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## Criminalisation of False Promise to Marry and Deceptive Sex in Bharatiya Nyaya Sanhita, 2023

ORIGINAL ARTICLE



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### Abstract

*In India Marriages as an institution are consequences of promises the parties make to each other mutually. The fact to be considered is not only the promise but also the mode in which it is obtained. Promises to marry cases involves the instances as the prosecutrix alleges that her consent for physical intercourse was obtained under a misrepresentation that the defendant will marry her though he is not having such an intention from the beginning of relationship. The allegation of obtaining the Consent through deceitful means itself creates an ambiguity in proving the innocence for the male who would always be considered as accused as per Section 69 of Bhartiya Nyaya Sanhita, 2023. Section 69 of the Bharatiya Nyaya Sanhita (BNS) emerges as a pivotal safeguard against deceptive practices, furnishing a legal frame that offers expedient to women who might fall prey to false pledges. By criminalizing*

*conduct involving deceitful means, this provision aims to empower women, allowing them to make informed choices in colorful angles of their lives. Section 69 of the BNS serves as a defensive guard, offering affected women an effective remedy in similar situations. This particular section itself reveals that it will create a space of gender injustice in the society as the provision could be greatly misused by the women. Therefore, this research article is an attempt by an author to do analysis of the newly added provision in our Criminal justice System and to further deal with different dimensions relating to its essential elements, comparison with previous criminal laws, about its presumption, nebulousity in defining connections, implicit for abuse, its validity and its effect in our Society.*

### Key Words

*Deceitful Means, Consent, Promise, Criminal Justice System.*

### Introduction

Welfare State ensures justice without discrimination with regard to establish the ideology of Rule of Law. On front the very objective of State is to provide equal protection to all irrespective of their religion, race, caste, sex or place of birth. Constitution of India through a specific provision states that State should not make any provision that make discrimination between two individual on the bases of their gender, religion, race, caste or place of birth.<sup>1</sup> The principle of equal protection under the Constitution of India does not mandate equality for all the individuals. It acknowledges that varying circumstances may necessitate different

legislative approaches. In the context of a diverse society, the concept of Reasonable Classification emerges, stipulating that classifications must be based on intelligible differences and must bear a rational relationship to the objective sought to be achieved by the legislation.<sup>2</sup> The Constitution recognizes the vulnerable position of women and their rights to protection. It empowers State to make special provisions for the advancement of the Women.<sup>3</sup>

Considering women an easy prey to all mentally frustrated persons who seek to satisfy sexual desire and lust the legislatures and Judiciary has always shown a protective approach towards them in our Criminal Justice System. There are many instance in which male obtains consent of his partner through deceitful means for the sake of having sexual favour from her. Such an act is termed as ‘Sex by deception’ which means sexual intercourse by which occurs when one party is operating under a false belief, typically induced by the deceit of the other party.<sup>4</sup> Here, “deceit” can refer to an extensive range of lies that a person could make to obtain sex. Such an act of deceptive sex would fall under the ambit of section 375 Indian Penal Code, 1860 through the interpretation of section 90 of Indian Penal Code, 1860 by the Judiciary. Indian Judiciary through many landmark cases held that the sexual intercourse pursuant to a false promise to marry is rape but failing to fulfill a genuine promise to marry is not.<sup>5</sup> As there was no specific penal provision to penalize the offence of deceptive sex, the task was left to judiciary to criminalize the accused in different provisions of Indian Penal Code.

In March 2020, the Central Government constituted a Committee titled “Criminal Law Reform Committee” with intent to reshape the three Major Criminal Laws in India. Eventually, the bills were introduced in December, 2023 and finally came into enforcement from 1<sup>st</sup> July, 2024 for the whole of India. The New Laws were called as Bharatiya Nagarik Suraksha Sanhita, 2023, Bhartiya Nyaya Sanhita, 2023 and Bhartiya Sakshya Adhiniyam, 2023.

The Bhartiya Nyaya Sanhita, 2023 is considered as replica of Indian Penal Code, 1860 in which various needed changes were introduced as a provision that were challenges in the Indian Penal Code. One of the challenges was to make an act of false promise to marry and deceptive sex a distinct and separate offence in order to protect the purity of human relationship.

