

'DON'T BRING ADULTERY BACK AS CRIME'

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Treating adultery as an offence is tantamount to the State entering into a “real private realm,” Chief Justice of India Dipak Misra wrote in his main opinion for the Constitution Bench on Thursday.

If Parliament, as it had let adultery continue in the rule book, tries to bring it back, the move would affect Article 21 of the Constitution. It would violate the dignity of husband and wife and the privacy attached to a relationship between the two, the Chief Justice held.

The government had argued that adultery should continue to be a crime to maintain the sanctity of marriage.

“Adultery does not fit into the concept of a crime. We may repeat at the cost of repetition that if it is treated as a crime, there would be immense intrusion into the extreme privacy of the matrimonial sphere,” the Chief Justice wrote for himself and Justice Khanwilkar.

“It [adultery] is better to be left as a ground for divorce,” the judgment observed.

Other offences

Justice Misra observed that Section 497 (adultery) is unlike any other offences relating to matrimonial relationship. The Chief Justice cited several of these other offences like Section 498-A (dowry harassment), the Protection of Women from Domestic Violence Act, 2005, Section 125 of the Code of Criminal Procedure, Sections 306 (abetment of suicide) or 304B (dowry death) or 494 (bigamy) of the Indian Penal Code.

“Let it be clearly stated, by no stretch of imagination, one can say, that Section 498-A or any other provision enters the private realm of matrimonial relationship... There has been correct imposition by law not to demand dowry or to treat women with cruelty so as to compel her to commit suicide. These activities deserve to be punished and the law has rightly provided so,” Justice Misra wrote.

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