Supreme Court Verdict on Adultery

Why in news?

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

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The "beauty" of the Constitution is that it includes "I, you and me".

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What is the ruling on?

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- Under Section 497 of the IPC, a man had the right to initiate criminal proceedings against his wife's lover.
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- Under Section 198(2) of the CrPC, the husband alone could complain against adultery.
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- The court has now struck down both these provisions and has decriminalised adultery.
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- Nevertheless, adultery will continue as a ground of divorce and, therefore, remain in civil law.
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How did Section 497 evolve?

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

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

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- **Anomalies in law** - An adulterous relationship did not constitute an offence if a married woman had her husband’s consent.
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- A wife could not prosecute her husband or his lover for violating the "sanctity of the matrimonial home".
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- Only a husband could prosecute the man with whom his wife had a sexual relationship.
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- Moreover, if the husband had an affair with an unmarried woman, divorcee or widow, it was not an offence of adultery.
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- **Rights** - The ability to make choices is a fundamental facet of human liberty and dignity.
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- Autonomy in matters of sexuality is intrinsic to a dignified human existence.

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- But Section 497 restricts women of the ability to make these fundamental choices.
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- It is also violative of Article 14 (equality) and Article 15 as it discriminated on grounds of sex and punishes just men.
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- **Attitude** - The “ancient notions” of the man being the seducer and woman being the victim is no longer the case today.
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- The court observed that the husband is neither master of his wife, nor does he have legal sovereignty over her.
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- The archaic Section 497 of the IPC is thus arbitrary -
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i. in punishing only men for adultery
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ii. in treating a woman as her husband’s property
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- Besides these, the court also took note of global decriminalisation of adultery.
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What is the significance?

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

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