

Decriminalisation of Adultery: Judgment Matrix

Joseph Shine v. UOI

		Justice Dipak Misra	Justice Rohinton Nariman	Justice D Y Chandrachud	Justice Indu Malhotra
Scope of Judgement	Ruled Section 497 as unconstitutional	Yes	Yes	Yes	Yes
	Decriminalised Adultery	Yes	Yes	Yes	Yes
	Read down Section 198 of the CrPC	Yes	Yes	Yes	Yes
	Overruled decision in Sowmithri Vishnu & V Revathi	Yes	Yes	Yes	Yes
Grounds	Violates the right to equality under Article 14	Yes, Section 497 is manifestly arbitrary and creates disproportionate distinctions between gender stereotypes	Yes, Section 497 of the IPC degrades the status of women.	Yes, Section 497 violates the principle of substantive equality by denying equal protection of the rights of both parties to a marriage.	Yes, Section 497 is based on archaic norms and, hence, violates women's fundamental rights to equality by denying them equal status.
	Violates Non-discrimination under article 15	Yes	Yes, Section 497 discriminates against women on the ground of sex.	Yes, Section 497 is grounded in and perpetuates stereotypes of gender and violates Article 15(1) of the Constitution.	Yes, a provision which is oppressive against women cannot be protected under the guise of protective discrimination.
	Adultery cannot be a criminal offence	Yes, State can not criminalize actions occurring within the private realm of marriage.	Yes, deterrent effect not a legitimate consideration for State enacting a criminal law.	Yes, there must be a sound and rationale need for a provision to remain in the criminal statute. State has no legitimate interest in criminalising adultery	Yes, adultery may be a moral wrong but that cannot be a sufficient reason to criminalise the act.
	Violates privacy and dignity of women under Article 21	Yes, as invidious distinctions created by Section 497 curtail the dignity of a woman and severely restrict her autonomy.	Yes, the law criminalising adultery is premised on a feudal and paternalistic understanding of a marital relationship	Yes, Section 497 is founded on the notion the sexual autonomy and dignity conferred on married women is seeded to the autonomy of the husband.	Yes, Section 497 as it stands today, fails to meet the three-fold requirement as laid down in <i>Puttaswamy</i> for invasion of privacy by State.
Further Reasoning	Transformative Constitutionalism	Yes	No	Yes	No
	Doctrine of Manifest Arbitrariness	Yes	Yes	Yes	No
	Constitutional Morality	No	Yes	Yes, as contrasted with Common Morality	No
	International References	Yes, Decriminalisation of adultery in China, Japan, Brazil, among other countries.	Yes, <i>South Korea Constitutional Court Decision</i> (2015) & Decision of the <i>Constitutional Court of Guatemala</i> ; <i>James Sibongo v. Lister Lutombi Chaka and Anr.</i> Supreme Court of Namibia (2016) to decriminalise adultery	Yes, <i>South Korea Constitutional Court Decision</i> (2015); <i>Law Advocacy for Women in Uganda v Attorney General of Uganda</i> (2007), <i>DE v RH</i> , Constitutional Court of South Africa (2015)	Yes, <i>Oliverson v. West Valley City & Hobbs v. Smith</i> (USA); <i>DE v. RH</i> (South Africa); <i>Anayasa Mahkemesi</i> (Turkey); <i>South Korea Constitutional Court Decision</i> and legislative reforms in Japan.