FROM MISCONCEPTION OF FACT TO A STANDALONE OFFENCE: REASSESSING SECTION 69 OF THE BHARATIYA NYAYA SANHITA, 2023 VIS-À-VIS THE IPC IN LIGHT OF *KUNAL RAMESHBHAI KALYANI V. STATE OF GUJARAT* (2026)

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ABSTRACT

Section 69 of the Bharatiya Nyaya Sanhita, 2023 (BNS) makes it an offence, short of rape, to obtain sexual intercourse by deceitful means or by a promise to marry made without any intention of fulfilling it. Under the Indian Penal Code, 1860 (IPC), the same grievance could be prosecuted only as rape under Section 375 read with Section 90, on the theory that consent was vitiated by a misconception of fact. In *Kunal Rameshbhai Kalyani v. State of Gujarat* (2026 INSC 987), decided on 7 September 2026, a Bench of Justice J.B. Pardiwala and Justice K. Vinod Chandran gave one of the first Supreme Court readings of the new provision and quashed an FIR registered under it. This article argues that Section 69 changed the name and the penalty of the conduct but not the burden of proof. It traces the three stages of the judicial doctrine and the limits that led Parliament to legislate; reads the change as a separation of agreement from freedom from fraud, organised around sexual autonomy; examines how digital communication will prove or defeat deceitful intention at the inception of a promise; and compares the IPC and BNS regimes. It identifies three questions that *Kunal* leaves open: the boundary between Sections 63 and 69, the constitutionality of a gender-specific offence, and the weight to be given to an accused's explanation for ending the relationship. It also proposes a four-question test for courts and prosecutors. The method is doctrinal and makes no claim about how often such prosecutions arise or fail in practice.

Keywords: Section 69 BNS; false promise to marry; consent; sexual autonomy; misconception of fact; Section 90 IPC; deceitful means; electronic evidence; Bharatiya Sakshya Adhiniyam, 2023.

I. Introduction

For most of the last sixty years, Indian courts have policed the line between a broken promise and a false promise of marriage with a provision that was never written for the purpose. Section 90 of the Indian Penal Code, 1860 (IPC) declared that consent given under a misconception of fact was not consent, and Section 375 treated sexual intercourse without valid consent as rape.[1] A woman who said she had been drawn into intimacy by a promise that was never meant to be kept could therefore complain only of rape, and a court that accepted her complaint had to convict of an offence carrying a minimum of ten years' rigorous imprisonment.[2] The Supreme Court repeatedly warned against the mechanical use of this route, most prominently in *Uday* and *Deepak Gulati*.[3]

The Bharatiya Nyaya Sanhita, 2023 (BNS), in force from 1 July 2024, offers a legislative answer.[4] Section 63 replaces Section 375 and Section 28 replaces Section 90, while Section 69 creates a new offence. Whoever, by deceitful means or by making a promise to marry a woman without any intention of fulfilling it, has sexual intercourse with her, such intercourse not amounting to rape, is punishable with imprisonment of up to ten years and fine.[5] The Explanation provides that "deceitful means" includes inducement by a false promise of employment or promotion, and marrying by suppressing identity.[6]

The Supreme Court has now read the new section for one of the first times in *Kunal Rameshbhai Kalyani v. State of Gujarat*, decided on 7 September 2026 by a Bench of Justice J.B. Pardiwala and Justice K. Vinod Chandran.[7] The complaint described a relationship that began on a digital platform, a wish to marry voiced at the first physical meeting, intercourse on 12 February 2024 after the complainant "succumbed" to the appellant's entreaties, and a two-day hotel stay in April 2024. The relationship ended when the appellant, citing his mother's disapproval, declined to marry. An FIR was registered under Section 69 at Sayajiganj

[1]The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, 90, 375 (India).
[2]IPC 376; *see also* The Criminal Law (Amendment) Act, 2018, No. 22, Acts of Parliament, 2018 (India).
[3]*Uday v. State of Karnataka*, (2003) 4 S.C.C. 46 (India); *Deepak Gulati v. State of Haryana*, (2013) 7 S.C.C. 675 (India).
[4]The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, 1(2) (India); Ministry of Home Affairs, Notification No. S.O. 850(E) (Feb. 23, 2024), Gazette of India, extraordinary, pt. II, § 3(ii) (India).
[5]BNS 28, 63, 69.
[6]*Id.* 69, Explanation.
[7]*Kunal Rameshbhai Kalyani v. State of Gujarat*, Crim. App. @ S.L.P. (Crl.) No. 11526 of 2026, 2026 INSC 987 (India Sept. 7, 2026).

