

Adultery Decriminalisation in India: A Socio-Legal Study in the Light of Joseph Shine vs Union of India

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ABSTRACT

The act of having sexual relations with someone who is not their spouse, or adultery, has long had a negative impact on Indian culture and the legal system. India's history includes a patchwork of colonial influences, changing social mores, and an ongoing struggle between modernity and tradition. This essay will examine the evolution of adultery laws in India, the discussion around their legalisation, and the enduring social attitudes associated with it.

Keywords: Adultery, Crime, Joseph Shine, Morality, Divorce, Spouse.

INTRODUCTION

Adultery, the voluntary sexual intercourse between a married person and a partner other than their legal spouse, has long been both socially condemned and legally punished in many societies. In India, this condemnation found legal sanction in Section 497 of the IPC, 1860, which criminalised adultery in a gender-biased manner. The provision treated the woman as a passive object and conferred prosecutorial rights exclusively to her husband, thereby reinforcing patriarchal assumptions.

The fact that adultery was first made a criminal penalty is clear evidence of the British influence on Indian law. This idea was codified, albeit with some bias, in Section 497²¹⁵ of the Indian Penal Code, which was drafted in 1860. Women were not seen as criminals, even if males may face legal action for having an extramarital affair with a married woman without her husband's approval. The patriarchal beliefs, which continue still to this day, usually convey that a woman's faithfulness to her husband directly affected his honour and property rights, were represented in this.

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²¹⁵ The Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1860 (India).

Section 497 was kept in place in India after independence despite growing feminist movements and changing social norms. Adultery was further entwined with marriage via the Hindu Marriage Act of 1955²¹⁶, which established it as a basis for divorce. However, the terms were different for men and women, underscoring the continued discrimination against women. Only in 1976, with the passing of the Marriage Laws (Amendment) Act²¹⁷, did adultery become a legal basis for divorce for either party. Adultery was still riddled with legal and social approval, however. Growing resistance was encouraged by the law's discriminatory nature, the possibility of being abused against women, and incompatibility with contemporary notions of privacy and human autonomy. The Supreme Court's historic 2018 ruling in the *Joseph Shine v. Union of India* case²¹⁸ resulted from a petition filed in 2017 challenging the legality of Section 497. Due to the law's disregard for modern morality and violation of fundamental rights, the court overturned it and decriminalised adultery.

STATEMENT OF PROBLEM

The decriminalization of adultery in India, as pronounced in the landmark case of *Joseph Shine v. Union of India*, marks a significant legal and societal shift. While the judgment acknowledges the importance of individual autonomy and privacy, it raises many socio-legal questions that warrant thorough investigation. This study explores the implications of adultery decriminalization, examining its impact on prevailing societal norms, relationships, and the legal framework.

RESEARCH QUESTIONS

The then CJI of India clarified that the Hon'ble Court should deal only with the constitutional validity of § 497 I.P.C. and § 198 CrPC. and the court formulated the following issues:

1. Whether § 497 and § 198 are violative of article 14 of the Constitution?
2. Whether § 497 and § 198 are violative of article 15 of the Constitution?
3. Whether § 497 and § 198 are violative of article 21 of the Constitution?
4. Whether adultery should be treated as a crime even after changing the definition of adultery to a gender-neutral one.

²¹⁶ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

²¹⁷ The Marriage Laws (Amendment) Bills, 1976, No. XXII of 1976.

²¹⁸ *Joseph Shine v. Union of India*, 2019 (3) SCC 39.

RESEARCH OBJECTIVES

1. To examine the societal impact of adultery decriminalisation in India post-Joseph Shine v. Union of India by assessing changes in attitudes, perceptions, and stigmas surrounding extramarital relationships, with a specific focus on the evolving dynamics of marital relationships and family structures.
2. To analyse the legal consequences and implications of the Joseph Shine judgment on the protection of individual autonomy and the right to privacy in personal relationships, evaluating how the legal reform has influenced the interpretation and application of adultery laws in India and identifying challenges and opportunities presented to the legal system.

RESEARCH METHODOLOGY

This study employs a doctrinal research methodology, primarily relying on analysing legal texts, court judgments, statutes, and scholarly literature relevant to decriminalising adultery in India following the landmark case of Joseph Shine v. Union of India. The research will involve an in-depth examination of legal documents, including the judgment itself, related case law, and legislative provisions pertinent to adultery laws in India.

