



Adultery and Related Intricacies

For Prelims: [Parliamentary Committees](#), Legal Standing V/s Legislative Action, Legal Position on Adultery in India.

For Mains: Arguments in Favour and Against Criminalising Adultery

[Source: IE](#)

Why in News?

The [Parliamentary Committee on Home Affairs](#) has suggested that [adultery](#) should be re-instituted as a crime in the [Bharatiya Nyaya Sanhita \(BNS\), 2023](#), the proposed law to replace the **Indian Penal Code (IPC), 1860**.

What is the Legal Position on Adultery in India?

- **About Adultery:**
 - Adultery is the voluntary act of engaging in sexual relations by a married individual (man or woman) with someone other than their spouse.
- **Legal Position in India:**
 - Before 2018, the **Indian Penal Code included Section 497**, which classified adultery as a criminal act punishable by imprisonment for up to five years, a fine, or both.
 - Notably, **only men could face penalties under Section 497**, while women were exempt from prosecution.
 - This **ran counter to the broader definition of adultery encompassing both genders** engaging in voluntary sexual relations outside marriage.
 - In a landmark case, **Joseph Shine vs Union of India (2018)**, the [Supreme Court](#) unanimously **struck down Section 497**.
 - The ruling highlighted discrimination and constitutional violations, asserting [Articles 14, 15, and 21](#) of the Indian constitution, protecting **equality, non-discrimination, and life and liberty**, respectively.
 - Recently, the **Parliamentary Committee on Home Affairs** proposed re-instituting adultery as a **crime in the Bharatiya Nyaya Sanhita (BNS), 2023**.
 - However, it suggests a crucial change: **making it gender-neutral, applicable to both men and women**.
 - It argued that **Section 497 was struck down on grounds of discrimination**, and making it gender-neutral would address this deficiency.

Legal Standing V/s Legislative Action

- The recent Parliamentary Committee on Home Affairs proposal appears to challenge the legal standing of the Supreme Court.
- The **Supreme Court's decision holds as the law of the land**. While Parliament cannot directly contravene the Supreme Court's decision, it has the authority to pass legislation that addresses

the judgment's basis, aiming to rectify the identified defects while potentially considering retrospective or prospective laws to align with the court's observations.

- In the **Madras Bar Association vs. Union of India (2021)** case, the Supreme Court clarified that for a validating law to be considered valid, **it must effectively rectify the flaw identified in the initial judgment.**
 - This implies that if the changes proposed by the statute had been in place during the earlier judgment, they should have addressed the issue raised in a way that prevented the flaw from being highlighted.

What are the Arguments in Favour and Against Criminalising Adultery?

- **Arguments For Criminalizing Adultery:**
 - **Preserving Marital Sanctity:** Proponents argue that **criminalizing adultery safeguards the institution of marriage**, maintaining its sanctity and traditional values within society.
 - **Deterrent Effect:** Making adultery a punishable offense **might act as a deterrent, discouraging individuals from engaging in extramarital affairs**, thereby reducing the incidence of such actions.
 - **Legal Recourse:** Criminalizing adultery provides a **legal avenue for addressing the breach of marital fidelity**, offering recourse to the aggrieved spouse for an act perceived as a violation of trust.
 - **Moral Grounds:** Some argue that adultery is **morally wrong** and should therefore be punishable under the law, **reflecting societal norms and ethical standards.**
- **Arguments Against Criminalizing Adultery:**
 - **Autonomy and Privacy:** The Supreme Court highlighted that **criminalizing adultery infringes upon individual autonomy** within marital relationships.
 - Criminalizing adultery was seen as a violation of constitutional principles, particularly **Article 21**, which safeguards the right to dignity and privacy of both spouses.
 - It was suggested that **such matters should be addressed as grounds for divorce** rather than as a criminal offense.
 - **Civil vs. Criminal Matter:** Critics argue that **adultery is primarily a civil matter, centered on breach of trust** within a marriage.
 - Treating it as a criminal offense may not be proportionate to the nature of the offense, potentially escalating the situation unnecessarily.
 - **Impact on Relationships:** Treating adultery as a criminal offense could exacerbate already strained relationships.
 - **Legal ramifications might intensify emotional distress** and damage the prospects of reconciliation between spouses.
 - **Legal Complexity:** Adultery often involves **subjective and nuanced circumstances** within relationships.
 - Attempting to legislate and prosecute such cases may lead to legal complexities, **burdening the judicial system with subjective matters.**

Conclusion

Navigating the complexities of adultery demands a nuanced approach. Balancing **legal reform, legislative actions, societal awareness** is pivotal for crafting a **fair and harmonious path forward.**

Legal Insights: [Re-instate Adultery as a Crime](#)

<https://www.drishtijudiciary.com/en>

