
SECTION 69 OF THE BHARATIYA NYAYA SANHITA, 2023: A CRITICAL ANALYSIS OF CONSENT, DECEIT, AND THE CARCERAL REGULATION OF INTIMACY

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ABSTRACT

The Bharatiya Nyaya Sanhita (BNS), 2023 replaces the Indian Penal Code, 1860 and, in doing so, introduces Section 69 as a standalone offence penalising sexual intercourse obtained by deceitful means or a false promise of marriage. Prior to the BNS, such allegations were prosecuted through a combined reading of Sections 375 and 90 of the IPC, a framework refined by the Supreme Court through the ‘false at inception’ test articulated in *Pramod Suryabhan Pawar v. State of Maharashtra*. This paper undertakes a doctrinal and critical analysis of Section 69, tracing its historical antecedents, its legislative architecture, and its early judicial interpretation. It argues that while the provision's decoupling of deceptive sex from rape resolves one doctrinal difficulty, its expansive definition of ‘deceitful means’ extending to false promises of employment, promotion, and the undefined concept of ‘identity suppression’ generates significant constitutional, evidentiary, and social risks. Drawing on feminist jurisprudence, comparative law from the United Kingdom, Singapore, Germany, Switzerland, and Canada, and recent High Court decisions including *Yeshas Kumar v. State of Karnataka*, the paper contends that Section 69 risks reinforcing paternalistic conceptions of female sexual agency, enabling communal weaponisation of the ‘identity suppression’ clause, and fostering a ‘breakup-to-lockup’ culture of retaliatory litigation. The paper concludes with proposals for legislative clarification, statutory harmonisation, and judicial safeguards.

Keywords: Bharatiya Nyaya Sanhita, Section 69, consent, false promise to marry, sexual autonomy, identity suppression, criminal law reform.

I. Introduction

The transition from the colonial-era Indian Penal Code ('IPC'), 1860 to the Bharatiya Nyaya Sanhita ('BNS'), 2023 marks a significant moment in the evolution of India's criminal justice system, altering the statutory framework governing sexual offences and intimate relationships. Enacted by Parliament and receiving Presidential assent in December 2023, the BNS is intended to shift the philosophical orientation of criminal law from a purely punitive, retributive colonial model toward one that is preventive and reformatory in character.¹ Central to this legislative overhaul is Chapter V, titled 'Of Offences Against Woman and Children', which consolidates and introduces several new provisions concerning sexual autonomy and consent.

Among these provisions, Section 69 of the BNS has emerged as the most intensely debated, establishing a distinct, standalone offence for sexual intercourse obtained through 'deceitful means' or a 'false promise to marry'. Historically, Indian courts addressed cases of sexual intercourse predicated on fraudulent matrimonial promises through the broader and considerably more severe umbrella of rape, by way of a combined reading of Section 375 (rape) and Section 90 (misconception of fact) of the IPC. Section 69 attempts to resolve this long-standing doctrinal ambiguity by expressly criminalising acts where consent is vitiated by deception, while stipulating that such acts 'not amount to the offence of rape'. The provision prescribes imprisonment of either description extending up to ten years, together with a fine, and its accompanying Explanation broadens 'deceitful means' to include false promises of employment or promotion, and inducement into marriage after suppression of identity.

While the ostensible legislative intent is protective safeguarding individuals, predominantly women, from patterns of sexual exploitation within intimate and professional relationships the provision has generated considerable academic, judicial, and constitutional debate. This paper examines whether Section 69 provides necessary statutory clarity or constitutes an instance of legislative overreach. It does so by tracing the historical context of the IPC regime, examining the evolution of Supreme Court doctrine, evaluating feminist critiques concerning the treatment of female sexual autonomy, and assessing the potential for the 'identity suppression' clause to be weaponised along communal lines.

¹The Bharatiya Nyaya Sanhita, 2023 (India); Ministry of Law and Justice, Government of India, Statement of Objects and Reasons, The Bharatiya Nyaya Sanhita, 2023.

II. Historical Antecedents

The Indian Penal Code, 1860 contained no standalone provision penalising sexual intercourse obtained through a false promise of marriage or other deceptive social inducement. Such disputes were instead processed through a joint reading of two distinct provisions: Section 375, defining rape, and Section 90, outlining the parameters of invalid consent.

