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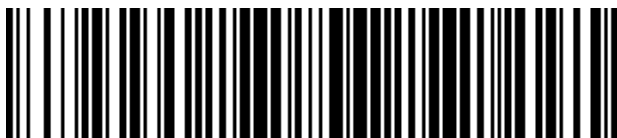
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Case commentary on Joseph Sinhe v. Union of India (2018)

Ateesha Mishra

INTRODUCTION

As we know that our Indian legal reformers played a vital role in changing the legal system of India. and they always encouraged women to be in a better position. there are many cases of inheritance of property, protection against any kind of domestic violence case and to protect their laws they always work hard towards improving their lives and status in society. Law plays important role in changing the social stagnation of the women in society. And the most important role is played by the Indian constitution in providing a better overview of the Indian legal system. Recently Supreme court has struck down section 497 of the Indian penal code which talks about Adultery as unconstitutional.

The main objective of this paper is to analyze the case of JOSEPH SHINE V/S UOI to discuss the issues related to women's freedom and liberty in a society. and what are the reasons behind the unconstitutional of this case? This article identifies what are the consequences of this on marriage in India.

As we know that section 497 of the Indian penal code, talks about the Adultery which was made unconstitutional by the court. Adultery is done by two adults who have strayed out the marriage bond. Or in simple terms, when two people are in martial bond and they committed something illegal and any act which is not acceptable by the eye of the law. The supreme court of India has struck down 158 years old section 497 of IPC, which held unconstitutionally and said this section was destroying the pride and prestige of women in society. so now adultery has become legal but now also it is unethical. marriage can only be successful when both partners develop confidence and trust between each other. adultery is now civil wrong for that divorce can be taken by both partners.

BRIEF FACTS

The fact of the case started when JOSEPH SHINE, -a non-resident Keralite filed public interest litigation (PIL) under Article 32 of the Indian constitution challenging the constitutionality of section 497 of the Indian penal code and with the section 198(2)of Cr.pc which violate the article 14, 15 and 21 of Indian constitution. This is the first PIL that was filed against this Adultery. this petition filed on the basis that women are the property of her husband. this provision of adultery is being discriminatory and biases on gender discrimination. and said that this section is being favored to women in some other way and discriminate on the part of men for holding them as extra-marital relationship and extra affair while in marriage. It's not always the mistake of men who

blamed on it. So this section became discriminate on this basis. The constitutional bench of 5 judges was set to hear upon the side of the petition and issue related to Section 497 of IPC.

ISSUES AND FACTS OF LAW

1. Whether section 497 of the Indian penal code 1860 violate article 14?
2. Whether the provision for adultery encourages stereotypes on women being the property of her husband and violates article 15 of the Indian constitution?
3. Whether offense of adultery violates Article 21 of the Indian constitution?

ARGUMENTS FROM PETITIONER SIDE

1. It was contended by the petitioner side that this provision is criminalizing adultery based on classification which is based on sex alone and it has no rational nexus which can be an object be achieved in the eye of law. And the consent of the wife is not taking into consideration and hence immaterial.
2. Which is violating article 14 of the Indian constitution?
3. The petitioner contended that this provision is based on the assumption that the wife is the property of her husband and if the husband gives consent then adultery is not committed.
4. This petitioner contended that the provision of article 497 of IPC provides gender discrimination and it provides the rights to women to prosecute against adultery which is against article 15 of the Indian constitution.
5. The petitioner contended that this provision is unconstitutional as it is unjust and undetermined mine the respect and dignity of women by not respecting her sexual autonomy and self –determination power which simply violates article 21 of the Indian constitution.

ARGUMENT FROM RESPONDENT SIDE

1. The respondent contended that adultery is an offense that can break the family relation and there should be inhibition of punishment for the protection of the institution of marriage.
2. The respondent also contended that adultery affects the spouses, kids, family relations, and society as a whole. It is an offense that is committed by an outsider with full knowledge to destroy the purity of marriage.

3. The respondent also contends that the provision of Article 15(3) of the Indian constitution saved the discrimination part which provides that state have the right to make special rights for women and children. They demand from the court to delete the portion which is found unconstitutional and retained the provision.

PREVIOUS JUDGEMENTS

YUSUF ABDUL AZIZ V. STATE OF BOMBAY¹

The constitutionality of section 497 of IPC was challenged on the ground that it violated Article 14, and article 15 of the Indian constitution which says that the wife will not be the culprit if she abets someone. The 3 judges upheld the validity of said provisions as it regarded as special provisions for women which are saved by article 15(3).

