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## **Judicial Intervention in Adultery Laws: A Comparative Study of India and Other Constitutional Democracies**

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### **ABSTRACT**

*The judicial treatment of adultery in India reflects a significant constitutional transformation from moral paternalism to individual autonomy. Historically criminalized under Section 497 IPC, adultery law embodied patriarchal assumptions that subordinated women's agency and autonomy. This paper critically examines the trajectory of judicial intervention culminating in the landmark judgment of Joseph Shine v. Union of India, wherein the Supreme Court decriminalized adultery as violative of equality, dignity and privacy under the Constitution of India. Adopting a doctrinal and comparative methodology, the study situates India's approach within broader constitutional democracies, including the United States (post Lawrence v. Texas), the United Kingdom, France and South Korea. It highlights how courts across jurisdictions have increasingly privileged constitutional morality over social morality, emphasizing sexual autonomy and gender justice. The paper further evaluates the implications of decriminalization on matrimonial law and societal norms, while critically engaging with debates on judicial activism and*



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*the limits of constitutional adjudication in private relationships. It concludes that judicial intervention has played a transformative role in aligning adultery laws with contemporary constitutional values, while underscoring the need for continued scholarly engagement with evolving notions of privacy, dignity and personal liberty.*

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## **Introduction:**

Adultery has long occupied a contested space at the intersection of law, morality and individual autonomy. Traditionally viewed as a moral transgression threatening the sanctity of marriage, it was historically criminalized in several jurisdictions, including India. Under Section 497 IPC, adultery was treated not merely as a private wrong but as a public offence, reflecting deeply embedded patriarchal assumptions about marriage, sexuality and the status of women. The provision, rooted in colonial-era morality, conceptualized women as passive subjects and effectively denied them agency, thereby reinforcing gender inequality within the legal framework.

In contemporary constitutional democracies, however, the legitimacy of criminalizing private consensual relationships has increasingly been called into question. The evolution of constitutional jurisprudence—particularly with respect to the rights to privacy, dignity and personal liberty—has prompted courts to reassess the role of the state in regulating intimate human conduct. In India, this shift culminated in the landmark decision of *Joseph Shine v. Union of India*, wherein the Supreme Court struck down Section 497 IPC as unconstitutional. The Court emphasized that the criminalization of adultery violated fundamental rights guaranteed under the Constitution of India, particularly Articles 14, 15 and 21 and affirmed the primacy of individual autonomy and constitutional morality over societal moral norms.

This judicial intervention represents a broader global trend, where constitutional courts have increasingly invalidated laws that intrude upon personal relationships without sufficient justification. Countries such as the United States, France and South Korea have similarly moved towards decriminalizing adultery, albeit through varying legal and constitutional pathways. These developments raise important questions about the proper limits of criminal law, the role of the judiciary in shaping social policy and the extent to which constitutional principles should govern private moral conduct.

Against this backdrop, the present study undertakes a comparative analysis of judicial intervention in adultery laws across India and other constitutional democracies. It seeks to examine how courts have navigated the complex relationship between law and morality and how principles such as equality, dignity



and privacy have influenced the decriminalization of adultery. By situating the Indian experience within a broader comparative framework, the paper aims to contribute to ongoing scholarly discourse on constitutional transformation, gender justice and the evolving boundaries of state regulation in intimate affairs.

### **Conceptual Framework: Adultery, Autonomy and Constitutional Morality**

The concept of adultery has undergone significant transformation across legal systems, evolving from a moral and religious transgression into a subject of constitutional scrutiny. Traditionally, adultery was perceived as a violation of marital fidelity, often attracting severe penal consequences rooted in religious doctrines and patriarchal social norms. In many early legal systems, it was treated as an offence against the husband, reflecting a proprietary understanding of women within marriage. Over time, however, modern constitutional democracies have re-evaluated this approach, increasingly recognizing adultery as a private matter better addressed within the domain of civil law rather than criminal sanction. This evolution reflects a broader shift from morality-based criminalization to a rights-based legal framework.

In the Indian context, the transformation of adultery jurisprudence is closely linked to the expanding interpretation of fundamental rights under the Constitution of India. The judiciary has progressively emphasized the interrelationship between privacy, dignity and personal liberty, particularly under Article 21. The recognition of privacy as a fundamental right in Justice K.S. Puttaswamy v. Union of India marked a pivotal moment in constitutional jurisprudence, affirming that intimate personal choices, including those related to relationships and sexuality, fall within the protected realm of individual autonomy. Consequently, any state intrusion into consensual adult relationships must satisfy strict constitutional scrutiny, thereby limiting the scope of criminal law in regulating private conduct.