Police Station, Vadodara City, on 20 May 2025.[8] The Gujarat High Court refused to quash it, relying on *Deepak Gulati*. The Supreme Court set that order aside, finding a consensual relationship and nothing that amounted to deceitful means.[9]

I. From Doctrine to Decree: How the Courts Wrote the Law of False Promises Before Parliament Did

From Judicial Interpretation to Statutory Criminalisation: The Changing Law on False Promises of Marriage in India

A. One Set of Facts, Two Verdicts

Two courts read the same complaint and reached opposite conclusions. The Gujarat High Court, as reported, saw an allegation that deserved investigation and treated the accused's reliance on his mother's disapproval as a sign of bad faith. The Supreme Court saw a consensual relationship that had ended badly, found nothing in the complaint that amounted to deceit, and quashed the First Information Report (FIR).[10]

The gap between the two courts is not a quarrel about facts. It is a quarrel about what Section 69 of the Bharatiya Nyaya Sanhita, 2023 (BNS) asks a court to look for.[11] The section does not answer that question on its face. The answer lies in about sixty years of case law that the section absorbed without naming it.

This part argues that Section 69 changed the name and the price of the conduct, but not the burden of proof. The courts spent six decades building a test for the false promise of marriage, and Parliament, in giving the conduct its own offence, kept the test. The argument moves in four steps: the three stages of the judicial doctrine, the limits that made that route unsatisfactory, the structure of Section 69, and the way *Kunal* links the two regimes. The method is doctrinal. It reads statutes and reported decisions and makes no claim about how often such prosecutions arise or fail.

[8] *Id.* 2, 5.
[9] *Id.* 3, 5–7.
[10] *Kunal*, 2026 INSC 987, 3, 5–7.
[11] BNS 69.

B. When Interpretation Ran Out: The Limits of Section 90

Three limits explain why the doctrine could not be the end of the matter.

The first was classification. Every proven false promise had to be called rape, and after 2018 it carried a minimum of ten years' rigorous imprisonment, even though the wrong involved no force, no incapacity and no mistake about the nature of the act.[12] A conviction was therefore costly, and courts had reason to read the evidence narrowly. The caution that runs through the case law is partly a consequence of that disproportion.

The second was textual. The doctrine was built by interpreting "misconception of fact", and that phrase could not comfortably carry other deceits, such as a false promise of employment or a marriage ceremony conducted under a concealed identity. Other provisions touched the area, including those on deceitful cohabitation, sham marriage ceremonies and cheating.[13] None of them made sexual access obtained by deceit an offence in its own right.

C. Kunal as Hinge: Old Tests, New Offence

Kunal is one of the first Supreme Court readings of Section 69, and it stands between the two regimes. The facts are set out above. In short, a relationship that began on a digital platform, a wish to marry voiced at the first meeting, intercourse and a two-day hotel stay, and a later refusal attributed to the appellant's mother ended in an FIR under Section 69.[14] The Supreme Court made three moves.

It first placed Section 69 in its history. A false promise of marriage had been prosecuted under Section 375 read with Section 90, which required proof that consent was tainted because the woman believed the promise and permitted intimacy on that belief, while the accused never intended to keep it. The BNS, the Court said, carved the fraudulent and deceitful conduct out of rape as a separate offence with its own penalty. The High Court had relied on *Deepak Gulati*, which was decided under an IPC that had no equivalent of Section 69.[15]

Finally, it applied that standard to the complaint as pleaded. The complaint described a consensual relationship, did not allege that the first act was conditional on a promise of

[12]IPC 376; *see also* Criminal Law (Amendment) Act, 2018.
[13]IPC 493, 496, 415, 420.
[14]*Kunal*, 2026 INSC 987, 2, 5–6.
[15]*Id.* 3–4.

marriage, and recorded only that the complainant "succumbed" to the appellant's entreaties. A wish to marry, voiced at the outset, was not deceitful means, and a refusal explained by a mother's disapproval suggested a promise made in good faith, if it was made at all.[16] As reported, the High Court had read the same explanation as a sign of bad faith. The Supreme Court's approach therefore also tells courts how to weigh an accused's account of why a relationship ended.