Legislature introduced the provision i.e., Section 69 in BNS, 2023. Section 69 of the Bhartiya Nyaya Sanhita (BNS) emerges as a pivotal safeguard against deceptive practices, furnishing a legal frame that offers expedient to women who might fall prey to false pledges. By criminalizing conduct involving deceitful means, this provision aims to empower women, allowing them to make informed choices in colorful angles of their lives. However, there is another side of the coin wherein the parties are in Consensual relationship with each other and due to some differences one party walks out of relationship, the other might be accused under the said provision of BNS. This is where the real challenge comes as to whether the accused’s intent to marry was genuine and further to distinguish between a genuine promise and a broken commitment. BNS contains a concurrence clause akin to Section 90 of the IPC. If concurrence is absent per 28<sup>6</sup> of the Sanhita, it might constitute rape. Still, if concurrence is attained through deceitful means, like false pledges of employment or marriage with vicious intent, it falls within the horizon of Section 69, and so the preface of Section 69 in the BNS aims to sculpt out a separate legal provision to address cases of sexual intercourse eased by dishonesty, distinct from the IPC’s vittles, emphasizing the pivotal aspect of concurrence attained under fraudulent pretenses.

## **Decoding Essential Features of Section 69 BNS, 2023**

The New Substantive Criminal Law i.e, Bhartiya Nyaya Sanhita, 2023 introduced a new Chapter V dealing with Offences against Women and Child and of Sexual Offences. A new Section 69 of this Chapter specifically addresses situations where sexual advantages are obtained through a deceitful promise of marriage. Following are the essential characteristic of Section 69 BNS:

- 1. Gender Neutrality of the Offender:** The Section 69 starts with the word, “Whoever” that clearly indicates that the provision is gender neutral. Therefore, it is not that only male would be prosecuted

under the provision, but a Women having sexual relationship with another women<sup>7</sup> by making a false promise of employment or in promotion could be punished under the act. However, it is to be noted that this section prima facie involves man<sup>8</sup> as prime accused of the offence.

- 2. Women as a Victim in case of false Promise for Marriage:** The offence of section 69 is always against women. The point of Sexual harassment of man has been overlooked again in the new law.
- 3. Sexual Relationship must be Consensual between the two Parties:** Consensual sexual relationship means when two adults willingly engage in sexual relationship<sup>9</sup>. It means that there must be mutual consent between the man and women for the sexual relation.
- 4. Consent obtained by Deceitful Means:** The deceitful means under this section includes inducement for, or false promise of employment or promotion, or marrying by suppressing the identity.

Under the Provision “deceitful means”, indicates the intent to deceive by different modes like adopting dishonestly<sup>10</sup> or fraudulently<sup>11</sup> modes.

It can be seen that Explanation of Section 69 provides a wider interpretation of the term deceitful means by expanding its meaning to employment and promotion also. But here, we will only look into the aspect of false promise to marry. Two infractions are established under Section 69 of the BNS: one is via *dishonest tactics*, and the other is by a “*false promise to marry*.” Deceitful means include inducing someone to marry after suppressing their identity or making false promises of job or promotion. The false promise to marry crime, on the other hand, is relevant when a guy purposefully makes a commitment to marry a woman, intending to violate it, in order to get her permission and take advantage of her sexually.

## Concept of False Promise to Marry Under Section 69

After going through the provisions of Section 69 BNS, a false promise to marry is the dominant factor to constitute an offence. The Explanation of Section 69 clarifies that it extends beyond the specific offence of false promise to marriage. In order to constitute an act as false promise to marry following condition must be fulfilled;

### Promise to Marry

The foremost and essential condition is that there must be a promise by the man to a woman that he will marry her. If no offence has been made to marry then an offence under section 69 BNS cannot be constituted.

It is to be noted that the marriage of female to female i.e., between the persons of same gender is not legal in India.<sup>12</sup> However, a woman as victim can be exploited by another female as accused by using the position for employment or promotion.

### Absence of Intention to Marry

Another essential condition is that man should have no intention to get marry to the woman whom he promised to get married and the promise was made simply to obtain the consent of the woman for establishing sexual relation. Here, there should be specific connection of actus reus with his mens rea.

