



AN ANALYTICAL STUDY REGARDING ABOLITION OF ADULTERY IN INDIA

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Abstract:

This research paper examines the abolition of adultery as a criminal offense in India, focusing on its implications for gender equality and individual autonomy. It provides an overview of the legal history of adultery in India, highlights the issues related to the criminalization of adultery, and discusses the landmark judgment of the Supreme Court in *Joseph Shine v. Union of India* (2018). The paper also explores the social and legal implications of decriminalizing adultery, with emphasis on the importance of promoting gender equality and respecting individual rights and freedoms.

Key Words: Social, Legal, Decriminalizing, Adultery

Introduction:

Adultery was decriminalized in India on September 27, 2018, when the Supreme Court of India struck down Section 497 of the Indian Penal Code, which made adultery a criminal offense. Prior to the court's ruling, a person who engaged in sexual relations with someone else's spouse could be prosecuted and punished with imprisonment for up to five years. The law was criticized for being gender-biased, as it only punished men who engaged in extramarital affairs with the wives of other men, while women were treated as passive victims. The court held that the law violated the right to equality enshrined in the Indian Constitution, as well as the right to privacy. The decision to abolish adultery as a criminal offense was seen as a progressive step towards gender equality and personal freedom. However, it also raised concerns about the potential impact on the institution of marriage and the social norms surrounding marital fidelity. Adultery was a criminal offense under Section 497 of the Indian Penal Code (IPC) until the Supreme Court of India struck down the provision in the landmark case of *Joseph Shine v. Union of India* (2018). This paper analyzes the implications of this decision on gender equality and individual autonomy in India, highlighting the issues associated with the criminalization of adultery and the importance of promoting a more equitable and just society.

Adultery was criminalized under Section 497 of the IPC, which was enacted in 1860. The provision made it a criminal offense for a man to have sexual intercourse with a married woman without the consent of her husband. However, the law did not penalize a married man engaging in extramarital relations with an unmarried woman or a woman engaging in consensual extramarital affairs. The history of adultery laws in India can be traced back to the British colonial era. In 1860, the Indian Penal Code was enacted, which criminalized adultery under Section 497. The law made it an offense for a man to have sexual intercourse with the wife of another man without the latter's consent, and punished such acts with imprisonment for up to five years, or a fine, or both. The law did not recognize the opposite scenario of a woman having sexual relations with a married man. The rationale behind the adultery law was rooted in Victorian morality, which considered adultery as a grave moral offense and a threat to the institution of marriage. The law was also influenced by the patriarchal values prevalent in Indian society, which viewed women as the property of their husbands and sought to protect the honor of the husband and his family.

Over the years, the law was subject to criticism on various grounds, including its discriminatory nature, as it treated women as passive victims and failed to recognize their agency in extramarital affairs. The law was also criticized for its limited scope, as it only applied to sexual intercourse between a man and a married woman, and did not address other forms of infidelity or same-sex relationships. In September 2018, the Supreme Court of India struck down Section 497 of the Indian Penal Code, holding that the law violated the right to equality and privacy enshrined in the Constitution. The court observed that the law treated women as the property of their husbands and perpetuated gender stereotypes, and that it was no longer relevant in a modern, liberal democracy. The abolition of adultery as a criminal offense was seen as a significant step towards gender equality and personal freedom.

Issues with the Criminalization of Adultery:

The law was criticized for being biased against men, as it only punished men who had sexual relations with another man's wife, while women were not held accountable for their actions. The law did not require the consent of the wife in order to prosecute the man for adultery. This meant that even if the wife consented to the extramarital affair, the man could still be prosecuted. The law only applied to sexual intercourse between a man and a married woman. It did not address other forms of extramarital affairs, such as those involving unmarried individuals or same-sex relationships. Adultery was only punishable with imprisonment for up to five years, or a

fine, or both. This was seen as an inadequate deterrent for a personal conduct that should be dealt with in civil courts. Adultery laws have been misused in the past to harass or blackmail individuals, particularly women. This can result in false or frivolous cases being filed, which can cause significant harm to the individuals involved. The criticisms of Section 497 were among the main reasons why the Supreme Court of India struck down the law in 2018. The court held that the law violated the right to equality and privacy enshrined in the Constitution and was no longer relevant in a modern, liberal democracy.