D. The Ledger: What Moved and What Stayed

The two regimes can be compared on six points.[17]

Feature	**Judicial regime (Sections 375 and 90 IPC)**	**Statutory regime (Section 69 BNS)**
Characterisation	Rape, because consent is vitiated by misconception of fact	Separate offence of intercourse by deceit, "not amounting to the offence of rape"
Mental element	Promise false at inception (*Deepak Gulati*)	Promise "without any intention of fulfilling the same", read as the same rigour (*Kunal*)
Causation	Direct nexus between promise and consent (*Pramod Pawar*)	Deceit must induce the consent; a wish to marry is not enough (*Kunal*)
Punishment	Rigorous imprisonment of not less than ten years, up to life	Imprisonment up to ten years and fine
Scope	Promises of marriage, by interpretation	Promises of marriage, deceitful means generally, and the Explanation's examples
Quashing stage	Complaint examined against settled standards	Complaint tested on its own averments (*Kunal*)

What changed is the classification, the penalty and the range of deceits covered. What did not change is the evidentiary threshold. The prosecution must still prove the accused's state of mind at the time of the promise and must still show that the promise caused the consent. That

[16] *Id.* 5–6.
[17] The comparison draws on the authorities cited in Parts II.B to II.E, *supra*.

continuity has two consequences. It guards against over-criminalisation, since a lower penalty might otherwise make the section a routine charge in every broken relationship. It also means that complainants carry the same difficult burden as before, so that the practical gain of the new offence may be a fairer label and sentence rather than easier proof. The insistence in *Kunal* that the complaint itself disclose deceit, and not merely disappointment, makes early scrutiny by police and magistrates important.

The history therefore shows a movement from interpretation to legislation that kept its central standard. Whether that standard is applied with attention to the whole course of conduct, so that Section 69 neither punishes disappointment nor shelters deliberate deceit, is now a question for the courts. The next part asks what the new offence does to the idea of consent itself.

II. Reconceptualising Consent Under Indian Criminal Law: From Section 90 IPC to Section 69 BNS

Consent Divided: Agreement, Deceit and Autonomy in the Passage from Misconception of Fact to Deceitful Means

A. When "Yes" Is Not Free

A "yes" is not always a free one. A person can agree to intimacy and still be the victim of a lie that made her agree. The criminal law has to decide whether such a person consented, and the way it answers reveals what it takes consent to be.

The IPC answered in a single sentence: fraud destroyed consent, and intercourse without consent was rape. The BNS answers in two. A woman who agrees because of a deceit may still be treated as having agreed, and the deceit is then punished as a separate wrong.[18] This part argues that the BNS has separated two questions the IPC treated as one: whether a woman agreed to intercourse, and whether her agreement was free of fraud. It proceeds through the binary model of the IPC, the three-tier structure of the BNS, the autonomy principle that explains the change, and the faultlines that *Kunal* leaves open, and it ends with a four-question test for applying Section 69.

[18]IPC 90, 375; *see also* BNS 63, 69.

B. The Binary Bargain

The IPC never defined consent affirmatively in its general provisions. Section 90 defined it by exclusion: consent given under fear of injury or under a misconception of fact is not consent, if the person doing the act knows, or has reason to believe, that it was so given.[19] Section 375 made intercourse without consent rape. The Criminal Law (Amendment) Act, 2013 added an explanation describing consent as an unequivocal voluntary agreement, communicated by words, gestures or any form of verbal or non-verbal communication, to participate in the specific sexual act.[20] The presumption of absence of consent in the law of evidence rests on the same picture.[21]

The model is a switch. Either the consent was real and the act lawful, or the consent was vitiated and the act was rape. A false promise of marriage tested the switch because it is a complaint of fraud, not of force. It also strained the vocabulary of Section 90 for a deeper reason. A promise concerns the future, and its falsity lies in the promisor's present intention. The woman is not mistaken about the nature of the act, about who her partner is, or about any existing fact. She is deceived about a state of mind.

The courts' tests, intention at inception and a direct nexus, were ways of making that kind of deception fit a provision written for mistakes about facts. They did not reinterpret consent. They filtered cases so that the switch produced tolerable results.[22]

C. Three Tiers, Two Lines: The Architecture of the BNS

The BNS keeps the old architecture and adds a layer. Section 28 carries forward Section 90, Section 63 carries forward Section 375 with its explanation of consent, and Section 64 carries forward the punishment.[23] Section 69 supplies the new layer, and its words "not amounting to the offence of rape" are the hinge.[24] The result is three tiers separated by two lines.