HISTORICAL AND LEGAL BACKGROUND OF SECTION 497 IPC

Colonial Legacy and Patriarchal Design

Section 497²¹⁹ of the IPC was drafted by Lord Macaulay and enforced in 1860. It stated:

“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 adultery.”

This provision criminalised only the man involved in an extramarital relationship with a married woman. The woman herself could neither be prosecuted nor sue her adulterous husband's partner. The law reflected a feudal, patriarchal view of marriage where women were regarded as the property of their husbands. Their consent or agency was not legally acknowledged.

²¹⁹ The Indian Penal Code, 1860, § 497, No. 45, Acts of Parliament, 1860 (India).

Post-Independence Judicial Endorsement

Despite the advent of a liberal-democratic Constitution in 1950, Section 497 remained untouched for decades. Challenges to the law were repeatedly dismissed. In *Yusuf Abdul Aziz v. State of Bombay*²²⁰, the court upheld the constitutionality of Section 497, citing Article 15(3)²²¹, which allows special provisions for women. Later in *Sowmithri Vishnu v. Union of India*²²², the court again declined to strike down Section 497, reasoning that extending the scope of the law would “create more problems than it would solve.” This judicial reluctance exposed the courts’ hesitance to interfere with prevailing social morality.

Adultery as Ground for Divorce

The Hindu Marriage Act, 1955²²³ incorporated adultery as a ground for divorce. Originally, only a wife had to prove that her husband committed adultery and treated her with cruelty. The 1976 Marriage Laws (Amendment) Act made adultery a valid ground for divorce for both spouses. While the provision shifted within matrimonial law from a moral to civil wrong, criminal law continued to treat it as a public wrong—a contradiction that remained unresolved until Joseph Shine.

SECTION 497 IPC AND SECTION 198 CRPC: A GENDERED LEGAL PERSPECTIVE

Section 497 of the Indian Penal Code, 1860, read with Section 198²²⁴ of the Code of Criminal Procedure, 1973, was emblematic of the patriarchal underpinnings of colonial criminal law in India. The law stated that any man who had sexual intercourse with a married woman, without the consent or connivance of her husband, was guilty of adultery. The woman, regardless of her willingness or participation, was not considered punishable under this section.

This provision treated women as dependents, without legal agency or sexual autonomy, effectively implying that their choices were to be mediated by their husband’s will. The assumption underlying Section 497 was that a married woman could not make independent

²²⁰ Yusuf Abdul Aziz v. State of Bombay, AIR 1954 SC 321.

²²¹ INDIA CONST. art. 15(3).

²²² Sowmithri Vishnu v. Union of India, AIR 1985 SC 1618.

²²³ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

²²⁴ The Code of Criminal Procedure, 1973, § 198(2), No. 2, Acts of Parliament, 1974 (India).

decisions about her sexual life and that her infidelity was primarily an affront to the husband's honour.

Moreover, Section 198 of the CrPC added another layer of gender bias by stipulating that only the aggrieved husband could file a complaint in cases of adultery. Women had no such corresponding right to prosecute their husbands for similar conduct, reinforcing the asymmetrical treatment of genders. The law's language and implementation underscored the notion that a woman was her husband's property, and any violation of that "property" by another man constituted a criminal breach.

This asymmetry was not just legally problematic but also socially regressive. It entrenched gender stereotypes by legally endorsing the idea of male dominance and female subordination. In *Joseph Shine*, the Supreme Court correctly observed that this formulation failed the constitutional test of equality and dignity under Articles 14²²⁵ and 21²²⁶.

JOSEPH SHINE V. UNION OF INDIA (2018): CASE OVERVIEW

Facts and Petition

Joseph Shine, a non-resident Keralite, filed a writ petition under Article 32 of the Constitution challenging the constitutionality of Section 497 IPC and Section 198(2) CrPC. The petitioner argued that the law violated Articles 14, 15, and 21 of the Constitution by discriminating on the basis of gender, denying equality before law, and infringing upon the right to privacy and dignity.

Key Constitutional Issues

The Hon'ble Court framed the following questions:

1. Whether Section 497 IPC and Section 198(2) CrPC violate Article 14 (equality)?
2. Whether they violate Article 15 (non-discrimination)?
3. Whether they violate Article 21 (personal liberty)?
4. Should adultery remain a criminal offence, even if gender-neutral?

The Verdict

²²⁵ INDIA CONST. art. 14.

²²⁶ INDIA CONST. art. 21.

