BLOGS

Joseph Shine v. Union of India: Landmark Case on Decriminalisation of Adultery

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The case of Joseph Shine v. Union of India challenged the constitutional validity of Section 497 of the Indian Penal Code (IPC) and dealt with decriminalisation of adultery. Read more about it here!

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Date of Judgment: September 27, 2018

Bench: Dipak Misra (CJI), R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud, Indu Malhotra

Introduction

In December 2017, Joseph Shine filed a Public Interest Litigation (PIL) under **Article 32**, challenging the constitutional validity of the offence of adultery under Section 497 of the IPC and Section 198(2) of the CrPC.

The case argued that the law was discriminatory and violated Articles 14, 15, and 21 of the Indian Constitution, as it treated women as victims rather than equal participants and excluded them from being prosecuted for adultery.

Facts of the Case

Shine's motivation to file the PIL stemmed from a personal tragedy where a friend committed suicide after a woman falsely accused him of rape. He argued that these sections were gender-biased, violated equality under Article 14, 15, and 21 of the Indian Constitution, and unfairly treated women as victims without giving them the right to prosecute adulterous husbands.

The law was seen as discriminatory, as it treated men and women unequally, and women were considered the property of their husbands. The Supreme Court, recognizing the law as outdated

and discriminatory, referred the case to a five-judge Constitution Bench.

Arguments Advanced

Petitioner's Side

The petitioner, Joseph Shine, argued that Section 497 of the IPC and Section 198(2) of the CrPC were unconstitutional as they violated fundamental rights under Articles 14, 15, and 21 of the Indian Constitution.

The counsel for the petitioner highlighted that these laws, dating back to the British era, were outdated and irrelevant in modern times. They contended that Section 497 was discriminatory, treating women as the property of their husbands and denying them the right to prosecute adulterous husbands.

The petitioner also argued that the laws were paternalistic and arbitrary, infringing on women's dignity, sexual autonomy, and privacy. They asserted that adultery, being a consensual act between two parties, should not criminalize only men or be contingent on the husband's consent. Therefore, both parties should be equally liable, and everyone should have the right to engage in consensual sexual relationships, irrespective of their marital status.

Respondent's Side

The respondents argued that adultery should remain a criminal offence to protect the institution of marriage, as it negatively impacts the spouse, children, and society. They contended that adultery is morally outrageous and should be punished to deter such behavior.

The respondents claimed that the discrimination in the law was justified under Article 15(3), allowing special laws for women and children, and that the right to privacy under Article 21 is not absolute and can be restricted for public interest. They also argued that Section 497 served as affirmative action favoring women and was necessary to maintain societal morality and the sanctity of marriage.

Issues Identified

- Whether Section 497 of the IPC read with Section 198(2) of the CrPC violates Articles 14, 15, and 21 of the Constitution of India.
- Whether the provision for adultery is arbitrary and discriminatory under Article 14.
- Whether Section 497 violates Article 15 by discriminating on a gender basis, especially as it does not consider an act as an offence if the husband consents to it.
- Whether criminalizing adultery constitutes an intrusion by law into the private realm of an individual.

Judgement on Decriminalisation of Adultery

The Supreme Court unanimously struck down Section 497 of the IPC, declaring it unconstitutional.

The Court held that the law was manifestly arbitrary and violated the right to equality. It treated women as property, and the classification it made based on gender was not reasonable or justifiable. The bench noted that the section reinforced stereotypes about women's roles in marriage and society.

The Court emphasized that women are equal partners in a marriage and should not be reduced to the status of mere objects. Section 497 placed women in a subordinate position and failed to recognize their individual autonomy. The law was also found to reinforce patriarchal views and violate the dignity of women.

The Court, relying on the right to privacy recognized in ***Puttaswamy v. Union of India***, held that sexual autonomy is part of the right to privacy. The state has no authority to interfere in consensual sexual relationships between adults, as long as they do not harm public morality or order.

The Court ruled that adultery may be grounds for civil remedies like divorce, but it should not be criminalized. Criminal law should not interfere in matters of personal relationships between consenting adults.

Key Observations by the Judges

1. Chief Justice Dipak Misra: Adultery is not a crime; at best, it is a civil wrong. The law cannot treat women as objects and infringe upon their individual dignity. Marriage does not imply a

surrender of individual autonomy.

2. Justice D.Y. Chandrachud: The provision perpetuated patriarchal views and denied women the autonomy to make choices in matters of sexual relations. It reinforced the idea that women are subordinate to men in a marriage. He further emphasized the importance of privacy, autonomy, and the right to equality in personal matters.
3. Justice Indu Malhotra: She agreed that the law violated the right to equality and dignity of women. She also stated that the notion of the woman being “the property” of her husband was deeply patriarchal and unjust.

Analysis of the Judgement

This decision overruled previous judgments and established that adultery is a private matter, not a criminal offence. The Court emphasized that the law treated women as property and was discriminatory and outdated.

The judgment highlighted that adultery, though morally wrong, should not be criminalized and should only be grounds for divorce and therefore ruled in favour of decriminalisation of adultery.

Critics argued that decriminalizing adultery might increase infidelity and that the decision should have been left to Parliament. Nonetheless, adultery is now a civil issue, not a criminal one, and the ruling aims to protect the dignity and autonomy of individuals within marriage.

The Supreme Court observed that Section 497 of the IPC and Section 198(2) of the CrPC are arbitrary and discriminatory, violating Article 14. The classification treats only the husband as an aggrieved person and does not give the wife any rights, which is outdated and perpetuates the notion of women as property.

The Court found that Section 497 discriminates based on gender, violating Article 15. It is based on stereotypes that men control their wives’ sexuality, treating women as passive and incapable of exercising sexual freedom.

The Court also held that Section 497 violates Article 21 by compromising women’s dignity and sexual autonomy. It allows adultery with the husband’s consent, making women subservient and denying them individuality.

Conclusion

The Supreme Court’s decision in Joseph Shine v. Union of India marked a significant step toward gender justice and the recognition of individual autonomy. The Court decriminalized adultery, emphasizing the importance of personal liberty, privacy, and equality in intimate relationships. While the judgment did not endorse adultery, it placed the burden of such personal matters in the domain of civil law rather than criminal law, ensuring that the state does not interfere in consensual adult relationships.

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