However, it is extremely difficult to determine the intention of any person in relationship and it is quite possible that a mere breach of promise would fall under the purview of Section 69 BNS? For Instance, “A” lived in with his partner “B” in an apartment for two months and both planned to get married to each other in a year or so. However, things between the two turned non reconcilable and so “A” decided to move out of relationship with “B”. “B” being hurt of it, accused A that he never had an intention to marry B instead made false promise for obtaining physical relationship. In a situation it is extremely difficult for “A” to prove that his intention was not to deceive “B” in regard to Marriage. So, there is a difference between breach of promise of marriage and no intention to marry. For such instance, honorable Supreme Court has issued guidelines to determine the term “Intent to marry” varies from case to case.<sup>13</sup> The Legislature has left a wide gap under

Section 69 BNS for determining the criteria of an act which will be considered as Intent to marry and an act in which it will be considered as an absence of Intent to marry. As usual the gap is to be filled by the Judiciary from time to time through its verdict.

### **Sexual Intercourse based on that Promise**

It is also essential to establish that the sexual intercourse or physical relationship should be on the false promise to marry. It implies that the consent which has been obtained from woman should be on the basis that man has promised to marry her if she has sexual intercourse with him. So it is necessary that sexual intercourse should be result of that promise and nothing else.

### **Does not Constitute Offence of Rape<sup>14</sup>**

Another essential which is to be satisfied for the offence under sec. 69 is that the act should not constitute the offence of rape. It implies that the act should not fulfill the elements of Rape. The consent of woman should be there. For example, if the man promises to marry, yet the woman refused to have sexual intercourse following which the man did the act without her consent will constitute an offence of rape and hence, it will not be punished under sec. 69 of BNS rather will be punished for rape.

### **Position of False Promise of Marriage before Bharatiya Nyaya Sanhita, 2023**

Before the Commencement of Bharatiya Nyaya Sanhita, 2023 the act of false promise to marry would fall under the provision Sec. 375 and Sec. 90 of IPC through judicial interpretation by Judiciary. Sec. 375 provides for the offence of rape and sec. 90 of IPC provides for Consent. There was no provision relating to false promise for marriage in Indian Penal Code. Courts through its judgments have interpreted such offence to come under the definition of rape. This has been done by interpreting consent under Sec. 375 as free consent defined under Sec. 90 of IPC. Courts have interpreted free consent to mean the consent which has been obtained without any fraudulent and deceitful means. Hence, the consent obtained by false promise to marriage was considered as deceitful in nature and does not constitute free consent leading the offence to be punishable under rape under Indian Penal Code.

It is further to be noted that Section 69 BNS also has a close resemble to Section 493 of IPC according to which “an act of cohabitation caused by a man deceitfully inducing a belief of lawful marriage”. However the scope of latter section under IPC was narrower than that of Section 69 of BNS. Moreover, Section 69 provides protection to women against all forms of sexual exploitation.

In the case of *K. Hymavathi v. The State of Andhra Pradesh*<sup>15</sup>, the Supreme Court upheld the conviction of a man for rape based on a false promise to marry. The court considered the deception and its impact on the victim’s consent.

In the case of *State of Uttar Pradesh v. Naushad*<sup>6</sup>, Section 90 was used. In this instance, the prosecutrix—Shabana’s father, the informant—was the paternal uncle of the accused Naushad. The informant claimed that Naushad used to frequently visit his home and persuaded her daughter to have sex with him on the basis of a pledge that he would one day wed her. The question raised by this case was whether Naushad could be found guilty of rape or not. According to Section 375 of the Indian Penal Code, the court found Naushad guilty of rape and sentenced him to life in jail.

### **Attitude of Judiciary for Interpreting the Clause of False Promise of Marriage**

There are no judicial pronouncements in relation with sec. 69 of BNS. But this offence has existed in the society for a few years now, due to which judiciary has used its power to criminalise the offence by interpreting consent as free consent under sec. 375 and has thus included the offence of false promise of marriage:

- 1. Anurag Soni v. State of Chhattisgarh<sup>17</sup>:** In this instance, a female pharmacy student granted the appellant permission to have physical contact with her only after he made a commitment to marry her, even though she was aware that the appellant’s marriage had already been arranged with another

woman, Priyanka Soni. As a result, the Court decided that it was reasonable to draw the conclusion from the evidence that the accused never intended to wed the prosecutrix and that he had deceived her by saying he would marry her, which is why she agreed to have physical contact with him. Her consent will therefore be regarded as lacking consent under Section 90 because it was predicated on a false impression of the facts. The accused was therefore found guilty.