Section 90 of the IPC provided that consent is not valid in law if given under a ‘fear of injury’ or a ‘misconception of fact’, provided the accused knew, or had reason to believe, that consent was given in consequence of such fear or misconception.² Where a woman alleged that she engaged in intercourse solely because the accused promised to marry her, and the promise was subsequently reneged upon, the prosecution would argue that the promise constituted a ‘misconception of fact’, thereby vitiating consent and rendering the act rape.

A. The Statistical Reality of the Pre-BNS Regime

This arrangement placed trial courts in a difficult position, effectively elevating a broken promise of marriage to the gravity of rape an offence historically carrying mandatory minimum sentencing and severe social stigma. The scale of this categorisation was considerable. I believe this is approximately 10,068 cases of rape committed by ‘known persons on promise to marry’ were recorded by the National Crime Records Bureau in 2016, and reporting has also suggested that a substantial proportion of rape cases registered in Delhi during the same period concerned allegations of sexual intercourse under a false promise of marriage; readers are encouraged to verify these exact figures against the primary NCRB source before relying on them.³ This volume of litigation placed considerable strain on the criminal justice system and generated concern that rape law was being used to adjudicate the breakdown of consensual relationships, trivialising the experiences of survivors of violent sexual assault in the process.

B. Judicial Doctrine: The ‘False at Inception’ Test

Faced with a volume of cases in which the line between criminal deception and the ordinary breakdown of a consensual relationship was unclear, the Supreme Court developed a

²The Indian Penal Code, 1860, s 90 (India).

³National Crime Records Bureau, Crime in India 2016 (Ministry of Home Affairs, Government of India). I am not fully certain of the precise figures reproduced in secondary commentary discussing this data and recommend consulting the original NCRB report and contemporaneous Delhi Police data directly.

doctrine distinguishing a 'false promise' from a mere 'breach of promise'.

In *Pramod Suryabhan Pawar v. State of Maharashtra*, the Supreme Court held that for a false promise to vitiate consent under Section 90, the promise must have been false from its very inception that is, the accused must never have intended to honour it. A promise that was genuine at the time it was made, but which subsequently could not be fulfilled owing to parental opposition, caste barriers, or incompatibility, amounts only to a breach of promise, which does not constitute rape.⁴ The Court articulated a two-pronged test: first, the promise must have been given in bad faith, with no intention of being honoured at the time it was made; and second, the promise must bear a direct and immediate nexus to the woman's decision to engage in the sexual act.

Conversely, in *Anurag Soni v. State of Chhattisgarh*, the Supreme Court upheld a conviction where the accused continued to promise marriage, and to engage in intercourse, even after his own marriage had already been fixed to another woman evidence found sufficient to establish that the promise had been false from its inception.⁵ These decisions, together with earlier authority such as *Deepak Gulati v. State of Haryana*, shaped a settled doctrine that only promises made without any genuine intention of fulfilment attract criminal liability. Section 69 of the BNS was drafted with the explicit aim of codifying this judicially developed standard.

III. The Legislative Architecture of Section 69

The enactment of the BNS was preceded by deliberation before the Parliamentary Standing Committee on Home Affairs, whose report on the *Bharatiya Nyaya Sanhita Bill* was submitted in November 2023, notwithstanding dissenting notes from several members concerning the pace of the legislative process.⁶

Section 69, located within Chapter V, provides that 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

⁴*Pramod Suryabhan Pawar v State of Maharashtra* (2019) 9 SCC 608 (India).

⁵*Anurag Soni v State of Chhattisgarh* (2019) 13 SCC 1 (India).

⁶Parliamentary Standing Committee on Home Affairs, 246th Report on the *Bharatiya Nyaya Sanhita*, 2023 (Parliament of India, November 2023).

extending to ten years, together with a fine.⁷ The most significant structural change effected by this provision is the deliberate uncoupling of deceptive sexual intercourse from rape. By creating an independent offence with a reduced maximum sentence and no mandatory minimum, the legislature appears to acknowledge that sex obtained by deception, while a serious violation of bodily autonomy and trust, lacks the element of physical coercion characteristic of rape.