The Constitution Bench comprising CJI Dipak Misra, and Justices R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud, and Indu Malhotra unanimously struck down Section 497 IPC and Section 198(2) CrPC as unconstitutional.

Key observations:

Article 14: The law was manifestly arbitrary. It treated women as victims and not as persons with agency.

Article 15²²⁷: The exemption of women from punishment did not serve the purpose of “special provisions.” It reinforced stereotypes.

Article 21: The right to privacy, recognised in *Puttaswamy v. Union of India*²²⁸, includes decisional autonomy in intimate matters. Criminalising consensual sexual relationships between adults violates this right.

Justice Chandrachud powerfully observed: “*Section 497 is a codified rule of patriarchy. Society has no business to interfere in the private lives of individuals.*”

Justice Indu Malhotra added: “*The law perpetuates gender stereotypes and paternalistic notions which are outdated and unconstitutional.*”

CONSTITUTIONAL MORALITY VS. SOCIAL MORALITY

Defining Constitutional Morality

Constitutional morality refers to adherence to the core principles of the Constitution—justice, liberty, equality, and fraternity—over and above prevailing social norms. It empowers courts to interpret laws in alignment with the transformative vision of the Constitution.

In *Navtej Singh Johar v. Union of India*²²⁹, the court held that laws rooted in societal morality, like Section 377²³⁰ IPC (which criminalised homosexuality), must yield to constitutional morality.

²²⁷ INDIA CONST. art. 15.

²²⁸ *Puttaswamy v. Union of India*, (2017) 10 SCC 1.

²²⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²³⁰ The Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).

Similarly, in *Joseph Shine*, the court held that the state cannot impose a particular vision of morality through penal provisions. Marriage, being a private contract, should be governed by civil law, not criminal sanctions.

The Role of the Judiciary

Through this lens, the judiciary becomes not just a passive interpreter of law, but an active protector of fundamental rights. The ruling in *Joseph Shine* thus aligns with the court's role as the guardian of constitutional values.

FEMINIST CRITIQUE AND GENDER JUSTICE

Patriarchy Embedded in Law

Section 497 criminalised adultery in a manner that dehumanised women. It reduced them to the status of chattel and viewed their consent as irrelevant. This was legally and morally unacceptable in a constitutional democracy that promises equality and dignity to all.

Feminist scholars such as Flavia Agnes and Nivedita Menon have long critiqued the law as being emblematic of India's legal patriarchy. The provision did not punish the adulterous husband but instead targeted the third party, treating the wife as a passive sufferer.²³¹

Post-Decriminalisation: Challenges Remain

While the judgment is a victory for women's rights, the societal judgment against women engaged in extramarital affairs remains strong. In matrimonial litigation, women are still stigmatised more harshly than men. There is a pressing need for family courts to operate without moral bias.

Moreover, personal laws in various religious communities still contain gender-biased provisions on maintenance, guardianship, and divorce—requiring deeper legislative reform beyond this judgment.

INTERNATIONAL JURISPRUDENCE ON ADULTERY

India's move to decriminalise adultery brings it in line with international human rights standards:

²³¹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, Oxford University Press, 2001; Nivedita Menon, *Seeing Like a Feminist*, Zubaan, 2012.

United Kingdom: Adultery is not a criminal offence. It is a ground for divorce under civil law.

United States: Although adultery remains a crime in a few states, it is rarely prosecuted and is largely treated as a civil matter.

Germany and France: Decriminalised adultery decades ago in keeping with privacy and gender equality rights.

South Korea: Decriminalised adultery in 2015 after holding that it infringes on individual autonomy (South Korean Constitutional Court, 2015).

In contrast, countries like Saudi Arabia and Pakistan still treat adultery as a criminal offence under religious law, with harsh penalties, especially for women. India's judgment thus signals a progressive, rights-based approach, aligned with global democratic values.

SOCIETAL REPERCUSSIONS AND CULTURAL RESISTANCE

Despite the progressive nature of the Joseph Shine ruling, the societal acceptance of decriminalised adultery remains fraught with challenges. India's deeply entrenched notions of marital sanctity, honour, and fidelity continue to influence public perception, especially in rural and traditionalist settings. Adultery, though decriminalised, is still widely considered a moral wrong and a serious breach of trust within a marriage.²³²

Many Indian families, especially those from orthodox backgrounds, view marriage not merely as a personal contract but as a sacrosanct social institution embedded in community values and religious rituals. Consequently, any threat to its perceived integrity, such as adultery, is often met with severe social sanction. Women, in particular, bear the brunt of this social stigma.

