



Adultery is not a crime, rules SC; strikes it off IPC

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Highlights

- A five-judge Constitution Bench, led by Chief Justice of India Dipak Misra, in four separate but concurring opinions held that adultery is not a crime and struck it off the Indian Penal Code.
- Chief Justice Misra, in an opinion for himself and Justice A.M. Khanwilkar, observed that Section 497 (adultery) of the Code “commands” married couples to remain loyal to each other.

A matter of choice

- Two individuals may part if one cheats, but to attach criminality to infidelity is going too far, the Chief Justice observed.
- Besides, there is no data to back claims that abolition of adultery as a crime would result in “chaos in sexual morality” or an increase of divorce.
- How married couples deal with adultery is “absolutely a matter of privacy at its pinnacle”, the Chief Justice wrote.
- Loss of moral commitment in a marriage creates a dent in the relationship, but it is left to each individual to deal with the problem — some may forgive while others may seek divorce. Punishing each other or the wife’s lover is unlikely to re-kindle commitment, the judgment said.
- Section 497 treats a married woman as the commodity of her husband, the Bench held.
- Adultery is not a crime if the cuckolded husband connives or consents to his wife’s extra-marital affair.
- Section 497 treats a married woman as her husband’s “chattel”.
- The provision is a reflection of the social dominance of men prevalent 150 years ago, the judgment said.

Section 497 archaic: Justice Nariman

- Justice Rohinton Nariman, in his separate opinion but concurring judgment holding that adultery is not a crime, said Section 497 made a husband the “licensor” of his wife’s sexual choices.
- Justice Nariman listed out countries which had repealed adultery as a crime, starting with the People’s Republic of China.
- Justice Nariman, member of the five-judge Constitution Bench that delivered the judgment striking adultery of the Indian Penal Code, said Section 497 is archaic and based on the chauvinistic reason that the “third-party male” has seduced the woman, and she is his victim.
- “Husband is not the master... Obituaries should be written of these historic perceptions,”

Chief Justice Dipak Misra observed.

Codified patriarchy

- Justice D.Y. Chandrachud, in his separate view, termed Section 497 as a “codified rule of patriarchy”.
- Marriage does not mean ceding autonomy of one to the other.
- Ability to make sexual choices is essential to human liberty.
- Even within private zones, an individual should be allowed her choice, he observed.
- Society imposes impossible virtues on a woman. Raises her to a pedestal. Confines her to spaces. Objectifies her and says she should be pure.
- But society has no qualms to commit rape, honour killings, sex-determination and infanticide, Justice Chandrachud admonished.
- Justice Chandrachud’s opinion transcended from a mere quashing of Section 497 to a judicial document on the centuries-old struggle of women against patriarchy.
- Though adultery is considered to be an offence relating to marriage, the wife of an adulterer has no voice of her own, no agency to complain.
- If the woman involved in the extra-marital affair happens to be single and has no husband who is wronged, the law treats the situation with total unconcern, Justice Chandrachud pointed out.
- The Bench also held Section 198 (2) of the CrPC, which gives the cuckolded husband the exclusive right to prosecute his wife’s lover, manifestly arbitrary.
- Justice Indu Malhotra, reading her opinion the last on the Bench, held that Section 497 is based on the Doctrine of Coverture.
- This doctrine, not recognised by the Constitution, holds that a woman loses her identity and legal right with marriage, is violative of her fundamental rights.

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