First tier: absent or vitiated consent. Intercourse against the woman's will or without her

[19]IPC 90.
[20]IPC 375, Explanation 2; *see also* The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).
[21]The Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023, 120 (India); *see also* The Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872, 114A (India).
[22]*See Deepak Gulati*, (2013) 7 S.C.C. 675; *Pramod Suryabhan Pawar*, (2019) 9 S.C.C. 608.
[23]BNS 28, 63, 64.
[24]*Id.* 69.

consent; with consent obtained by putting her, or someone in whom she is interested, in fear of death or hurt; with consent given because she believes the man to be another person to whom she is or believes herself to be lawfully married; with consent given when she cannot understand its nature and consequences because of unsoundness of mind or intoxication; and the cases involving a girl under eighteen or a woman unable to communicate consent. These remain rape.[25]

Second tier: consent induced by deceit. The woman understands the act and knows her partner, and she agrees, but her decision was induced by a promise of marriage made without any intention of fulfilling it, or by another deceit within the Explanation. This is Section 69.[26]

Third tier: consent freely given, followed by disappointment. A relationship ends and a promise that was sincere when made goes unfulfilled. The criminal law does not reach it.

The first line, between the first and second tiers, is the contested one. The second line, between the second and third, is the one the courts have policed for sixty years.

The tiers track a familiar distinction between mistakes that go to the nature of the act or the identity of the partner, and mistakes about collateral matters. The first tier covers the former. The second covers a kind of collateral deceit that the legislature has judged serious enough to punish even though the woman knew what she was doing. Section 69 does not weaken the protection of consent. It names a wrong that consent doctrine could never describe accurately.

D. Autonomy as the Organising Principle

The separation is best explained by sexual autonomy. The Supreme Court has recognised decisional autonomy over intimate matters as part of privacy and dignity,[27] and has treated sexual autonomy as inseparable from dignity.[28] If autonomy is the interest protected, it can be violated in two ways. A person's will can be overborne, which is the first tier. Or the exercise of her will can be manipulated by false information on which she relied, which is the second. Section 69 gives the second violation a name and a penalty that is proportionate to it.

The Explanation confirms the logic. A false promise of employment or promotion, or a

[25] *Id.* 63.
[26] *Id.* 69.
[27] *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).
[28] *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

marriage entered into by suppressing identity, does not make the woman unaware that she is having intercourse. It makes her choice depend on a falsehood. The harm is the corruption of the choice.[29]

The rationale also supplies a limit. If the wrong lies in the induced choice, the section should reach only deceit that actually induced the choice. A relationship in which intimacy preceded any promise, or in which the promise was an ordinary expression of hope, does not engage it. That is where the autonomy principle and the doctrine of direct nexus meet.[30]

III. The Evidentiary Significance of Digital Communication in Proving Deceitful Intention: Judicial Perspectives in *Kunal Rameshbhai Kalyani*

A. The Facts and the Holding

The complainant alleged that the appellant, with whom she had come into contact through a digital platform, entered into physical relations with her on the promise of marriage and later resiled because his mother did not approve of the match. An FIR dated 20.05.2025 was registered at Sayajiganj Police Station, Vadodara City, under Section 69 BNS. The Gujarat High Court refused to quash it, relying on *Deepak Gulati*.[31] The complaint itself recorded that the friendship formed online had become a love affair, that the appellant expressed his wish to marry on the first physical meeting, that intercourse took place on 12.02.2024 after the complainant "succumbed to his entreaties", and that in April 2024 she stayed with him in a hotel for two days.[32]

The Supreme Court set aside the High Court's order. It observed that the complaint disclosed a consensual relationship and nothing indicating deceitful conduct, and it stressed that on the first occasion the complainant did not even say that she permitted intimacy only because of a promise to marry. It held that mere communication of a desire to marry cannot amount to deceitful means, and that the complainant's own case, that the appellant backed out because his mother objected, indicated that the promise was made in good intention, "if at all it was made". The FIR was quashed.[33]

[29]BNS 69, Explanation.
[30]*Pramod Suryabhan Pawar*, (2019) 9 S.C.C. 608.
[31]*Kunal*, 2026 INSC 987, 3.
[32]*Id.* 5.
[33]*Id.* 5–7.

