

JOSEPH SHINE VS UNION OF INDIA

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ABSTRACT

“Legal submission of one sex over the other is wrong in itself no law should be discriminatory as it is the biggest barriers to human development; and that it should be replaced by a complete system of quality, not allowing power and privilege on one hand, or disability on the other”. The Apex Court noted the role of John Stuart Mill, a British philosopher and politician, Economist, while embarking on the task of examining sections 497 IPC and 198 CrPC in terms of their constitutional function

Case title: Joseph Shine vs Union Of India

Court: Supreme Court of India

Bench: Justice Deepak Mishra, Justice R.F Nariman, Justice D.Y Chandrachud, Justice A.M Khanwilkar and Justice Indu Malhotra

Petitioner: Joseph Shine

Respondent: Union of India

Citation: 2018 SC 1676

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INTRODUCTION**ADULTERY**

Adultery is sexual activity between two people who are not married. It is considered objectionable under different moral, religious and social beliefs. In India IPC section 497 “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.”(1) This section of the IPC was heavily criticized by many prominent female activists, as it portrayed the wife as the property of the husband rather than an equal partner. The gist of the section is that only a man can commit adultery and only a man can be held liable under section 497, which outrages the rights of women as equal partners (further promotes the idea of women are property of men)

PREVIOUS PRECEDENTS ON SECTION 497

1. Yusuf Abdul Aziz vs The State Of Bombay (1954)

The appellant was prosecuted under section 497 of the IPC. He claimed that the adultery law violated the fundamental right of equality guaranteed under Articles 14 and 15 of the Constitution. Three years later in 1954, the Supreme Court ruled that Section 497 was valid. It held that Section 497 did not give a licence to women to commit adultery and it can not make provisions as it is a violation of Article 15(3)

2. Revathi vs Union Of India &Ors (1988)

The Supreme Court decided that the offence of adultery as defined in Section 497 is considered by the legislature as an offence against the sanctity of the matrimonial home, an act which is committed by a man, as it generally is. The philosophy underlying the scheme of these provisions appears to be that as between the husband and the wife social good will be promoted by permitting them to 'makeup' or 'break up' the matrimonial tie rather than to drag each other to the criminal court.

Section 497 of the Indian Penal Code and Section 198(1) read with Section 198(2) of the Criminal Procedure Code go hand in hand and constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit who invades the peace and privacy of the matrimonial unit and poisons the relationship between the two partners constituting the matrimonial unit

FACTS OF THE CASE

Joseph shines as a non-resident Keralite filed public interest litigation under Article 32. The petition challenged the constitutionality of section 497 IPC and 198(2) CrPC. He further argues that the section is unconstitutional as it discriminates between men and women and only men are held liable whereas women are treated as property. Married women are not different in any way from men and they should also be held liable for it .why only men. He opined that the law promotes age-old thinking of men having the right to their women as property.

ISSUED RAISED

- 1) Whether section 497 of the IPC (which makes adultery a criminal offence) is constitutionally valid?
- 2) Whether section 198(2) of the code of criminal procedure,1973 is violative of fundamental rights (14,15 and 21)?
- 3) Whether Section 497 is an excessive penal provision that needs to be decriminalized?

ARGUMENTS RAISED BY PETITIONER

Section 497 of the IPC is prima facie unconstitutional because it discriminates against men and violates Articles 14, 15 and 21 of the Constitution of India. When sex occurs with the consent of both parties, there is no valid reason to exclude one party from the debt. This alleged discrimination is contrary to the true nature and nature of Article 14 as outlined in Maneka Gandhi v. Union of India, (1978) 2 SCR 621, RD Shetty v. Airport Authority, (1979) 3 SCR 1014 and EP Royappa V State Of Tamil Nadu, 1974 (4) SCC 3.

Section 497 of the IPC cannot be construed as a beneficial provision under Article 15 (3). It also unfairly discriminates against women by perpetuating the misconception that women are the property of men. This is also proved by the fact that if adultery is involved with the woman's consent at the time, such an act is regarded as a punishable offence under code.

The same amount in institutional discrimination was won by Hon'ble Court in CharuKhurana and Ors v. Union of India and Ors., 2015 (1) SCC 192. (See also Frontier v Richardson, (1973) 411 US 677). As sexual privacy is an integral part of the 'right to privacy.' Section 198 (2) of the CrPC also violates Articles 14, 15, and 21 of the Constitution of India because it does not leave women in prosecution for anyone committing adultery.

