
THE SHADOW OF DECEIT: A CRITIQUE OF JUDICIAL NARROWNESS IN SEXUAL EXPLOITATION ON THE PRETEXT OF MARRIAGE

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ABSTRACT

The introduction of Section 69 of the Bharatiya Nyaya Sanhita (BNS) was heralded as a legislative recognition of the "grey area" between consensual sex and rape. However, judicial reliance on the "Intent at Inception" test continues to render this provision a "paper tiger." By analysing the cases of *Pramod Kumar Navratna*, the *Rahul Mamkootathil* allegations, and the *Anurag Soni* doctrine, this article argues that the current legal standard for "deceit" creates an impossible evidentiary burden for victims, effectively legalizing serial sexual predation under the guise of adult autonomy.

The IPC Era: The Architecture of Vitiating Consent

For over 160 years, the Indian legal system grappled with a conceptual gap: how to punish a man who obtained sexual consent through a false promise of marriage. Because the IPC did not have a specific provision for "sexual fraud," prosecutors were forced to shoehorn these cases into Section 375 (Rape).

To achieve this, the judiciary relied on Section 90 IPC, which stated that consent given under a "misconception of fact" is no consent at all. The argument was that if a woman consented to sex only because she believed a marriage would follow, a false promise constituted a "misconception." If the promise was a lie from the start, the consent was "vitiating," and the act was legally categorized as rape.

This "legal fiction" was inherently unstable. It forced judges to equate a manipulative lover with a violent predator, leading to deep discomfort in the stands. In many cases, if a relationship lasted for years or if the couple lived together, courts were hesitant to label the man a "rapist,"

resulting in a high rate of acquittals. The law struggled to distinguish between a "breach of promise" (a civil wrong where the intent to marry was genuine but failed due to circumstances) and a "false promise" (a criminal act where there was never an intention to marry).

The BNS Pivot: Deconstructing Section 63 vs. Section 69

The enactment of the Bharatiya Nyaya Sanhita seeks to resolve this by creating two distinct silos. Section 63 BNS now handles "Rape" in its traditional sense—acts committed against the will or without the consent of the victim, primarily through force or coercion. Meanwhile, Section 69 BNS carves out a specialized offense for "sexual intercourse by deceitful means" or a "promise to marry without the intention of fulfilling the same."

On the surface, this is a progressive step toward "legal honesty." It acknowledges that while sexual fraud is a grave wrong, it is qualitatively different from the physical brutality associated with Section 63. However, this bifurcation has inadvertently created a "hierarchy of harm."

By capping the punishment for Section 69 at ten years—compared to the potential life imprisonment for rape—the state subtly signals that exploitation through psychological manipulation is a "lesser" injury than exploitation through physical violence. This overlooks the "slow, manipulative erosion of agency" that characterizes grooming-style relationships, where the trauma is not found in a single moment of violence but in a prolonged cycle of emotional and bodily exploitation.

The "Cheating" Aspect: Sexual Intercourse as a Fraudulent Transaction

The most profound shift in the BNS is the underlying reliance on the doctrine of Cheating (Section 318 BNS). Under Section 318, cheating occurs when someone is induced by a fraudulent or dishonest representation to deliver property or to do an act they would not otherwise have done.

Section 69 is, in essence, the criminalization of "Sexual Cheating." It treats the woman's body and her sexual autonomy as the "interest" that is fraudulently induced. This brings the evidentiary burdens of white-collar crime into the bedroom. In a standard cheating case, the prosecution must prove "Intent at Inception"—that the accused had a dishonest intention at the very moment the transaction began.

Applying this to Section 69 creates a "near-impossible burden of proof." To secure a conviction, the victim must prove a negative: that the accused *never* intended to marry her. If the accused can show even a shred of evidence that he once considered the marriage—such as introducing her to a distant relative or looking at wedding venues—the criminal intent is diluted into a mere "civil breach."

The "Safe Harbour" for Predators

This legislative separation has inadvertently created a "safe harbour" for sophisticated offenders. Under the old IPC regime, the threat of a rape conviction was a powerful deterrent. Now, a predator can strategically navigate the gap between the two sections.

In court, the defence can argue that the act was "consensual" (defeating Section 63) and that the failure to marry was a "subsequent development" rather than a "pre-meditated fraud" (defeating Section 69). By utilizing the technical defences inherent in the law of cheating, offenders can escape the "vile" label of a rapist while simultaneously avoiding the ten-year sentence of Section 69.

The result is a legal landscape where the victim's loss of dignity is acknowledged in theory but frequently dismissed in practice. The judiciary often fails to capture "continuing deceit." Even if a man's intent was genuine at the start, if he realizes he no longer wants to marry but continues to use the promise of marriage to maintain sexual access, the current interpretation of Section 69 may still view him as innocent of a criminal act.

The Erosion of Agency

The move from Section 375 IPC to Section 69 BNS highlights a fundamental tension in Indian law: the struggle to define "consent" in a society where marriage is often the prerequisite for intimacy. While the BNS provides much-needed clarity by separating fraud from force, it risks devaluing the psychological trauma of sexual exploitation by framing it as a "lesser" fraud.

By tethering sexual autonomy to the rigid requirements of criminal cheating, the law remains blind to the realities of manipulation and grooming. Until the judiciary moves past the "Intent at Inception" test and recognizes the "continuing deceit" that keeps victims trapped, Section 69 will remain a well-intentioned but flawed instrument—one that offers a statutory name for a victim's pain without providing a realistic path to justice.

Case Analysis: The "Impossible Burden" of Proof

1. The Pramod Kumar Navratna Case (Supreme Court, 2026)

This case serves as a quintessential example of the "Awareness Penalty." The Supreme Court quashed the FIR, focusing on the victim's professional status (an advocate).