A candid reading of the order is necessary. The judgment is short and does not itself lay down rules on chats, call records or the certification of electronic records. Its reference to the digital platform is factual background. The evidentiary significance of digital communication in this setting is therefore an extension drawn from the Court's reasoning, and the discussion below should be read as such.

B. Intention at Inception as the Evidentiary Problem

Intention is a state of mind, and a state of mind is proved by inference from outward conduct. Every Supreme Court decision on false promises of marriage has wrestled with this. In *Uday*, the Court held that where the prosecutrix knew that her marriage with the accused would face caste-based opposition and yet continued the relationship, her consent was not obtained by a misconception of fact.[34] In *Deelip Singh v. State of Bihar*, the Court accepted that a promise made with no intention of keeping it can vitiate consent, but insisted that the promise must actually be the inducement.[35] *Deepak Gulati* crystallised the rule: there must be adequate evidence that at the initial stage the accused had no intention whatsoever of marrying, and a failure to keep a promise due to reasons that are unclear "does not always amount to misconception of fact".[36]

A line of later decisions refined the test. In *Pramod Suryabhan Pawar v. State of Maharashtra*, the Court held that for consent to be vitiated the promise must have been false and made in bad faith at the time it was given, and that the misconception must have a direct nexus with the woman's decision to engage in the act.[37] *Anurag Soni v. State of Chhattisgarh* shows the other side of the line, since a conviction was sustained where the facts showed that the promise was a device used to obtain sexual access.[38] *Dhruvaram Murlidhar Sonar v. State of Maharashtra* and *Sonu @ Subhash Kumar v. State of U.P.* are quashing decisions in which the Court separated consensual relationships that later fail from rape.[39] In *Maheshwar Tigga v. State of Jharkhand*, the Court declined to find a vitiated consent where the circumstances suggested a genuine, though unfulfilled, intention to marry.[40] *Naim Ahamed v. State (NCT of Delhi)* again emphasised that a long-standing consensual relationship sits uneasily with the claim that

[34] *Uday*, (2003) 4 S.C.C. 46.
[35] *Deelip Singh*, (2005) 1 S.C.C. 88.
[36] *Deepak Gulati*, (2013) 7 S.C.C. 675, 24.
[37] *Pramod Suryabhan Pawar*, (2019) 9 S.C.C. 608.
[38] *Anurag Soni*, (2019) 13 S.C.C. 1.
[39] *Dhruvaram Murlidhar Sonar*, (2019) 18 S.C.C. 191; *Sonu*, (2021) 18 S.C.C. 517.
[40] *Maheshwar Tigga*, (2020) 10 S.C.C. 108.

consent was induced by deception at the start.[41]

The common thread is evidentiary. Because the accused's mind at the moment of the promise cannot be examined directly, courts look for objective markers: whether the accused was already married or engaged, whether he concealed identity or status, whether he made the promise repeatedly and in contexts unrelated to sexual access, whether he took steps toward marriage, and how quickly and in what manner he withdrew. The same logic governs cheating. In *Hridaya Ranjan Prasad Verma v. State of Bihar*, the Court held that dishonest intention at the time of making the promise distinguishes cheating from mere breach of contract, and *Mohd. Ibrahim v. State of Bihar* reiterated that the ingredients of cheating must be shown to exist at inception.[42] *Kunal* applies the same reasoning to Section 69.[43]

C. Why Digital Communication Is Now at the Centre of the Inquiry

In the period in which most of the older cases arose, the record of a promise was largely oral testimony. Today the relationship itself often begins and proceeds online, as it did in *Kunal*. Messages, voice notes, video calls, social media interactions, photographs with metadata, hotel booking confirmations, location histories and payment records create a contemporaneous, time-stamped narrative. This changes the evidentiary character of these cases in three ways.

First, a digital record can corroborate the existence and timing of a promise. If a message sent before the first physical encounter expressly links intimacy to marriage, it supports the complainant's claim that the promise was the inducement. Conversely, if the record shows that the relationship was affectionate and mutual and that marriage was mentioned only after intimacy, it undermines the nexus required by *Pramod Pawar*.[44] The Court's emphasis in *Kunal* on the absence of any statement that intimacy was permitted because of the promise is, in effect, an inquiry into this nexus.[45]

Second, digital communication can reveal the accused's state of mind through surrounding conduct. Messages that show planning for a future together, introductions to family, or efforts to persuade parents point toward good faith, and the later breakdown looks like the

[41]*Naim Ahamed*, (2023) 15 S.C.C. 385.
[42]*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 S.C.C. 168 (India); *Mohd. Ibrahim v. State of Bihar*, (2009) 8 S.C.C. 751 (India).
[43]*Kunal*, 2026 INSC 987, 4.
[44]*Pramod Suryabhan Pawar*, (2019) 9 S.C.C. 608.
[45]*Kunal*, 2026 INSC 987, 5.

