

The Problem of Proving Deceitful Intent in Sexual Offences Under Section 69 Bns

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Abstract:

Section 69 of the Bharatiya Nyaya Sanhita, 2023 is a new law that aims to protect women from being misled into sexual relationships. It criminalizes an individual who has sexual relations with a woman by deception. This may include a false promise of marriage or abuse of trust or intimacy to obtain her consent. The concept is to acknowledge that sometimes consent is not freely given but rather the product of lies, manipulation, or emotional pressure. While the purpose of this law is to protect women from such harm, it also brings serious challenges when applied in real life. The toughest part is proving what was in the accused person's mind at the time. The court has to decide whether the promise made such as marriage was a genuine one that later failed, or a false one made only to obtain consent for sex. This is a very difficult task, because people's minds cannot be read, and relationships often involve emotional ups and downs. What may start as a genuine relationship can later break down due to misunderstandings or other reasons, without any criminal intention.

This creates a big challenge in proving the case. Courts often rely on the woman's complaint, her version of the story, and sometimes messages or chats exchanged between the two. But these may not always clearly show that the man had a dishonest mind from the beginning. If a person honestly intended to marry but changed his mind later due to valid reasons, it should not be treated as a crime. However, under Section 69, it becomes very easy to file a case based on a failed relationship. This raises the fear of misuse of the law, especially when emotions run high after a breakup. Innocent people may face arrest, social shame, and long legal battles even if there was no intention to cheat. Another concern is the use of legal presumptions. In many such cases, courts may start with the assumption that the man is guilty unless he can prove otherwise. But this goes against the core principle of criminal justice that everyone is innocent until proven guilty beyond reasonable doubt. Criminal law is supposed to punish the guilty, not to create fear or risk for innocent people caught in complicated personal matters. This research paper tries to explore all these concerns. It examines how comparable cases have been dealt with in Indian courts in the past, and what can we learn from them. It also juxtaposes legislation in other nations, where such private concerns are handled with greater sensitivity. Lastly, it provides recommendations for enhancing this law such as including more explicit guidelines, additional requirements for evidence, and improved protections to ensure that the law serves to protect those who really deserve justice, and at the same time avoids unjust punishment of innocent individuals.

Keywords: Deceitful means, sexual relationship, genuine, bonafide, consent.

Research Question:

1. How can the Indian legal system effectively determine and prove the accused's intent to deceive under Section 69 of the Bharatiya Nyaya Sanhita, 2023?
2. What are the key evidentiary and doctrinal challenges in distinguishing deceitful intent from genuine relationship breakdowns in consensual sexual cases?
3. What legal safeguards or reforms are necessary to prevent misuse of Section 69 while ensuring genuine protection for victims?

Hypothesis: Section 69 of BNS is hard to apply because it's tough to prove someone lied on purpose. This can wrongly punish innocent people, so clearer rules and protections are needed.

Research methodology:

This is a doctrinal research that studies Section 69 of BNS by reading the law, past court cases, and legal ideas like consent and intent. It also compares laws in other countries and looks at real-life cases. The aim is to suggest better rules to stop misuse and protect both victims and the innocent.

1. Introduction:

Section 69 BNS criminalizes consensual sexual intercourse when consent is obtained by deception, such as false promises of marriage, fraudulent representation, or abuse of authority. Unlike the traditional definition of rape, this provision targets consensual acts where consent is later challenged based on the motive and truthfulness of the promise made. "The provision recognizes that consent obtained through fraud, manipulation, or misrepresentation is not valid, as the deceived party is denied their full autonomy in making an informed decision. The law seeks to protect individuals from being misled into sexual relations, ensuring that consent remains genuine and voluntary."¹ "Section 69 explicitly forbids sexual contact obtained through deception, especially in cases where Individuals marry without the intention of honoring their vows. Those found guilty may face a fine and Imprisonment for a maximum of ten years."²

While the intention is to strengthen protection for women, especially in cases of emotional and social vulnerability, the provision opens up an evidentiary grey zone. It demands that the prosecution prove the accused's mental state (*mens rea*) at the time of the act a notoriously difficult legal challenge. "it encounters substantial challenges in implementation. The provision suffers from vague language, difficulties in proving intent, ambiguous consent definitions, and risks of misuse, which may lead to unnecessary legal disputes and varying judgments."³ "For one to be punished by this section, the act of sexual intercourse should have been consented to by solely or integrally relying upon a duplicitous and an insincere promise. The language of the section plainly implies that only a woman can seek redressal for consent obtained perfidiously."⁴ Psychologically it is not really possible to determine the promise was innocent or deceitful beyond reasonable doubt.

