It was suggested that adultery was a matter of societal and family interest and should be dealt with as a crime, preserving the sanctity of marriage.
- There was also an argument made about the potential adverse consequences of decriminalizing adultery, particularly on the institution of marriage.

### **Judgement**

In a landmark decision, the Supreme Court Struck down Section 497, IPC as Unconstitutional. The Court declared that the provision violated the fundamental right to equality guaranteed Under Article 14 and the Right to personal liberty Under Article 21 of the Constitution. The Main reasons for the Judgement were:-

#### **1. Violation of Equality and Non-Discrimination (Article 14):**

The Court held that Section 497 discriminated against women by treating them as passive victims in an adulterous relationship. It placed the entire responsibility for adultery on the male partner, making the woman's consent irrelevant and implying that women could not exercise agency in matters of marital relationships. This, according to the Court, violated the principle of equality.

#### **2. Right to Privacy and Autonomy (Article 21):**

The Supreme Court emphasized that the right to privacy and individual autonomy were integral to the right to life and personal liberty under Article 21 of the Constitution. Adultery, being a personal matter between consenting adults, should not be subject to criminal sanction by the state, as long as it did not harm any other individual or violate public order.

#### **3. Gender Equality:**

The Court observed that the patriarchal nature of Section 497 reinforced gender inequality by assuming that women were the property of men and that their role in the adulterous act was

secondary. The law, by treating the woman as a passive object, contributed to the notion that women were incapable of making autonomous decisions regarding their relationships.

#### **4. Abolishment of Archaic Laws:**

The Court pointed out that the law had become outdated and was no longer in line with contemporary societal values of gender equality and individual autonomy. The Court noted that the personal choices and decisions of adults should not be criminalized by the state unless there was harm to others or public morality.

#### **Impact and Significance**

The judgment in *Joseph Shine vs. Union of India* is a significant step in the progression of gender equality in India. By striking down the law, the Supreme Court not only affirmed the rights of women to exercise agency in their personal lives but also recognized the evolving nature of societal norms and values. The decision also sent a clear message that laws must adapt to contemporary understandings of equality, autonomy, and privacy.

The judgment also laid the groundwork for future challenges to discriminatory laws and practices that continue to subjugate women and minorities in India. By decriminalizing adultery, the Court also reinforced the notion that personal relationships and intimate decisions should be free from state interference, unless they harm others or breach public order.

However, the judgment was not without its critics, particularly those who believed that decriminalizing adultery might undermine the institution of marriage. Some feared that it could lead to moral decay in society, though the Court was clear in its opinion that the law had no place in regulating private relationships between consenting adults.

#### Conclusion

The Supreme Court's decision in *Joseph Shine v. Union of India* was a landmark ruling that decriminalized adultery and struck down Section 497 of the IPC, which was deemed unconstitutional. The judgment was a triumph for gender equality, individual autonomy, and the right to privacy. It emphasized the need for the legal system to evolve and reflect modern values and societal norms. The case represents an important moment in the ongoing struggle for gender justice and equal rights in India.

<sup>1</sup> (2019) 3 SCC 39

<sup>2</sup> INDIA CONST.Art.14

<sup>3</sup> INDIA CONST.Art.15

<sup>4</sup> INDIA CONST.Art.21

<sup>5</sup> 1954 SCR930

<sup>6</sup> (1985)Supp SCC 137

<sup>7</sup> (1988)2 SCC 72

<sup>8</sup> (2017) 10 SCC1