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## CASE COMMENTRY ON JOHN SHINE VS UNION OF INDIA

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**Abstract :** This case critically analysis the judgment in the case of John Shine Vs UOI which led to the drastic change to the cultural aspect of India. The idea of transformative justice has been evoked in this case as concurrence with the other progressive Nations around the world. Let's discuss the reasoning behind the judgement of the case

**Keywords :** Equality

The practice of adultery is considered as an criminal offense for time in memorial adultery has been punished under section 497 of Indian penal code the section goes as

“Whoever has sexual intercourse with the person who is and whom he knows or has reason to believe to be the wife of another man without the consent or convenience of that man such sexual intercourse not amounting to the offence of rape is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extent to 5 years or with fine or with both in such case the wife shall not be punishable as an better”

This Victorian era law has been a post by both men and women as it is while eating the rights of women and accuses only men for an act of adultery even though women have taken a part in it. She was not even punished as an abator when it comes to women's right we speak of equality in every spear of life may it be equal renemoration or equal opportunity or equal rights in property but the right to make a complaint on an adulterous husband was denied under section 497 of IPC.

This scenario changed after the landmark judgment of John shine versus union of India it was a public interest litigation filed by John shine there were numerous issues in this case but the most important ones are

1. Whether section 497 of IPC and section 198 (2) of CrPC which give special privilege to men that only the husband could initiate a criminal proceeding under section 497 of IPC is constitutionally valid?
2. Whether the section 497 of IPC and 198 (2) of CrPC is bilative of article 14 and 15 (1) and article 21 of constitution of India?

The argument from petitioner side was that the 14 + bicate back law was not suitable to modern times as it is violative of article 14 as there is no equality between men and women were only men can initiate a proceeding and women or considered as a property of their husband moreover the section also does not cover we do and divorce women under its ambit. Discrimination is not only on women but also on men who are only punished for an act where women are also actively involved and women are considered to be a victim. Choosing a sexual partner comes under right of privacy under article 21 despite the women or men being married or not and the decision to stay loyal in the institution of marriage can happen only through strong bond of marriage and not through legislation.

The respondent side argument was that section 497 is a special provision to protect women so it is a protective discrimination for the benefit of women. Family is a social structure for the very existence of a constructive society so if according to peditional argument article 21 is applied to the same it would break the sanctity of marriage.

After hearing both sides, the court decided to struck down section 497 of IPC and section 198 (2) of CrPC to the extent applicable to section 497 of IPC.

Analysis the critical analysis of the judgment is that this case led to the drastic change to the cultural aspect of India. The idea of transformative justice has been evoked in this case as concurrence with the other progressive Nations around the world. Decriminalizing adultery is a way to uphold gender equality despite all odds. Adultery still stands as an option in civil disputes with regards to divorce. A stated in respondent argument family is the very basis of social structure where reputation of individual is seen to be an important aspect through d criminalizing the section 497 of IPC women have been given their reputation of being equal to man and objective women has been curbed. Also this section had many loopholes and only men were to be punished which made women who were in adultery with that man to vanish in the eyes of the law. I stated about being loyal in the marriage is a personal choice and punishment for adultery under section 497 was discriminative so sticking down such a provision won't have a negative impact on the society