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**“JOSEPH SHINE VS. UNION OF INDIA
[STRIKING DOWN OF ADULTERY LAW]”**

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Joseph Shine Vs. Union of India [Striking Down of Adultery Law]

Supreme court Bench- HON'BLE CHIEF JUSTICE DIPAK MISHRA, HON'BLE JUSTICE A. KHANWILKAR, HON'BLE JUSTICE R.F. NARIMAN, HON'BLE JUSTICE D.Y. CHANDRACHUD, HON'BLE JUSTICE INDU MALHOTRA

Parties - Petitioner(s) Joseph Shine,

Respondent(s) Union of India

Date of Decision-27th September 2018

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SYNOPSIS

The writ petition is filed to challenge the constitutional validity of section 497 of IPC¹ and section 198(2) of CrPC.² This is often a public Interest Judicial Proceeding.

Section 497 of the IPC is unconstitutional as it violates article 14 15 and 21 of the constitution as it is discriminating against men. Once the sexuality takes place with the consent of each of the parties, then there is no sensible reason for excluding one party from the liability. The same discrimination is against truth scope and nature of Article 14 as highlighted in **Maneka Gandhi v. Union of India**,³ **R.D. Shetty v. Airport Authority**,⁴ and **E.P. Royappa v. State of Tamil Nadu**.⁵

Section 497 of IPC can't be understood as a beneficial provision under Article 15(3) and also exemption provided for women doesn't fall within the scope of the Article. It indirectly discriminates against women by holding associate's degree inaccurate presumption that women are the property of the men. This is often additional proven by the fact that if the extramarital sex is engaged with the consent of the husband of the women the such act seizes to be an offense punishable under the IPC. Constant significances to institutionalized discrimination that was repelled by this Hon'ble court in **Charu Khurana and Ors. V. Union of India**.⁶

The same provision is additionally hit by the ratio laid down in **Puttaswamy v. Union of India**⁷, since privacy is associated with an internal part of the 'right to privacy'.

However, the respondent is of the view that sexual relationships outside marriage would breakdown the institution of marriage and it doesn't warrant protection under article 21 and the right to privacy and right to liberty isn't absolute one and is subjected to reasonable restriction when legitimate public interest is concerned. Article 15(3) saves the provision as a special for the benefit of women that is enabling provision providing for protecting discrimination.⁸

¹ Indian Penal Code, 1860, section 497

² Code of Criminal Procedure, 1973, section 198 (2)

³ Maneka Gandhi V. Union of India (1978) AIR 597, 978 SCR (2) 621

⁴ R.D. Shetty V. Airport Authority, (1978) 3 SCR 1014

⁵ E.P. Royappa V. State of Tamil Nadu, 1974 (4) SCC 3

⁶ Charu Khurana and Ors V. Union of India and ors.,2015 (1) SCC 192

⁷ Justice K.S. Puttaswamy (Ret.) V. union of India and Ors, (Writ petition (Civil) No. 494 of 2014

⁸ By Jismin Jose, Joseph Shine vs. Union of India ,Law Times Journal (September 10, 2020:13 hrs.)
<https://lawtimesjournal.in/joseph-shine-vs-union-of-india/>

Section 497 IPC and 198(2) CrPC was challenged before this Hon'ble Court on three occasions, firstly in **Yusuf Abdul Aziz v. State of Bombay and another**⁹, secondly in **Sowmithri Vishnu v. union of India**¹⁰, and Last in **V. Revathi V. Union of India**¹¹

INTRODUCTION

Adultery has been a crucial topic of debate in India. It has been taken into account as a criminal activity. It has its historical base & value, which is considered as a heinous crime. The provision of Section 497 of IPC deals with the laws associated with adultery. Adultery is the most controversial topic in India. The most reason for the controversy was around the incontrovertible fact that the language of section 497. Firstly, it had been discriminatory towards the women which suggests that the women weren't given any right to prosecute their husband if the husband was involved in any quite extramarital relationship. Secondly, adulterous men are responsible for punishment but women aren't even considered as an abettor.¹²

Recently, In Joseph Shine v. Union of India, the apex court ruled that adultery is no longer a criminal offense by putting down a 158-year-old colonial-era law. This provision was challenged for the first time in the Yusuf Abdul Aziz case¹³ where question was raised on section 497 to be violative of gender equality enshrined under Article 14 and 15 of the constitution.¹⁴ However, the apex court ruled that the content section was valid. Later on, this section was challenged once more within the case of Smt. Sowmithri Vishnu V. union Of India, However, as a result of the sanctity of marriages the supreme court upheld this legislation.