Central to this transformation is the distinction between constitutional morality and social morality. Constitutional morality, as developed through judicial interpretation, refers to adherence to the core values enshrined in the Constitution—such as liberty, equality, dignity and individual autonomy—irrespective of prevailing societal norms. In contrast, social morality is shaped by cultural traditions, religious beliefs and majoritarian perceptions of right and wrong. The judiciary has increasingly asserted that laws grounded solely in social morality cannot override fundamental rights. This principle has been instrumental in dismantling archaic legal provisions that perpetuate discrimination or infringe upon personal freedoms.



Furthermore, the critique of adultery laws is deeply embedded in concerns of gender justice. Historically, such laws have been criticized for reinforcing patriarchal structures by treating women as passive or subordinate actors within marriage. The earlier legal framework in India exemplified this bias by denying women equal agency and by implicitly endorsing male control over female sexuality. Contemporary constitutional analysis, however, challenges these assumptions by recognizing women as autonomous individuals entitled to equal protection of the law. The shift toward a gender-just interpretation of rights underscores the importance of dismantling legal provisions that institutionalize inequality and perpetuate stereotypes.

Thus, the conceptual framework of this study situates adultery within a broader discourse on individual autonomy, constitutional values and gender equality, providing the analytical foundation for examining judicial intervention in India and other constitutional democracies.

### **Judicial Intervention in India: From Deference to Transformation**

Before 2018, the Indian judiciary largely adopted a deferential approach towards the constitutionality of Section 497 IPC, consistently upholding it despite its evident gender bias. In cases such as *Yusuf Abdul Aziz v. State of Bombay*, *Sowmithri Vishnu v. Union of India* and *V. Revathi v. Union of India*, the Supreme Court justified the provision on grounds of protecting the sanctity of marriage and treating women as a “class in need of protection.” This reasoning reflected a paternalistic and patriarchal understanding, wherein women were not recognized as autonomous individuals but rather as dependents within marital relationships.

A transformative shift occurred with the landmark judgment in *Joseph Shine v. Union of India*, where the Supreme Court unanimously struck down Section 497 IPC as unconstitutional. The Court held that the provision violated Articles 14, 15 and 21 of the Constitution of India by denying women equality, dignity and sexual autonomy. The judgment marked a decisive move away from earlier precedents and emphasized that the state has no legitimate interest in regulating consensual sexual relationships between adults.

The decision in *Joseph Shine* also exemplifies the proactive role of the judiciary in dismantling colonial-era morality laws that are incompatible with contemporary constitutional values. Section 497 IPC, rooted in Victorian notions of morality, was criticized for treating women as property of their husbands. By invalidating such a provision, the Court reinforced its role as a guardian of fundamental rights and a transformative constitutional body committed to progressive legal reform.



Furthermore, the judgment significantly contributed to the expansion of Article 21 jurisprudence, particularly in relation to privacy, dignity and personal autonomy. Drawing upon the principles laid down in Justice K.S. Puttaswamy v. Union of India, the Court recognized that intimate personal choices fall within the protected domain of individual liberty. Adultery, while remaining a moral and civil wrong, was held to be beyond the legitimate reach of criminal law. This evolution underscores the shift from a morality-based legal framework to one grounded in constitutional morality, where individual rights and freedoms take precedence.

### **Comparative Constitutional Perspectives:**

In the **United States**, adultery has largely lost its status as a criminal offence, with several states either repealing or ceasing to enforce such laws. The constitutional discourse has increasingly emphasized the right to privacy and personal autonomy, particularly following the landmark decision in *Lawrence v. Texas*. The judiciary has moved toward protecting consensual adult relationships from state interference, thereby framing adultery as a matter of private morality rather than public criminality.

In the **United Kingdom**, adultery is not recognized as a criminal offence and has long been treated solely within the domain of civil law. It constitutes a ground for divorce under matrimonial law but does not attract penal consequences. The legal approach reflects a clear demarcation between public law and private relationships, where the state refrains from regulating consensual moral conduct between adults.

**France** presents a similar trajectory, having decriminalized adultery in 1975. The legal framework evolved to prioritize individual liberty, equality and personal dignity over traditional moral policing. Adultery is now relevant only in civil proceedings, particularly in divorce cases, indicating a shift toward a rights-based approach grounded in modern constitutional values.

In **South Korea**, adultery remained a criminal offence until the Constitutional Court, in *South Korea Constitutional Court Adultery Decision*, declared it unconstitutional. The Court recognized that criminalizing consensual sexual relations between adults infringed upon sexual autonomy and personal freedom. This decision marked a significant transition from state-enforced morality to constitutional protection of individual choice.

A comparative analysis of these jurisdictions reveals a consistent trend toward decriminalization, guided by evolving constitutional principles such as privacy, dignity and autonomy. While cultural contexts differ, judicial reasoning across these democracies demonstrates a gradual shift away from



punitive approaches to adultery, favoring instead the protection of individual rights and limiting state intervention in intimate personal matters.