A. The Epistemology of ‘Deceitful Means’: Professional and Social Overreach

While the separation of Section 69 from the offence of rape resolves one doctrinal difficulty, the expansive wording of the provision introduces new epistemological and procedural ambiguities. The Explanation to Section 69, extending ‘deceitful means’ to promises of employment and promotion, represents a considerable expansion of carceral power into professional and workplace relationships that were previously governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Section 354A of the IPC.

The prosecution must establish, beyond reasonable doubt, that a promise of professional advancement was the operative inducement for the complainant's consent, and that the accused had no intention of honouring that promise at the time it was made. Disentangling objective professional merit legitimate restructuring, performance evaluation from a retaliatory allegation following the breakdown of a workplace relationship is likely to prove exceptionally difficult in practice, leaving the provision open to both misuse by an aggrieved employee and manipulation by an unscrupulous superior.

B. The Dilution of the Mens Rea Requirement

A further, comparatively under-examined feature of Section 69 is its apparent departure from the mens rea standard embedded in the former Section 90 of the IPC, which required that the accused knew, or had reason to believe, that consent was given under a misconception of fact. Commentary from Project 39A suggests that Section 69 dispenses with this explicit requirement of knowledge as to the complainant's state of mind, focusing instead on the objective falsity of the promise.⁸ If accurate, this shift would mean that sexual intercourse

⁷The Bharatiya Nyaya Sanhita, 2023, s 69 (India).

⁸Vasudha Gandhi and Medha Gandhi, ‘From Promise to Punishment: An Analysis of Section 69 of the BNS,

could, in principle, be punished on the basis of an objectively false promise even where that specific promise had no demonstrable bearing on the complainant's decision to consent, thereby removing the causal inquiry that previously anchored liability to the accused's state of mind.

IV. Feminist Jurisprudence and The Paradox of Protectionism

The most searching theoretical challenge to Section 69 arises from feminist jurisprudence and critical legal scholarship. While ostensibly drafted to protect women from exploitation arising out of gendered power imbalances, critics argue that the provision undermines female sexual autonomy and revives colonial-era conceptions of sexual morality.

A. The Infantilisation of Adult Women

Criminalising sex obtained by deceit, with penalties approaching those attached to violent offences, risks entrenching a paternalistic narrative in which adult women are treated as inherently susceptible to manipulation and in permanent need of the protection of the criminal law to navigate ordinary intimate relationships. Such a framing implicitly denies women the capacity to assess the risks of pre-marital intimacy as autonomous agents capable of making reasoned if sometimes regrettable choices.

As Neetika Vishwanath has argued, Section 69 has comparatively little to do with punishing sexual violence and considerably more to do with regulating socially disfavoured or pre-marital sexual activity.⁹ If the legislative objective is genuinely the protection of women's sexual autonomy, it is difficult to reconcile that objective with a provision that assigns women a status of enduring victimhood.

B. The Conflation of Contractual Fraud and Sexual Consent

Commentators have also questioned the theoretical soundness of treating sexual consent as analogous to consent in a commercial contract, in which a promise made without any intention of fulfilment renders the agreement voidable for fraud. Human intimacy, unlike a commercial transaction, is inherently fluid: a promise to marry may be entirely genuine at the

2023' (Project 39A). To the best of my knowledge this working paper is publicly available through Project 39A's website; I have not been able to independently verify a stable, citable URL and would recommend the author confirm the precise citation before relying on it in a footnote.

⁹Neetika Vishwanath, 'Controlling Women's Sexual Autonomy' (Project 39A, 2023). I am not certain of the exact publication details and recommend the author verify this citation against the primary source.

time it is made yet may dissolve owing to changed emotional circumstances or external pressure. Requiring a criminal court to reconstruct, after the fact, the subjective intention behind a promise made in a private relationship imposes a demanding evidentiary burden and risks penalising the ordinary unpredictability of human emotion.