⁹ AIR 1954 SC 321

¹⁰ Sowmithri Vishnu V. Union of India AIR 1985 SC 1681

¹¹ V. Revathi V. Union of India, (1988) 2 (SCC) 72

¹² *Ibid*

¹³ Yusuf Abdul V. State of Bombay and Another, AIR 1954 SC 321

¹⁴ Constitution of India, Article 14 and 15

BACKGROUND

Several times the question arises on the constitutionality of "Sec 497 of IPC and sec 198 of CrPC" before the Supreme Court of India. In three landmark cases, the Supreme court has held Sec 497 of IPC and Sec 198(2) of CrPC as valid. But it became unconstitutional after the Judgment of Joseph Shine vs Union of India¹⁵.

SECTION 497 OF INDIAN PENAL CODE

Under Section 497 of the IPC¹⁶ stated that if a married man makes an agreeable relationship with a married woman, the husband of that woman can file a case against this man in the name of adultery but he cannot take any action against his wife.

Also, the wife of the man involved in this case cannot register a case against the woman. It also provides that only the husband of his fellow woman can take action against the man involved in the extramarital affair by filing a complaint.¹⁷

SECTION 198(2) OF CODE OF CRIMINAL PROCEDURE

Under section 198(2) of CrPC¹⁸ specified that the complaint file charge against the Husband under section 497 and 498 of IPC. In this provision, only a husband committed offenses. It implies that women are exempted from punishment and only men are charged with offence of adultery even if she is an abettor.

¹⁵ (2019) 3 SCC 39 : (2019) 2 SCC (Cri) 84

¹⁶ 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 intercourse not amounting to the offense of rape is guilty of the offense 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. In such cases, the wife shall not be punishable as an abettor".

¹⁷By Soumya Goel, Joseph shine V union of India, legalserviceIndia, (10 September,2020)

<http://www.legalserviceindia.com/legal/article-3127-joseph-shine-v-s-union-of-india.html>

¹⁸ Section 198(2) of CrPC specified how a complainant may file charges for offenses committed under Sections 497 and 498 IPC. Section 198(2) CrPC specified that only the husband may file a complaint about the offense of adultery.

The three landmark judgment are

Yusuf Abdul Aziz v/s State of Bombay¹⁹

In this case, sec 497 of IPC and sec 198 of CrPC has violated article 14²⁰ (right to equality and equal protection of the law) and Article 15 (prohibition of decriminalization based on race, caste, sex, religion, etc.) of the constitution. The supreme court held that there is a special provision for women and children under Article 15(3) of the constitution and as a result, the petition of the husband was dismissed.²¹ Therefore, section 497 of IPC was held constitutional.

Sowmithri Vishnu v/s Union of India²²

The court held that if a woman has an illicit relationship with another man then she is a victim not the author of the crime. The court also disagreed with the view that the husband has a license to develop an illicit relationship with an unmarried woman. So, the court declared section 497 of IPC as constitutional.

Revathi v/s Union of India²³

The court held that the law allows neither the husband of the offending wife to prosecute his wife nor will the law permit the women to prosecute the offending husband for being disloyal to her. Thus, both the husband and the wife are disabled from putting each other with the weapon of criminal law. So, there is no violation of the right to equality under article 14 and thus, section 497 is valid.

¹⁹ Yusuf Abdul V. State of Bombay and Another, AIR 1954 SC 321

²⁰ Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

²¹ Nothing in this article shall prevent the State from making any special provision for women and children

²² Sowmithri Vishnu V. Union of India AIR 1985 SC 1681

²³ V. Revathi V. Union of India, (1988) 2 (SCC) 72.

