

## Supreme Court Verdict on Adultery

### Why in news?

\n\n

The Supreme Court has removed provisions on adultery in IPC and CrPC, and subsequently decriminalised adultery.

\n\n

*The “beauty” of the Constitution is that it includes “I, you and me”.*

\n\n

### What is the ruling on?

\n\n

\n

- Under Section 497 of the IPC, a man had the right to initiate criminal proceedings against his wife’s lover.

\n

- Under Section 198(2) of the CrPC, the husband alone could complain against adultery.

\n

- The court has now struck down both these provisions and has decriminalised adultery.

\n

- Nevertheless, adultery will continue as a ground of divorce and, therefore, remain in civil law.

\n

\n\n

### How did Section 497 evolve?

\n\n

\n

- The First Law Commission of 1837, under Lord Macaulay, had not included adultery as a crime in the original IPC. It was only a civil wrong.

\n

- The Second Law Commission in 1860, headed by Sir John Romilly, made

adultery a crime but spared women from punishment.

\n

- This was due to the conditions in which they lived - child marriage, age gap between spouses, and polygamy.
- The drafters of the IPC looked at this as being sympathetic to women, and also viewed men as the real perpetrators.
- In 1954, the Supreme Court too treated Section 497 as a special provision made in favour of women.
- This was made valid in exercise of the state's powers under Article 15(3) of the Constitution.
- In 1988, the court upheld Section 497 by saying only an "outsider" is liable and not the woman.
- This exemption is basically a "reverse discrimination in favour of women".

\n\n

### **What is the Court's rationale in decriminalising?**

\n\n

\n

- **Anomalies in law** - An adulterous relationship did not constitute an offence if a married woman had her husband's consent.
- A wife could not prosecute her husband or his lover for violating the "sanctity of the matrimonial home".
- Only a husband could prosecute the man with whom his wife had a sexual relationship.
- Moreover, if the husband had an affair with an unmarried woman, divorcee or widow, it was not an offence of adultery.

\n\n

\n

- **Rights** - The ability to make choices is a fundamental facet of human liberty and dignity.
- Autonomy in matters of sexuality is intrinsic to a dignified human existence.

- \n
- But Section 497 restricts women of the ability to make these fundamental choices.
- \n
- It is also violative of Article 14 (equality) and Article 15 as it discriminated on grounds of sex and punishes just men.
- \n
- **Attitude** - The “ancient notions” of the man being the seducer and woman being the victim is no longer the case today.
- \n
- The court observed that the husband is neither master of his wife, nor does he have legal sovereignty over her.
- \n
- The archaic Section 497 of the IPC is thus arbitrary -
- \n

\n\n

- \n
- i. in punishing only men for adultery
- \n
- ii. in treating a woman as her husband’s property
- \n

\n\n

- \n
- Besides these, the court also took note of global decriminalisation of adultery.
- \n

\n\n

### **What is the significance?**

\n\n

- \n
- The Court did not equalise the right to file a criminal complaint, by allowing a woman to act against her husband’s lover.
- \n
- It instead preferred putting an end to the Victorian-era morality itself.
- \n
- It is thus a significant step towards rights-based social relations, instead of a state-imposed moral order.
- \n
- Taking forward the judicial precedents, the law makers should now play a proactive role in amending such regressive laws.
- \n

\n\n

\n\n

**Source: Indian Express, The Hindu**

\n