## **Gender Equality and Substantive Justice**

Section 497 of the Indian Penal Code reflected a deeply gender-biased and paternalistic understanding of marital relationships, wherein a married woman was treated not as an autonomous individual but as a passive object of her husband's control. The provision criminalized a man for engaging in sexual relations with a married woman without the consent of her husband, while the woman herself was exempted from punishment, ostensibly for her "protection." This legal framework reinforced patriarchal notions of women as property and denied them agency, thereby violating the core principles of equality and dignity.

The judicial transformation of this perspective is most prominently reflected in *Joseph Shine v. Union of India*, where the Supreme Court of India categorically struck down Section 497 as unconstitutional. The Court recognized women as equal rights-bearing individuals, capable of making autonomous choices and rejected the notion that they require paternalistic protection under criminal law. It emphasized that such provisions perpetuate gender stereotypes and undermine the constitutional vision of substantive equality.

This shift is closely tied to the interpretation of Article 14 of the Constitution of India, which guarantees equality before the law and equal protection of the laws. The Court held that Section 497 failed the test of reasonable classification and was manifestly arbitrary, as it discriminated on the basis of gender and marital status. By excluding women from both liability and agency, the law violated not only formal equality but also substantive justice, which requires the dismantling of structural inequalities embedded in legal systems.

From a comparative feminist perspective, many constitutional democracies have moved away from criminalizing adultery, recognizing it as a matter of personal morality rather than state intervention. Jurisdictions such as France and the United Kingdom have long decriminalized adultery, emphasizing individual liberty and gender neutrality in legal frameworks. Similarly, the Constitutional Court of South Korea, in 2015, invalidated its adultery law, acknowledging that state regulation of private consensual relationships infringes upon personal autonomy and disproportionately affects women.



Thus, judicial intervention in India aligns with a broader global trend toward recognizing gender equality as a substantive constitutional value. The decriminalization of adultery not only removes a discriminatory legal provision but also marks a significant step toward affirming women's agency, dignity and equal status within both the legal system and society.

### **Impact of Decriminalization: Legal and Social Dimensions**

The decriminalization of adultery following the landmark judgment in *Joseph Shine v. Union of India* marked a significant shift in Indian legal and social thought, redefining the boundaries between state intervention and private morality. By striking down Section 497 IPC, the Supreme Court clarified that consensual intimate relationships between adults fall within the domain of personal autonomy and privacy, thereby removing the stigma of criminal liability while retaining the relevance of adultery in civil contexts.

A key distinction that emerges post-decriminalization is between criminal law and civil matrimonial remedies. Criminal law, being coercive and punitive, is intended to address acts that harm society at large. In contrast, adultery, though morally contentious, is now treated as a private wrong with civil consequences. Under matrimonial laws such as the Hindu Marriage Act, 1955 and other personal laws, adultery continues to function as a valid ground for divorce, judicial separation and in certain cases, claims related to maintenance and custody. This separation reinforces the principle that not all moral wrongs warrant criminal sanction.

The implications for marriage, divorce and family law are both nuanced and transformative. Decriminalization has shifted the focus from punishment to resolution, encouraging parties to seek remedies through family courts rather than the criminal justice system. It also promotes a more balanced and gender-neutral understanding of marital obligations, removing the earlier paternalistic notion that treated women as property of their husbands. Consequently, the legal framework now aligns more closely with constitutional values of dignity, equality and individual choice as embedded in the Constitution of India.

The debate on whether decriminalization weakens or strengthens marital institutions remains contested. Critics argue that removing criminal sanctions may erode the sanctity of marriage and reduce deterrence against infidelity. However, proponents contend that marriage, as a voluntary and intimate association, should be sustained by mutual trust and respect rather than fear of penal consequences. From this perspective, decriminalization strengthens the institution by placing it on a foundation of consent and equality rather than coercion.



Societal responses to this legal shift reflect an ongoing transition in norms and values. Urban and progressive segments tend to view the judgment as a step toward recognizing individual freedoms, while more conservative sections express concern over its perceived impact on family stability. Over time, however, the decision contributes to a gradual normalization of the idea that the state should not intrude into private consensual relationships. This evolution indicates a broader movement toward aligning legal frameworks with changing social realities and constitutional morality.

### **Critical Analysis: Limits and Possibilities of Judicial Intervention**

Judicial intervention in adultery laws reflects a broader tension between constitutional adjudication and democratic governance. The debate between judicial activism and judicial restraint becomes particularly significant when courts engage with morality-based offences. In the Indian context, the decision in *Joseph Shine v. Union of India* demonstrates a clear instance of judicial activism, where the judiciary moved beyond mere interpretation to invalidate a long-standing penal provision, Section 497 IPC, on grounds of arbitrariness, gender discrimination and violation of dignity. While such intervention is often justified as necessary to uphold fundamental rights under the Constitution of India, critics argue that it risks encroaching upon the legislative domain and undermining democratic processes.