FACTS OF THE CASE

Joseph Shine is a non-resident, from the state of Kerala. He filed a PIL under article 32 of the Constitution.²⁴ He has challenged the constitutional validity of the offense of adultery under section 497 of IPC and section 198 (2) of CrPC on the ground that this law was discriminatory towards men. According to provisions, only men can be prosecuted.²⁵

The thing that led him to challenge the legality of Section 497 was when one amongst his close friends from Kerala committed suicide after a lady colleague of his made serious rape charges on him. Joseph Shine said that he just wanted to protect Indian men from being punished for having extramarital affairs by retaliatory women or their husbands. Section 497 was drafted with a conventional plan which isn't any longer applicable in Modern Indian Society.

ISSUES OF THE LAW

1. Whether Section 497 of the IPC is constitutionally valid or not?
2. Whether section 198(2) of the CrPC 1973 is violative of fundamental rights (14,15 and 21) or not?
3. Whether Section 497 is an extreme penal provision that requires it to be decriminalized or not?

ARGUMENTS ADVANCED BY THE PETITIONER

1. Section 497 of the IPC is unconstitutional as it violates Article 14, 15, and 21 of the Constitution as it is discriminating against men. When sexual intercourse takes place

²⁴ Article 32, Constitution of India, 1950

²⁵ *Supra* Note 12

with the assent of both parties, there are no grounds for excluding one party from the liability. Due to which it violates the very scope of Article 14 of the Indian Constitution¹³. Therefore, Section 497 of the IPC is unconstitutional.

2. The meaning of adultery under Section 497 is indistinct. It simply criminalizes the extramarital affair of a man with a wedded woman not including widows, bachelor women, and Divorcees under the domain of definition of Section 497.
3. Section 497 does not include a provision for hearing the married woman with whom the accused is alleged to have committed adultery. That it capriciously assumes that man is always a seducer and ignores women as an abettor.
4. Section 497 of the IPC cannot be interpreted as a valuable provision under Article 15(3).²⁶ It also ultimately discriminates against women by holding a wrong presumption that women are the property of the men. This is also clear by the fact that if the adultery is betrothed with the assent of the husband of the woman then, such act seizes to be an offense punishable under the Indian Penal code.
5. As sexual privacy is an integral element of the 'right to privacy.' Section 198 (2) of CrPC is also in contravention of Article 14, 15, and 21 of the Constitution of India as it excludes women from prosecuting any person engaging in adultery. Therefore, Section 497 of IPC and Section 198(2) of CrPC needs to be decriminalized.²⁷

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²⁶ Kalyani V. State of Tr. Inspector of Police and Another (CrI.), 2232 of 2011

²⁷ By Ritwik Guha Mustafi, Joseph Shine vs. Union of India : A Case Comment, 5th Voice News, (September 10, 2020 12:33 hrs) <https://5thvoice.news/legalnews/NzEwMQ==/Joseph-Shine-vs-Union-of-India-A-case-comment#>

ARGUMENTS ADVANCED BY THE RESPONDENT

1. The Respondents contended that adultery is an offense that breaks the family relations and deterrence should be there to protect the institution of marriage.
2. The Respondent claimed that adultery affected the children, spouse, and society. It is an offense committed by an outsider with the complete Knowledge to destroy the sanctity of marriage.
3. The discrimination by the provision is saved by Article 15(3), which stated the state rights to make special laws for women and children. Thus, the court to delete the portion found unconstitutional but retain the provision.²⁸

RATIO DECIDENDI

On 27 September 2018, the court delivered its decision in this case unanimously which held that section 497 of IPC is unconstitutional. It held that section 497 of IPC violated the fundamental rights of equality, liberty, and privacy mentioned under Art. 14, 15 and 21 of the Indian Constitution,1950.²⁹ Therefore, the Supreme Court of India has declared section 497 unconstitutional but regards it as an ethical wrong and may be used as a ground for divorce.