ARGUMENTS RAISED BY RESPONDENT

The written application under Article 32 of the Indian constitution is bound to be revoked as soon as section 497 of the Indian Code, 1860, supports and protects the institution of marriage. In Sowmithri Vishnu vs Union of India, the court upheld this view.

Subjecting Section 497 of the Indian Code, 1860 and Section 198 (2) of the Criminal Procedure Code, 1973 would be tantamount to committing adultery, thus eliminating the sanctity of marriage and the fabric of society as a whole. The government has already been seized for sexual biasedness (gender-biased). Honourable Supreme Court W.Kalyani vs State Tr.Insp. Of Police &AnrThe Petitioner (2012) 1SCC358.

JUDGMENT

The law, which prohibits the right to persecute women, is not gender-neutral. Under Section 497, the wife of an adulterous husband, is unable to prosecute her husband for marital infidelity. This provision, therefore, is discriminatory against women and violates Article 14. Article 497 as it is today, we cannot hide in the shadow of the subtle light of Article 14 which illuminates anything absurd, discriminatory, and oppressive.

Section 15 (3) of the Constitution is a provision that allows the State to enact laws that benefit women and children, to protect and promote this class of citizens. Section 497 provides for the punishment of adultery, an act performed by consensus between two adults who have violated the marriage bond. Such provision may not be construed as a provision of the law enshrined in Article 15 (3) of the Constitution.

The real purpose of taking action to empower women is to empower women and empower them in the social and economic spheres. A law that removes women's rights to prosecution cannot be called a "profitable law".

The right to privacy and personal freedom, however, is not absolute; it is subject to reasonable limits on legal interests. The limits of human freedom are indeed difficult to identify black and white; however, that freedom must embrace the public interest. Freedom of sexual intercourse permitted outside of marriage by a married person does not require protection under Article 21.

In the context of Article 21, attacks on privacy by the State must be permitted based on reasonable and effective law. Such attacks must meet threefold requirements as set out in Justice K. S. Puttaswamy (Retd.) &Anr. V. UOI and Anr. (supra): Legitimacy, which delays the

existence of the law; A requirement, defined in terms of legal interests of the State and equilibrium, ensures a logical connection between the object and the accepted methods.

Section 497 as it stands today, fails to meet the threefold requirement, and therefore must be defeated.

To criminalize certain conduct is to declare that it is a public wrong which would justify public censure, and warrant the use of criminal sanction against such harm and wrongdoing.

The autonomy of an individual to make his or her choices for his/her sexuality in the most intimate spaces of life should be protected from public censure through criminal sanction. The autonomy of the individual to make such decisions, which are purely personal, would be repugnant to any interference by the State to take action purportedly in the best interest of the individual.

REVIEW BY COURT

It was noted that thinking about adultery from a criminal standpoint could be a step again. This Court has been on the road to constitutional reform and, therefore, it is not at all right to sit on a time machine and go to a different time there. The machine is on its way back. Therefore, treating adultery as a crime can be in law without reason.

CONCLUSION

The law must march in line with changed views and ideas in a changing society. The law must be aware of a changing society and must be in line with the ideas and ideas that develop over time. The current requirement must be provided through a legal interpretation process.

Equality before the law means not only equal access to the law but also equal exposure to the law. This is one of the rules followed by a five-judge panel of the Supreme Court, which ruled an unconstitutional section of the Indian Penal Code that committed a crime of adultery for 158 years. But the basic feeling of decision and being a true spirit will take time to fully integrate with the current social mix.

COMMENT

I opine that this is the 21st century where equality and freedom have taken over the world. There is a need for changes in the law to eliminate discrimination against women. In India, many laws are now obsolete. Adultery is one of them, it had to be removed. Adultery not only discriminates against men and women but also lowers a woman's dignity. This was filed as a case when society was full of ancestry and nationalism. In that society, the belief was held that women could be at home and that they did not have the same rights and opportunities as men. And married women did not own the individual property but were treated as the property of their husbands which is reflected in the provision of adultery.

But times have changed; women are no longer behind the shadow of men. Adultery as a criminal offence is not important because it is a private matter where the courts should not intervene. There is sexual independence for everyone and the same prohibition can violate constitutional principles. This ruling removes the charge of adultery and makes it a place of public error only. Violations of the law by both men and women as stated in the reports of the Law Commission would not have served a purpose as adultery is a very secretive act related to the marital state. The Legislature should have taken this step a long time ago but still, our courts have been very effective in filling vacancies and removing obsolete laws through a change in public opinion.

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