
SECTION 69 OF BHARATIYA NYAYA SANHITA, 2023: CRIMINALISATION OF FALSE PROMISE OF MARRIAGE – A LEGAL AND CONSTITUTIONAL ANALYSIS

Gauri Joshi, LL.B., Bharati Vidyapeeth's Institute of Management and Research
(BVIMR), New Delhi

ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 introduced Section 69 to criminalise sexual intercourse obtained through deceitful means, including a false promise of marriage. This provision seeks to address consent obtained through deception while reducing the legal uncertainty that existed under the Indian Penal Code, 1860.

This paper examines the scope, purpose, and legal significance of Section 69 by analysing its statutory framework and judicial background. It distinguishes between a deliberately false promise and a genuine relationship that ends due to changing circumstances. The paper also evaluates the constitutional implications of the provision, particularly under Articles 14 and 21 of the Constitution of India.

While Section 69 strengthens protection against deception-based exploitation, concerns remain regarding its broad wording, evidentiary challenges, and potential impact on consensual adult relationships. The paper concludes that a balanced interpretation is essential to protect victims while safeguarding individual rights and constitutional freedoms.

Keywords: Bharatiya Nyaya Sanhita, Section 69, False Promise of Marriage, Consent, Deceitful Means, Constitutional Law.

1. Introduction

The Bharatiya Nyaya Sanhita, 2023 (BNS) has brought significant changes to India's criminal law framework by replacing the Indian Penal Code, 1860. Among its newly introduced provisions, Section 69 has attracted considerable attention as it criminalises sexual intercourse obtained through deceitful means, including a false promise of marriage. The provision was introduced to address situations where consent is secured through deception rather than through a genuinely informed and voluntary decision.

Before the enactment of the BNS, cases involving false promises of marriage were primarily examined under rape provisions, particularly where consent was alleged to have been obtained under a misconception of fact. Over the years, courts struggled to distinguish between a relationship that failed due to changing circumstances and one that was based on a deliberately false promise from the beginning. This often resulted in inconsistent judicial outcomes and uncertainty regarding criminal liability.

Section 69 attempts to provide a specific legal framework for such situations. In addition to false promises of marriage, it also covers deception relating to employment, promotion, and concealment of identity. While the provision aims to protect individuals from exploitation, it has also raised important constitutional and legal questions. Critics argue that its broad wording may interfere with consensual adult relationships, whereas supporters view it as a necessary safeguard against deception-based abuse.

This paper examines the scope and implications of Section 69 from both legal and constitutional perspectives. It analyses the evolution of the law, the statutory framework of the provision, and the challenges that may arise in its practical application. The study further evaluates whether the provision successfully balances victim protection with constitutional values such as liberty, privacy, and personal autonomy.

Research Objectives

1. To examine the scope and purpose of Section 69 of the Bharatiya Nyaya Sanhita, 2023.
2. To analyse the judicial approach towards false promise of marriage cases prior to the enactment of the BNS.

3. To evaluate the constitutional validity of Section 69 with reference to Articles 14 and 21 of the Constitution of India.
4. To identify the practical and legal challenges associated with the implementation of the provision.

Research Questions

1. What is the legal scope and significance of Section 69 BNS?
2. How does Section 69 differ from the legal position under the Indian Penal Code?
3. Does Section 69 comply with constitutional principles of equality, liberty, and privacy?
4. What are the potential benefits and shortcomings of the provision?

Research Methodology

The present study adopts a doctrinal research methodology based on the analysis of primary and secondary legal sources. Primary sources include the Bharatiya Nyaya Sanhita, 2023, the Constitution of India, and relevant judicial decisions of the Supreme Court and High Courts. Secondary sources include books, journal articles, research papers, legal commentaries, and scholarly writings. The study employs an analytical and critical approach to evaluate the effectiveness and constitutional implications of Section 69.

2. Historical Background and Judicial Position under the Indian Penal Code

Prior to the enactment of the Bharatiya Nyaya Sanhita, 2023, there was no specific provision under the Indian Penal Code, 1860 (IPC) that directly criminalised sexual intercourse obtained through a false promise of marriage. Such cases were generally examined under the provisions relating to rape, particularly Section 375 IPC, where the validity of consent became the central issue. The courts were required to determine whether the consent given by a woman was voluntary or whether it had been obtained under a “misconception of fact” as contemplated under Section 90 of the IPC.

