

Adultery law violates the dignity of woman, says SC

The Bench said the provision treating women as 'chattel' was absurd.

The time has changed since it was commonly accepted that it is the man who is the seducer and not the woman, the Supreme Court said on Thursday, while questioning if the 'archaic' law on adultery would stand the test of right to equality.

A five-judge Constitution Bench, headed by Chief Justice Dipak Misra, made the observation while hearing a case challenging the validity of the penal law, which makes adultery an offence punishable only for men and not the consenting women.

Penal provisions

Section 497 in the Indian Penal Code, which defines adultery, says that a man could be punished up to five years in jail if he has sexual intercourse with another man's wife. However, it is not an offence if the sexual intercourse is with the "consent or connivance" of the husband of the woman.

The Bench, also comprising Justices R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud and Indu Malhotra, said the IPC section treats a married woman as "chattel" (a personal possession) of the conniving husband, which was "absurd". "When a woman is treated as chattel, her right to dignity is affected," the Bench remarked.

The Bench also observed that decriminalising adultery was not "a licence for people to go indulge in it".

It also remarked that adultery is a sign of marital breakdown as marriage as an institution has two pillars where both parties have to be equally responsible.

Advocate Kaleeswaram Raj, appearing for petitioner Joseph Shine, an Indian living in Italy, said adultery remains a ground for divorce in all personal laws.

"However, penalising adultery and jailing citizens for engaging in consensual sex is a different thing altogether. There is no compelling state interest or even a valid rationale for the state to do so," Mr. Raj said.

Mr. Raj clarified that he was seeking to strike down the provisions as unconstitutional and looking to make its provisions gender neutral.

Senior counsel Meenakshi Arora said most countries have done away with adultery as a criminal offence, including Bhutan, Sri Lanka, China, South Korea.

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