



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

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.

JOSEPH SHINE V. UNION OF INDIA (2018 Supreme Court)

~ Deepika Tayal

CITATION- (2019) 3 SCC 39

BENCH- Chief Justice of India Dipak Misra, Justice Rohinton Fali Nariman, Justice D.Y. Chandrachud, Justice A.M. Khanwilkar and Justice Indu Malhotra

DECIDED ON: 27 September 2018

ABSTRACT

The landmark judgment of the Hon'ble Supreme Court of India in the case of Joseph Shine v. Union of India (2018)¹ led to the conclusive burial of Section 497 of the Indian Penal Code 1860². The provision pertained to extramarital intercourse but was limited to only those instances whereby a man had intercourse with a woman who was married to another man. The provision was struck down by a Constitutional Bench consisting of five judges of the Hon'ble Supreme Court of India who unanimously held that the provision was violative of the constitutional guarantees of the Indian citizens and failed to pass constitutional muster for the reasons explained hereinbelow.

INTRODUCTION

When the Indian Parliament made adultery a criminal offence under Section 497 of the Indian Penal Code 1860, the legal landscape of the world was drastically a different place from what it is today. The landmark judgment of the Hon'ble Supreme Court of India on 27 September 2018 by a five-judge constitutional bench of the Hon'ble Supreme Court led by Chief Justice of India Dipak Misra sought to end this legal anomaly and finally reaffirmed the ideals of the

¹ AIR 2018 SC 4898.

² Section 497 of Indian Penal Code 1860.

constitution regarding gender justice, human dignity and the creation of an egalitarian society wherein there is absolute equality between the two sexes.

The present judgement of the Hon'ble Supreme Court of India concerns the constitutional validity of Section 497 of the Indian Penal Code 1860 which punishes the crime of Adultery. Section 198 (2) of the Code of Criminal Procedure, 1973³ deals with prosecuting crimes against marriage. The definition of Adultery under the law states that "*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 the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both*".

The wife shall not be punishable for being an abettor in the commission of this offence. Supreme Court's Constitutional Bench, while unanimously declaring Section 497 of the Indian Penal Code as unconstitutional, held that it violates the principles of equality as mandated under Article 14 and right to dignity as enshrined under Article 21⁴ of the Constitution of India. The bench further opined that 'adultery' does not constitute a crime but is a ground for civil action in the form of action for divorce by the other spouse to the marriage. *Joseph Shine v. Union of India* has also revived the debate on the nexus between law, state, personal autonomy and sexuality.

FACTS AND THE BACKGROUND

The writ petition that was filed by Joseph Shine, a non-resident of Indian origin, residing in Italy, under Article 32 of the Constitution of India⁵ and questioned the validity of Section 497 of the Indian Penal Code, 1860 as well as Section 198(2) of the Code of Criminal Procedure, 1973 that provided only the husband of the adulterous wife has the right to prosecute the adultery case as he alone is the "person aggrieved" by such an act.

Consequently, the matter was first heard by a three-judge bench but referred to a larger bench as there were several constitutional issues involved in the case. The case was eventually to be heard by a Constitutional Bench that consisted of the following judges: Chief Justice D.Y. Chandrachud, Justice A.M. Khanwilkar, Justice R.F. Nariman, Justice D.Y. Chandrachud and Justice Indu Malhotra.

ISSUES BEFORE THE COURT

³ Section 198(3) of Code of Criminal Procedure.

⁴ Article 14 and 21 of Constitution of India.

⁵ Article 32 of Constitution of India.

The Constitutional Bench had to address the following questions:

- (i) Whether Section 497 of the Indian Penal Code, 1860 and Section 198(2) of the Code of Criminal procedure, 1908 are violative of Articles 14, 15 and 21 of the Constitution of India;
- (ii) Whether the definition of adultery in Section 497 of Indian Penal Code, 1860, which excluded the adulterous woman from the ambit of criminal liability, as well as from the capacity to prosecute and the status of a victim, was constitutionally sustainable;
- (iii) Whether adultery, as defined in Section 497 of Indian Penal Code, 1860 could at all be treated as a criminal offence, given that it falls within the intimate private sphere of an individual's life.

ARGUMENT OF THE PARTIES

The petitioner contended that the Section 497 of Indian Penal Code, 1860 was an anachronistic and patently unconstitutional. It gave effect to the husband's proprietary interest in the wife's sexuality and treated the wife not as a person in her own right, but as an object whose behaviour could injure the husband. The petitioner further argued that provision violated the principles of equality under Article 14 of the Constitution of India by creating an arbitrary and irrational classification the same act of adultery attracted criminal liability when the woman involved was married but not otherwise and violated the right to dignity and privacy under Article 21 of the Constitution of India by criminalising consensual intimate conduct between adults within the realm of their personal private lives.