Drawing on Prabha Kotiswaran's work on carceral feminism, Preeti Pratishruti Dash has argued that reliance on police power to regulate broken promises overlooks the traumatic character of the criminal trial process itself, and that civil remedies for instance, in tort may offer complainants a more appropriate and less coercive route to redress.¹⁰

V. Constitutional Validity, Article 15, And Gender Discrimination

The scope of Section 69 has attracted constitutional challenge, notably before the Kerala High Court by way of a public interest litigation anchored in Articles 14, 15, and 21 of the Constitution.¹¹

A central point of contention concerns the gender-specific framing of the offence: although the offender is described in gender-neutral terms as 'whoever', the complainant is statutorily confined to a 'woman'. Proponents contend that this asymmetry is constitutionally permissible under Article 15(3), which allows the State to make special provision for women, on the basis that the social stigma and economic consequences attaching to a broken promise of marriage fall disproportionately on women. Critics respond that defining the offence by reference to female vulnerability risks reinforcing the very patriarchal assumptions the provision purports to dismantle, and that the exclusion of transgender persons from the statutory definition of 'woman' leaves an already marginalised community outside the provision's protective scope entirely.

VI. The 'Identity Suppression' Clause: Risks of Communal Weaponisation

Perhaps the most constitutionally precarious feature of Section 69 is the inclusion, within the Explanation, of 'marrying after suppressing identity' as a form of deceitful means.

¹⁰Preeti Pratishruti Dash, 'From Scotland to India: Deceptive Sex, Autonomy, and the Expansion of Carceral Power', *Modern Criminal Law Review* (2026, forthcoming as reflected in secondary discussion). I cannot confirm the precise volume, issue, and page citation for this piece and would recommend verifying it directly with the journal before publication.

¹¹*Vimal Vijay v Union of India*, WP(C) No 31598 of 2024 (Kerala High Court, India). I believe this matter was pending before the Kerala High Court as of early 2026; readers should check the court's current docket for its status, as this may have changed.

Although apparently intended to address concealment of a prior marriage or serious criminal history, the absence of any statutory definition of ‘identity’ creates considerable interpretive latitude.

In the contemporary Indian context, the term ‘identity’ is frequently understood to refer to religion and caste. Civil society commentary has raised concern that this ambiguity could lend statutory colour to allegations associated with the unsubstantiated ‘Love Jihad’ narrative concerning interfaith relationships. Where a partner in an interfaith relationship does not immediately disclose their religious identity whether from apprehension of family or social reprisal and the relationship subsequently ends, the absence of a defined threshold for ‘identity suppression’ leaves open the possibility that ordinary relationship breakdown could be recast as a criminal offence carrying a sentence of up to ten years.

VII. Early Judicial Interpretation: Curtailing The ‘Breakup-To-Lockup’ Pipeline

Although the BNS has been in force for a comparatively short period, early judicial engagement with Section 69 indicates an awareness of its potential for misuse in the context of retaliatory complaints filed after the breakdown of a consensual relationship, often coinciding with the accused's marriage to a third party. Courts have in several instances treated such delay as indicative of retaliatory motive when considering applications for anticipatory bail.

A significant illustration is the Karnataka High Court's decision in *Yesnas Kumar v. State of Karnataka*, in which the petitioner and complainant, who had met through a dating application, had been in a consensual relationship for several months before its breakdown led to an FIR alleging a false promise of marriage and to the petitioner's arrest. Justice M. Nagaprasanna was critical of the mechanical application of Section 69 in such circumstances, observing that the ending of a relationship should not, without more, be converted into a criminal offence, and directed the petitioner's release, emphasising the safeguards against arbitrary arrest under Article 21 of the Constitution.¹²

Similarly, in proceedings before the Madhya Pradesh High Court, an FIR was quashed where the complainant's own account indicated that she had learned of the accused's subsisting

¹²*Yesnas Kumar v State of Karnataka*, Criminal Petition No 17730 of 2025 (Karnataka High Court, 2026, India). I believe this decision was reported in early 2026; readers should verify the citation and current status of the judgment against the official Karnataka High Court records, as I cannot independently confirm the precise date or citation.

marriage years earlier and had nonetheless continued the relationship conduct the Court considered inconsistent with a claim of deceitful inducement.¹³ These decisions collectively suggest a developing judicial consensus that Section 69 is not to be used to criminalise the ordinary, if painful, dissolution of long-term consensual relationships.

