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Consensual Rape? The Aftermath of Failed Relationships

MURALI GANGAPURI*  AND GORANTLA UDAI DEEPAK** 

ABSTRACT

The expression “consensual rape” presents a legal contradiction, yet it captures a recurring controversy in Indian criminal jurisprudence: whether sexual relations voluntarily established between adults can later become the subject of a rape prosecution after the relationship deteriorates or ends. This paper examines the boundary between consensual sexual intimacy, sexual intercourse obtained through deception, and rape committed after consent has been withdrawn. It analyses the transition from the Indian Penal Code, 1860, to the Bharatiya Nyaya Sanhita, 2023, with particular emphasis on sections 63 and 69. The study adopts a doctrinal and interdisciplinary methodology, examining statutory provisions, landmark Supreme Court judgments, selected High Court decisions, research papers, scholarly articles, legal commentaries and committee reports. It argues that the subsequent failure of a relationship cannot retrospectively transform earlier consensual intercourse into rape. At the same time, a prior romantic or sexual relationship cannot protect an accused where a later sexual act occurs through force, coercion, deception or after consent has been withdrawn. The paper distinguishes a promise of marriage that was false from its inception from a genuine promise that was subsequently broken. It further examines whether section 69 BNS creates an independent offence of deceitful sexual intercourse or merely reproduces the judicial doctrine developed under section 375 of the IPC. The paper finds that Indian courts have developed useful principles, but their application remains inconsistent and heavily dependent on judicial evaluation of conduct, delay, communication, cohabitation and the duration of the relationship. It concludes that courts must protect genuine survivors without treating every failed relationship as rape, and must protect the liberty of accused persons without converting the language of consensuality into a presumption against complainants.

Keywords: Consent, Rape, Failed Relationships, False Promise of Marriage, Bharatiya Nyaya Sanhita, Sexual Autonomy, Deception

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I. INTRODUCTION

Intimate relationships frequently involve emotional attachment, sexual relations, promises of marriage and expectations of long-term commitment. Such relationships may later end because of incompatibility, family opposition, refusal to marry, financial disagreement, infidelity or a change in emotional commitment. When a relationship ends, one party may approach the criminal justice system alleging that sexual intercourse was obtained through force, deception or a false promise of marriage.

This situation raises a difficult legal question. Can sexual intercourse that took place voluntarily during a relationship later be prosecuted as rape merely because the relationship became bitter? The expression “consensual rape” does not describe a recognised offence, because rape and legally valid consent are contradictory concepts. The phrase is useful only as a critical description of cases in which earlier consensual intimacy is later presented as rape, or in which an accused relies upon earlier consent to deny a later non-consensual act.

Indian criminal law must distinguish between three situations. The first involves consensual intercourse followed by the breakdown of the relationship. The second involves a later sexual act after consent has been withdrawn, or one in which force, threats or coercion are used. The third involves sexual intercourse obtained through a promise of marriage that was false from the beginning and was made only to secure sexual access.

These situations cannot be treated alike. A failed relationship does not automatically become rape. Equally, previous intimacy does not establish permanent consent. Consent is specific to the particular sexual act and may be withdrawn at any time; a person may consent to intercourse on one occasion and refuse it on another. Similarly, a promise of marriage may vitiate consent where it was deliberately false and directly induced the sexual act.

A. Evolution of the legal framework

The controversy originally developed under sections 375 and 376 of the Indian Penal Code, 1860 (IPC). In *Uday v. State of Karnataka*, the Supreme Court examined whether sexual intercourse within a romantic relationship became rape because the accused later failed to marry the complainant. The Court recognised the relevance of misconception of fact but refused to treat every failed promise as rape.¹

In *Deepak Gulati v. State of Haryana*, the Supreme Court distinguished between a promise that was false from the beginning and a genuine promise subsequently broken.² The Court held that

¹ *Uday v. State of Karnataka*, (2003) 4 SCC 46.

² *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675.

the absence of a subsequent marriage did not, by itself, prove that the original promise was dishonest.

The principle was clarified in *Pramod Suryabhan Pawar v. State of Maharashtra*. The Supreme Court held that the promise must have been false when it was given, and that the false promise must have been of immediate relevance to, or have borne a direct nexus with, the woman's decision to engage in the sexual act.³ This test contains both a temporal requirement and a causal requirement.

