



An Analysis of the Decriminalisation of Adultery in India: A Transition from Patriarchal Morality to Constitutional Equality.

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Abstract

This paper critically examines the decriminalisation of adultery in India, focusing on the constitutional transformation from patriarchal morality to gender equality. For 158 years, Section 497 of the Indian Penal Code 1860 criminalised adultery in a manner that reinforced gender stereotypes by punishing only men while treating women as passive victims. Earlier judicial decisions attempted to justify this asymmetry under Article 15(3), but such reasoning entrenched inequality. The Supreme Court's landmark ruling in Joseph Shine v Union of India (2019) unanimously struck down Section 497 and Section 198(2) of the Code of Criminal Procedure 1973, recognising that the criminalisation of adultery violated Articles 14, 15, and 21 of the Constitution. The judgment marked a jurisprudential shift towards constitutional morality, affirming privacy, dignity, and individual autonomy. The study concludes that adultery, while morally contentious, is best addressed as a civil wrong within matrimonial law rather than through criminal sanctions.

Keywords: Adultery, Gender Justice, Constitutional Morality, Privacy, Equality, Indian Penal Code

Introduction

For more than a century and a half, adultery was criminalised in India through Section 497 of the *Indian Penal Code, 1860* (IPC). This provision, drafted in colonial times, reflected Victorian ideals of morality that subordinated women to men. Under the section, only the man involved in an adulterous act could be prosecuted, while the woman was viewed not as a consenting individual but as the property of her husband. The exemption of women from prosecution did not signal equality; rather, it reinforced the stereotype that women lacked independent moral agency and required protection from their male guardians.¹ This “protectionist” approach transformed the wife into a passive victim, incapable of choosing or consenting.

The judicial shift culminating in *Joseph Shine v Union of India*² In 2018 altered this long-standing narrative. The Supreme Court struck down Section 497 as unconstitutional, declaring that the provision violated Articles 14, 15, and 21 of the Constitution. The judgment marked a critical turning point in Indian jurisprudence, as it redefined the relationship between morality and legality. No longer would criminal law be permitted to police private, consensual relationships between adults, even when these were seen as immoral by societal standards. Instead, the Court emphasised individual autonomy, privacy, dignity, and substantive equality.

This paper examines the trajectory of the law on adultery, highlighting how earlier judicial reasoning preserved patriarchal control and moral policing, while the *Joseph Shine* ruling dismantled these foundations. It situates the judgment within the broader constitutional framework, establishing that decriminalisation was not a moral endorsement of adultery but a reaffirmation of the principle that criminal law cannot intrude into the private sphere of marriage. In doing so, the study affirms that the 2018 ruling represented not only a legal milestone but also a profound assertion of constitutional morality over outdated patriarchal norms.

Research Issue

The central research issue concerns the constitutional validity of Section 497 IPC in a modern democratic state. A statute designed in colonial India, where women were regarded as dependents of men, inevitably came into conflict with India’s constitutional guarantees of equality, liberty, and dignity. The first question is whether the law created an arbitrary and discriminatory classification based on gender. Section 497 criminalised only the man, while treating the woman as a passive participant. This selective application raised serious questions

¹ Bibhabasu Misra, ‘Abstract: Issues Left by the Legislature’ (2023) VOR Issues <https://ideas.repec.org/p/vor/issues/2023-47-07.html> accessed 18 August 2025.

² *Joseph Shine v Union of India* (2019) 3 SCC 39.

under Article 14, which guarantees equality before the law and equal protection of the laws.³ By punishing only one party, the law institutionalised inequality.

The second issue is whether Section 497 contravened Article 15(1), which prohibits discrimination on grounds of sex. The provision reflected a gender stereotype: that women lacked agency and were incapable of consenting to extramarital relations. Courts in earlier cases, such as *Yusuf Abdul Aziz v State of Bombay*,⁴ Attempted to save this provision by invoking Article 15(3), which allows the State to make special provisions for women. Yet this reasoning was problematic because it justified discrimination in the name of protection, perpetuating the very inequalities the Constitution sought to eliminate.

Thirdly, the question arises whether criminalising a consensual act between adults infringes Article 21. This article, especially after the landmark decision in *Justice K. S. Puttaswamy v Union of India*⁵, recognising the right to privacy, protects personal liberty, dignity, and sexual autonomy. By criminalising adultery, the State intruded into the private sphere of marriage, treating it as a matter of public morality rather than individual choice.