VIII. Comparative Perspectives on Sexual Fraud

The criminalisation of sex obtained by deception is not unique to India, though the scope of Section 69 is markedly broader than comparable provisions elsewhere. Under the Sexual Offences Act 2003, English law vitiates consent only where the deception concerns the nature or purpose of the act itself, or the identity of the person involved through impersonation it does not extend to a false promise of marriage or employment.¹⁴ Singapore's Penal Code similarly confines liability for deception-based sexual offences to deception as to the nature or purpose of the act.

A comparative study by Wilson Chan situates the Indian approach both under the former IPC doctrine and now under Section 69 as considerably broader than the Singaporean model in its willingness to criminalise a false promise of marriage.¹⁵ German and Swiss law recognise deception-based violations of sexual self-determination in narrower, more clearly delineated circumstances, while Canadian courts have been reluctant to extend fraud-vitiated consent to unfulfilled promises of marriage, generally confining the doctrine to serious misrepresentations such as concealment of a sexually transmitted infection or sabotage of contraception. Section 69 thus represents a considerable outlier internationally in anchoring a ten-year custodial sentence to the non-fulfilment of a social or professional promise.

IX. Procedural Anomalies and Statutory Conflicts Within The BNS

Section 69 also generates internal tension within the BNS. Section 63 of the BNS defines the offence of rape, while Section 28 the analogue to the former Section 90 of the IPC provides that consent given under a misconception of fact is invalid.¹⁶ Because Section 69 applies only where the relevant intercourse does 'not amount to the offence of rape', without any express

¹³Varun Pratap Singh v State of Madhya Pradesh (Madhya Pradesh High Court, 2026, India). I am not fully certain of this matter's exact citation and recommend independent verification before publication.

¹⁴Sexual Offences Act 2003, s 76 (UK).

¹⁵Wilson Chan, 'False Promise to Marry and Other Forms of Sex by Deception in India and Singapore' (2022) 34(1) National Law School of India Review, Article 4.

¹⁶The Bharatiya Nyaya Sanhita, 2023, ss 28, 63 (India).

overriding clause resolving the relationship between the two provisions, the statute leaves open the possibility that a single set of facts could be charged, at the prosecution's discretion, under either or both provisions creating scope for inconsistent treatment of similarly situated accused persons across jurisdictions.

A related overlap arises with Section 68 of the BNS, which criminalises sexual intercourse obtained through abuse of a position of authority in a fiduciary relationship. A false promise of promotion made by a workplace superior could, in principle, fall within both Section 68 and Section 69, notwithstanding that the two provisions carry different sentencing structures. Section 68 prescribing a mandatory minimum of five years, and Section 69 prescribing none. This divergence confers considerable, largely unguided discretion on investigating authorities as to which provision to invoke.

X. Conclusion and Recommendations

Section 69 of the Bharatiya Nyaya Sanhita, 2023 represents an ambitious attempt to codify judicially developed doctrine on consent, deceit, and intimacy, while decoupling deception-based sexual offences from the more severe framework applicable to rape. That legislative intent, however, is undermined by considerable definitional vagueness particularly the extension of 'deceitful means' to professional promises and the undefined concept of 'identity suppression' as well as by unresolved tension with neighbouring provisions of the BNS. Early judicial engagement, exemplified by the Karnataka High Court's intervention in *Yeshas Kumar*, suggests that courts are alert to the risk of the provision being used to criminalise the ordinary breakdown of consensual relationships, but judicial caution alone cannot substitute for legislative precision.

This paper accordingly recommends four measures. First, the Explanation to Section 69 should be legislatively clarified to exclude religious, caste, or marital identity from the scope of 'identity suppression' unless concealment is shown to have caused demonstrable physical or financial harm. Second, the overlap between Sections 63, 68, and 69 requires an express overriding or reconciling clause to remove prosecutorial discretion to charge inconsistently across similar fact patterns. Third, courts should continue to apply the 'false at inception' test rigorously and should make consistent use of their powers to quash retaliatory complaints at the threshold. Fourth, arrest under Section 69 should not be treated as an automatic consequence of registration of an FIR, consistent with the safeguards articulated in *Arnesh*

Kumar v. State of Bihar. Absent such reform, Section 69 risks functioning less as an instrument protecting sexual autonomy than as a blunt carceral tool for regulating the ordinarily private and unpredictable terrain of adult intimate relationships.

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