The legal debate surrounding false promises of marriage emerged from situations in which a woman consented to a sexual relationship based on the assurance that the accused intended to

marry her. When the promised marriage did not materialise, the courts had to decide whether the consent was genuine or whether it had been procured through deception. The absence of a specific statutory framework led to the development of judicial principles through case law.

One of the earliest significant decisions on this issue was *Uday v. State of Karnataka (2003)*. In this case, the Supreme Court held that every breach of a promise to marry does not automatically amount to rape. The Court observed that a distinction must be made between a false promise made with dishonest intentions from the beginning and a genuine promise that could not ultimately be fulfilled due to unforeseen circumstances. The judgment emphasised that criminal liability should arise only where the promise was never intended to be honoured.

The Supreme Court further elaborated on this principle in *Deepak Gulati v. State of Haryana (2013)*. The Court held that if a woman voluntarily enters into a relationship based on love and affection and the marriage subsequently does not take place, criminal liability cannot be imposed merely because the relationship failed. The Court stressed that the intention of the accused at the time of making the promise is the determining factor in assessing criminal responsibility.

A landmark clarification was provided in *Pramod Suryabhan Pawar v. State of Maharashtra (2019)*. The Supreme Court held that consent would be considered vitiated only when two conditions are satisfied. First, the promise of marriage must have been false from the very beginning. Second, the false promise must have had a direct bearing on the woman's decision to consent to sexual intercourse. The Court thereby established a clear distinction between a deliberate act of deception and a genuine relationship that later breaks down.

Similarly, in *Sonu @ Subhash Kumar v. State of Uttar Pradesh (2021)*, the Supreme Court reiterated that a failed relationship or an unsuccessful promise to marry cannot by itself constitute a criminal offence. The Court emphasised the necessity of proving fraudulent intent at the inception of the relationship. This judgment reinforced the principle that criminal law should not be used to punish every failed romantic relationship.

The judicial approach under the IPC therefore sought to balance two competing concerns. On one hand, the courts recognised the need to protect women from sexual exploitation achieved through deliberate deception. On the other hand, they were cautious not to criminalise consensual relationships merely because the parties later separated or marriage did not occur.

The determination of criminal liability depended largely upon the facts of each case and the ability to establish dishonest intention at the time the promise was made.

Despite these judicial developments, significant uncertainty remained in the law. Different courts often interpreted similar factual situations differently, resulting in inconsistent outcomes. The absence of a dedicated statutory provision also created ambiguity regarding the precise nature of the offence and the standard of proof required. It was in this context that the legislature introduced Section 69 of the Bharatiya Nyaya Sanhita, 2023, with the objective of specifically addressing sexual intercourse obtained through deceitful means, including false promises of marriage.

Thus, the legal position under the IPC was largely shaped through judicial interpretation rather than explicit legislative recognition. The enactment of Section 69 BNS represents an attempt to codify and clarify this area of law, although its scope and constitutional implications continue to generate considerable debate among legal scholars and practitioners.

3. Statutory Anatomy of Section 69 of the BNS, 2023: Breaking Down the Elements

The introduction of Section 69 in the Bharatiya Nyaya Sanhita (BNS), 2023, represents a legislative attempt to formalize the boundary between penalizing fraudulent exploitation and over-criminalizing personal relationships. To understand its practical implications, it is essential to analyze the structural framework, the specific language employed by the legislature, and the core ingredients required to constitute an offence under this section.

3.1 The Text and Essential Ingredients

Section 69 states that whoever, by deceitful means or by making a promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, which intercourse does not amount to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

A literal and purposeful reading of the text reveals that to attract criminal liability under this section, the prosecution must establish the following essential ingredients:

- **The Act:** The accused must have had sexual intercourse with the woman.

- **The Inducement (The Means):** Such sexual intercourse must have been induced either by (a) "deceitful means" or (b) by making a "promise to marry without any intention of fulfilling the same."
- **The Negative Proviso:** The act of sexual intercourse must explicitly not amount to the offence of rape under Section 63 of the BNS (which corresponds to Section 375 of the IPC).

