

JOSEPH SHINE v. UNION OF INDIA¹

The Supreme Court's judgement in *Joseph Shine v. Union of India* represents an important step in reformative constitutionalism. The judgment reinforces the Constitution's commitment to gender justice, human dignity, and an equal society where men and women stand on the same footing. The Court strongly criticized patriarchal attitudes embedded in parts of Indian society, especially those that view women as subordinate to men or, worse, as their property. By striking down the adultery law, the Court rejected legal provisions rooted in outdated notions of male dominance and affirmed that the Constitution cannot tolerate practices that undermine the autonomy and equality of women.

Facts of the Case

In 2017, Joseph Shine, an Indian citizen residing in Italy, filed a public interest petition under Article 32 challenging the constitutionality of Section 497 of the Indian Penal Code, 1860, which criminalised adultery. He also contested Section 198(2) of the Code of Criminal Procedure, 1973, which restricted the right to file a complaint in adultery cases solely to the husband of the woman involved, preventing anyone else from being treated as an aggrieved party.

These provisions, he argued, violate the fundamental rights guaranteed to all citizens under Articles 14, 15, and 21 of the Constitution. Since the Constitution upholds equality before the law under Article 14, he contended that such laws are discriminatory, unfair, and inherently gender-biased, making them incompatible with constitutional guarantees.

Since Independence, numerous cases before the Supreme Court and various High Courts have questioned the constitutional validity of Section 497 of the IPC, which criminalised adultery in a selective and male-centric manner. The provision faced repeated challenges for its gender-biased structure and discriminatory assumptions. Key cases where Section 497 was contested include *Yusuf Abdul Aziz v. State of Bombay*, *Sowmithri Vishnu v. Union of India*, *V. Revathi v. Union of India*, and *W. Kalyani v. State*. However, in all these earlier decisions, the Supreme Court declined to declare the section unconstitutional and upheld its validity each time. In this landmark case however, these earlier judgements were turned over.

Question of Law

The case raised several important constitutional questions. First, the Court examined whether India's adultery law was arbitrary and discriminatory, and therefore violated Article 14. It also considered whether Section 497 of the IPC itself was unconstitutional. A major concern was whether the provision reinforced the outdated idea that women are the property of their husbands, especially because the law treated a husband's "consent" as capable of removing the offence—an approach that conflicted with Article 15's guarantee against gender-based discrimination. The Court also had to decide whether the law violated a woman's dignity by denying her sexual autonomy and her right to make personal choices. Another issue was whether criminalising adultery amounted to an unjustified intrusion by the State into the private sphere of marriage. Lastly, the Court considered whether adultery laws should be gender-neutral, since Section 497 allowed only husbands to file complaints and gave no legal remedy to wives whose husbands committed adultery.

Judgement

The Supreme Court, in *Joseph Shine v. Union of India*, struck down Section 497 of the IPC and the corresponding portion of Section 198(2) of the CrPC as unconstitutional for violating Articles 14, 15 and 21. The Court held that the adultery provision was outdated and fundamentally incompatible with constitutional values of equality, dignity, autonomy, and privacy. It emphasized that Section 497 treated women as passive objects by making the husband's "consent or connivance" central to determining criminality, thereby reducing a woman to the property of her spouse. This approach denied women independent agency within marriage and reinforced gender stereotypes, making the provision discriminatory under Articles 14 and 15.

The Court further reasoned that criminalizing adultery intruded into the private realm of marriage and violated the right to privacy and personal liberty protected under Article 21. Marriage, the Court noted, is a partnership of equals, and the State cannot impose penal consequences on consensual sexual choices between adults. While adultery can continue to serve as a civil ground for divorce, it cannot be treated as a criminal offence because it does not harm society at large. The judgment marks a shift towards recognising individual autonomy and gender equality within intimate relationships.