¹ Yadav, D., & Kumar, R. (2025, April 14). Deceit, consent, and Justice: A critical review of section 69 of the BNS 2023. IJLLR Journal. <https://www.ijllr.com/post/deceit-consent-and-justice-a-critical-review-of-section-69-of-the-bns-2023>

² Wahab, Md. I. (2024, December). Analysing the Vagueness and Shortcomings of Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023. <https://www.ijfmr.com/>. <https://www.ijfmr.com/papers/2024/6/31101.pdf>

³ Ibid.

⁴ Singh, S., & Vikram, K. (2024, November 12). Promises, prejudices and perils: Unveiling the complexities of Section 69, Bharatiya Nyaya Sanhita, 2023 - NLIU law review. <https://nliulawreview.nliu.ac.in/>. <https://nliulawreview.nliu.ac.in/blog/promises-prejudices-and-perils-unveiling-the-complexities-of-section-69-bharatiya-nyaya-sanhita-2023/>

2. The Psychological and Evidentiary Dilemma to prove guilt beyond reasonable doubt:

“Sexual consent can involve much less active terms: being moved, being curious, finding oneself open to what is unknown, impressionable, vulnerable, surprised, intrigued or even moved along and drifting, wondering what will arrive, relinquishing, ceding.”⁵ For real consent to exist, an adult woman must clearly understand what the sexual act is and what its results might be. In rape laws, consent means using one’s mind to think and understand its meaning and moral weight. It is a careful and conscious choice between saying no and saying yes.

“Deception has long been the subject of conceptual debate in the philosophical and legal literature. From these debates, it is possible to identify an orthodox interpretation of deception. In criminal law, that interpretation often finds expression in those offences to which deception is conceptually central namely, property offences (through crimes like obtaining property, money or services by deception).”⁶ Proving that a person intended to deceive at the time a promise was made especially in intimate or romantic relationships is extremely complex. Human emotions and relationships are fluid, and decisions around marriage can change for genuine reasons. How can one establish beyond reasonable doubt that a person never intended to marry, as opposed to later changing their mind? What standard of evidence can reliably capture the mental state of the accused at the time of the act? Should failure to fulfil a promise always be treated as proof of deception? These questions highlight how subjective interpretations and emotional fallout can influence criminal proceedings. Court risk entering into private, emotional domains not easily governed by rigid legal rules.

3. Impact of Section 69 BNS on Live-in Relationships: In live-in relationships, couples often share emotional and physical closeness without getting married. Sometimes, when the relationship ends, one partner may say that they agreed to be physically intimate because of a promise of marriage. If that promise turns out to be false, they may file a case under Section 69 of the BNS. This creates legal confusion, as it's hard to know if the promise was a lie from the start or just didn't work out. It becomes difficult for the law to judge whether there was real cheating or just a failed relationship. “Section 69 requires to fulfil three criteria for the act to be an offence: (i) gaining consent by deceitful means; (ii) making a false promise to marry without intention to fulfill it; and (iii) having consensual sexual intercourse with a woman”⁷ The impact of provision under section 69 BNS is that “it has initiated a considerable debate in the Criminal Justice System due to its nature and adverse interpretation of the provision. Additionally, concerns have been raised regarding the provision’s ambiguity and discretionary nature, which could lead to unfair treatment and reliance on gender stereotypes, particularly disadvantaging women further, the broad definition of “deceitful means” raises concerns about possible misuse with the law being exploited for false accusations and unjust outcomes. Criminalizing consensual sex based on a broken promise of marriage also raises questions about

⁵ Judith Butler, Sexual Consent: Some Thoughts on Psychoanalysis and Law, Vol. 21(2), Columbia Journal of Gender and Law, 19 (2011)

