



## The Bharatiya Nyaya Sanhita, 2023

**For Prelims:** [Bharatiya Nyaya Sanhita, 2023](#), [IPC \(Indian Penal Code\)](#), Code of Criminal Procedure (CrPC), Indian Evidence Act, Supreme Court, [Adultery](#), [National Judicial Data Grid](#).

**For Mains:** The Bharatiya Nyaya Sanhita, 2023, Amendments, Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

**Source:** [HT](#)

### Why in News?

Recently, a Parliamentary Committee has reviewed the [Bharatiya Nyaya Sanhita \(BNS\) 2023 Bill](#), proposing significant changes to **India's Criminal Justice System**, recommendations including a **gender-neutral provision criminalizing adultery**.

- The BNS Bill, introduced by the Ministry of Home Affairs, seeks to replace the **colonial-era IPC (Indian Penal Code)**.

### What are the Key Highlights of the Proposed Changes in BNS?

- **Adultery and Gender-Neutral Provision:**
  - The parliamentary committee has recommended including a gender-neutral provision that criminalizes **Adultery**.
    - This move comes after the [Supreme Court \(SC\)](#) declared **Section 497 of the Indian Penal Code (IPC)**, which criminalized adultery, as **unconstitutional in 2018**.
  - The panel seeks to **protect the institution of marriage** but in a gender-neutral way.
- **Non-Consensual Sex and Bestiality:**
  - The committee is considering a clause to criminalize **non-consensual sex between men, women, or transpersons**, as well as acts of bestiality.
  - This indicates an effort to **address various forms of sexual offenses** comprehensively.
- **Definition of Terms:**
  - The committee has suggested better definitions for terms like "**community service**" and "life imprisonment" in the bill.
- **Positive Changes:**
  - The new draft code has included the removal of [Section 124A \(Sedition\)](#) and provisions for prosecuting offenses committed in foreign countries.

### What are the Arguments for Legalizing and Criminalizing Adultery?

- **Legalizing Adultery:**
  - **Individual Autonomy and Privacy:** The Supreme Court, in *Joseph Shine vs. The Union of India*, 2018 judgment recognized the importance of individual autonomy and the right to privacy.

- Legalizing adultery acknowledges the **right of adults to make decisions about their personal relationships** without state interference.
  - The court said that the 158-year-old law was unconstitutional and is violative of Article 21 (Right to life and personal liberty) and Article 14 (Right to equality).
- **Doctrine of Coverture:** Section 497 of the [IPC \(Indian Penal Code\)](#) is based on the Doctrine of Coverture.
  - This doctrine, not recognised by the Constitution, holds that a woman loses her identity and legal right with marriage, is violative of her fundamental rights.
- **Human Liberty:** According to the Supreme Court (SC), Marriage does not mean **ceding autonomy of one** to the other.
  - Ability to make sexual choices is **essential to human liberty**. Even within private zones, an individual should be allowed her choice.
  - The SC observes that "Society imposes impossible virtues on a woman, raises her to a pedestal. Confines her to spaces. Objectifies her and says she should be pure. But society has no qualms to commit rape, honour killings, sex-determination and infanticide".
- **Deterrence Effect:** Legalization could eliminate the chilling effect of the law on individuals who **may be reluctant to leave abusive or unhappy marriages** due to the fear of legal consequences.
  - It might encourage open communication and **resolution of marital issues**.
- **Reducing Judicial Burden:** Adultery cases used to burden the legal system. Legalizing it can free up the courts to address more pressing issues and cases.
- **Criminalizing Adultery:**
  - **Preservation of Marital Sanctity:** Adultery can harm the **institution of marriage**, leading to broken families and emotional trauma for the spouse and children. Criminalizing it can be seen as a means to protect the sanctity of marriage.
  - **Gender Protection:** It is argued that criminalizing adultery is a means to protect women from unfaithful spouses who **might otherwise abandon them**, leaving them economically vulnerable.
  - **Moral and Societal Values:** It is argued that the adultery law upholds **traditional moral and societal values**, which are still important to many in Indian society.
    - Criminalizing adultery could be viewed as a way to protect and preserve the family structure, which is considered a fundamental building block of society.

## Way Forward

- Creating awareness about the implications of adultery on families and relationships can help **individuals make informed decisions** about their personal lives.
- Encouraging couples to seek marriage counseling and mediation in cases of marital discord can be a **proactive approach to resolving issues before they lead to adultery**. Promoting the availability and accessibility of such services can be beneficial.
- There is a need to promote alternative dispute resolution mechanisms, such as arbitration and mediation, to help couples resolve issues related to infidelity or marital discord outside of the court system.