



ADULTERY - GS II MAINS

Q. 'Adultery should remain in the Indian Penal Code as it ensures the sanctity of the marriage, and is for public good'. Explain the statement in the light of recent Supreme Court judgements. (15 marks, 250 words)

News: *"Make Adultery Crime Again": MPs' Panel Contradicts Supreme Court Order*

What's in the news?

- Adultery should be made a crime again because "the institution of marriage is sacred" and it must be "protected", a parliamentary panel recommended to the government in its report on the Bharatiya Nyay Sanhita, a bill tabled by Union Home Minister Amit Shah in September.

Key takeaways:

- The report has also argued that the revised adultery law must treat it as a "gender-neutral" crime, and has called for both parties - the man and the woman - to be held equally liable.
- The panel's report, if accepted by the government, is set to contradict a landmark 2018 ruling by a five-member bench of the Supreme Court that said "adultery cannot and should not be a crime".

What is meant by adultery?

- It is a **voluntary sexual intercourse** between a married person and a person who is not their spouse.

SC Judgement:

- A five-judge Review Bench led by the Chief Justice of India upheld the September 2018 verdict of the Constitution Bench which had struck adultery out of the penal statute book.

Centre's stand on Adultery:

- Adultery should remain in the Indian Penal Code as it ensures the sanctity of the marriage, and is for public good.

What is IPC Section 497?

- As per Section 497 of IPC, it is a **punishable offence for a man to have sexual intercourse with a married woman without the consent of her husband.**



- The man committing such an offence shall be imprisoned for five years or more and can also be asked to pay a fine.
- In India, adultery was a ground for divorce under Section 13 (1) of Hindu Marriage Act, 1956.
- The 42nd report of the Law Commission of India Report in 1971 and the Malimath Committee on Criminal Law Reforms of 2003 recommended amendment to the adultery law. Both reports suggested that Section 497 of the IPC should be made gender-neutral.

Concerns associated:

- One big concern regarding this law is that it **does not appear to be gender-neutral**.
- Section 497 does not enable a woman to file a complaint against her husband when he has had sexual intercourse with another woman.
- Section 497 treats a **married woman as her husband's "chattel"**. The provision is a reflection of the social dominance of men prevalent 150 years ago.

1. Treats woman as a property of man:

- The law is founded upon the idea that the status of the wife in a marriage is akin to that of the property of the husband.
- The power is vested in a **husband to control the sexuality** of his lawfully wedded wife.
- It reinforces the submissiveness of women within the marriage.

2. Criminalises only the man and not the woman involved:

- The law is **sexist in nature**; it only criminalises the conduct of the man while excusing the woman.

3. Does not allow the wife to prosecute her adulterous husband:

- Section 497 gives husbands the exclusive right as an aggrieved party to prosecute the adulterer in a case involving his wife
- However, a similar right has not been conferred on a wife to prosecute the woman with whom her husband has committed adultery.

4. It is adultery only when it involves a married woman:

- Section 497 does not take in cases where the husband has sexual relations with an unmarried woman
- **Marriage is social contract and breach should be only civil.**
- Adultery law was brought in 1860. The social scenario has changed a lot since then. Adultery should not be treated as criminal offence now.
- Although adultery is basis of divorce under section 13 (1)(i) of The Hindu marriage 1955.

5. If the consent of the husband was received it is not adulterous:

- It observed that the fulcrum of offence within the Section is destroyed if the husband were to consent to the wife having a relationship with another man.

Challenges:



- It will encourage **extra-marital affairs leading to conflicts in families.**
- It may lead to more number of **divorce** cases.
- It may have a **negative impact on children** in case of separation between wife and husband.
- Some experts think that it will destroy the ancient **institution of marriage** and culture in India as it **promotes westernisation.**

WAY FORWARD:

- It is time to revisit all archaic laws in India. The basic theme which runs through all the laws should include **human dignity, personal liberty, gender equality** etc.
- To **change the social outlook in a patriarchal society**, it is necessary that laws are designed to protect and empower women.
- When the laws by themselves sanction the submissiveness of women, people will continue to hold social prejudices against women.
- **Most of the countries around the world have decriminalised adultery.** It is time for India to follow suit and make it a civil offense.
- The centre should make amendments in the law and replace the word husband with spouse to make it **gender neutral.**
- It is the responsibility of both husband and wife to save the sanctity of marriage. Change in Adultery law must be taken in the right spirit.