"unavoidable circumstances" contemplated in *Deepak Gulati*.[46] Messages that show concealment of an existing marriage or of a false identity, or that show the accused describing the relationship as casual to third parties, point toward deceit, and would also engage the Explanation to Section 69 on marrying by suppressing identity.[47]

Third, digital communication is the best evidence of what a subsequent refusal looks like. In *Kunal*, the complainant's own case was that the refusal was attributed to the accused's mother. A refusal that is explained, even if unfair, is evidence of a promise that was sincerely made but could not be carried out, and the Court treated this as a statement against the existence of deceit.[48] A prosecution that wishes to prove the opposite would need electronic records showing that the explanation was invented after the fact.

D. Admissibility and Proof under the Bharatiya Sakshya Adhiniyam, 2023

The weight of digital communication depends on its admissibility. Under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), Section 61 provides that an electronic record shall not be denied legal effect, validity or enforceability merely because it is electronic, and Section 63 prescribes the conditions and the certificate through which such records become admissible, replacing Section 65B of the Indian Evidence Act, 1872.[49] The case law under the old Act therefore continues to guide interpretation. *Anvar P.V. v. P.K. Basheer* held that electronic records are admissible as secondary evidence only if the certificate requirement is satisfied.[50] *Shafhi Mohammad v. State of H.P.* had relaxed that requirement for a party not in possession of the device, but *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* overruled it and restored the certificate as a condition precedent.[51] *Tomaso Bruno v. State of U.P.* confirmed that electronic records such as CCTV footage are relevant evidence and must be proved properly.[52] Earlier, in *R.M. Malkani v. State of Maharashtra* and *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, the Court had accepted tape-recorded conversations subject to authenticity, relevance and the elimination of tampering.[53]

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[46]*Deepak Gulati*, (2013) 7 S.C.C. 675, 24.
[47]BNS § 69, Explanation.
[48]*Kunal*, 2026 INSC 987, 6.
[49]BSA §§ 61, 63; *see also* Indian Evidence Act § 65B.
[50]*Anvar P.V. v. P.K. Basheer*, (2014) 10 S.C.C. 473 (India).
[51]*Shafhi Mohammad v. State of Himachal Pradesh*, (2018) 2 S.C.C. 801 (India); *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 S.C.C. 1 (India).
[52]*Tomaso Bruno v. State of Uttar Pradesh*, (2015) 7 S.C.C. 178 (India).
[53]*R.M. Malkani v. State of Maharashtra*, (1973) 1 S.C.C. 471 (India); *Ziyauddin Burhanuddin Bukhari v.*

In the context of Section 69 these principles have practical consequences. A complainant who relies on chats must ensure that the device, the account and the extraction are identified and certified. An accused who relies on chats to show a relationship between equals must meet the same standard. Screenshots without certification, forwarded messages and edited conversation threads are vulnerable. Where deceit is the gravamen, the integrity of the record is not a technical matter but the heart of the case. The right to privacy recognised in *K.S. Puttaswamy v. Union of India* adds a further dimension, since intimate communications and images must be handled with care, and courts should be slow to permit their needless circulation.[54]

IV. Misconception of Fact and Deceptive Means: A Comparative Analysis of the IPC and Section 69 of the BNS

A. The IPC Framework

Under the IPC, a false promise of marriage was prosecuted through a chain of provisions. Section 375 defined rape as sexual intercourse in specified circumstances, including without consent. Section 90 stated that consent is not consent if given under fear of injury or a misconception of fact, and the person doing the act knows or has reason to believe this.[55] The prosecution had to show that the woman consented because of a misconception of fact, that the accused knew this, and that the promise was false at inception.