SOWMITHRI VISHNU V/S UNION OF INDIA AND OTHERS²

In this case, the bench of 3 judges upheld the validity by stating extending the ambit of offense which can be only be done by the legislature but not by courts. here, the court accepted only men can commit the offense.

V. REVATHI V/S UNION OF INDIA³

The court noted that this section is not allowing either husband of the offending wife to prosecute her nor does it permit the wife to offend her husband for being disloyal to her. This section doesn't discriminate on the ground of adultery.

LAW POINTS

ISSUE 1-

the provisions of adultery are violating article 14 of the Indian constitution.

JUDGEMENT CITED ;

E.P.ROYAPPA CASE V/S STATE OF TAMIL NADU ⁴

SHAYRA BANU V.UNION OF INDIA⁵

¹ (1954)SCR930.

² (1985)Supp SCC137.

³ (1988)2 SCC 72.

Section 497 deprives women to live with dignity, respect, and honor. and it deprives women of to right to life and the right to live with their liberty. sexual autonomy is the value and fall within the ambit of article 21 of the Indian constitution which talks about personal liberty. In this way, it is violating article 14 of the Indian constitution and it is based on gender stereotypes.

ISSUE 2-

This provision in this discriminate against the married women and married men on the ground of adultery. as this section says that a man has full control over her wife on sexual autonomy. and she will be her property. Section 497 of IPC protects women from being abetter. this provision somewhere protects the right of women which is saved by article 15(3).

JUDGEMENT CITED

GOVERNMENT OF ANDRA PRADESH V.S P.B. VIJAYAKUMAR⁶

INDEPENDENT THOUGHT V.S UNION OF INDIA⁷

In the above cases, the Apex court held that Article 15(1)of the Indian constitution violates the dignity of women and became discriminatory based on gender and there is a stereotype of controlling the wife's sexual autonomy.

ISSUE 3-

The dignity and respect of the individual sexual privacy which has been protected by the Indian constitution under article 21 of the Indian constitution. and women have an equal right to privacy as man has.

S. PUTTUSWAMY AND OTHERS. V.S UNION OF INDIA ⁸

COMMON CAUSE V.S UNION OF INDIA⁹

This provision allows adultery on the husband's consent, then it is legal, as this section provides control over the wife on her sexual autonomy. when the penal code drafted at that time women's rights were not given much importance and she was treated as chattel. The enforcement of forced on someone's sexual autonomy is curtailing the right to dignity and respect for women.

JUDGEMENT OF THE COURT

In December 2017, joseph shine filed a petition challenging the validity of section 497 of IPC. A three judges bench headed by X chief justice of India, Dipak Misra had referred the petition to a

⁶ (1995) 4 SCC520.

⁷ (2017) 10 SCC 800.

⁸ (2017) 10 SCC 1 .

⁹ (2018) 5SCC 1.

five-judge of the constitutional bench. the court observed that the law was based on social presumptions. in their judgment, they also mentioned that the husband cannot become a master of their wife. Total of five benches of judges comprised of chief justice of India, and justice F. Nariman, A.M Khanwilker, J. D Y Chandrachud, and Indu Malhotra which has been given under Article 21 of the Indian constitution.

There are the followings things court observed

1. Section 497 of the IPC lacks an adequately determining the concept of criminalizing the consent sexual activity and somewhere give the concept of arbiter manifesting.and it also violates the equality under article 14 of the Indian constitution.
2. Section 497 of IPC is based on gender stereotypes and violates the principle of article 15 of the Indian constitution.
3. Section 497 of the Indian constitution violates article 21 of the Indian constitution. Which talks about the right to enjoy personal liberty.
4. Section 198 of CRPC, is a discriminatory provision it says that the husband alone can file a complaint or somebody who filed a complaint against another man.

CASE COMMENT

Now infidelity is a more common concept in society especially if we talk about the large and complex society then it would be a great decision towards westernization. as we know that this decision has been criticizing the basis that people commit adultery without any fear of the law. The case regarding adultery has been increasing since it is decriminalized. males have been committing an offense and there is no limit to it. There were many views of adultery, some suggest that the parliament has to make the law to punish men and women both equally for adultery.

The judgment has put forward a very good initiative towards decriminalizing section 497 of IPC and section 198(2)of CrPc both theses sections are against women's dignity and self-respect. And tow important thing in this is that these section doesn't provide women to prosecute her husband as adulterous and again secondly it doesn't even punish women for being as an abettor.

However, the judgment brings out some kind of confusion regarding the nature of adultery as it makes adultery as not punishable.

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