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the IPC with effect from 1 July 2024, has added a new dimension. Section 63 defines rape, while section 69 creates a separate offence of sexual intercourse obtained by deceitful means or by a promise to marry made without any intention of fulfilling it.⁴ The relationship between these provisions requires careful analysis, because not every deceitful sexual relationship satisfies every ingredient of rape.

B. The central problem

The central problem is whether Indian criminal law can accurately distinguish between consensual sexual relations followed by a failed relationship and sexual intercourse obtained through deception, coercion or a false promise of marriage.

The issue is complicated because the same facts may support different interpretations. Continued communication may indicate a consensual relationship, but it may also result from emotional dependence or the hope of reconciliation. Delay in filing a complaint may reflect social pressure or fear, but it may also be relevant to the factual assessment. Repeated sexual intercourse may suggest mutual intimacy, but it does not establish consent to every later act.

The paper therefore examines whether courts should treat the breakdown of a relationship as evidence of a false complaint, or should instead focus on the accused's intention, the complainant's understanding and the circumstances surrounding each alleged sexual act.

C. Significance of the study

The subject is significant both for individual rights and for the administration of criminal justice. An excessively broad interpretation of rape in failed relationships may expose individuals to arrest and prosecution even where sexual relations were voluntary and the promise of marriage

³ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608.

⁴ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 63, 69 (India); *see also id.* § 358(1) (repealing the Indian Penal Code); Ministry of Home Affairs, Notification S.O. 850(E) (Feb. 23, 2024) (India) (appointing July 1, 2024 as the date on which the Sanhita, save section 106(2), came into force).

was genuine when made. It may also allow criminal law to become a mechanism for resolving personal disputes.

At the same time, an excessively narrow approach may disregard genuine cases in which women were deliberately deceived, sexually exploited or induced to remain in a relationship through false assurances. Treating every relationship-based complaint as false would reinforce harmful stereotypes and discourage survivors from approaching the justice system.

The issue must therefore be approached by balancing survivor protection, sexual autonomy, personal dignity and the presumption of innocence. The constitutional right to privacy includes decisional autonomy and bodily integrity.⁵ These principles protect both the freedom to consent and the freedom to refuse sexual relations.

D. Scope and structure

The paper focuses on adult relationships involving allegations of rape, false promises of marriage and deceitful sexual intercourse under Indian criminal law. It does not separately analyse marital rape, child sexual abuse under the Protection of Children from Sexual Offences Act, 2012, or sexual offences involving persons legally incapable of consenting.

The paper first examines consent, sexual autonomy and the legal meaning of rape. It then traces the judicial development of the false-promise-to-marry doctrine, before analysing failed relationships, retrospective rape allegations, delay and continued contact. It next examines section 69 BNS and its relationship with rape under section 63, and closes with findings and recommendations.

II. CONSENT, SEXUAL AUTONOMY AND THE LEGAL MEANING OF RAPE

A. Consent as the foundation of sexual offence law

Consent is the central principle separating lawful sexual intimacy from rape. It is not merely the absence of physical resistance. It is a voluntary, conscious and informed decision to participate in a particular sexual act.

Section 63 BNS defines rape, and Explanation 2 to the section provides that consent means an unequivocal voluntary agreement when the woman, by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.⁶ The reference to a specific act is crucial. Consent to a romantic relationship is not

⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

⁶ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63, Explanation 2 (India).

automatically consent to sexual intercourse, and consent on one occasion is not permanent consent for all future occasions.

The statutory language rejects the assumption that resistance or visible injury is essential to prove the absence of consent. A person may be unable to resist because of fear, shock, emotional dependence, intimidation or unequal power. The absence of physical resistance cannot, by itself, establish consent.

B. Consent and submission

Indian courts have distinguished consent from submission. Submission may result from fear, pressure, emotional vulnerability or the belief that resistance will produce greater harm. Consent involves the exercise of free will.

In *Kaini Rajan v. State of Kerala*, the Supreme Court stated that consent requires voluntary participation, not only after the exercise of intelligence based on knowledge of the significance and moral quality of the act, but after a full exercise of the choice between resistance and assent.⁷ This principle prevents every instance of physical participation from being treated as voluntary agreement.

