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CASE COMMENT ON JOSEPH SHINE V. UNION OF INDIA- Kushagra Pareek¹**The Bench:**

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PROCEDURAL HISTORY OF THE CASE:

- **Filing of Writ Petition:** The case was initiated as a writ petition under Article 32 of the Constitution of India challenging the constitutional validity of Section 497 of the Indian Penal Code (IPC).
- **Initial Hearing:** The matter was first heard before a three-judge Bench of the Supreme Court of India. During this stage, references were made to the Yusuf Abdul Aziz case, which discussed the potential violation of Articles 14 and 15 of the Constitution by Section 497.
- **Constitution Bench:** Subsequently, the case was referred to a Constitution Bench comprising five Judges of the Supreme Court of India. This elevation to a higher bench indicates the significance and complexity of the legal issues involved in the case.
- **Detailed Analysis:** The Constitution Bench conducted an in-depth examination of the legal provisions, constitutional principles, and precedents relevant to the case. This thorough analysis likely involved arguments from both the petitioner and the respondent and amicus curiae submissions.
- **Final Judgment:** After considering all the arguments, legal interpretations, and constitutional provisions, the Constitution Bench delivered its final judgment on 27th September 2018. The judgment declared Section 497 of the IPC and Section 198 of the Code of Criminal Procedure as violative of Articles 14, 15(1), and 21 of the Constitution and struck them as invalid.

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FACTS OF THE CASE:

- Joseph Shine, the petitioner, approached the Supreme Court of India to challenge the legality of Section 497 of the IPC. The respondent in this case was the Union of India, representing the government.
- Section 497 of the IPC criminalized adultery, defining it as a punishable offense when a man engages in sexual intercourse with the wife of another man without the latter's consent or connivance. The provision did not allow the wife to be punished as an abettor in such cases.
- The petitioner contended that Section 497 of the IPC and Section 198(2) of the CrPC were discriminatory and violated fundamental rights enshrined in the Indian Constitution, specifically Articles 14 (Right to Equality), 15(1) (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty).
- The petitioner argued that the provisions were archaic, gender-biased, and infringed upon the principles of equality and personal liberty. The petitioner sought the abolition of these provisions to uphold the constitutional rights of individuals.
- The case underwent a thorough judicial review by a Constitution Bench of the Supreme Court of India. The Bench examined the historical context, societal changes, and evolving interpretations of fundamental rights in the context of adultery laws.

ISSUES:

- The primary issue was whether Section 497 of the IPC, which criminalized adultery and prescribed punishment for the same, conformed with the fundamental rights guaranteed under the Indian Constitution, particularly Articles 14 (Right to Equality), 15(1) (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty).
- A significant issue raised was the gender bias inherent in Section 497, which only penalized men for adultery and exempted women from punishment as abettors. This raised concerns about the discriminatory nature of the provision and its impact on gender equality.
- The case also delved into whether the differential treatment of men and women under Section 497 violated the right to equality enshrined in Article 14 of the Constitution.

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The question of whether the provision created an arbitrary classification based on gender was a key issue.

- Another crucial issue was the infringement of the right to personal liberty under Article 21 of the Constitution. The criminalization of adultery and the associated legal consequences were examined considering individual autonomy and privacy rights.
- The case also considered evolving societal norms, changing perceptions of relationships, and the need to reassess outdated laws in the context of modern relationships and gender dynamics.

ARGUMENTS RAISED BY PETITIONER:

- **Discrimination Based on Gender:** The petitioner argued that Section 497 of the IPC discriminated based on gender by only holding men liable for adultery and exempting women from punishment as abettors. This gender-based distinction was seen as arbitrary and violative of the right to equality under Article 14 of the Indian Constitution.
- **Violation of Right to Equality:** The petitioner contended that the differential treatment of men and women under Section 497 amounted to a violation of the right to equality guaranteed by Article 14. The provision's gender-specific nature was seen as discriminatory and unjust.
- **Infringement of Personal Liberty:** It was argued that criminalizing adultery under Section 497 infringed upon the personal liberty and autonomy of individuals in their private relationships. The provision was viewed as an intrusion into the personal lives of individuals, violating their right to privacy and dignity under Article 21 of the Constitution.
- **Outdated and Archaic Law:** The petitioner highlighted that Section 497 was an archaic provision that did not align with contemporary societal norms and values. The law was considered outdated and out of touch with the changing dynamics of relationships and gender roles in modern India.
- **Constitutional Inconsistency:** The petitioner contended that Section 497 and Section 198(2) of the CrPC were inconsistent with the broader constitutional framework of equality, non-discrimination, and personal liberty enshrined in the Indian

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Constitution. These provisions were seen as relics of the past that needed to be struck down to uphold constitutional values.

- **Progressive Interpretation of Laws:** The petitioner advocated for a progressive interpretation of laws in line with evolving societal norms and principles of equality. It was argued that the Court should adopt a forward-looking approach to ensure that laws reflected contemporary realities and promoted gender justice.

