

## CHANGING FACET OF ADULTERY IN INDIA

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### ABSTRACT

The social condition of the women was worse she was considered to be the property of the husband and she was not considered to be abettor to the crime. Due to previous law various fundamental rights of the women were infringed. She was not allowed to prosecute neither the husband nor the woman with whom her husband has sexual intercourse. Also it was not a crime when husband has sexual relations with unmarried women, divorcee or widow. As it didn't justify to exemption, various questions arose regarding the constitutional validity of the Sec 497 of The Indian Penal Code, 1860.

Keywords: Adultery, Sec 497.

### INTRODUCTION

In today's world the lifestyle of masses changes drastically. What they earlier prefer to do, is what they are not at all interested today. The ethics and moral standard of people also changes with the time. So there is need to widely interpret the statute. As the law is for the people and not the people for law. The reasons which justified for the exemption of women for the offence of adultery in the most recent century are no more valid today, the results of revising the meaning of adultery to make women culpable would be horrific. Though we the people of India has undergone many changes but there are still many instances where the violence, atrocities against women can be seen in day to day life, still in many societies and culture the condition of women is unimaginable, thus the women are not being dealt with equality in every society. We live in a society where a long way from indictment, even a single charge against women character is sufficient to procure devastation in her life. In any conditions such law should be promoted. In this way, changing the meaning of adultery to make women culpable under the name of gender parity will just give society a ground to malign women and build the divergence of status further crushing the very motivation behind the proposed revision.[1]

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The recent judgment in Joseph Shine V. Union of India, Sec. 497 of Penal Code has been declared unconstitutional. Same grounds were raised as in the case of Somithri Vishnu v. Union of India. Justice Y.V.Chandrachud disagreed with the arguments made by the petitioner stating they have strong emotive appeal but have no valid legal basis to rest upon. A penal provision cannot be held unconstitutional merely because it punishes the man alone or doesn't give right to prosecute women her husband or the woman with whom he has committed adultery. All the above arguments found favor in the Joseph Shine Judgment, accepting all the argument D Y Chandrachud overruled Somithri Vishnu.

"Section 497 criminalizes the conduct of the man who has sexual intercourse with the wife of another without his consent. It exempts women from criminal liability. Underlying this exemption is the notion that women, being denuded of sexual agency, should be afforded the 'protection' of the law. In criminalizing the accused who engages in the sexual relationship, the law perpetuates a gender stereotype that men, possessing sexual agency are the seducers, and that women, as passive beings devoid of sexual agency, are the seduced," Justice Chandrachud and Justice Khanwilkar stated in the judgment. They further said, "It is deeply offensive to equality and destructive of the dignity of the woman. On this stereotype, Section 497 criminalizes only the accused man."

"The real heart of this archaic law discloses itself when consent or connivance of the married woman's husband is obtained – the married or unmarried man who has sexual intercourse with such a woman, does not then commit the offence of adultery. This can only be on the paternalistic notion of a woman being likened to chattel, for if one is to use the chattel or is licensed to use the chattel by the "licensor", namely, the husband, no offence is committed," stated Justice RF Nariman in the judgment.[2]

Further he stated, "What is clear, therefore, is that this archaic law has long outlived its purpose and does not square with today's constitutional morality, in that the very object with which it was made has since become manifestly arbitrary, having lost its rationale long ago and having become in today's day and age, utterly irrational. On this basis alone, the law deserves to be struck down.<sup>36</sup>

Also autonomy is intrinsic in dignified human existence and respect for sexual autonomy must be emphasized. [3]

## CONCLUSION

This judgment has also expanded the horizons of individual liberty and gender parity. These developments are most welcomed which will affirm right to equality, liberty and sexual autonomy. Further the remaining countries where adultery is treated as criminal offence should be inspired by the other countries where a step has taken to decriminalized it, should also consider the aspects of individual liberty, sexual autonomy and equality before law.

## REFERENCES

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