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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **"REDEFINING FIDELITY: ADULTERY, AUTONOMY, AND THE SEARCH FOR JUSTICE IN MODERN INDIA"**

AUTHORED BY - ADVOCATE DIVYA TANDON

## **Abstract**

This paper analysis the legal and societal impacts of the Hon'ble Supreme Court of India's landmark Judgement in the case of "*Joseph Shine v. Union of India* (2019) 3 SCC 39, AIR 2018 SC 4898"<sup>1</sup>, which decriminalizes adultery in India by striking down Section 497 of the Indian Penal Code. This significant judgment Indian jurisprudence took a leap into an advanced phase, cascading outdated patriarchal norms and adopting a constitutional foundation for personal liberty, egalitarianism and privacy.

The paper examines how this decriminalization affects the perception of marital fidelity, the righteousness of marriage, and the intervention of state in regulating personal relationships. The paper illustrates how the judicial system, has made headway in exonerating criminal prohibitions, but in doing so, has created a vacuum devoid of appropriate civil sanctions for the aggrieved spouse. The emotional, psychological and Civil harm resulting due to infidelity remains largely unaddressed under our existing family law.

Subsequently, the paper calls for a balanced legal reform that maintain both personal liberty and accountability within sacred knot of marriage. It suggests a civil law statute that respects independence and choices while providing justice to betrayed spouses within the hoax of a relationship, thereby aligning India's legal position in consonance with constitutional values and evolving social norms.

## **1. Introduction**

Adultery has been long viewed as both moral transgression and a legal offense in numerous parts of the world. In India, Section 497 of the Indian Penal Code (IPC)<sup>2</sup> once criminalized adultery in a manner that treated women as an asset and denied association in sexual

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<sup>1</sup> Kirti Singh, *Marriage, Rights and the Indian Constitution: From the Uniform Civil Code to the Joseph Shine Case*, 12 Indian J. Const. L. 101 (2019).

<sup>2</sup> Indian Penal Code, 1860 (India).

relationships. This provision, anachronous from colonial era, finally abolished by the Hon'ble Supreme Court in the landmark judgment "*Joseph Shine v. Union of India*". This ruling proclaimed the law unconstitutional, believing it in violating the basic fundamental rights, including the right to privacy, gender equality, choice and Liberty.

While the judgment took a progressive step towards reformative legal landscape, it also sparked intense public debate. Analyst debated that decriminalization of adultery could sabotage the sanctity of marriage, erode moral accountability, and weaken legal protections for aggrieved spouses. Simultaneously, supporters hailed the decision as a victory for individual liberty and gender justice<sup>3</sup>. Perhaps there has been a legal vacuum left after the verdict especially regarding legal aids for aggrieved spouses raises significant concern about the evolving role of the law in regulating personal relationships.

This paper examines the connotation of decriminalizing adultery in India from a socio-legal perspective. It seeks to examine the constitutional rationale behind the Joseph Shine's verdict. The central thesis of this paper is primarily the constitutional values were infringed by having criminal liabilities against adultery, and how abolishing it has exposed a gap in civil remedies that warrants serious reform to ensure justice and emotional accountability within marriage.<sup>4</sup>

## **2. Historical and Legal Context**

Indian adultery laws are rooted to the colonial legislature. In Indian Penal Code a man who has betrayed his wife after engaging in a sexual relationship with someone else's wife without obtaining her husband's consent has been considered as a criminal offense. Strangely, the justice of India did not criminalize a married man's sexual relationship with an unmarried woman or even with a widow, creating an unreasonable and gendered distinction.

The Victorian notions of morality, patriarchal control over women's sexuality<sup>5</sup>, and the sanctity of monogamous marriage of colonial law can be traced here. Over the time, Indian courts of Law upheld the constitutionality of Section 497. In *Yusuf Abdul Aziz v. State of Bombay (1954)*, the Supreme Court rejected a challenge against the law on grounds of Article 14, upholding

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<sup>3</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 1999).

<sup>4</sup> *Law Commission of India, Report No. 227, Laws of Civil Marriage in India – A Proposal to Resolve Certain Conflicts*, (2009).

<sup>5</sup> Shreya Atrey, *Sex, Stereotypes and Constitutional Silences: How Law Does (Not) Speak about Women*, 9 NUJS L. Rev. 1 (2016).

that the exemption of women from prosecution did not amount to unconstitutional discrimination.

Once Again, in the matter “*Sowmithri Vishnu v. Union of India (1985) and V. Revathi v. Union of India (1988)*”, the court defended its view that Section 497 was not a discrimination against women but it provide a protective shield to them. These ruling, however, failed to appreciate the fundamental imbalance perpetuated by the law and its regressive portrayal of women as passive participants in sexual relationships.