⁶ Matthew Gibson, Deceptive Sexual Relations: A Theory of Criminal Liability, Oxford Journal of Legal Studies, Volume 40, Issue 1, March 2020, Pages 82–109, <https://doi.org/10.1093/ojls/gqz031>

⁷ S M Aamir Ali, Vashist, A., & Ghose, A. (2024b, May 4). Bharatiya Nyaya Sanhita and the False Promise to Marry. <https://www.ssrn.com/index.cfm/en/.file:///C:/Users/hp/Downloads/ssrn-5222490.pdf>

individual autonomy and agency in intimate relationships. Furthermore, the provision could be misused by earmarking couples who face societal disapproval due to their backgrounds”⁸

4. Risk of Misuse and Harm to Innocent Persons

Due to its subjective nature, Section 69 can be misused in several ways: “The Supreme Court held that a consensual relationship, even if followed by a breach of a promise to marry, does not amount to rape under Section 376 of Indian Penal Code, 1860, unless it is proved that the promise was false from the beginning.”⁹ “There is a difference between a false promise and a genuine promise that was broken in the later stages of the relationship. The former is a promise that the promisor never intended to fulfil and was mala fide ab initio. The latter is a promise that, when initially made, was well-intentioned but due to subsequent circumstances, was broken. By failing to account for the difference between the two, not considering the situations where the intent to marry has changed, the law remains vague about the proceedings in light of such differences and objectively imposes criminal liability. For instance, a man, out of true love and other validating reasons, proposes marriage to his partner. However, due to certain circumstances that ensued, the couple parted ways. In such cases, a woman may exploit her position and bring proceedings against the man maliciously.”¹⁰ “The broad definition of “deceitful means” raises concerns about possible misuse, with the law being exploited for false accusations and unjust outcomes.”¹¹ After a relationship ends, one party may accuse the other of having made a false promise. Families may use this provision to pressure or punish a partner in inter-caste or inter-religious relationships. In cases of consensual sex between young adults, a retrospective claim of deception can turn an emotional breakup into a criminal case for an innocent person, the accusation itself can be damaging. Social stigma, loss of reputation, pre-trial incarceration, and lengthy legal proceedings can destroy lives even if the accused is ultimately acquitted.

5. Judicial approach:

Under POCSO and sexual offence laws, Indian courts have seen a shift toward victim-centric presumptions such as presuming absence of consent once a basic claim is made while such presumptions are valuable in cases of clear power imbalance or coercion, applying similar logic to consensual relationships with claims of deceit can tilt the balance too far. Section 69 lacks a clear legal test to differentiate broken relationships from criminal fraud. Honorable Supreme court in case of Prashant Bharti v. Delhi¹² held that “The victim’s age should be taken into account. In order to assess the consent issue, determine how mature she is, and determine the extent to which she is deemed to have given her consent based on her belief that the accused will fulfill his promise of marriage.” In another case of Uday vs. State of Karnataka¹³ the Supreme Court noted that “the victim’s consent to engage in sexual

⁸ Karwande, Dr. B. (2024, May). Criminalisation of false promise to marry and deceptive ... https://www.amoghvarta.com/.https://www.amoghvarta.com/uploads/current_issue/1726575567riminalisation-of-False-Promise-to-Marry-and-Deceptive-Sex-in-Bharatiya-Nyaya-Sanhita-2023.pdf

⁹ Jaspal Singh Kaural v The State of NCT of Delhi, 2025 INSC 457 | 2025 SCO.LR 4(2)[6]

¹⁰ Supra Note No. 4

¹¹ Dr. Bhoopendra Karwande. (2024, May). Criminalisation of False Promise to Marry and Deceptive Sex in Bharatiya Nyaya Sanhita, 2023. https://www.amoghvarta.com/.https://www.amoghvarta.com/uploads/current_issue/1726575567riminalisation-of-False-Promise-to-Marry-and-Deceptive-Sex-in-Bharatiya-Nyaya-Sanhita-2023.pdf

¹² AIR 2013 SC 2753

¹³ AIR 2003 SC 1639

relations with someone she is deeply in love with, on the condition that they marry in the future, cannot be deemed to be a misconception of fact.” Furthermore the high court of Madhya Pradesh in case of *Abhishek Arajariya vs. State of Madhya Pradesh*¹⁴ on 27 June, 2024 has ruled that “a married woman engaging in a continuous sexual relationship with another man cannot resort to the plea that her consent was obtained based on a false promise to marry”

Honorable supreme Court in *Deepak Gulati v. State of Haryana*¹⁵ observed that “the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

If courts begin to presume that every unfulfilled promise is a deception, the burden unfairly shifts to the accused contrary to the criminal law principle of presumption of innocence.