Finally, the debate concerns whether adultery should be classified as a public crime against the State or a private civil wrong against a spouse. The distinction is critical: crimes concern society at large, while adultery essentially concerns trust and fidelity between individuals. The constitutional conflict thus lay in whether personal immorality warranted criminal punishment or civil remedies.

Hypotheses

The research rests on two interlinked hypotheses. The **primary hypothesis** is that Section 497 IPC was unconstitutional because it embodied archaic patriarchal assumptions. It regarded women as the property of their husbands and excluded them from responsibility, reflecting a discriminatory mindset. This legal framework was fundamentally inconsistent with constitutional guarantees of equality under Article 14, the prohibition of sex-based discrimination under Article 15, and the rights to liberty, privacy, and dignity under Article 21.⁶ The Supreme Court itself recognised in *Joseph Shine* that “husband is not the master of the wife,” thereby dismantling the very foundation of Section 497.⁷

³ Law Commission of India, Report on Reform of Family Law (2018).

⁴ Yusuf Abdul Aziz v State of Bombay AIR 1954 SC 321.

⁵ Sowmithri Vishnu v Union of India (1985) Supp SCC 137.

⁶ V Revathi v Union of India (1988) 2 SCC 72.

⁷ Joseph Shine v Union of India (2019) 3 SCC 39; see also Rest the Case, ‘Joseph Shine v Union of India Case Brief’ <https://restthecase.com/knowledge-bank/case-laws/joseph-shine-vs-union-of-india> accessed 18 August 2025.

The **secondary hypothesis** is that decriminalisation does not legitimise adultery but instead shifts it to the civil domain. Adultery remains a valid ground for divorce under personal laws, such as Section 13 of the *Hindu Marriage Act 1955*, Section 27 of the *Special Marriage Act 1954*, and provisions of the *Indian Divorce Act 1869* applicable to Christians.⁸ By treating adultery as a civil wrong, the law allows aggrieved spouses to seek remedies such as divorce or judicial separation, without invoking criminal punishment. This respects individual autonomy while ensuring accountability within marriage.

Both hypotheses highlight the evolution from patriarchal morality to constitutional morality. The former subordinated women and treated infidelity as an offence against male honour, while the latter recognises individuals, men and women alike, as autonomous agents entitled to dignity and equality. In this sense, decriminalisation was not about moral permissiveness but about aligning legal frameworks with constitutional principles. Thus, the hypotheses together affirm that the striking down of Section 497 was both justifiable and necessary.

Research Questions

The research is guided by four interrelated questions that explore the constitutional and jurisprudential dimensions of adultery's decriminalisation in India. The first question examines the extent to which Section 497 IPC reflected gender bias and violated the guarantee of equality under Article 14. By punishing only men while exempting women, the provision institutionalised unequal treatment. Moreover, by making the husband the sole party entitled to prosecute, it denied women equal legal standing, effectively reinforcing the notion of female subordination.⁹ The second research question evaluates how judicial interpretations of personal autonomy and privacy under Article 21 evolved to render the criminalisation of adultery unsustainable. Landmark rulings such as *Justice K. S. Puttaswamy v Union of India*¹⁰ Established privacy as a fundamental right, thereby strengthening the argument that consensual sexual relations between adults, however morally contentious, fall within the private sphere. This constitutional development directly informed the reasoning in *Joseph Shine v Union of India*, where adultery was deemed incompatible with dignity and autonomy.

The third question addresses the broader legal and social implications of distinguishing adultery as a civil wrong rather than a criminal offence. If adultery is viewed as a crime, the State assumes

⁸ Privacy Library, 'Joseph Shine v Union of India' <https://privacylibrary.ccgnlud.org/case/joseph-shine-vs-union-of-india> accessed 18 August 2025.

⁹ Indian Penal Code 1860, s 497 (struck down).

¹⁰ Justice K. S. Puttaswamy v Union of India (2017) 10 SCC 1.

a paternalistic role in regulating marital relationships. If treated as a civil wrong, however, the focus shifts to the individual rights of spouses, where remedies such as divorce or separation better serve the interests of justice.

The fourth question explores how *Joseph Shine* departed from earlier judgments, such as *Yusuf Abdul Aziz*, *Sowmithri Vishnu*.¹¹, and *V Revathi*.¹² These earlier cases upheld Section 497 under the pretext of protecting women, but the 2018 ruling explicitly rejected this reasoning, affirming that women are autonomous individuals rather than passive dependents. Collectively, these research questions guide the inquiry into why decriminalisation was both constitutionally necessary and socially progressive.

