



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

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

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

THE LAW ON ADULTERY IN INDIA

~ *Shubhika Dutta*

INTRODUCTION

Adultery is defined as voluntary sexual intercourse between a married person and someone other than that person's current spouse.¹ Adultery in India has come a long way. From being a crime in the colonial era to now being a private issue tied to personal freedom and marriage. The Supreme Court's landmark judgment in *Joseph Shine v. Union of India* marked a significant development in the Indian legal landscape. It was in this judgment that adultery was decriminalised in India. It was revised to reflect the principles of equality, privacy, and fairness for all genders.²

ADULTERY LAW BEFORE 2018

Before 2018, adultery was criminalised under section 497 of the Indian Penal Code, 1860. It stated that a man could be punished for having consensual sexual relations with a married woman without her husband's consent. It should be noted here that the woman herself was exempt from this law and not penalised. The law was unfair and treated women as if their husbands owned them. The offence was non-cognizable and bailable. It was punishable by imprisonment for a term which could extend to five years, or with a fine, or both.³ However, it only protected the husband's marital rights and denied women the reciprocal protection or standing in court. The law was criticised on several grounds. It was based on gender discrimination, which hence violated Article 14 of the constitution.⁴ The law presumed that women were passive participants and denied them autonomy in this act. Most importantly, it failed to reflect modern principles of personal liberty and equality. The law was rooted in a

¹ Merriam-Webster, *Adultery*, <https://www.merriam-webster.com/dictionary/adultery> (last visited June 20, 2025).

² *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

³ The Indian Penal Code, No. 45 of 1860, § 497 (repealed 2018).

⁴ INDIA CONST. art. 14.

patriarchal and colonial understanding of marriage and morality.

THE JOSEPH SHINE JUDGMENT AND ITS EFFECT ON THE CONSTITUTION

A five-judge Supreme Court Constitution Bench unanimously declared Section 497 IPC unconstitutional in *Joseph Shine v. Union of India*.⁵ The Court ruled that the law violated several fundamental rights guaranteed by the Indian Constitution and was outdated and patriarchal. Writing the majority ruling, Chief Justice Dipak Misra concluded that the clause was arbitrary and in violation of Article 14 since it had no logical connection to the goal it was intended to accomplish.⁶ Additionally, it violated Article 21, which protects the right to life and personal liberty, including the right to privacy and dignity. It also violated Article 15(1) by discriminating only based on sex.⁷ Justice D.Y. Chandrachud, in his concurring opinion, emphasised that the law treated women as “chattels,” devoid of individual agency and choice. He highlighted that punishing only the man in an adulterous relationship and granting immunity to the woman was a legal contradiction that upheld Victorian morality rather than constitutional values.⁸

ADULTERY AFTER DECRIMINALISATION

The *Joseph Shine* ruling resulted in the decriminalisation of adultery. While decriminalised, adultery retains its status as a civil wrong in Indian law. It continues to serve as a legitimate basis for divorce or judicial separation under various personal statutes, including the Hindu Marriage Act, 1955,⁹ the Special Marriage Act, 1954¹⁰, and the Indian Divorce Act, 1869.¹¹

By repealing a law that viewed women as inferior to men, the ruling strengthened gender equality and protected the right to privacy and dignity in sexual and marital relationships. The Court acknowledged that marital conflicts are best resolved within the family or through civil

⁵ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

⁶ *Id.* at ¶ 37.

⁷ INDIA CONST. arts. 15(1) & 21.

⁸ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 at ¶¶ 52–55 (Chandrachud, J., concurring).

⁹ The Hindu Marriage Act, No. 25 of 1955, § 13(1)(i).

¹⁰ The Special Marriage Act, No. 43 of 1954, § 27(1)(a).

¹¹ The Indian Divorce Act, No. 4 of 1869, § 10.

legal remedies, so it removed the criminal penalty and placed the burden of resolving them on the parties.

ADULTERY IN CIVIL LAW AND FAMILY DISPUTES

Adultery still carries consequences under matrimonial law even after it was decriminalised. Although direct evidence is uncommon, courts have held that the burden of proof for adultery in divorce cases must be unambiguous and compelling. Depending on the specifics of the case, circumstantial evidence such as hotel reservations, call logs, text messages and witness statements may be sufficient.¹² Adultery can affect child custody, alimony, and maintenance, among other areas of family law, in addition to being a basis for divorce. However, Indian courts take a cautious approach to these cases, considering the child's best interests as well as the family's overall welfare.

MORAL WRONGS AND CONSTITUTIONAL MORALITY

Decriminalising adultery is in line with a larger constitutional principle that states the government has no right to control consenting adults' private sexual behaviour. The judiciary emphasised that moral wrongs are not always equivalent to legal wrongs and that moral or religious codes shouldn't be enforced through the criminal justice system. According to the tenets established in Justice K.S. Puttaswamy v. Union of India,¹³ the Court recognised that individual dignity depends on privacy and autonomy. The Joseph Shine ruling confirms that personal decisions in private affairs must be protected under Article 21 and that adultery, while possibly immoral in a social setting, is not a crime against society.

CRITICISMS OF THE JUDGMENT

Although the ruling was widely praised, traditionalists criticised it, claiming that decriminalisation might promote adultery and undermine the value of marriage. But as the Court correctly pointed out, marriage is a private contract, and any violation of it should be settled between the parties rather than being punished by jail time.

Furthermore, the decision only eliminates the criminal penalty for adultery; it does not legalise or legitimise it. Depending on the circumstances, resentful spouses may still pursue civil

¹² *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 S.C.C. 226.

¹³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

remedies such as divorce, alimony, or custody. Decriminalisation makes sure that the criminal code isn't abused to settle personal scores or enforce patriarchal moral standards.

CONCLUSION

A major step towards updating Indian family law and bringing it into line with constitutional morality was taken by the Supreme Court in the Joseph Shine case. The Court has eliminated a remnant of colonial morality and advanced a more equitable and compassionate legal system by acknowledging the values of equality, autonomy, and privacy. The idea that personal relationships should be governed by mutual respect and trust rather than fear of punishment is reflected in the fact that adultery is no longer a criminal offence, even though it is still a basis for civil relief.