LEGAL PRINCIPLE ESTABLISHED

The judgement in the present case was delivered unanimously by a constitutional bench of the Hon'ble Supreme Court composed of Chief Justice of India Deepak Misra, Justice Khanwilkar, Justice Nariman, Justice Chandrachud and Justice Indu Malhotra.

Justice Misra and Justice Khanwilkar referred to the earlier pronouncements of the Hon'ble Supreme Court of India on the same issue before pronouncing the judgement on the incongruity between Section 497 Indian Penal Code, 1860 and the mandates of Articles 14 and 21 of the Constitution of India.

The constitutional bench of the Hon'ble Supreme Court in the case of *Yusuf Abdul Aziz v. the State of Bombay*⁶ held that Section 497 of the Indian Penal Code is constitutionally valid as it

⁶ Yusuf Abdul Aziz v State of Bombay AIR 1954 SC 321.

is saved by Article 15(3)⁷ of the Constitution of India which empowers the State in making any special provision for the women and children. Similarly, in the case of *Sowmithri Vishnu v. Union of India* and *Another*⁸ and *V. Revathi v. Union of India*⁹, the court upheld the validity of Section 497 of the Indian Penal Code vis-a-vis Article 14 of the Indian Constitution on the ground that no such constitutional provision is violated by defining the offence of adultery so as to limit the class of offenders to men. Justice Misra and Justice Khanwilkar decided the issue on the strength of right to equality and right to dignity guaranteed under Articles 14 and 21 of the Constitution of India.

The judgment established the following principles of permanent constitutional importance: *First*, that the dignity of the individual is non-negotiable and cannot be bargained away for social institutions. Marriage is a social institution like religion and it cannot use the machinery of the state's criminal law as a weapon against one of its members.

Second, that constitutional morality is a higher norm than popular morality and the courts must uphold the former even if the latter may lead elsewhere.

Third, the right to make intimate decisions, including decisions about sexual conduct between the consenting adults, is protected under the right to privacy as a facet of Article 21 of the Constitution of India.

Fourth, the historical deference of the courts to the legislature in matters of personal law and social morality does not extend to protecting provisions which offend the basic constitutional guarantees of equality and dignity.

CRITICAL ANALYSIS

The significance of *Joseph Shine v. Union of India* extends far beyond the decriminalisation of adultery. The judgment contributes to the substantial constitutional discourse on personal autonomy, privacy and the limits of state intervention in the intimate relationships of individuals.

By striking down Section 497 of the Indian Penal Code, the Hon'ble Supreme Court recognised that the consensual relationships between the adults belong primarily to the private sphere and should not ordinarily attract criminal sanctions.

The decision may also be justified through the principles of proportionality. While adultery may constitute a breach of the marital trust and provide the grounds for divorce, criminal

⁷ Article 15 of Constitution of India.

⁸ *Sowmithri Vishnu v Union of India and another* AIR 1985 SC 1618.

⁹ *V Revathi v Union of India* (1988) 2 SCC 72.

punishment is an excessive response that neither preserves the marriage nor serves the legitimate penal objective. The Court therefore distinguished between the moral wrongdoing and the criminal conduct. Further, the judgment reinforces the idea that constitutional morality must prevail over popular morality. By rejecting the provision rooted in patriarchal assumptions and gender stereotypes, the Hon'ble Court strengthened the constitutional values of equality, dignity and individual liberty. Consequently, *Joseph Shine* represents not merely the decriminalisation of adultery but the reaffirmation of the Constitution's commitment to personal freedom and to gender justice.

CONCLUSION

"The beauty of the Indian Constitution is that it includes 'I' 'you' and 'we'. Such a magnificent, compassionate and monumental document embodies emphatic inclusiveness..."

These are the lines rightly quoted by Chief Justice Dipak Misra in the apex court decision of the case of *Joseph Shine v. Union of India*. The story of the burial of 158-year-old penal provision that had lost all constitutional legitimacy is the story of the Hon'ble Supreme Court's judgment in the case of *Joseph Shine v. Union of India*. But at the level of its reasoning, it is something much more important: it is the constitutional declaration and that the criminal law cannot be co-opted as an instrument of moral policing under the pretext of protecting the social institutions.

Beyond the significant contribution of *Joseph Shine* to the struggle for gender justice, the case has played a pivotal role in redefining the relationship between the individual and the state. The judgment rejected the notion that the criminal law could be used to enforce the social and the moral codes on individuals. Instead, it emphasized on the importance of the dignity, autonomy and equality of each and every individual. Through this constitutional judgment, the Court invalidated a colonial law that was completely archaic and offensive to the rights to liberty of the individuals.