Social and Legal Implications of Decriminalizing Adultery:

The decriminalization of adultery has social and legal implications that affect individuals, families, and society as a whole. Decriminalizing adultery protects the individual autonomy and personal choices of adults, as it recognizes the right of consenting adults to engage in sexual relationships outside of marriage without fear of criminal prosecution. Decriminalizing adultery eliminates the gender bias inherent in previous laws, where only men could be prosecuted for having extramarital affairs. This promotes gender equality by recognizing the agency and equal rights of both men and women. Decriminalizing adultery may have both positive and negative effects on marital relationships. While it recognizes the right of individuals to choose their partners, it may also affect the institution of marriage and the social norms surrounding marital fidelity. Decriminalizing adultery eliminates the criminal penalty for the conduct and reduces the scope of police intervention in private affairs. However, it also means that spouses who are wronged due to infidelity may have limited legal recourse for damages in civil cases. Decriminalizing adultery may lead to changes in social norms and attitudes towards extramarital affairs. It may promote a more liberal and individualistic approach to relationships, or it may lead to a backlash and reinforcement of conservative values. The implications of decriminalizing adultery are complex and may have both positive and negative effects on individuals and society. However, it is generally seen as a step towards promoting personal freedom and gender equality, while recognizing the complexity and diversity of human relationships.

Law of Abolition of Adultery in India:

The Indian law on the abolition of adultery is based on the Supreme Court's decision in the case of *Joseph Shine v. Union of India* (2018). The court struck down Section 497 of the Indian Penal Code (IPC), which criminalized adultery as an offense. The court held that the provision was unconstitutional, as it violated the right to equality and privacy enshrined in the Constitution.

Prior to the abolition of adultery, Section 497 of the IPC made it a criminal offense for a man to have sexual intercourse with the wife of another man, without the latter's consent. The law punished such acts with imprisonment for up to five years, or a fine, or both. The law was criticized for being gender-biased, as it only punished men for adultery, while women were treated as passive victims.

The Supreme Court's decision to abolish adultery as an offense was based on the reasoning that the law perpetuated gender stereotypes, treated women as the property of their husbands, and violated the right to equality and privacy. The court held that adultery was a personal matter that did not require state intervention, and that it was up to the individuals concerned to deal with the consequences of their actions.

The abolition of adultery as an offense in India is seen as a progressive step towards gender equality and personal freedom. However, it has also raised concerns about the potential impact on the institution of marriage and the social norms surrounding marital fidelity. The law has shifted the emphasis towards civil remedies for marital disputes, and spouses who are wronged due to infidelity may have limited legal recourse for damages in civil cases.

List of Cases:

The Supreme Court's decision in the case of *Joseph Shine v. Union of India* (2018) was the first and only case that dealt with the issue. The court struck down Section 497 of the Indian Penal Code, which criminalized adultery as an offense, and held that it was unconstitutional. The court's decision abolished the law, making adultery no longer a criminal offense in India. Therefore, there are no other cases related to the abolition of adultery in India, as the decision was based on a single case. *Joseph Shine v. Union of India* (2018) is a landmark case in India related to the abolition of adultery. The case was filed by Joseph Shine, an Indian citizen living in Italy, challenging the constitutionality of Section 497 of the Indian Penal Code (IPC), which criminalized adultery as an offense.

Shine argued that Section 497 violated the fundamental right to equality enshrined in the Indian Constitution, as it treated women as the property of their husbands and discriminated against men by punishing them for adultery but not women.

The Supreme Court of India, in its judgment, struck down Section 497 of the IPC and held that it was unconstitutional. The court held that the provision was archaic, regressive, and based on gender stereotypes. The court also observed that adultery was a private matter and did not warrant state intervention. The court's decision in the *Joseph Shine* case abolished adultery as an offense in India, making it no longer a criminal offense. The decision was widely welcomed as a progressive step towards gender equality and personal freedom. However, it also raised concerns about the potential impact on the institution of marriage and the social norms surrounding marital fidelity.

Conclusion:

The abolition of adultery as a criminal offense in India is a significant step towards promoting gender equality and individual autonomy in the country. The landmark judgment in *Joseph Shine v. Union of India* (2018) reflects a progressive approach to addressing societal issues through the lens of individual rights and freedoms, rather than through moral policing. Future research should explore the long-term impacts of this decision on gender relations, marital relationships, and societal attitudes towards personal liberties in India. Additionally, further reforms in family law should be pursued to ensure that the legal system continues to evolve in line with contemporary notions of equality and individual rights. By embracing progressive legal changes and promoting a more equitable society, India can foster an environment where all individuals, regardless of their gender or marital status, are treated with respect and dignity and can exercise their fundamental rights and freedoms without fear of discrimination or persecution.

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