3.2 The Statutory Dichotomy: "False Promise" vs. "Deceitful Means"

The legislature has widened the net of this offence by introducing an explanation clause that expands the definition of "deceitful means." The statute explicitly clarifies that deceitful means shall include:

- False promises of employment or promotion,
- Inducement by marrying after concealing identity, or
- Fraudulent misrepresentation of status or authority.

This legislative expansion creates a structural dichotomy within the section. While the first part deals with the conventional domain of a "false promise of marriage," the second part creates an entirely modern omnibus category targeting economic, professional, and identity-based fraudulent inducements.

3.3 The Shift in Punishment and the Stigma of 'Rape'

One of the most profound structural changes brought about by Section 69 is the statutory decoupling of deception-based sexual exploitation from the definition of rape. Under the IPC regime, if a court found that consent was vitiated by a false promise of marriage under Section 90, the accused was automatically convicted of rape under Section 375, which carried a minimum mandatory sentence of ten years, extending up to life imprisonment, alongside immense societal stigma.

Section 69 corrects this disproportionate sentencing framework by categorizing this conduct as a standalone felony rather than rape. The maximum punishment is capped at ten years with an open-ended provision for a fine. By removing the label of "rape" while preserving a severe

penal consequence, the BNS aims to ensure that the stigma attached to the conviction matches the exact nature of the moral and legal wrong committed.

4. Constitutional Analysis of Section 69 of the BNS, 2023: Balancing Protection and Personal Liberty

The constitutional validity of Section 69 of the Bharatiya Nyaya Sanhita, 2023, remains one of the most debated aspects of the provision. While the legislature seeks to protect women from deception-based sexual exploitation, the provision simultaneously raises concerns regarding equality, personal liberty, privacy, and decisional autonomy. Since criminal law directly interferes with individual freedom, any restriction imposed by the State must satisfy constitutional standards laid down under Articles 14 and 21 of the Constitution of India.

4.1 Article 14 and the Test of Non-Arbitrariness

Article 14 guarantees equality before the law and equal protection of laws. The Supreme Court has consistently held that legislation must not be arbitrary, irrational, or manifestly unreasonable. A law may classify individuals into different categories, but such classification must be based upon an intelligible differentia and must have a rational nexus with the objective sought to be achieved.

Section 69 seeks to distinguish between ordinary consensual sexual relationships and those induced through deception. The legislative objective of protecting women from fraudulent inducement is undoubtedly legitimate. However, concerns arise regarding the broad and undefined nature of terms such as “deceitful means.” The absence of precise statutory standards may result in inconsistent judicial interpretations and selective enforcement.

A constitutional challenge may therefore arise on the ground that the provision confers excessive discretion upon investigating agencies and courts. If the distinction between a deliberately false promise and a subsequently broken promise remains unclear, the possibility of arbitrary application cannot be ignored. Consequently, the constitutionality of Section 69 under Article 14 will largely depend upon a narrow and principled judicial interpretation of the provision.

4.2 Article 21 and the Right to Personal Liberty

Article 21 guarantees that no person shall be deprived of life or personal liberty except

according to procedure established by law. Judicial interpretation has expanded the scope of Article 21 to include dignity, autonomy, privacy, and the freedom to make intimate personal choices.

Personal relationships and decisions regarding marriage and sexuality form an integral part of individual liberty. Criminal provisions regulating intimate relationships must therefore withstand strict constitutional scrutiny. Critics argue that Section 69 risks transforming failed romantic relationships into criminal disputes, thereby exposing individuals to prosecution for decisions that may arise from changing personal circumstances rather than fraudulent intent.

Supporters of the provision contend that Article 21 also imposes a positive obligation upon the State to protect individuals from exploitation and abuse. From this perspective, the provision serves as a legitimate mechanism to safeguard vulnerable individuals who consent to sexual intercourse only because they have been deliberately deceived. The constitutional challenge lies in balancing the protection of victims with the preservation of personal liberty.

