

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 4**

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**2021**

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# Condemnation of Decriminalization of adultery in India: An Analysis of Joseph Shine v. Union of India

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## ABSTRACT

*Adultery is an act which indulges any sort of consensual sexual relationship between a married individual and an individual who isn't their companion. Generally adultery implies unified sexual intercourse with the wife of another man. It mainly focuses on patriarchy and male toxic masculinity. Adultery in India treats a woman as a victim who has been enticed by a man to do such an act and not as an offender. This case commentary attempts to justify the contentions against Decriminalization of Adultery and how it can demolish the sanctity and the institution of marriage.*

**Keywords:** Decriminalization, Adultery, Marriage, Legality, patriarchy.

## I. INTRODUCTION

Transportation Section 497 of Indian Penal Code defines Adultery Law which was struck down by five-judge bench in a Supreme Court judgement in *Joseph Shine vs. Union of India*<sup>3</sup>. Lord Macaulay who is the maker of the penal code questioned its nearness within the penal code as an offense or maybe proposed that it ought to be way better cleared out as a civil wrong. Numerous judgements have expanded the ambit of essential rights in similarity with changing societal values and expanding individual freedom and the Law advances with time to time.

## II. FACTS OF THE CASE

- Joseph Shine filed a writ petition under Article 32 of Indian Constitution challenging the constitutionality of the offence of Adultery under Section 497 of Indian Penal Code r/w Section 198 of Criminal Procedure Code violating the Articles 14 and Article 15 of the Constitution of India.

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<sup>3</sup> Joseph Shine vs. Union of India, 2018 SCC Online SC 1676.

- The petitioner contended that the provisions for adultery has been claimed to be autocratic and prejudiced on the basis of gender.
- The petitioner claimed the dignity of a woman can be demolished by such laws and hence it is violative of Article 21 of Indian Constitution.
- The respondent contended that the Article 15(3) has been saved by the discrimination by provision which makes special laws by state rights for women and children.
- The respondent demanded the court to retain the provision but to excise the unconstitutional part.
- The five-judge bench was set up for hearing the petition.

### **III. ISSUES RAISED**

Based on the facts, it is evident that the legal issues raised are multi- dimensional revolving around “Decriminalization of Adultery”.

1. Whether the provision for adultery (Section 497 IPC) is excessive and severe in nature?
2. Whether Section 497 IPC is violative and arbitrary under Article 14, 15 and 21 of the Constitution?
3. Whether the provision for adultery enables the stigma of women being the property of men and encourages discrimination on the basis of gender under Article 15?
4. Whether the patriarchal control over women’s bodies compromises their dignity by the way of denial of sexual autonomy and right to self-determination?
5. Whether the offence of adultery in IPC can be considered as an intrusion by law in the private sphere of a person?

### **IV. JUDGEMENT**

- The Supreme Court Struck down Section 497 of Indian Penal Code in this case which is violative of Articles 14, 15 and 21 of Indian Constitution and proclaimed it as impermissible.
- This provision is based on the generalization that a man has control over his wife’s sexuality and discrimination which clearly violates Article 14 of the Constitution of India. It sustains the idea that women are detached and unable to work out their sexual opportunity.
- The court in clarification said that each one of them has freedom to create choices with respect to their sexual life and women should not be treated as a property.

- This provision makes a woman a victim and husband a distressed person. Indeed in case the law changes and gives equal rights to women against adultery, it is completely a private matter.
- The Apex Court held that law is quite unfair and isn't accordance with the modern times and consequently pronounced void.
- Adultery is not a crime, way better cleared out as a ground for divorce.

## **V. COMMENTS**

The set of odd conditions together constituted a near-perfect storm of patriarchy. On marriage, proprietorship over a woman's body moves from her father to husband, the husband being approved to bring an indictment against the other man strike of the conviction. Woman has no autonomous identity for the reason of law and society, as she has to encompass into the identity of her husband. As the individuals are moving towards westernization adultery become more common in bigger cities. Decriminalization of Adultery cleared a way for individuals to commit adultery without any fear where this choice has been predominantly criticized on this specific ground.

Since decriminalization, there has been increase in the number of adultery. The decriminalization of adultery goes beyond its prompt setting which may have a distend impact that serves for more remarkable freedom, balance, and autonomy inside what is commonly caught on to be the private sphere. The Supreme Court has moreover been criticized that they ought to have let parliament take choices on adultery concurring to the changing social environment. Adultery plays chaos within the lives of the concerned individuals even though it is not considered to be a serious crime. Some individuals foresee dedication and faithfulness of a person towards their life partner. An individual who is performing a two-timing act is damaging the indispensable standards of the institution of marriage which of the society and reasonableness and faithfulness is being focused on. Adultery does bring out a few of the coordinate results even though it doesn't appear to be gravest of crimes. The person committing adultery is aware of the truth that someday by one means or another his/her accomplice will come to know of his/her contact, and definitely won't take it peacefully; undoubtedly that individual will have to be confront a part of anger and criticism by the family as well as the society. Considering the laws and the situation of our society, adultery is certainly a serious act.

## **VI. CONCLUSION**

Adultery is a comprehensive occurrence that has the ability to threaten the bedrock of a family

and destroy the family relations. Decriminalisation of adultery has the potential to impact millions of families. Though there are certain benefits, the severe fallout cannot be ignored. In a country with one of the highest numbers of divorce and marital infidelity, decriminalising adultery will only lead to the disruption of institution of numerous marriages. Since adultery is not a crime now, it will become an act that will destroy the very sanctity and foundation of marriage. It is worth noting that rather than decriminalising the whole legal provision, the Section could have been amended in such a way that it shows no point of discrimination between men and women, instead of giving the upper- hand to men and being derogatory to women.

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