

ADULTERY LAW MUST STAY FOR MILITARY: GOVT.

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The Supreme Court on Wednesday admitted a petition filed by the Ministry of Defence (MoD) seeking to exempt armed forces personnel from the ambit of a Constitution Bench judgment of 2018 that decriminalised adultery.

One of the chief reasons given by the government for seeking exemption is, incidentally, that “there will always be a concern in the minds of the Army personnel who are operating far away from their families under challenging conditions about the family indulging in untoward activity.”

A three-judge Bench led by Justice Rohinton Fali Nariman said the plea had to be considered by a Constitution Bench because the original verdict, striking down Section 497 (adultery) of the IPC, was pronounced by a five-judge Bench in September 2018. The court referred the case to the Chief Justice to pass appropriate orders to form a five-judge Bench to clarify the impact of the 2018 judgment on the armed forces.

The government said in the petition that personnel of the Army, Navy and the Air Force were a “distinct class”. They were governed by special legislation, the Army Act, the Navy Act and the Air Force Act.

Adultery amounted to an unbecoming conduct and a violation of discipline under the three Acts. The special laws imposed restrictions on the fundamental rights of the personnel, who function in peculiar situation requiring utmost discipline. The three laws were protected by Article 33 of the Constitution, which allowed the government to modify the fundamental rights of the armed forces personnel. The judgment of 2018 created ‘instability’. It allowed a personnel charged with carrying on an adulterous or illicit relationship to take cover under the judgment.

“In cases of adultery, even if there is a charge against the accused, an argument can be raised that we are circumventing the law and what could not be done directly is being done directly through these Acts,” the Ministry said.

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