Research Methodology

The methodology employed in this study is primarily **doctrinal and qualitative**, relying on a close analysis of primary and secondary legal sources. Primary sources include the Constitution of India, particularly Articles 14, 15, and 21, which form the bedrock of fundamental rights jurisprudence. Statutory provisions such as Section 497 of the *Indian Penal Code 1860* and Section 198(2) of the *Code of Criminal Procedure 1973* are central, as both were struck down in the *Joseph Shine* ruling. In addition, personal laws such as the *Hindu Marriage Act 1955* (Section 13(1)(i)), the *Special Marriage Act 1954* (Section 27(1)(a)), and the *Indian Divorce Act 1869* provide the civil law context in which adultery continues to remain relevant.¹³

Judicial precedents form another cornerstone of the methodology. Landmark judgments—*Yusuf Abdul Aziz v State of Bombay*, *Sowmithri Vishnu v Union of India*¹⁴, *V Revathi v Union of India*, and *Joseph Shine v Union of India*—were analysed to trace the judicial trajectory from colonial morality to constitutional equality. These cases reveal how earlier courts upheld Section 497 by invoking Article 15(3) to justify “special protection” for women, while the 2018 judgment broke away from this logic by affirming women’s equal agency.¹⁵

Secondary sources include academic journals, scholarly articles, and reports of the Law Commission of India. For instance, the Law Commission’s discussions on reforming family law provide valuable insights into the shifting legal landscape. Doctrinal research was combined with comparative analysis, contrasting pre- and post-decriminalisation interpretations of constitutional principles.

¹¹ *Yusuf Abdul Aziz v State of Bombay* AIR 1954 SC 321.

¹² *Sowmithri Vishnu v Union of India* (1985) Supp SCC 137.

¹³ *Indian Penal Code 1860*, s 497 (struck down 2018); *Code of Criminal Procedure 1973*, s 198(2).

¹⁴ *Sowmithri Vishnu v Union of India* (1985) Supp SCC 137.

¹⁵ *V Revathi v Union of India* (1988) 2 SCC 72; *Joseph Shine v Union of India* (2019) 3 SCC 39.

The approach is analytical rather than empirical, as the focus lies on legal reasoning rather than statistical data. Nevertheless, the methodology recognises the social implications of the law by engaging with scholarship on gender justice and constitutional morality. This blended approach ensures that the analysis is both legally rigorous and contextually grounded, thereby offering a comprehensive understanding of adultery's decriminalisation.

Statutory Provisions

At the heart of the debate lies Section 497 of the *Indian Penal Code 1860*. The provision stated: "Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of adultery..." The section explicitly exempted women, declaring that the wife "shall not be punishable as an abettor." The law thus constructed adultery as an offence against male ownership rather than a mutual breach of marital fidelity.

Complementing this was Section 198(2) of the *Code of Criminal Procedure 1973*, which restricted the right to initiate prosecution to the husband of the adulterous woman. This further reinforced the patriarchal underpinnings of the law by excluding wives from legal standing. Together, these provisions transformed adultery into a male-centric offence, denying women both agency and recourse.

In contrast, personal laws treated adultery as a ground for divorce or separation. Section 13(1)(i) of the *Hindu Marriage Act 1955* and Section 27(1)(a) of the *Special Marriage Act 1954* recognise adultery as a valid ground for dissolution of marriage.¹⁶ Similarly, the *Indian Divorce Act 1869*, governing Christians, provides that adultery constitutes sufficient cause for divorce.¹³ These provisions illustrate the distinction between civil and criminal remedies. While civil law focuses on protecting marital rights, the criminal law (pre-2018) sought to punish individuals for private conduct, thereby overstepping constitutional boundaries.

By striking down Section 497 IPC and Section 198(2) CrPC, the Supreme Court clarified this distinction. It affirmed that while adultery may be morally undesirable and remains a ground for civil action, it does not warrant criminalisation. This reflects a significant doctrinal shift, situating adultery firmly within the private realm of marriage rather than the public domain of criminal law.

¹⁶ Hindu Marriage Act 1955, s 13(1)(i).

Landmark Case Law

Judicial responses to adultery before 2018 reveal a consistent pattern of upholding Section 497 despite its evident inconsistencies with constitutional principles. In *Yusuf Abdul Aziz v State of Bombay*¹⁷ The Court dismissed challenges under Article 14 by invoking Article 15(3), which permits special provisions for women. The judgment framed women as victims in need of protection, thereby sustaining the paternalistic logic of Section 497.