However, the principle must also be applied without presuming that all intimate relationships are coercive. The existence of a relationship is relevant evidence, but it does not decide whether consent existed in relation to the specific act.

C. Consent, deception and misconception of fact

Consent obtained through deception raises a separate question. A person may agree to sexual intercourse because of a representation that substantially affects the decision to participate. If the representation was deliberately false from the beginning and was made solely to obtain sexual access, the consent may be legally defective.

Not every unfulfilled expectation constitutes a misconception of fact. A promise to marry may be genuine when made and may later fail because of family opposition, incompatibility, financial circumstances or a change of intention. The fact that the marriage did not take place does not automatically prove that the promise was false when made.

In *Pramod Suryabhan Pawar*, the Supreme Court required proof that the promise was false from the beginning and bore a direct nexus with the woman's decision to engage in sexual

⁷ *Kaini Rajan v. State of Kerala*, (2013) 9 SCC 113.

intercourse.⁸ The promise must therefore be both false and causally connected with the sexual act.

D. Sexual autonomy and constitutional privacy

Sexual autonomy is connected with constitutional privacy, dignity and personal liberty. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognised privacy as including decisional autonomy, bodily integrity and the freedom to make intimate personal choices.⁹

In *Suchita Srivastava v. Chandigarh Administration*, the Court recognised a woman's right to make reproductive choices as a dimension of personal liberty under Article 21.¹⁰ These decisions demonstrate that intimate decisions cannot be evaluated exclusively through the lens of social morality.

Constitutional autonomy operates in both directions. It protects a person's freedom to consent and the right to refuse. It also requires criminal law to protect individuals from coercion, fraudulent inducement and the abuse of emotional vulnerability.

E. Consent is act-specific and time-specific

A previous sexual relationship does not create permanent consent. A person may agree to intercourse on one occasion and refuse on another. If the accused continues after a clear withdrawal of consent, the previous relationship cannot provide a defence.

The same applies to engaged couples, live-in partners and persons who have promised to marry each other. Engagement or cohabitation does not create an irrevocable licence to engage in sexual activity. The question remains whether the complainant voluntarily agreed to the particular act.

This principle also explains why the phrase "consensual rape" is legally inaccurate. Rape and valid consent cannot coexist in relation to the same act. The phrase may be used only critically, to describe the retrospective treatment of consensual relations as rape or the misuse of prior consent to deny a later non-consensual act.

⁸ *Pramod Suryabhan Pawar*, (2019) 9 SCC 608.

⁹ *Justice K.S. Puttaswamy*, (2017) 10 SCC 1.

¹⁰ *Suchita Srivastava*, (2009) 9 SCC 1.

F. Relationship history and evidence

The duration and nature of a relationship may be relevant but are not conclusive. A long relationship may support an inference of voluntary participation, but it may also contain periods of coercion, manipulation or deception.

Repeated intercourse must therefore be assessed cautiously. It may indicate mutual intimacy, but repetition does not establish consent to every act. Relevant evidence may include messages, promises, threats, financial dependence, cohabitation, attempts to marry, discussions with family members and the timing of the complaint.

In *State of Punjab v. Gurmit Singh*, the Supreme Court warned courts against evaluating complaints of sexual offences through stereotypical expectations of how a genuine complainant should behave.¹¹ A complainant may remain in contact with an accused because of fear, emotional attachment, family pressure, pregnancy, economic dependence or the hope of reconciliation.

G. Consent and emotional expectation

A person may enter a relationship hoping that it will result in marriage. The failure of that expectation may cause serious emotional harm, but emotional disappointment is not automatically legal deception. Criminal liability requires proof that the accused intended to deceive, or had no intention of fulfilling the promise when it was made.

This principle protects the freedom of adults to enter and leave relationships. It also ensures that criminal law punishes culpable deception rather than every moral wrong or personal disappointment.

H. Analytical conclusion

Consent must be voluntary, informed and related to a specific sexual act. Previous intimacy does not establish permanent consent. A false promise must be distinguished from a genuine promise subsequently broken. The later failure of a relationship cannot retrospectively transform an earlier consensual act into rape without proof that consent was absent, vitiated or obtained through legally recognised deception.