4.3 Privacy and Decisional Autonomy

The recognition of privacy as a fundamental right by the Supreme Court in the landmark judgment of *Justice K.S. Puttaswamy v. Union of India* significantly altered the constitutional discourse surrounding intimate relationships. The Court recognised that personal choices relating to marriage, sexuality, and relationships fall within the protected sphere of privacy.

Section 69 indirectly regulates consensual sexual relationships by criminalising consent obtained through specified forms of deception. While the State possesses a legitimate interest in preventing fraud, excessive intervention in private relationships may raise concerns regarding decisional autonomy. Courts may therefore be required to ensure that the provision targets only genuine instances of fraudulent inducement and does not become a tool for policing consensual adult relationships.

The constitutional principle of autonomy requires that adults be treated as capable of making independent decisions regarding their personal lives. Consequently, criminal liability should arise only where deception substantially affects the validity of consent and not merely because a relationship subsequently fails.

4.4 The Doctrine of Proportionality

Modern constitutional jurisprudence requires restrictions upon fundamental rights to satisfy the doctrine of proportionality. This doctrine mandates that a measure adopted by the State must pursue a legitimate objective, possess a rational connection with that objective, be necessary to achieve the objective, and maintain an appropriate balance between competing interests.

The objective of Section 69, namely the prevention of deception-based sexual exploitation, is undoubtedly legitimate. However, questions remain regarding whether the provision has been drafted narrowly enough to avoid encroaching upon constitutionally protected freedoms. If interpreted broadly, the provision may criminalise conduct beyond its intended purpose and thereby fail the proportionality test.

A constitutionally sustainable interpretation would therefore require courts to insist upon clear proof of fraudulent intention existing at the very inception of the relationship. Such an approach would ensure that the provision addresses genuine exploitation while respecting constitutional guarantees of liberty and autonomy.

4.5 Constitutional Assessment

From a constitutional perspective, Section 69 occupies a delicate position between victim protection and individual freedom. The provision pursues a legitimate social objective and addresses a genuine concern relating to exploitation through deception. Nevertheless, its constitutional validity will ultimately depend upon judicial safeguards against arbitrary enforcement and expansive interpretation.

A balanced constitutional approach would require courts to distinguish between intentional fraud and ordinary relationship failures. By doing so, the judiciary can ensure that Section 69 remains a tool against exploitation rather than a mechanism for criminalising personal choices and consensual relationships.

5. Critical Evaluation and Practical Challenges of Section 69 of the BNS, 2023

The enactment of Section 69 of the Bharatiya Nyaya Sanhita, 2023 has generated significant legal and academic debate. While the provision seeks to provide protection against deception-based sexual exploitation, it also raises several concerns relating to interpretation, enforcement,

and the broader role of criminal law in regulating personal relationships. A critical evaluation of the provision reveals both its strengths and potential shortcomings.

5.1 Legislative Merits and Protective Objectives

One of the principal strengths of Section 69 lies in its recognition of deception as a serious form of exploitation. The provision acknowledges that consent obtained through deliberate fraud may not be entirely voluntary and that such conduct can cause substantial emotional, psychological, and social harm to the victim. By creating a separate offence, the legislature has sought to address a legal gap that previously depended largely upon judicial interpretation.

The provision also provides greater statutory clarity than the previous legal framework under the Indian Penal Code. Under the earlier regime, courts were often required to determine whether a false promise of marriage amounted to rape through the application of Section 90 IPC. This approach frequently resulted in inconsistent outcomes and uncertainty regarding criminal liability. Section 69 attempts to resolve this ambiguity by specifically criminalising sexual intercourse obtained through deceitful means.

Another positive aspect of the provision is that it separates deception-based offences from the offence of rape. This distinction allows the law to recognise the seriousness of fraudulent conduct without necessarily equating it with the more severe offence of rape. In doing so, the legislature has attempted to create a punishment structure that is more proportionate to the nature of the wrongdoing.

5.2 Evidentiary Challenges and Proof of Intention

Despite its protective objectives, the practical implementation of Section 69 presents significant evidentiary difficulties. The central requirement of the offence is proving that the accused never intended to fulfil the promise at the time it was made. Establishing a person's state of mind is inherently complex and often depends upon circumstantial evidence rather than direct proof.

