

DE JURE NEXUS LAW JOURNAL

Author:

Deepasha Sharma

Symbiosis Law School, Noida

1st Year, BA LL.B.

JOSEPH SHINE VS UNION OF INDIA

Court: Supreme Court

Citation: 2018 SC 1676

Coram: Dipak Mishra, R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud, Indu Malhotra

Theme: Section 497's constitutional validity

Subject: Indian Penal Code

Judgement: India

LAW JOURNAL

INTRODUCTION

There are certain laws in India that have gotten so antiquated that they have lost their significance over time. One of these laws was the one concerning adultery. It was specified in the International Criminal Code (IPC) under Section 497. The legislation was very discriminating and was based on the alternatives of the British period, when there was no freedom, independence, or rights granted to the people, and a patriarchal culture predominated. As a result, the legislation had become outdated. This statute has been challenged several times throughout the years, and on September 27, 2018, after almost 158 years of existence, it was struck down by the hon'ble Supreme Court of India.

BRIEF FACTS OF THE CASE/PREAMBLE

A writ petition was filed following the right prescribed under article 32 of the constitution by Joseph Shine. This petition challenged the legitimacy of "section 497 of IPC read together with section 198 of Cr.P.C.", the reason being it was a violation article 14, 15, and 21. This all

incidence started as a PIL against the offence of adultery. As described by the petitioner, adultery is arbitrary and biased against one gender. The petitioner stated that such a statute degrades a woman's dignity. The petition was heard by a constitutional bench of five justices.

CASE COMMENT/ANALYSIS

First and foremost, the scholar believes that the Supreme Court's objective in this decision was hon'ble. The court was aiming to respect the spirit of the constitution by attempting to eliminate gender inequity, which had been a key area of controversy in the subject of adultery for many years. We must not lose sight of the social institution of "family," which is an essential component of any community. Adultery is not only a violation of socially acceptable conventions, but it is also detrimental to a family's reputation. It might also be the source of a family's disintegration. It should also be highlighted that the family's social position and reputation have been badly impacted as a result of the adultery practice. Adultery is a morally reprehensible act. A legal right cannot be a moral evil. A morally reprehensible conduct, according to natural law philosophers, cannot constitute a legal right. Despite some deviations from this paradigm, following positivists believed that laws should include moral substance. In addition, the researcher would like to examine the fact that in situations of adultery, there is a great deal of stress within a family, which may result in mental trauma or other harm to the spouses or other family members. Also, the issue arises as to whether the harm done to a victim spouse's reputation, as well as his or her mental and physical health, can be healed or compensated by a simple divorce. As a result, punitive laws are required.

ISSUES

1. Is the provision in Article 14 for adultery arbitrary and bigoted?
2. Whether the provision for adultery supports the notion that women are men's property as well as discriminates based of gender under Article 15?
3. Is it possible that denying a woman's sexual autonomy and freedom to self-determination compromises her dignity?
4. Constitutes it possible that criminalizing adultery is a legal intrusion into an individual's private life?

JUDGEMENT

In its court ruling in the judgement of “Joseph Shine v. Union of India”, the hon'ble Supreme Court knocked down the 158-year-old Victorian Morality Law against Adultery. The decision is unique in that it overturns all prior decisions maintaining the criminalization of adultery. With benefits come drawbacks, and this decision is likely to be no exception. So, although adultery is now legal, it is still unethical. Trust is the foundation of marriage which spouses have in one another. The Supreme Court has taken a step back from intervening in people's

personal and moral life. Adultery is now only a legal violation for which divorce is the only remedy.

The court said that law is founded on a "societal assumption." The statute has been knocked down and the court has said that "a husband cannot be the master of his wife" in four distinct cases. The following were found in the judgment: - Section 497 is antiquated and unconstitutional. Adultery is no longer considered a crime. The application of Section 497 is capricious. The right of an individual to make decisions about his or her sexuality is the most personal choice he or she can make, and it should be safeguarded from public criticism and criminal punishment. Wrongs that are criminal by law must be public wrongs, not just acts perpetrated against a single victim. In a community, there can't be male supremacy, patriarchal monarchy, or husband monarchy over wife.

When absolutely required, the right to live in dignity also includes the right not to be exposed to public criticism and punishment by the state. If there is a civil remedy that can be used to achieve the goal, it should be used. Why use a punitive sentence if a civil sanction may accomplish the same goal? Criminal law must be consistent with constitutional morality. Adultery provision imposes a marital structure in which one spouse must relinquish sexual liberty to another.

The section fails the legality test and is incompatible with the constitutional guarantee of liberty and dignity. By this decision, the Supreme Court has differentiated adultery as an offense, but it has also said that adultery will continue to be a reason for divorce. Without a doubt, the Supreme Court's historic decision is founded on preserving people's dignity by avoiding punishment when a civil remedy like as divorce is accessible to the aggrieved spouse, thereby removing the post-millennial antiquated rule. Finally, the section 497 was held unconstitutional by the hon'ble Supreme Court, and it was repealed as a punitive law that viewed women as "chattel of husbands."

PRESENT STATUS OF THE JUDGEMENT

In bigger cities, where individuals are going toward westernization, infidelity is increasingly widespread. This decision has been heavily criticized on the grounds that it allows individuals to commit adultery without fear of repercussions. Since its legalization, India has witnessed an upsurge in the matters relating to adultery. There is a common notion among males that guaranteeing the purity of a lineage any more is not possible. Many argue that the parliament should have followed proposals from law commissions to penalize both men and women without any bias for the offence of adultery. The hon'ble Supreme Court has been chastised for not allowing parliament to make judgments on adultery in light of changing socioeconomic circumstances.

CONCLUSION

The twenty-first century has ushered in a new age of equality and liberalism that has swept the world. To eliminate laws that discriminate against women, legislative reforms are necessary. With the passage of time, several Indian laws have become outdated. Adultery was one of them, and it had to be destroyed. Adultery not only discriminates between men and women, but it also degrades the dignity of a woman. This was seen as an insult in a culture dominated by patriarchy and paternalism. In that society, women were regarded as belonging at home, and they lacked the same rights and opportunities as men. And, as seen by the provision for adultery, married women were not seen as individuals but as the property of their husbands.

Things have changed since then, and women are no longer veiled in the shadows of males. Adultery is not a criminal violation since it is a private matter in which the courts have no jurisdiction. Interfering with a person's sexual autonomy would be a breach of constitutional principles. According to this judgement, adultery is now a civil rather than a criminal offense. Because adultery is a particularly personal affair involving the marital area, criminalizing both men and women, as advocated by Law Commission research, would not have accomplished the goal. The Legislature should have done it a long time ago, but as societal notions have evolved, our court has been pretty good at filling in the gaps and repealing unneeded statutes.

Section 497 of the Indian Penal Code was knocked down, which stated: "Whoever has sexual intercourse with a person who is the wife of another man without that man's permission, such sexual intercourse not amounting to the act of rape, is guilty of the offence of adultery."

- The issue: It considered women as victims of crime and as her husband's property. If a man had sexual relations with a lady after obtaining her husband's permission, it was not considered a crime.
- After the Judgment: Although adultery may be grounds for divorce, it is no longer a criminal offense punishable by up to five years in prison.
- The government's problem: The Centre said in its affidavit to the Supreme Court that diluting the charge of adultery would go against the sacredness of marriage.
- Keep in mind that, although adultery is no longer a crime in and of itself, any unhappy spouse who commits suicide as a result of their partner's infidelity may be charged with abetment to suicide, which is a felony.