The early case law was cautious. In *Rao Harnarain Singh v. State of Punjab*, frequently cited in this area, the court distinguished consent given out of love and passion from consent induced by deception.[56] *Jayanti Rani Panda v. State of West Bengal* drew the distinction between a breach of promise and a false promise, holding that only the latter vitiates consent.[57] *Uday* adopted that approach in the Supreme Court.[58] In *Yedla Srinivasa Rao v. State of A.P.*, by contrast, the Court upheld a conviction where the accused had obtained access on a promise of marriage that was not kept in circumstances showing no intention to keep it.[59]

Deepak Gulati then made a second distinction central: rape versus consensual sex. The Court

Brijmohan Ramdass Mehra, (1976) 2 S.C.C. 17 (India).
[54]*Puttaswamy*, (2017) 10 S.C.C. 1.
[55]IPC §§ 375, 90.
[56]*Rao Harnarain Singh*, A.I.R. 1958 Punj. 123.
[57]*Jayanti Rani Panda*, 1984 Cri. L.J. 1535.
[58]*Uday*, (2003) 4 S.C.C. 46.
[59]*Yedla Srinivasa Rao*, (2006) 11 S.C.C. 615.

explained that rape involves an act against the will or without consent, while in consensual sex the woman actively participates, and the court must determine on which side of the line the facts fall.[60] *Pramod Pawar* reinforced that the misconception must be directly relevant to the decision to participate, and *Maheshwar Tigga* and *Naim Ahamed* applied this principle in favour of the accused.[61]

The IPC also contained adjacent provisions that were rarely used for promises of marriage but are conceptually relevant. Section 493 punished a man who deceitfully causes a woman not lawfully married to him to believe herself lawfully married and to cohabit, and Section 496 punished a person who dishonestly goes through the ceremony of marriage knowing it is not lawful.[62] Cheating under Sections 415 and 420 required deception and dishonest inducement.[63] These provisions show that Indian criminal law had long recognised sexual or marital deception but had not made a false promise of marriage a free-standing sexual offence.

B. The BNS Framework

Section 28 BNS reproduces the content of Section 90 IPC on consent given under fear or misconception. Section 63 BNS retains the structure of Section 375, and Section 64 retains the punishment of rigorous imprisonment of not less than ten years which may extend to life.[64] Section 69 is the new provision. It applies where intercourse is obtained "by deceitful means or by making promise to marry without any intention of fulfilling the same". It applies only where the act does not amount to rape. And it carries a maximum of ten years, with fine, a lower ceiling than Section 64.[65] The contrast is summarised in the table below.

Feature	**IPC (Sections 375 and 90)**	**BNS (Section 69)**
Characterisation	Rape, because consent is vitiated by misconception of fact	Separate offence of sexual intercourse by deceit, "not amounting to rape"

[60] *Deepak Gulati*, (2013) 7 S.C.C. 675.
[61] *Pramod Suryabhan Pawar*, (2019) 9 S.C.C. 608; *Maheshwar Tigga*, (2020) 10 S.C.C. 108; *Naim Ahamed*, (2023) 15 S.C.C. 385.
[62] IPC 493, 496.
[63] *Id.* 415, 420.
[64] BNS 28, 63, 64.
[65] BNS 69; BNS 64.

Feature	IPC (Sections 375 and 90)	BNS (Section 69)
Mental element	Knowledge that consent was given under misconception; promise false at inception (*Deepak Gulati*)	Deceitful means, or promise made "without any intention of fulfilling the same"
Punishment	Rigorous imprisonment of not less than ten years, up to life (Section 376)	Imprisonment up to ten years and fine
Illustrations of deceit	Developed judicially	Statutory Explanation: false promise of employment or promotion; marrying by suppressing identity
Victim	Woman	Woman

C. What Kunal Decides about the Relationship between the Two

The Court's central passage describes the IPC position: a false promise of marriage was prosecuted under Section 375 read with Section 90, which required a finding that the consent was tainted because the victim believed the promise and permitted intimacy only on that belief, the promisor never having intended to comply. It then states that the BNS, by incorporating Section 69, "brought in a separate offence carving out the fraudulent and deceitful conduct" from the grave offence of rape, while providing a penalty for the deceptive conduct. The words "without any intention of fulfilling the same" bring in "the same rigor" of the promise having been given with an intention of never being fulfilled.[66]

Three propositions can be drawn from this. First, Section 69 is a standalone offence. Conduct that was formerly forced into the rape framework now has its own provision with its own penalty. Second, the mental element is continuous with the IPC era. The Court does not treat the new section as lowering the threshold, and *Deepak Gulati*, on which the High Court had relied, remains the point of reference for what must be shown. Third, the test remains the accused's state of mind at the time the promise was given, so that a later failure to marry, however reprehensible, is not itself the offence. The Court's remark that a refusal founded on the mother's disapproval suggests a promise made with good intention applies the principle in *Deepak Gulati* that there may be circumstances in which a person with the best of intentions is

[66] *Kunal*, 2026 INSC 987, 4.

unable to marry the victim owing to unavoidable circumstances.[67]

The judgment therefore frames Section 69 as the codification of a case-law distinction, not a departure from it. It resolves the textual question whether "without any intention" requires something weaker than the IPC doctrine's "no intention whatsoever", and it does so in favour of continuity.