2. **Yedla Srinivisa Rao vs. State of A.P<sup>18</sup>**: In this instance, the accused used to visit the prosecutrix sister's home every day and beg her for a sexual favor. Even though he wouldn't let her join him in such activities, he would constantly nag and try to convince her. She fought for around three months. He went to her sister's house one more one day, shut the door, and forced her to have sex against her will and without her consent. He said he would marry her in response to her question about why he had ruined her life. Thus, they proceeded with their sexual relationship based on this assurance, and he also continued to assure her that he would marry her. After considering all of the above information, the court determined that the consent was given believing the accused would marry her. As a result, this permission will be interpreted as giving no consent, and the accused will be found guilty in accordance with Section 375 of the IPC and given the punishment specified in Section 375 of IPC.
3. **Prashant Bharti v. Delhi<sup>19</sup>**: The victim's age should be taken into account, according to the Supreme Court, 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.
4. **Deepak Gulati vs. State of Haryana<sup>20</sup>**: According to the Supreme Court, a person can only be found guilty of rape under the penal rules if there is proof that the accused's "intention was mala fide and that he has clandestine motives." The Court went on to say that the defendant needed sufficient proof to demonstrate that he never intended to wed the victim. In such a case, the court cannot use Section 90 of the IPC to impose criminal liability on the accused and to completely forgive the victim's act unless it is certain that the accused never planned to marry the victim in the first place.
5. **Uday vs. State of Karnataka<sup>21</sup>**: The accused will not be found guilty of rape within the meaning of Section 375 of the IPC because the Supreme Court noted that the victim's consent to engage in sexual 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 under Section 90 of the IPC.
6. **Abhishek Arajariya Vs. State of Madhya Pradesh<sup>22</sup>**: Madhya Pradesh High Court 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. The single-judge bench of **Justice Sanjay Dwivedi** relied on several apex court judgments to iterate that consent cannot be regarded as one that has been obtained based on a misconception of fact when the prosecutrix was a married woman on the date of developing physical relations with the accused. From the factual circumstances, the court also inferred that it was a consensual relationship that continued for over 8 years before the prosecutrix obtained a decree of divorce from her husband in 2019.

## Challenges to be Faced by the Implication of Section 69 of BNS

The effect of 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 individual autonomy and agency in intimate relationships. Furthermore, the provision could be misused by earmarking couples who face societal disapproval due to their backgrounds, exacerbating societal prejudices and as well

as marginalizing vulnerable groups. Irrevocably, this provision aims to safeguard women's rights, its potential implications warrant careful consideration and possible amendments to ensure fairness and protect individual rights within the legal framework.

## Suggestions

- It is suggested that Courts should be more careful in determining the criminality of offence under Sec. 69 of BNS. A careful and such an interpretation is required for the law which is neither wide nor too narrow as to cause injustice to victim.
- In the cases, where it is proved unreasonably that a false case has been filed, then a penalty should be imposed on the complainant. This is to ensure that rate of false cases is decreased and a punishment is served upon them.
- Legislation should further take into account the contentions of men and legislate a law in favour of men also which may include the cases where women forces men to marry her to save himself from false case on false promise to marry.

## Conclusion

Section 69 of the Bharatiya Nyaya Sanhita, 2023 marks an essential and much needed step forward in addressing the complexities surrounding sexual relations under false promises of marriage or deceitful means. By criminalizing such acts, the intent of law is to protect individuals from exploitation and uphold the principles of trust, transparency, and genuine consent in intimate relationships.

The Section further includes different modes of deceitful means apart from the false promise of marriage, itself signifies the objective of our law framers to combat sexual exploitation of women. Gender neutrality of the provision is also a need of today's modern world as society has transformed from its orthodox base to urban routes redefining its own existence.

Though the provision has touched the essential need of modern India yet it is not far from criticism. As we say, every good situation happens with adversity so does this provision.

Concerns regarding reinforcement of societal norms, ambiguity in interpretation, and potential misuse highlight the need for careful consideration and possible amendments to ensure fairness and protection of women rights within the legal framework.

The Principle of Equality as embodied in our ground norm i.e, Constitution of India should be equally applicable for both man and women, even though the latter are considered as part of vulnerable group yet the principle of innocence should be fairly and wisely implemented while interpreting the Section 69 of Bharatiya Nyaya Sanhita, 2023.

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