

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION (CRL) NO.. 194 OF 2018

IN THE MATTER OF:-

JOSEPH SHINE ... PETITIONER
VERSUS
UNION OF INDIA ...RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT (UNION OF INDIA)**

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[PAPER BOOK]

ADVOCATE FOR RESPONDENT:-
B. V. BALRAM DAS (AOR)

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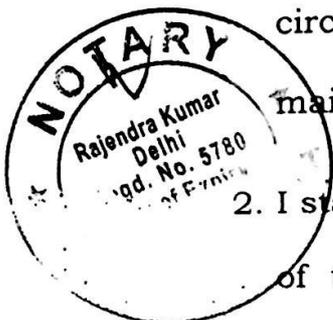
JOSEPH SHINE ... PETITIONER
VERSUS
UNION OF INDIA ...RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT**

I, Thangkholum Haokip S/o Late Shri H.M. Haokip, working as Under Secretary (Judicial &PP), aged about 51 years, Office at Ministry of Home Affairs, Major Dhyan Chand National Stadium, India Gate, New Delhi - 110002, do hereby solemnly affirm and state on oath as under:

1. That I am duly authorized for and on behalf of Respondent Ministry to swear the present affidavit. I am fully conversant with the facts and circumstances of the present case as per records maintained by the Respondent Ministry.

2. I state that I have read and understood the contents of the Writ Petition and the reply thereto is as under:



3. At the outset, I deny all averments, submissions, contentions as well as the allegations contained in the present Writ Petition except those that are expressly and specifically admitted hereinafter.
4. That the Respondent is the nodal Ministry with regard to the questions and issues raised in the present Writ Petition under Article 32 of the Constitution of India. The present Writ Petition challenging the Constitutional vires of Section 497 of Indian Penal Code, 1860 and Section 198(2) of the Code of Criminal Procedure, 1973 is wholly misconceived.
5. The present Writ Petition under Article 32 of the Constitution of India is liable to be dismissed at the very outset as Section 497 of the Indian Penal Code, 1860 supports, safeguards and protects the institution of Marriage. In Smt Sowmithri Vishnu Vs Union Of India 1985(Supp)SCC137 this Court has held:



... If we were to accept the argument of the petitioner, Section 497 will be obliterated from the statute book and adulterous relations will have a more free play than now. For then, it will be

impossible to convict anyone of adultery at all. It is better, from the point of view of the interests of the society, that at least a limited class of adulterous relationship is punishable by law. **Stability of marriages is not an ideal to be scorned...**

It is submitted that striking down Section 497 of the Indian Penal Code, 1860 and Section 198 (2) of The Code of Criminal Procedure, 1973 would tantamount to decriminalizing the offence of adultery, thereby eroding the sanctity of marriage and the fabric of society at large.

The Government is already seized of the issue relating to gender bias. The Hon'ble Supreme Court in W. Kalyani Vs State, (2012)1SCC358 has held:

".... The provision is currently under criticism from certain quarters for showing a strong gender bias for it makes the position of a married woman almost as a property of her husband. But in terms of the law as it stands, it is evident from a plain reading of the Section that only a man can be proceeded against and punished for the offence of adultery. Indeed, the Section provides expressly that the wife cannot be punished even as an abettor. Thus, the mere fact that the Appellant is a woman makes her

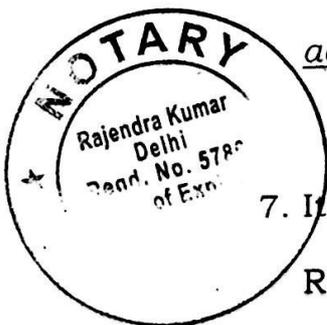


completely immune to the charge of adultery and she cannot be proceeded against for that offence...

6. In order to meet address these concerns the Committee on Reforms of Criminal Justice System has observed in its report of March 2003 at Para 16.3:

"16.3.1 A man commits the offence of adultery if he has sexual intercourse with the wife of another man without the consent or connivance of the husband. The object of this section is to preserve the sanctity of the marriage. The society abhors marital infidelity. Therefore, there is no good reason for not meeting out similar treatment to wife who has sexual intercourse with a married man.

16.3.2 The Committee therefore suggests that Section 497 I.P.C should be suitably amended to the effect that "whosoever has sexual intercourse with the spouse of any other person is guilty of adultery..."



7. It is submitted that the Malimath Committee in its Report on Committee on Reforms of Criminal Justice System has recommended the amendment

of Section 497 of The Indian Penal Code, 1860 to make it gender neutral. The recommendations of the Malimath Committee are:

*"...Section 497 of the Indian Penal Code regarding the offence of adultery be amended to include wife who has sexual intercourse with a married man by substituting the words 'whosoever has sexual intercourse with the spouse of any other person is guilty of adultery'...". True typed copy of the Relevant Extracts of the Malimath Committee Report is annexed herewith and is marked as **Annexure - R1.***

8. It is submitted that striking down Section 497 of IPC and Section 198(2) of Cr.P.C. will prove to be detrimental to the intrinsic Indian ethos which gives paramount importance to the institution and sanctity of marriage. The provisions of law under challenge in the present writ have been specifically created by the legislature in its wisdom, to protect and safeguard the sanctity of marriage, keeping in mind the unique structure and culture of the Indian society.

