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A LEGAL AND SOCIAL STUDY OF ADULTERY IN INDIA

~ Shelly Vyas

Overview

In Indian legal and social discourse, adultery is traditionally defined as voluntary sexual contact between a married individual and a non-spouse—has long been a contentious topic. Adultery, that is illegal under Section 497 of the Indian Penal Code (IPC), was once considered as crime against society and sanctity of marriage in addition to betrayal of marital trust. However, a major change in the legal perspective on individual liberty, gender equality, and personal liberty occurred in 2018, when the Supreme Court of India declared Section 497 as unconstitutional in landmark ruling in case of *Joseph Shine v. Union of India*.

The development of Indian law regarding adultery is examined, with the Supreme Court's decision to decriminalize it and its wider ramifications for marriage, gender justice, and Indian society.

Background History and Section 497 of IPC

Section 497 of the IPC, passed in 1860 while the country was still a colony, made adultery illegal in the following ways:

"Anyone who engages in sexual activity with someone who is or whom he has reason to believe is the wife of another man without that man's knowledge or consent, even if that sexual activity does not constitute rape, is guilty of adultery."

Only the man involved in the illicit relationship received punishment.

This treated the woman like an oblivious object and did not punish them for aiding and supporting.

To prove the offense, the husband's consent or lack thereof, was necessary.

Married men who had extramarital affairs with widows or unmarried women were exempt. This law treated women as their husbands' property rather than independent people with rights and obligations of own. It reflected a strong patriarchal mentality.

Law criticism

Section 497 has been criticized over time for lack of its moral and constitutional reasons:

Gender Discrimination: This law violated the Article 14 which refers to right to equality in Constitution by punishing only men and contesting women agency over their decisions.

Personal Liberty Violation: It was claimed that making consenting adult sexual acts illegal constituted an invasion of privacy, in violation of Article 21 (Right to Life and Personal Liberty).

Patriarchal Bias: By requiring the husband's approval, the clause treated wives as their husbands' property.

Criminal punishment, according to critics it does not uphold the institution of marriage. It may even exacerbate marital discord that makes it ineffective in preventing marital breakdown.

The Supreme Court's historic ruling in case of Joseph Shine v. Union of India (2018): Section 497 IPC was unanimously declared unconstitutional by a five-judge constitutional bench headed by Chief Justice Dipak Misra in the case.

Important Points of Judgment:

- **Articles 14, 15, and 21 violated:** The court ruled that clause which violated the equality and dignity guarantees of constitution, was capricious and discriminatory against women.
- **Right to Privacy and Autonomy:** Citing the seminal Puttaswamy v. Union of India (2017) ruling, court underlined that adults possess freedom to make decisions regarding their private lives, which includes their sexual preferences also.

- **Women are not Property:** The court declared unequivocally, it is out of date and against constitutional principles to treat women as husbands' property.
- **Marriage and Criminal Law:** The court noted, although adultery may give rise to civil remedies like divorce but it shouldn't be punishable by law.

The consequences of the Decision

1. Moral judgment versus decriminalization

The court's decision keeps the issue of criminal responsibility apart from ethical or civil consequences but it does not support adultery as a moral act. It indicates that adults' private, consensual conduct should not be prohibited by the state and that morality is an arbitrary notion.

2. Women's Empowerment

The court's decision encourages gender equality and women's dignity in marriage by eliminating the obsolete paternalistic idea that men ought to govern women's sexuality.

3. Civil Compensation Remain: Based on personal laws, adultery is still an adequate basis for divorce. Only the criminal penalties are eliminated by decriminalization; civil liabilities remains in place.

4. The supremacy of Constitutional Morality towards Social Morality

The court's ruling reaffirmed the belief that, especially when it comes to issues featuring fundamental rights then the constitutional morality must take precedence over traditional social morality.

Rebuttals and Criticism

The decision was met with criticism from some quarters despite its progressive stance:

Undermining of Marital Institution: According to some, decriminalizing adultery might undermine marriage's sanctity and deteriorate family values.

Insufficient Deterrent Mechanism: Critics argue that infidelity might increase if there is no

threat of criminal prosecution.

Cultural Sensitivity: The decision, says critics, is not aligned with Indian cultural values, which place a high value on marital fidelity.

The Court, however, answered these claims by claiming that moral or cultural norms that are infringing upon constitutional rights should not be imposed by the system of criminal justice.

Worldwide Context

Adultery is now regarded as a private matter in the vast majority of democratic nations, where it is not considered an offense. For example:

Adultery was abolished in the UK centuries ago.

Although certain states still have laws against it, adultery is not punished at the federal level in the United States.

Germany and France oversee it as a civil proceeding rather than a criminal one.

India's decision aligns it with global human rights regulations concerning equality, liberty, and privacy.

In conclusion

In India, abolishing the penalty of adultery marks an important milestone in the development of a more liberal and progressive society that follows constitutional foundations. The removal of adultery from the criminal code is an effective conviction of individual liberty, gender equality, and right to privacy, even though it is still, a socially and morally controversial topic.

As a societal norm, marriage ought to be established on consent, mutual respect and trust and not on fear of punishment. Personal commitment cannot be substituted for legal compulsion.

The Supreme Court of India strengthened its position as the safeguard of civil liberties and constitutional morality by invalidating Section 497.