The media portrayal of adultery in Indian television and films also reflects and reinforces these attitudes. While some modern narratives portray adultery in nuanced ways, many continue to moralise and vilify the woman involved, perpetuating stereotypes of the "homewrecker" or the "fallen woman." These depictions contribute to the public's negative perception of the act and those associated with it, regardless of the legal standing.

²³² GAUTAM BHATIA, THE TRANSFORMATIVE CONSTITUTION (HarperCollins, 2019).

Furthermore, in social discourse, there continues to be confusion between decriminalisation and legal validation. Many assume that by decriminalising adultery, the Court has given it moral sanction, which is not the case. The judgment specifically stated that adultery, while no longer a criminal offence, could still serve as a valid ground for divorce and be subject to civil liabilities.

ADULTERY AND DIVORCE: CONTINUING LEGAL CHALLENGES

The decriminalisation of adultery has not eliminated its relevance in civil matrimonial law. Adultery continues to be a ground for divorce under various personal laws in India, including the Hindu Marriage Act, 1955; the Indian Divorce Act, 1869; the Dissolution of Muslim Marriages Act, 1939; and the Parsi Marriage and Divorce Act, 1936.

However, several challenges persist. Firstly, the definition and proof of adultery in matrimonial disputes remain ambiguous. Courts often require clear evidence of sexual intercourse, which is difficult to establish without infringing on privacy. This leads to prolonged litigation, character assassination, and emotional distress for the parties involved.

Secondly, the standard of proof varies significantly across cases. While some courts have accepted circumstantial evidence, others insist on direct proof. This inconsistency leads to unpredictability in judicial outcomes, undermining the credibility of the legal process.

Thirdly, personal laws across religions continue to treat men and women unequally in many respects. For instance, under Christian personal law (prior to amendments), a wife had to prove both adultery and cruelty to obtain a divorce, whereas a husband could do so by proving only adultery. Although some of these laws have been reformed, significant disparities still exist.

Moreover, while adultery is recognised as a civil wrong, issues like alimony, child custody, and division of property in cases involving adultery are subject to judicial discretion. There is no uniform standard guiding how the presence of adultery affects these outcomes, leading to inconsistencies and perceived injustice. Some courts may consider the adulterous spouse's conduct while awarding maintenance, while others may refrain from penalising personal choices in such matters.

In light of these issues, there is a pressing need for comprehensive reform in matrimonial law. Legal scholars and women's rights advocates have called for uniform, gender-neutral laws that treat all spouses equally, provide clear standards for evidence, and avoid moral policing. They also emphasise the importance of counselling, mediation, and privacy in adjudicating sensitive matters like adultery.

IMPLICATIONS AND THE ROAD AHEAD

Impact on Civil Remedies

While adultery is no longer a criminal offence, it remains a valid ground for divorce under personal laws. This dual treatment is consistent with the distinction between public wrongs and private disputes. Courts continue to examine adultery for issues like alimony, custody, and maintenance.

Re-examining Marital Rape Exception

A crucial follow-up to *Joseph Shine* could be the reconsideration of the marital rape exception under Section 375²³³ IPC. The logic of autonomy, dignity, and consent must be extended to challenge the notion that marriage implies irrevocable sexual consent.

Uniform Civil Code and Gender-Just Reforms

This judgment also strengthens the call for a Uniform Civil Code under Article 44²³⁴ of the Constitution, not in terms of uniformity of practice, but uniformity in protecting fundamental rights and ensuring gender justice across all personal laws.

CONCLUSION

The decriminalisation of adultery in *Joseph Shine v. Union of India* is not merely a legal reform—it is a reaffirmation of India's commitment to the constitutional values of liberty, equality, and dignity. By striking down Section 497 IPC, the court recognised that criminal law must not become an instrument of enforcing patriarchal morality. However, decriminalisation alone is not sufficient. Societal attitudes, personal laws, and institutional biases must also evolve.

²³³ The Indian Penal Code, 1860, § 375, No. 45, Acts of Parliament, 1860 (India).

²³⁴ INDIA CONST. art. 44.

True equality in intimate relationships can only be achieved through a combination of legal reform, judicial sensitivity, and cultural transformation. The Joseph Shine judgment is a milestone on this path, and its legacy will continue to shape India's journey towards a more just, equal, and humane society.