A central question is whether courts should intervene in morality-based offences at all. Traditionally, criminal law has been shaped by prevailing social morality; however, constitutional courts increasingly prioritize individual autonomy and dignity over majoritarian values. The Indian Supreme Court's evolving jurisprudence, particularly in cases recognizing privacy and personal liberty, suggests that morality cannot serve as a sole basis for criminalization. Comparative jurisprudence, such as *Lawrence v. Texas*, reinforces this approach by emphasizing that consensual intimate conduct falls within the protected sphere of personal liberty. Nonetheless, excessive judicial intervention in such domains raises concerns about courts substituting their moral reasoning for that of society.

Another critical concern is the risk of over-constitutionalization of private relationships. By bringing intimate and personal matters within the ambit of constitutional scrutiny, courts may inadvertently expand the reach of constitutional law into areas traditionally governed by social norms and personal choice. While this expansion strengthens rights discourse, it may also blur the distinction between public law and private life. The decriminalization of adultery illustrates this tension: although it removes state intrusion into consensual relationships, it simultaneously constitutionalizes marital dynamics, potentially inviting further litigation on personal conduct within relationships.



Therefore, there is a pressing need to strike a balance between individual autonomy and societal interests. Judicial intervention should be guided by a principled framework that distinguishes between harm-based offences and morality-based prohibitions. While the protection of dignity, equality and privacy must remain paramount, courts must also exercise restraint to avoid overreach. The challenge lies in ensuring that constitutional values serve as a shield against unjust laws without transforming the judiciary into a moral arbiter of private life.

### **Conclusion:**

The comparative analysis of adultery laws across constitutional democracies reveals a clear shift from moral policing through criminal law to a rights-based framework grounded in individual autonomy and dignity. India's judicial transformation, culminating in *Joseph Shine v. Union of India*, aligns it with progressive jurisdictions such as the United States, the United Kingdom, France and South Korea, where adultery is no longer treated as a criminal offence but rather as a matter within the private domain of matrimonial relations. This transition reflects a broader constitutional commitment to limiting state intrusion into intimate personal choices.

The study affirms that constitutional morality must prevail over societal or majoritarian notions of morality, particularly in matters concerning personal relationships and individual autonomy. By reading the guarantees of equality, dignity and privacy into the framework of the Constitution of India, the judiciary has reinforced the principle that the law cannot perpetuate patriarchal structures or treat individuals as subjects of control within marital relationships. The decriminalization of adultery thus marks a significant step toward recognizing individuals, especially women, as autonomous rights-bearing persons rather than as objects within a marital framework.

At the same time, the judgment highlights the evolving nature of sexual autonomy jurisprudence and opens new avenues for legal and academic inquiry. Future research may focus on the intersection of sexual autonomy with emerging issues such as digital intimacy, consent within marriage and the role of the state in regulating private morality. Additionally, there remains scope to examine how family law systems adapt to this shift and whether civil remedies adequately address the complexities of marital breakdown. In this regard, the jurisprudence on sexual autonomy continues to develop as a dynamic and contested field, requiring sustained scholarly engagement and critical analysis.



## References:

1. Constitution of India (Articles 14, 15, 19, 21)
2. Section 497 IPC (struck down)
3. Code of Criminal Procedure, 1973
4. Joseph Shine v. Union of India
5. Yusuf Abdul Aziz v. State of Bombay
6. Sowmithri Vishnu v. Union of India
7. V. Revathi v. Union of India
8. K.S. Puttaswamy v. Union of India
9. Lawrence v. Texas (USA)
10. Constitutional Court of South Korea Adultery Case
11. H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing)
12. M.P. Jain, *Indian Constitutional Law* (LexisNexis)
13. Upendra Baxi, *The Future of Human Rights* (Oxford University Press)
14. Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press)
15. Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*
16. Gautam Bhatia, "The Transformative Constitution and the Decriminalization of Adultery," *Indian Law Review*
17. Aparna Chandra, "Gender Equality and Sexual Autonomy in Constitutional Law," *NUJS Law Review*
18. Shreya Atrey, "Constitutional Morality and Its Critics," *Oxford Journal of Legal Studies*
19. Jean L. Cohen, "Sexuality, Privacy and the State," *Columbia Journal of Gender and Law*
20. Law Commission of India, 42nd Report on the Indian Penal Code
21. Law Commission of India, 172nd Report on Review of Rape Laws
22. United Nations Human Rights Committee, General Comments on Privacy and Equality
23. SCC Online (Supreme Court Cases database)
24. Manupatra Legal Database
25. JOR (JSTOR)
26. HeinOnline