The question of equality with regards to the statute under challenge has already been observed and the



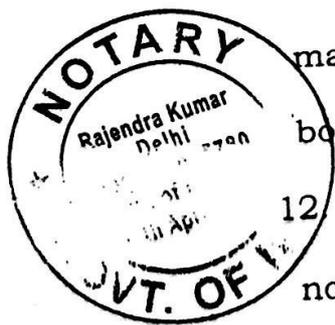
matter is under consideration with the appropriate authorities.

9. It is submitted that the Parliamentary Standing Committee on Home Affairs in its 146th Report dated 23.06.2010 has recommended a comprehensive review of the Criminal Justice System of the country. Earlier the Parliamentary Standing Committee in its 111th and 128th Reports had stressed upon the need to reform and rationalize the Criminal Law of the country by introducing a comprehensive legislation in Parliament rather than bringing about piecemeal amendments in the respective Acts. It is submitted that the Law Commission was requested to take into account the recommendations made by the Malimath Committee in this regard. Hence, the recommendation of the Malimath Committee on amendment of Section 497 Adultery stands referred to the Law Commission of India which took up the matter for study and examination on 11.10.2013. True typed copies of letter dated 06.07.2010, 25.04.2013 and 14.06.2013 are being annexed herewith and are marked as Annexure - R2.



10. It is submitted, that on 11.12.2014, the Law Commission intimated that they have identified certain focus areas and formed sub-groups to deliberate on such areas and that the Commission is actively pursuing the issues and will finalize views as early as possible. The status has been reiterated on 11.03.2016. On 08.02.2018, the Respondent Ministry had again sought the status of comprehensive review of the Criminal Justice System being carried out by the Law Commission of India. The true typed copies of letter dated 11.12.2014, 11.03.2016 and 08.02.2018 are being annexed herewith and is marked as **Annexure - R3, Annexure - R4 and Annexure - R5** respectively.

11. It is submitted that the final Report of Law Commission is awaited regarding the amendment of Section 497 IPC. The Malimath Committee in its report has held that the object of this section is to preserve the sanctity of the marriage. The decriminalization of adultery will result in weakening the sanctity of a marital bond and will result in laxity in the marital bond.

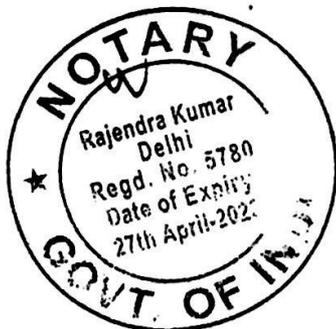


12. That the judgments relied upon by the Petitioner are not applicable to the present case and the

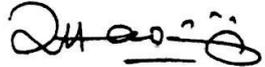
interpretation sought to be placed on the said judgment is misconceived and erroneous. It is most humbly submitted that the Law Commission has intimated that they have identified certain focus areas and formed sub-groups to deliberate on such areas and is actively pursuing the issue and will finalize their final views soon.

13. That the contents of the present counter affidavit are confined to the issues raised and averments made by the Petitioner. That the Respondent craves leave of this Hon'ble Court to file further affidavit/documents if and when required.

14. That, hence, it is most respectfully prayed that this Hon'ble Court be pleased to dismiss the Writ Petition as the averments made and the issues raised by the Petitioner have no merits.



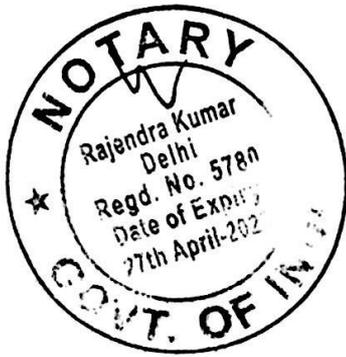
Verification


DEPONENT

(
(THE
अवर सचिव/Secretary
Ministry of Home Affairs
भारत सरकार/Govt. of India

Verified at Delhi on 08th day of May, 2018 that the content of the above affidavit are true and correct to the

best of my knowledge and belief. No part of it is false and nothing has been concealed there from.



Thangkholum Haokip
DEPONENT

(थॅंगखोलुन हाकिप)
(THANGKHOLUN HAOKIP)
अवर सचिव / Under Secretary
सुद मंत्रालय
Ministry of Home Affairs
Govt. of India

ATTESTED *[Signature]*
RAJENDRA KUMAR
NOTARY, DELHI-R-5760 Ph. 8212491092
GOVERNMENT OF INDIA 9899446209
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No. 08.05.2018

08.05.2018
I CERTIFY THAT THE CONTENTS EXPLAINED TO THE DEPONENT BY EXECUTANT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON IDENTIFIED BY *[Signature]*
IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE

IDENTIFIED