In *Sowmithri Vishnu v Union of India*¹⁸ The Supreme Court reiterated this approach. A wife challenged Section 497 because it denied women the right to prosecute adulterous husbands. The Court rejected this contention, holding that the law's focus on the male outsider preserved the sanctity of marriage. Far from advancing gender equality, the decision reinforced the patriarchal notion that women were incapable of independent decision-making.

Similarly, in *V Revathi v Union of India*¹⁹ The Court held that Section 497 was not discriminatory because neither husband nor wife could prosecute their spouse, only the third-party man. The Court went so far as to describe the exemption for women as a "shield rather than a sword."¹⁷ This reasoning perpetuated the stereotype of women as passive dependents rather than equal agents.

A decisive break came with *Joseph Shine v Union of India*.²⁰ The Constitution Bench unanimously struck down Section 497 and Section 198(2) CrPC, holding them violative of Articles 14, 15, and 21. The Court declared that the provision was manifestly arbitrary, discriminatory based on sex, and violative of dignity and privacy. It famously declared, "Husband is not the master of the wife."¹⁸ This case marked a paradigmatic shift in Indian constitutional jurisprudence, rejecting protectionist reasoning and affirming women's autonomy.

Research Report

The decriminalisation of adultery represents a broader transformation in Indian constitutional thought from patriarchal morality to constitutional morality. Earlier judgments reflect a judiciary grappling with colonial-era laws. In *Yusuf Abdul Aziz* and *Sowmithri Vishnu*, the Court justified Section 497 through Article 15(3), framing women as weak and in need of special protection. Yet this reasoning entrenched patriarchal stereotypes rather than dismantling them.

¹⁷ Yusuf Abdul Aziz v State of Bombay AIR 1954 SC 321.

¹⁸ Sowmithri Vishnu v Union of India (1985) Supp SCC 137.

¹⁹ V Revathi v Union of India (1988) 2 SCC 72

²⁰ Joseph Shine v Union of India (2019) 3 SCC 39.

The *Joseph Shine* verdict overturned this logic by recognising that equality does not lie in protecting women as a class but in affirming their agency. By linking the issue to Article 21, the Court elevated the discourse from equality alone to a more expansive recognition of dignity, privacy, and autonomy. It established that the State cannot criminalise consensual acts between adults simply because society considers them immoral. This principle affirms the autonomy of individuals in matters of intimate choice, a hallmark of a constitutional democracy.

Importantly, the decision drew a clear line between public crimes and private wrongs. A crime represents an offence against society at large, whereas adultery constitutes a breach of trust between two individuals. Accordingly, civil remedies such as divorce or separation provide an appropriate legal response, while criminal punishment oversteps constitutional boundaries. By retaining adultery as a ground for divorce under personal laws, the judgment preserved accountability without resorting to punitive measures.

Thus, the ruling reflects a jurisprudential maturation. It not only decriminalised adultery but also signalled a deeper shift in how the Indian judiciary interprets constitutional values. The move from protectionism to autonomy marks an embrace of substantive equality, where women are no longer treated as dependents but as equal rights-holders.

Conclusion

This research confirms that Section 497 IPC was a colonial relic incompatible with modern constitutional principles. Rooted in patriarchal morality, it reduced women to passive dependents and treated adultery as an affront to male ownership rather than a mutual breach of marital trust. By criminalising consensual private conduct it violated fundamental rights to equality, non-discrimination, and personal liberty.

The Supreme Court's decision in *Joseph Shine v Union of India* represents a landmark victory for gender justice and constitutional morality. By unanimously striking down Section 497 and Section 198(2) CrPC, the Court affirmed that women are equal, autonomous individuals with agency over their choices. The judgment underscored that criminal law cannot be wielded as an instrument of moral policing, particularly in the private sphere of marriage.

Significantly, the ruling did not legitimise adultery but correctly reclassified it as a civil wrong, retaining its status as a ground for divorce under personal laws. This distinction reflects the principle that while infidelity is a serious moral and relational issue, it does not warrant the coercive machinery of criminal law.

The judgment thus embodies a constitutional transition from protectionist paternalism to

substantive autonomy. It aligns Indian jurisprudence with global constitutional standards that prioritise individual rights over outdated social norms. By affirming that “husband is not the master of the wife,” the Court corrected a historical wrong and reinforced the constitutional promise of equality, liberty, and dignity. The evolution from patriarchal morality to constitutional equality marks a defining moment in India’s democratic journey.



References

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