

# NOT A CRIME: ON SUPREME COURT'S ADULTERY RULING

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The cleansing of the statute books of provisions that criminalise consensual relations among adults continues, with the Supreme Court finally [striking down a colonial-era law](#) that made adultery punishable with a jail term and a fine. In four separate but concurring opinions, a five-judge Bench headed by the Chief Justice of India, Dipak Misra, finally transported India into the company of countries that no longer consider adultery an offence, only a ground for divorce. They have removed provisions related to adultery in the Indian Penal Code and the Code of Criminal Procedure. According to Section 497 of the IPC, which now stands struck down, a man had the right to initiate criminal proceedings against his wife's lover. In treating women as their husband's property, as individuals bereft of agency, the law was blatantly gender-discriminatory; aptly, the Court also struck down Section 198(2) of the CrPC under which the husband alone could complain against adultery. Till now, only an adulterous woman's husband could prosecute her lover, though she could not be punished; an adulterous man's wife had no such right. In a further comment on her lack of sexual freedom and her commodification under the 158-year-old law, her affair with another would not amount to adultery if it had the consent of her husband. "The history of Section 497 reveals that the law on adultery was for the benefit of the husband, for him to secure ownership over the sexuality of his wife," Justice D.Y. Chandrachud wrote. "It was aimed at preventing the woman from exercising her sexual agency."

But the challenge before the court was not to [equalise the right](#) to file a criminal complaint, by allowing a woman to act against her husband's lover. It was, instead, to give the IPC and the CrPC a good dusting, to rid it of Victorian-era morality. It is only in a progressive legal landscape that individual rights flourish — and with the decriminalisation of adultery India has taken another step towards rights-based social relations, instead of a state-imposed moral order. That the decriminalisation of adultery comes soon after the Supreme Court judgment that read down Section 377 of the IPC to decriminalise homosexuality, thereby enabling diverse gender identities to be unafraid of the law, is heartening. However, it is a matter of concern that refreshing the statute books is being left to the judiciary, without any proactive role of Parliament in amending regressive laws. The shocking message here is not merely that provisions such as Section 497 or 377 remained so long in the IPC, it is also that Parliament failed in its legislative responsibility to address them.

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