Relationships evolve over time, and intentions may change due to personal, financial, familial, or social circumstances. A promise that was initially genuine may later become impossible to fulfil. In such situations, distinguishing between an intentional deception and a genuine change of circumstances becomes extremely difficult. Courts may therefore face substantial challenges

in determining whether criminal liability should arise.

The absence of objective statutory guidelines for assessing fraudulent intention further increases the possibility of inconsistent judicial decisions. Without clear standards, similar factual situations may produce different outcomes in different courts, thereby undermining legal certainty.

5.3 Risk of Over-Criminalisation

A major criticism of Section 69 is that it may contribute to the over-criminalisation of personal relationships. Criminal law is traditionally regarded as the most coercive instrument available to the State and is generally reserved for conduct that causes substantial public harm. Critics argue that the breakdown of a consensual romantic relationship should not automatically become a matter of criminal prosecution.

Modern relationships are often influenced by changing personal circumstances, family pressures, career considerations, and social expectations. Not every failed relationship involves fraud or exploitation. If courts adopt an expansive interpretation of Section 69, individuals may face criminal liability for conduct that is more appropriately addressed through civil or personal remedies.

The possibility of over-criminalisation becomes particularly significant where evidence of fraudulent intent is weak or ambiguous. In such cases, the threat of criminal prosecution may create undue pressure and transform private disputes into criminal proceedings.

5.4 Potential for Misuse

Like many criminal provisions dealing with intimate relationships, Section 69 may be vulnerable to misuse in certain circumstances. The subjective nature of personal relationships and emotional expectations can make it difficult to objectively assess the intentions of the parties involved. Allegations may sometimes arise after the breakdown of a relationship, making it challenging to distinguish genuine cases of deception from allegations motivated by disappointment, resentment, or personal disputes.

While the possibility of misuse should not undermine the legitimate purpose of the provision, it highlights the need for careful investigation and judicial scrutiny. Courts must ensure that

criminal liability is imposed only where there is convincing evidence of fraudulent inducement rather than mere relationship failure.

5.5 Need for Judicial Safeguards and Legislative Clarification

The long-term success of Section 69 will largely depend upon its interpretation by courts. Judicial safeguards are essential to prevent arbitrary enforcement and to preserve the distinction between deliberate deception and genuine relationship breakdowns. Courts should insist upon clear evidence demonstrating that the accused possessed fraudulent intent at the very inception of the relationship.

Legislative clarification may also be beneficial. Terms such as “deceitful means” could be defined with greater precision to reduce ambiguity and improve consistency in judicial decision-making. Clear statutory guidelines would help ensure that the provision targets genuine exploitation while minimizing the risk of misuse.

5.6 Overall Assessment

Section 69 represents a significant attempt to address deception-based sexual exploitation within India’s criminal justice framework. The provision reflects a legitimate concern for protecting individuals from fraudulent inducement and provides a distinct legal response to conduct that previously existed in a grey area of criminal law. However, its effectiveness will depend upon careful interpretation, strict evidentiary standards, and adherence to constitutional principles.

While the provision possesses considerable protective value, its broad language and reliance on subjective assessments of intention create practical challenges that cannot be ignored. A balanced judicial approach is therefore essential to ensure that Section 69 serves its intended purpose without becoming a tool for over-criminalisation or unjust prosecution.

6. Conclusion

Section 69 of the Bharatiya Nyaya Sanhita, 2023 introduces a distinct offence for sexual intercourse obtained through deception, particularly through false promises of marriage. The provision seeks to protect individuals from exploitation while addressing a legal gap that previously relied on judicial interpretation.

At the same time, its application raises practical concerns. Determining whether a promise was intentionally false from the beginning or whether a genuine relationship later failed due to changing circumstances remains a significant challenge. Therefore, courts must carefully distinguish fraudulent conduct from consensual relationships that do not result in marriage.

Ultimately, the success of Section 69 will depend on a balanced judicial approach. The provision should protect victims of deception without criminalising genuine relationships or undermining constitutional values such as liberty, privacy, autonomy, and equality. A careful interpretation supported by clear evidence can ensure that the law achieves its intended purpose while safeguarding individual rights.

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