Despite escalating criticism and debates, the law remained untouched until 2018. After the landmark verdict of “*K.S. Puttaswamy v. Union of India (2017)*”<sup>6</sup>, which acknowledge the right to privacy, and “*Navtej Singh Johar v. Union of India (2018)*”, which decriminalized homosexuality the demand for the abrogation of Section 497 IPC, grew parallel to constitutional progress. These decisions laid the preliminaries for a progressive recontextualization of sexual autonomy, ultimately culminating in the Joseph Shine verdict.

### **3. The Joseph Shine Judgment: Analysis**

The Supreme Court's judgment “*Joseph Shine v. Union of India (2018)*”<sup>7</sup> marks a turning point in the legal discourse encircling adultery in India. The case challenged the constitutionality of Section 497 of the Indian Penal Code, which criminalized adultery, but only when committed by a man against a married woman. The petitioners alleged that statute infringed the right of equality under Article, and violate fundamental rights, of right to privacy under Article 21, and the right to live with dignity.

#### **Key Arguments**

The petitioners argued that Section 497 IPC was outdated and unconstitutional. One of the main arguments was that it created a gendered inequality punishing men for adultery but absolving women from prosecution. This strengthen patriarchal beliefs that women cannot exercise autonomy in marital relationships and are merely the property of their husbands. Further, Law doesn't consider woman's consent as a legitimate factor in committing an offense, implying

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<sup>6</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

<sup>7</sup> LiveLaw.in, *Joseph Shine Judgment Summary*, <https://www.livelaw.in/top-stories/sc-strikes-down-adultery-as-a-crime-147216> (last visited Apr. 29, 2025).

Supreme Court Observer, *Joseph Shine v. Union of India Case Analysis*, <https://www.scobserver.in/cases/joseph-shine-v-union-of-india> (last visited Apr. 29, 2025).

that a woman's agency was irrelevant in the context of marital fidelity.

The Union of India defended the law, stating that it provided a safeguard to protect the sanctity of marriage, with women aiding from its protective measures. The government insisted that the law did not amount to discrimination, because it targeted the privileged and powerful gender in the society.

### **Judicial Reasoning**

The bench, consisting of Chief Justice Dipak Misra and Justices R. F. Nariman, A. M. Khanwilkar, D. Y. Chandrachud, and Indu Malhotra, ruled by a majority of 4:1 that Section 497 was unconstitutional. The judgment, penned by Justice Nariman, emphasized that the law was violation of the fundamental rights guaranteed by the Indian Constitution.

The Court depended heavily on the right to privacy, pronouncing that adults have the right to make personal decisions in their intimate relationships, including marital ones. This contemplates the constitutional right of sexual autonomy within marriage. Additionally, the Court also perceived that Section 497 perpetuated gender inequality and diminished the agency of women in marriage. Women, like men, should also be free in making decisions about their sexual lives without interference.

### **Aftermaths of the Judgment**

The judgment reflected a wider judicial shift from not only decriminalizing adultery but also acknowledging personal autonomy and gender equality in marital relationships. Indian Law came nip and tuck with the global norms after striking down Section 497. This ruling, however, did not discourse the civil consequences of adultery, which leaves a void in legal remedies for the aggrieved by infidelity.

The decriminalization of adultery has significant ramifications, not just in legal terms but also in how society perceives marital fidelity and the sanctity of marriage. The Joseph Shine judgment sparked a complex dialogue about the evolving nature of marriage, particularly regarding the communal expectations that have commonly governed it.

#### **4. Fidelity: Modified Interpretation**

Traditionally, marital fidelity was always contemplated as a foundation of a successful marriage, with adultery representing treachery of this sacred bond. The Legislation, through Section 497 IPC, emphasize that adultery constitutes to a criminal offence hereby signaling the societal importance of fidelity. By abolishing the criminal penalties associated to adultery, the Hon'ble Supreme Court changes the discourse of the matter from a legal obligation to one of morality.

However, this transition creates a void. Widespread opinion also stated repealing the criminal liabilities may also result into creating a perspective that fidelity may no longer be an essential for a healthy relationship. This raises concern about how an individuals will comprehend the marital infidelity. This modification may also lead to the transformation in the perception of marital fidelity among social strata, including urban and rural divides, as well as its traditional and cultural beliefs.

#### **Social Prejudice and Matrimonial Sanity**

Marriage is not only a conjugal relationship but a social institution that carries considerable importance in the cultural and religious milieu. Thus, adultery has not only being disregard to the marital sacred knot but also a transgression against cultural expectation. The Supreme Court's ruling has, however, led to polarized reactions. Proponents of the judgement contend that personal relationships should remain free from legal interference, particularly regarding individual autonomy. Conversely, opponents claim that decriminalizing adultery represents a deterioration of societal morals and may contribute to the weakening of marriage as a foundational institution.