The court reasoned that an "educated woman" should have known that a promise of marriage from a married man or in a complex situation was "legally impossible" to fulfil.

This logic assumes that education is an antidote to emotional manipulation. It ignores the reality of "power imbalances" and "psychological grooming," where a predator uses a woman's trust to bypass her logic. By quashing the FIR at the threshold, the court denied the victim even the right to a trial to prove the "deceitful means."

2. The Rahul Mamkootathil v. State of Kerala (Kerala, 2025-2026)

This high-profile case highlights the intersection of political power and the "Marital Status" trap.

Allegations of long-term sexual exploitation followed by abandonment.

Because the victim was legally married (though separated) at the time of the relationship, the defence successfully argued that there could be no "misconception of fact" regarding marriage.

This exposes a massive loophole: an offender can target a woman in a vulnerable personal situation (like a pending divorce) and promise marriage, knowing that if he abandons her, the court will dismiss it as "consensual adult conduct" because a legal marriage wasn't immediately possible.

3. The Jaspal Singh Kaural v. State of NCT of Delhi (Supreme Court, April 2025)

This case is a stark example of the "Consensual Continuity" hurdle.

The complainant alleged that the accused lived with her for 25 days, during which he insisted on a physical relationship, stating he would only marry her if she complied. When he subsequently refused marriage, she filed a case for rape.

The Supreme Court set aside the High Court's decision to frame charges. It emphasized that because the complainant was "fully aware" of the nature of the relationship and continued her involvement without force, there was no "element of deceit."

This logic creates a "consent by exhaustion" standard. It ignores the coercive nature of a "conditional promise" (i.e., "sex or no marriage"), treating the victim's choice as a purely voluntary trade rather than an exploitative ultimatum.

4. *Rajnish Singh @ Soni v. State of U.P. (Supreme Court, March 2025)*

This case highlights the "Duration Trap," where long-term relationships are automatically disqualified from being considered deceitful.

A relationship spanned nearly 16 years. The victim alleged that the intimacy began with a promise of marriage that was maintained throughout. The FIR was filed only when she discovered the man was marrying someone else.

The Court quashed the FIR, observing that it is "difficult to ascertain a false promise" when a woman knowingly maintains a relationship for a "prolonged period."

This suggests that deceit has an expiration date. It rewards predators who are "patient" enough to exploit a victim for a decade, as the law eventually stops believing that a promise could have been the driving factor for the woman's consent. It fails to recognize that a long-term promise creates deeper reliance and, therefore, a more profound fraud.

5. *Kuldeep Verma v. State of U.P. (Allahabad High Court, January 2026)*

While this case is often cited as a "win" for victims under Section 69 BNS, its reasoning reveals the "Legal Impossibility" barrier for others.

A teacher was accused of an 11-year relationship with a student based on a marriage promise. He was already married—a fact he suppressed.

The Court refused to quash the FIR, holding that a married man *knows* he cannot marry, making his promise inherently deceitful.

Conversely, if the man is *unmarried* but simply has no intent, he is much more likely to get the

case quashed. This creates a strange disparity where the victim must prove the man had a legal bar to marriage rather than just a lack of honesty. It effectively tells unmarried predators that as long as they don't have a "legal" reason why they can't marry, their lies are just "failed affection."

The "Intent at Inception" Fallacy

The judiciary's favourite tool for quashing FIRs is the requirement that the man must have had no intention to marry from the very first day.

Evidentiary Vacuum, There is rarely a text message or a witness to a man's secret intention to cheat. Intent is usually proven by *subsequent conduct* (e.g., getting engaged to someone else while still having sex with the victim).

The *Anurag Soni v. State of Chhattisgarh* Standard: In this case, the Supreme Court upheld a conviction because the man married another woman *while* maintaining the relationship with the victim. However, in recent 2024-2026 trends, courts are increasingly viewing such behaviour as mere "personal choice" rather than "deceitful means."

Sociological Injustice: The "Disappointment" Narrative

Courts frequently use the word "disappointment" to describe the victim's state. This is a profound trivialization of sexual exploitation.

Loss of Dignity: In many Indian social contexts, a woman who has been sexually active on a promise of marriage faces severe social ostracization once abandoned.

The "Serial Predator" Problem: Under the current "Grey Area," a man can repeat this pattern with five different women. Each time, he can claim "I wanted to marry her initially, but then my parents disagreed," and the law will treat each case as a "disappointment" rather than a criminal pattern of sexual fraud.

Proposed Legal Reforms: Bridging the Grey Area

To make Section 69 BNS effective, the following reforms are necessary:

1. Rebuttable Presumption of Deceit

If a man has sexual intercourse on a promise of marriage and kemudian (then) marries someone else within a specific period (e.g., 6 months to 1 year) without a proven catastrophic change in circumstances, the law should presume he never had the intent to marry. The burden of proof should shift to him.

2. Broadening "Deceitful Means"

The explanation in Section 69 should include "Psychological Manipulation" and "Serial Predation." Evidence of the man having made similar promises to other women in the past should be admissible to prove his *modus operandi*.

3. Civil Restitution and Dignitary Damages

Even if a case does not meet the "Criminal Deceit" threshold, the law should mandate Civil Damages for the breach of promise, covering emotional distress and social rehabilitation.

Conclusion

The current judicial trend of quashing FIRs under Section 69 BNS is creating a legal vacuum where sexual fraud is treated with less gravity than financial fraud. By labelling the destruction of a woman's life and dignity as mere "disappointment," the courts are failing their constitutional mandate under Article 21. It is time for a law that recognizes that sexual consent is conditional, and a breach of that condition through fraud is a crime that the state must punish.