D. Conceptual Tension: Consent, Deceit and the Phrase "Not Amounting to Rape"

A more difficult question is conceptual. Under the IPC, deception that qualified as a misconception of fact meant there was no consent and the act was rape. Section 69 applies only when the act does not amount to rape, which implies that consent exists, though it was procured by deceit.[68] This seems to create two categories: deception so serious that it negates consent under Section 28 BNS (rape), and deception that leaves consent formally intact but is punishable as an independent wrong (Section 69).[69] The statute does not say how the line between them is drawn.

The Court's description of Section 69 as "carving out" deceitful conduct from rape suggests that Parliament intended false promises of marriage to move out of Section 63 and into Section 69, leaving Section 63 for cases involving force, incapacity, or fundamental deception about the nature of the act. If that is right, prosecutions that previously invoked Section 375 on a false-promise theory should now be framed under Section 69, with the lower ceiling of ten years. The alternative reading, that a prosecutor may still invoke Section 63 where the misconception is established, would defeat the purpose of the carve-out. Courts will need to settle this, and *Kunal* leans toward the first reading without squarely deciding it.[70]

The Explanation reinforces the point. Inducement by a false promise of employment or promotion, and marrying by suppressing identity, are examples of deceit that do not fit comfortably into the vocabulary of misconception of fact, because the woman understands the nature of the act perfectly well.[71] Section 69 thus treats the wrong as the manipulation of the choice, and not the absence of choice. This accords with the recognition in *Joseph Shine v. Union of India* of sexual autonomy as an aspect of dignity: autonomy can be violated by fraud

[67]*Kunal*, 2026 INSC 987, 4, 6; *Deepak Gulati*, (2013) 7 S.C.C. 675, 24.
[68]BN 69.
[69]*Id.* 28.
[70]*Kunal*, 2026 INSC 987 4; BNS 63.
[71]BNS 69, Explanation.

even where physical consent exists.[72]

VI. Conclusion

Section 69 of the BNS gives a long-standing wrong its own name. For six decades the law of false promises of marriage was written by the courts through the narrow vocabulary of "misconception of fact" in Section 90 IPC, and every proven case had to be called rape. Parliament has now separated that conduct from rape, lowered its penalty, and extended it to other deceits through the Explanation.[73] What it has not done is change the question a court must ask. *Kunal* confirms this: the prosecution must show that the promise was made without any intention of keeping it, and that the promise induced the consent.[74]

Four conclusions follow from this article. First, the continuity of the test is deliberate and defensible. It protects people whose relationships simply failed, and it keeps the section from becoming a routine charge in every broken engagement. Second, the structure of the BNS now divides consent into three tiers: consent that is absent or vitiated, which remains rape; consent induced by deceit, which is Section 69; and consent freely given and later regretted, which the criminal law does not reach. Sexual autonomy explains the middle tier, since the wrong lies in the corruption of the choice and not in its absence. Third, because intention at inception can only be inferred, digital communication will become the principal means by which the test is satisfied or defeated, and the integrity and certification of electronic records under the BSA will often decide the case. Fourth, the practical gain of the new offence is likely to be a fairer label and sentence, not easier proof.

Three questions remain open. The boundary between Section 63 and Section 69 should be settled in favour of the specific provision where the only inducement alleged is a promise or deceit within Section 69, so that the carve-out is not defeated by pleading rape. The gender-specific design of the section will face scrutiny under Article 14, and a reading anchored in the integrity of the choice would be easier to defend than one anchored in protection.[75] And courts must guard against a ready explanation, such as family opposition, becoming a standard answer to the charge, by weighing it with the whole course of conduct.

[72] *Joseph Shine*, (2019) 3 S.C.C. 39.
[73] BNS 63, 69.
[74] *Kunal*, 2026 INSC 987, 4.
[75] India Const. art. 14; *see Joseph Shine*, (2019) 3 S.C.C. 39.

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