

# Judgement of SC on Adultery

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**Context-** The Union of India sought clarification from the Supreme Court regarding whether its decision regarding adultery could be applied to the armed forces.

## Key Highlights

- In a landmark 2018 decision, *Joseph Shine v. Union of India*, the Supreme Court of India decriminalized adultery for more than four years.
- On the basis that they were in violation of Articles 14, 15, and 21 of the Indian Constitution, Section 497 of the Indian Penal Code (which deals with adultery) and Section 198 of the Criminal Procedure Code were found to be unconstitutional.
- In light of this, the Union government has asked the Supreme Court for clarification, arguing that because Article 33 of the Constitution designates the Army Act, the Air Force Act, and the Navy Act as special laws, any adultery or promiscuity should be subject to their respective provisions.

## What is adultery in India?

- The Supreme Court recently ruled that it “was not at all concerned with the effect and operation of the relevant provisions” and that “it is not as if this Court approved of adultery.”
- A voluntary sexual relationship between a married person and a non-spouse is considered adultery.
- Before the 2018 ruling by the Supreme Court, adultery was a crime in India under Section 497 of the Indian Penal Code.

- Under this law, it was illegal for a man to have sex with the wife of another man without that man's permission.
- The law did not punish women who committed adultery and treated women as the property of their husbands.
- Adultery is currently not a crime in India, but the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954 make it a valid grounds for divorce.
- In addition, adultery may be regarded as "misconduct" in accordance with the relevant Service Conduct Rules for employees of the government, including members of the armed forces.
- However, the employee's right to privacy must not be violated or arbitrary disciplinary action taken by the employer must have a direct or indirect connection to the employee's duties.

## Important decisions regarding adultery

- **The Indian Penal Code, 1860:** Until it was overturned by the Supreme Court in 2018, adultery was covered by Section 497 of the Indian Penal Code.
- **Yusuf Aziz v. State of Bombay, 1954:** The case upheld Section 497 of the IPC's constitutionality, stating that the law did not discriminate against men and that the adultery law safeguarded marriage's sacredness.
- **Sowmithri Vishnu v. Association of India (1985):** The Supreme Court ruled that Section 497 of the Indian Penal Code (IPC) violated Articles 14 and 15 of the Indian Constitution because it only made it illegal to have sex with a married woman without her husband's consent and did not make women guilty of adultery.
- **Union of India v. V. Revathi (1988):** The Supreme Court ruled in this case that Section 497 of the Indian Penal Code (IPC) discriminated against women and violated India's Constitution, noting that adultery is a private matter between adults and that the state has no right to interfere.
- **Union of India v. Joseph Shine (2018):** In this case, the Supreme Court ruled that Section 497 of the IPC was unconstitutional and invalid, stating that the outdated provision violated the Constitution's fundamental rights to equality and personal liberty.

## Issues of adultery

- Because adultery has no longer been punishable by law in India, employers are limited in their ability to discipline employees for their private lives.
- In order to be subject to disciplinary action, misconduct must have some connection with the employee's responsibilities, according to the courts.
- Under their specific laws, it is unclear whether the armed forces can still discipline people for adulterous acts.
- There are cases in which charges of infidelity have straightforwardly or by implication been utilized as a device to hamper the representative's capacity to release their obligations or keep up with discipline inside the working environment.
- Deciding if a demonstration of infidelity has a nexus with a representative's obligations can be a difficult errand, especially in situations where the supposed

demonstration is consensual and deliberate.

- **Article 33 discusses Parliament's authority to restrict members of the armed forces' fundamental rights in order to ensure proper performance of duties and discipline.**
- **The same principle applies to intelligence agencies and police officers.**
  - **The police and armed forces cannot be stripped of their right to privacy unless there is a connection to their responsibilities.**