ARGUMENTS RAISED BY RESPONDENT:

- The respondents argued that Section 497 of the IPC was aimed at preserving the sanctity of marriage and upholding the institution of marriage in society. They contended that the provision served as a deterrent against extramarital relationships and adultery, which could potentially destabilize families and lead to social unrest.
- It was argued that Section 497 had historical significance and was rooted in societal norms and values prevalent at the time of its enactment. The respondents emphasized the need to consider the historical context in which the provision was framed and its relevance in maintaining moral standards within society.
- The respondents contended that Section 497 was designed to protect women from being wrongfully prosecuted or stigmatized in cases of adultery. By exempting wives from punishment as abettors, the provision was seen as a safeguard to prevent the victimization of women in such situations.
- It was argued that the validity and necessity of Section 497 fell within the domain of the legislature, and any changes or amendments to the provision should be addressed through legislative action rather than judicial intervention. The respondents emphasized the principle of separation of powers and the role of the legislature in enacting and amending laws.
- The respondents highlighted the importance of social morality and public interest in upholding laws such as Section 497. They argued that the provision reflected societal values and norms regarding marital fidelity and the importance of maintaining stable family structures.
- While acknowledging the constitutional challenges raised by the petitioner, the respondents sought to demonstrate that Section 497 and Section 198(2) of the CrPC were not in violation of the fundamental rights guaranteed under the Indian

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Constitution. They contended that the provisions were consistent with the constitutional framework and served legitimate social objectives.

LAWS APPLIED:

- **Indian Penal Code (IPC):** Section 497 of the IPC, which dealt with the offense of adultery, was the primary law under scrutiny in this case. The Court analysed the provisions of Section 497 considering constitutional principles, gender equality, and personal liberty.
- **Code of Criminal Procedure, 1973 (CrPC):** Section 198(2) of the CrPC was also a crucial law considered in the case. This provision outlined the procedure for prosecuting offenses against marriage and specified who could file a complaint in cases of adultery.
- **Constitution of India:** The fundamental rights enshrined in the Indian Constitution, particularly Articles 14 (Right to Equality), 15(1) (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty), were central to the legal analysis in this case. The Court assessed the compatibility of Section 497 and Section 198(2) with these constitutional provisions.

JUDGEMENT:

- **Constitutional Validity:** The Court examined the constitutional validity of Section 497 of the Indian Penal Code (IPC), which criminalized adultery. After thorough consideration, the Court declared that Section 497 of the IPC and Section 198(2) of the Code of Criminal Procedure, 1973 were violative of Articles 14 (Right to Equality), 15(1) (Prohibition of Discrimination), and 21 (Right to Life and Personal Liberty) of the Indian Constitution.
- **Gender Discrimination:** The Court highlighted the discriminatory nature of Section 497, which only punished the male adulterer while exempting the female involved in the adulterous relationship. This gender-based classification was deemed arbitrary and unconstitutional.
- **Right to Equality:** The judgment emphasized that any legislation treating similarly situated persons unequally or discriminating based on sex alone would be liable to be

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struck down as violative of Articles 14 and 15 of the Constitution. The Court underscored the importance of upholding equality before the law.

- **Protection of Personal Liberty:** By striking down Section 497, the Court affirmed the right to personal liberty and autonomy in matters of personal relationships. The judgment recognized the need to move away from archaic laws that infringed on individual freedoms.

CRITICAL ANALYSIS:

1. Gender Equality and Discrimination:

- a. The judgment highlighted the discriminatory nature of Section 497, which punished only the male adulterer while exempting the female involved. This gender-based classification was rightly deemed arbitrary and violative of the right to equality.
- b. By striking down Section 497, the Court took a progressive stance towards gender equality, emphasizing that laws must treat individuals equally regardless of gender. This decision was a crucial step towards dismantling gender stereotypes and addressing systemic discrimination in the legal framework.

2. Personal Liberty and Autonomy:

- a. The judgment underscored the importance of personal liberty and autonomy in matters of personal relationships. By decriminalizing adultery, the Court recognized the right of individuals to make choices regarding their intimate relationships without state interference.
- b. This aspect of the judgment reflected a modern and liberal approach to personal freedoms, acknowledging that individuals have the right to privacy and autonomy in their personal lives.

3. Evolution of Legal Norms:

- a. The case demonstrated the evolution of legal norms and principles in response to changing societal values. The Court's decision to strike down Section 497

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signified a departure from archaic laws that no longer aligned with contemporary notions of equality and individual rights.

- b. This shift in legal interpretation showcased the judiciary's role in adapting to societal changes and upholding constitutional values in a dynamic and evolving society.

4. Impact on Marital Relationships:

- a. The judgment had a significant impact on the legal landscape governing marital relationships in India. By decriminalizing adultery, the Court aimed to promote healthier and more equitable relationships based on mutual respect and consent.
- b. The decision signalled a move towards recognizing the autonomy and agency of individuals within marriages, challenging traditional notions of marital fidelity and societal expectations.

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