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The decriminalisation of adultery cannot stand in the way of the army taking action against officers for misconduct, the Supreme Court has said.



By Abranam Inomas

The decriminalisation of adultery cannot stand in the way of the army taking action against officers for misconduct, said the Supreme Court on Thursday in response to an application by the union government seeking clarification on whether the 2018 judgment of the top court decriminalising adultery will come in the way of action against military officers tried under court martial proceedings for such “unbecoming” acts with spouses of fellow officers.

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A five-judge bench headed by justice KM Joseph examining the Centre’s application said, “After our judgment, adultery does not carry criminality but it remains immoral. It does not mean that adultery is not misconduct. In uniformed service such conduct can shake up discipline and family life.”

The application was argued by Additional Solicitor General (ASG) Madhavi Divan who said that the need to approach the Court arose after the Armed Forces Tribunal (AFT) passed an order relying on the SC judgment on adultery to close proceedings against an officer charged with such an act. “This issue is arising in multiple cases before AFT. This can create indiscipline within the ranks.”

She pointed out that Army Act punishes acts of adultery by uniformed personnel under Section 45 (unbecoming conduct) and Section 63 (violation of good order and discipline) that leads to initiation of disciplinary proceeding ending up even in dismissal. “The IPC offence of adultery has patriarchal connotations but in the armed forces, this offence is gender neutral. We can even take action against female officers indulging in adultery.”

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The Court was of the view that orders passed by AFT could be separately challenged before the top court where this issue will squarely fall for consideration.

“Court has taken a value judgment on adultery with regard to fundamental rights. But if an employer seeks to take action for misconduct, what prevents him. Is there anything in our judgment that stand in your way to treat such conduct as misconduct?” it asked.

Divan sought time to examine the judgment carefully and take a view on whether to press the application. The bench posted the matter for hearing on November 16.

The bench further noted that adultery, although decriminalized, cannot be taken lightly as families have been destroyed by the conduct of an infidel partner in a marriage.

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completely broken. Even children refuse to talk to such a parent. That is the kind of rancour and hatred that is in their minds.”

The application of the Centre was moved in the year 2020 after Centre’s review petition against the September 27, 2018 decision holding adultery punishable under Section 497 of Indian Penal Code (IPC) was dismissed. **The Centre acting on behalf of the armed forces wanted a clarification that the judgment will not come in the way of the Army, Navy and Air Force proceeding against officers for adulterous relationships affecting the discipline and integrity of the defence forces.**

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Advocate Kaleeswaram Raj who appeared for the petitioner Joseph Shine that led to the 2018 judgment said that the Centre’s application was misplaced as the entire judgment never considered the scope of adultery in armed forces.

The clarification application of Centre was referred to a Constitution bench in January 2021 as the Joseph Shine judgment was delivered by a five-judge bench.

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