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Adultery is Not a Crime: Supreme Court

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The Supreme Court has struck down as **unconstitutional**, the 158 year old **Section 497 of the Indian Penal Code**, which criminalizes adultery.

The five-Judge Bench led by Chief Justice of India Dipak Misra also declared **Section 198 of the Criminal Procedure Code** as unconstitutional, which deals with the procedure for filing a complaint for the offence of adultery. According to this, **the husband alone could complain against adultery while an adulterous man's wife had no such right.**

The Supreme Court's Observations

- It said that the 158-year-old law was unconstitutional and is violative of **Article 21 (Right to life and personal liberty) and Article 14 (Right to equality)**.
- The court observed that two individuals may part if one cheats, but to attach criminality to infidelity is going too far. How married couples deal with adultery is **absolutely a matter of privacy.**
- 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.
- Any provision of law affecting individual dignity and equality of women invites the wrath of the Constitution. It's time to say that a **husband is not the master of wife.** Legal sovereignty of one sex over other sex is wrong.
- However, if any aggrieved spouse ended her life because of her partner's adulterous relation, it could be **treated as an abetment** to suicide if evidence was produced.
- 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.**
- 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.

- "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".

Adultery

The act of adultery is a voluntary sexual intercourse between a married person and someone other than that person's current spouse or partner.

Section 497 of the IPC

- It mandates that whoever has sexual intercourse with the wife of another man, **without the consent or connivance of that man**, such sexual intercourse not amounting to the offence of rape is guilty of the offence of adultery and shall be punished.
- The **law does not punish his wife**, since it presumes that only a man can seduce a woman into a sexual act, and that it is the husband who has suffered due to the sexual relationship of his wife, carried out without his consent. At the same time, **the wife is not protected from similar behaviour committed by her husband**.

Way Forward

- The decriminalisation of adultery comes soon after the Supreme Court judgment that read down Section 377 of the IPC to decriminalise homosexuality, thereby **enabling diverse gender identities to be unafraid of the law**, is a positive and a progressive development.
- However, it is a matter of concern that refreshing the statute books is being left to the judiciary, **without any proactive role** of Parliament in amending regressive laws.
- The provisions such as **Section 497 or Section 377** should have been addressed by the Parliament in its legislative responsibility through debates and discussions.