The public debate over marital fidelity after *Joseph Shine* case is indicative of a major shift of societal ideologies. While certain factions view the decision as a triumph for personal freedoms, others worry that it may jeopardize social cohesion by eroding the moral basis of marriage.

## **5. Legal Consequences Post-Decriminalization**

The decriminalization of adultery through the *Joseph Shine*<sup>8</sup> judgment raised critical concerns regarding the civil obligations of marital infidelity. Although adultery is no longer a criminal offense but the emotional and psychological damage caused by infidelity remains same. This part explores how the legal system, particularly in the context of divorce, alimony, and custody, deals with the effects of adultery in an era where it is no longer criminalized

### **Impact on Divorce Proceedings**

Earlier, adultery served as a ground for divorce under various personal laws, including the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, amongst others. Even through adultery has been decriminalization but it still continues to be a valid ground for divorce in these statutes. However, infidelity still ought to be addressed as civil wrong.

Adultery is now categorized as a type of “cruelty” in the divorce cases under Section 13(1)(i) of the Hindu Marriage Act, 1955<sup>9</sup>, along with other relevant personal laws. This change signifies a transition from criminal consequences to civil remedies, as infidelity ceases to be punishable but is still potentially serving as evidence for damage to the marriage. Courts has shifted their focus to the emotional and psychological impact of adultery rather than treating it as a moral offense.

### **Custody and Maintenance Issues**

Divorce proceedings highly depend upon the factors surrounding infidelity for determining child custody and spousal support. As the Child’s well-being is the utmost priority in the child custody case, though adultery may not be a direct factor for the same but can be taken into consideration in order to secure a child’s welfare. Nonetheless, the Supreme Court has underscored that the child's welfare is the most important factor in these decisions, and merely committing adultery may not be enough reason to restrict a parent's custody rights.

### **Real World Challenges in Litigation**

One of the primary challenges that arose after decriminalization is the difficulty of proving adultery in court. In the absence of criminal sanctions, it may be more challenging for an

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<sup>8</sup> Gautam Bhatia, *Decriminalizing Adultery: Joseph Shine v. Union of India*, 3(1) Indian L. Rev. 1 (2018).

<sup>9</sup> PRS Legislative Research, *Hindu Marriage Act, 1955*, <https://prsindia.org/laws/bills/hindu-marriage-act> (last visited Apr. 29, 2025).

aggrieved spouse to establish infidelity, as the burden of proof in civil cases is generally lower. Furthermore, transitioning from criminal to civil consequences for adultery could result in extended legal battles, as partners strive to prove the damage caused by infidelity without the support of criminal statutes that previously served as a deterrent.

Furthermore, the legal community is grappling the most effective ways to address cases where adultery is used as a ground for cruelty, which is inherently subjective and dependent on the facts of each case differently. While courts may consider psychological or emotional abuse resulting from infidelity, it stills remains unclear how this will be consistently implemented across cases.

## **6. CONCLUSION AND THE PATH AHEAD**

A significant moment in Indian law was marked by the decriminalization of adultery in "*Joseph Shine v. Union of India*," which put a spotlight upon female equality, individual liberty, and the sanctity of marriage. While this landmark judgment rightly dismantled an archaic and constitutionally flawed law, it also highlighted significant void in India's civil legal structure concerning the actual harm that adultery may cause.

As this paper contends, the transition from criminalization to decriminalization must be accompanied by intentional and robust legal reform. We must make sure that the legislation changes to provide effective remedies that safeguard the honor and welfare of every spouse, particularly those who feel deceived by adultery.

This calls for the introduction of civil remedies, comprehensive reforms in matrimonial statutes, and a deeper understanding of emotional harm in family law to effectively address the void created by the repeal of Section 497 of Indian Penal Code. It is crucial to clarify that decriminalization does not equate to adultery approved morally. Rather, it embodies the essential fundamental idea that the government should not interfere in intimate relationship matters.

The legal system must adapt by establishing procedures that protect justice while safeguarding individual's right to freedom, right to privacy and right to Choice. In a diverse and unique society like India, the challenge of balancing tradition with constitutional values provides both

challenges and tremendous opportunities for progressive legal developments.

As we ahead, India's legal strategy on adultery must be rooted with empathy, equality, and a steadfast commitment to secure the civil foundations of marriage. It is only through these lenses the law can genuinely embody the principles of liberty and justice within the most intimate aspects of human life.