VERDICT OF COURT

In December 2017, the Joseph shine filed a petition raising queries on the constitutional validity of section 497 Of IPC. This case headed by 3 benches, later CJI Dipak Mishra has referred this

²⁸By Diganth Raj Sehgal. Case analysis: Joseph Shine v. Union of India (10 September,2020)<https://blog.ipleaders.in/case-analysis-joseph-shine-v-union-india/>

²⁹ Arun Kumar Agarwal and Another V. National Insurance Company Limited and others (2010) 9 SCC 218 State of Madhya Pradesh V. Mandan Lal (2015) 7 SCC 621

petition to 5 decide constitution bench that comprised CJ Dipak Mishra and Justice R.F Nariman, Justice A.M khanwilkar, Justice DY Chandrachud & Justice Indu Malhotra. whereas hearing the matter antecedently the court discovered that the law relies on " social presumptions".

On 27 September 2018, 5 decision bench affected down section 497 of IPC thereby decriminalizing society. It was affected down because its profaned articles 14, 15, and 21 of the Constitution of India nation that infringes upon women's dignity and autonomy. The 5 benches additionally scan section 198 of CrPC that specifies that solely a husband will file charge for offenses underneath section 497 of IPC. The bench overruled its Judgment Y Abdul Aziz, Sowmithri Vishnu, and Vishnu Revanthi. The bench made four different opinions, the court affected the law and declared that the husband can't be the master of his woman.³⁰

Their judgment controls the subsequent things-

1. Section 497 is primitive and is constitutionally invalid

Section 497 of IPC infringes on the rights of women. It deprives a woman of autonomy, dignity, and privacy. This section may be a denial of substantive equality, as a woman don't seem to be equal participants in an exceedingly wedding and she was incapable of freely willing to a sexual act that regarded them a sexual property of their relation. During this method, it profaned articles 14, 15, and 21 of the constitution.³¹ So, it was a control that section 497 of IPC is archaic and it was constitutionally invalid.

2. Section 497 to not be a criminal offense

A crime is an act that is committed on society as an entire. whereas criminal conversation may be a personal issue, it was the private sphere of marriage & it was not working into the construct of the crime. The construct of criminal conversation was standing as a civil and a ground of divorce. What happens if the husband leaves the woman and after that adultery happens which shows that it wholly depends upon personal discretion. Hence, declaring Adultery as a crime would be an injustice for a system.

³⁰ *Supra* Note 8

³¹ Pawan Kumar V. State of Himanchal Pradesh (2017) 7 SCC 780

3. Husband isn't a master of woman

In this case, it was a control that a husband or father isn't a matter of a woman or female offspring. She has equal rights and equal standing in an exceedingly society. they're going to not be discriminated to any extent further, they're going to be treated equally in an exceedingly society.

4. Section 497 is unfair

Throughout the judgment, it was a control that section 497 is unfair. It does not preserve the 'holiness of marriage'. For a husband, it's his right to let his woman have an affair with some other person. Following this judgment, it means that a Husband's incorporates a 'proprietary right' over his woman. Moreover, the woman cannot claim against her husband or his lover. In India, there was no provision associated with her husband having an affair with an amate less woman or a widow.

ANALYSIS

This judgment was put forward as a good initiative, as it became the section 497 of IPC or 198 (2) of Crpc unconstitutional. Both sections are discriminatory classified against women. Firstly, it had been discriminatory towards the women which suggests that the women weren't given any right to prosecute their husbands if the husband was involved in any quite extramarital relationship. Secondly, the adulterous men are responsible for punishment but women aren't even considered as an abettor. It is vital to note that, true involving extramarital sex might arise because of sad marital life. it might be higher to go away from the parties to their sphere, that after all could be an elementary right, giving them the liberty to proceed on the premise of a civil wrong, if they thus like.

However, it is also one of the most important factors that would arise i.e., adultery was not accepted in a society till now. The moral perceptions of the society will not accept adultery in its social fabric. And it can also be seen that their judgment is additionally silent on its impact on social establishments like marriage and also regarding children born out of such a relationship or concerned in the other manner in similar things.

CONCLUSION

Section 497 comes under the purview of the court several times but wherever it had been held constitutional. But the Supreme Court on 27th September, 2018 within the case of Joseph Shine vs Union of India declared it unconstitutional as sec 497 violated art. 14,15 and 21 of the Indian constitution. Moreover, this judgment has also put in to practice the idea of justice against discrimination. This judgment has overruled all past judgments which upholds the criminalization of adultery. Now adultery has become legal but it's still not ethical with the society and it can be used as a ground for divorce.



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