



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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DECRIMINALIZATION OF ADULTERY IN INDIA WITH RESPECT TO JOSEPH SHINE VS. UNION OF INDIA: CASE COMMENTARY

~ *Tamizharasi Govindaraj*

Case citation: Joseph Shine vs. Union of India, 2018 SCC 1676

Court of judicature: Supreme Court of India

Date of Judgment: September 27, 2018

Bench: Chief Justice Dipak Misra, Justice R.F. Nariman, Justice A. M. Khanwilkar, Justice D. Y. Chandrachud and Justice Indu Malhotra

BACKGROUND

In the case of Joseph shine vs. Union of India (2018) challenged the constitutionality section 497 of the Indian Penal Code. Section 497 of IPC criminalized adultery, where a person having sexual intercourse with a person's wife without the consent or connivance of that person, then it's punishable for adultery. Whereas the provision doesn't provide punishment for the women even as an abettor. This case challenged the constitutional validity on the basis of gender bias, violation of fundamental rights, autonomy and dignity.

ISSUE

Whether section 497 of IPC which criminalized adultery was constitutionally valid?

ARGUMENTS

Petitioner:

The petitioner (Joseph Shine) filed a public interest litigation (PIL) under Article 32 of the Indian Constitution of India. The petitioner challenged the constitutional validity of section 497 of IPC

and section 198(2) of CRPC. The punishment for adultery u/s.497 criminalized only the male, whereas the women explicitly exempted from the punishment, even as an abettor. In parallel section 198(2) of CRPC laid down a procedural provision that only the husband of the woman involved could file a complaint for the offense of adultery, which reinforced the notion of the wife being the property of her husband.

The petitioner argued that section- 497 of IPC violated article 14 (right to equality), article- 15 (right against discrimination) and article- 21 (right to personal life and dignity). The provision treated women as a husband's property and the autonomy and dignity of the woman were deprived. Further the petitioner contended that the law was based on the outdated notions of patriarchy and did not align with the contemporary aspects of gender equality and personal rights. In the case of *Yusuf Abdul Aziz vs. State of Bombay(1954)* the supreme court upheld the constitutionality of the section 497, however the petitioner argued that the social and legal implications of sec. 497 undermined woman and treated as a passive participants in adultery and promoted unequal standards of men and women, by considering the evolving jurisprudence on gender equality and personal liberty needs a new examination of its validity.

Respondents:

The respondents argued that the section 497 of IPC aimed at protecting the sanctity of the matrimonial relationship and family. The respondents maintained the moral standards of society which consider adultery as a morally wrong illegitimate act which damages the social fabric. The respondents argued that the differential treatment for men and women comes under reasonable classification. The laws were made in order to protect women from immoral acts, where historically women are more vulnerable and likely to be exploited easily in adulterous relationships. The husband's consent or connivance was a key aspect to justify the differential notions under the law.

JUDGMENT

The supreme court after hearing the arguments from both sides, decided that section-497 of the Indian Penal Code is unconstitutional and decriminalized adultery, held that adultery can be punished under the penal provision rather it can be used as grounds for divorce. The court further held that the provision violated the fundamental right i.e. article 14, 15 and 21 of the Indian

constitution. This landmark judgment marked a significant print in ensuring the right to equality, right against discrimination, and by upholding the autonomy of an individual and dignity in the matrimonial relationship.