6. Gender-Specific Enforcement:

Section 69 of the Bharatiya Nyaya Sanhita makes it a crime to have sexual relations through deceit, like a false promise of marriage or abuse of trust. The law is written in a way that mainly protects women and treats them as the only possible victims. Men are treated only as offenders under this section.

This gender-specific enforcement raises serious questions about fairness and equality. It assumes that only women can be deceived in such situations, but in reality, men and people of other genders can also face similar harm. By focusing on one gender, the law may ignore genuine cases where the victim is male.

This approach can also lead to misuse. False allegations are possible, and if the law does not allow equal protection, innocent people can suffer. It may also create social bias by reinforcing the idea that men are always the aggressors and women are always the victims.

A balanced law should protect all individuals, regardless of gender, and ensure that justice is not one-sided. Section 69 needs reform so that it addresses exploitation without discrimination. True justice should be based on facts and intent, not the gender of the victim or the accused.

7. Need for Safeguards and Judicial Restraint:

Section 69 of the Bharatiya Nyaya Sanhita has brought a lot of discussion and confusion in the criminal justice system. Many people are worried about how this law will be used in real-life situations. The language of the law is not very clear, and it gives a lot of power to the authorities to decide what counts as a crime. This may lead to unfair decisions. There is also concern that the law may be applied

¹⁴ M.Cr.C. No.31926 OF 2019

¹⁵ AIR 2013 SUPREME COURT 2071

differently based on gender, which can create more problems for women, even though it was meant to protect them.

The law punishes people for having sexual relations if they made a false promise of marriage. However, this is difficult to prove. Sometimes, people do break relationships due to personal reasons, not bad intentions. So, calling every broken promise a crime can be dangerous. It can take away people's right to make personal choices in their private lives. It also puts pressure on courts to decide what someone was really thinking during a relationship which is not always easy or fair.

Another problem is the wide meaning of the term "deceitful means." Because it is not clearly defined, there is a risk that people may misuse this law to file false complaints. This could harm the innocent and lead to wrong punishments. In short, while the law was made to stop misuse of trust in relationships. It has many unclear parts that can create serious legal and social issues if not handled carefully therefore "its potential implications warrant careful consideration and possible amendments to ensure fairness and protect individual rights within the legal framework."¹⁶

8. Conclusion

Section 69 of the Bharatiya Nyaya Sanhita, 2023, was made to protect women from exploitation. Its success depends on clear court interpretation, strong evidence, and public support. These are needed to protect people and prevent misuse. However, the language of the section is vague, which creates confusion about its need and purpose. The law should have clearer wording and a defined scope to avoid unnecessary legal issues.

Although its aim is to protect women, the section reflects outdated ideas, limits personal freedom, and is open to misuse. While the intention of punishing deceit in sexual relations is understandable, it can violate the rights of many and stop others from approaching the court. It also threatens to erode constitutional and judicial principles. Through loopholes in legal processes, numerous accused will be acquitted, and survivors may stay silent out of fear of shame or social abandonment.

A major issue is that it therefore excludes the LGBTQ+ community and eliminates more inclusivity. A gender-neutral statute would make it more fair and modern. Without change, it has the potential make the law appear more colonialised and much less of a provision for this modern society. Therefore, it is in need of amendments to protect everyone equally and showcase contemporary social realities.

¹⁶ MAJUMDAR, K., & CHATTOPADHYAY, B. (Vol. 7 Issue. 2; 2024) ISSN 2581-5369 International Journal of Law Management Humanities. <https://ijlmh.com/paper/deciphering-the-legal-implications-of-section-69-in-bns-a-comprehensive-analysis/>