¹¹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

III. JUDICIAL DEVELOPMENT OF THE FALSE-PROMISE-TO-MARRY DOCTRINE

A. The early judicial approach

The false-promise-to-marry doctrine developed through judicial interpretation of consent and of misconception of fact under section 90 of the IPC, which is now section 28 of the BNS.¹² The courts had to determine whether consent became invalid when a man promised marriage but later failed to marry the woman.

In *Uday v. State of Karnataka*, the Supreme Court held that a promise to marry may affect the validity of consent in appropriate circumstances, but it refused to treat every failed promise as rape.¹³ The Court recognised that a woman may participate in a relationship because of affection, emotional attachment and personal choice, with marriage being an expectation rather than the sole basis of consent.

The significance of *Uday* lies in its refusal to equate every failed romantic relationship with criminal deception.

B. False promise and breach of promise

In *Deepak Gulati v. State of Haryana*, the Supreme Court emphasised the difference between a genuine promise and a deceptive one.¹⁴ A promise made with no intention of fulfilment may vitiate consent. A promise that was honestly made but later broken does not automatically amount to rape.

The distinction rests on the accused's intention at the time of making the promise. The eventual outcome is relevant, but it cannot alone establish the original state of mind. Criminal law requires proof of the mental element accompanying the act.

C. The two-part test in *Pramod Suryabhan Pawar*

In *Pramod Suryabhan Pawar*, the Supreme Court set out a two-part test. The promise must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given; and the false promise must have been of immediate relevance to, or have borne a direct nexus with, the woman's decision to engage in the sexual act.¹⁵

The first part is temporal: the accused must have lacked the intention to fulfil the promise when it was made. The second is causal: the promise must have substantially influenced the complainant's decision.

¹² Indian Penal Code, No. 45 of 1860, § 90 (India); Bharatiya Nyaya Sanhita, No. 45 of 2023, § 28 (India).

¹³ *Uday*, (2003) 4 SCC 46.

¹⁴ *Deepak Gulati*, (2013) 7 SCC 675.

¹⁵ *Pramod Suryabhan Pawar*, (2019) 9 SCC 608.

The test prevents the automatic criminalisation of broken relationships while allowing prosecution where the promise was a calculated deception.

D. Conviction in cases of deliberate deception

The doctrine does not operate only in favour of the accused. In *Anurag Soni v. State of Chhattisgarh*, the Supreme Court upheld a conviction for rape where the accused had obtained the complainant's consent through a promise of marriage that was dishonest from the beginning.¹⁶

The case shows that the existence of a relationship does not prevent conviction. Where the evidence establishes that the accused used marriage as a device to secure sexual access without any intention of fulfilment, the complainant's consent may be treated as legally invalid.

E. Dhruvaram Murlidhar Sonar and consensual relationships

In *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*, the Supreme Court stressed the distinction between rape and consensual sex, and between a false promise and a promise later breached.¹⁷ The decision recognised the relevance of prolonged relationships and continued sexual relations, but it did not create an absolute rule that duration defeats every complaint.

The case is important because it prevents the retrospective conversion of consensual intimacy into rape solely because the relationship failed.

F. Maheshwar Tigga and proximity

In *Maheshwar Tigga v. State of Jharkhand*, the Supreme Court emphasised that a misconception of fact must be proximate in time to the sexual act.¹⁸ A remote or general expectation of marriage may not satisfy the statutory requirement.

The proximity principle is useful but must be applied cautiously. Emotional manipulation may continue over a long period. The passage of time cannot automatically defeat a complaint where the evidence shows continuing deception or coercive control.

G. Sonu, Naim Ahamed and Jaspal Singh Kaural

In *Sonu @ Subhash Kumar v. State of Uttar Pradesh*, the Supreme Court reaffirmed that a consensual relationship followed by a refusal to marry does not automatically constitute rape, and quashed a charge-sheet that contained no allegation that the promise to marry had been false at its inception.¹⁹

¹⁶ *Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1.

¹⁷ *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191.

¹⁸ *Maheshwar Tigga v. State of Jharkhand*, (2020) 10 SCC 108.

¹⁹ *Sonu @ Subhash Kumar v. State of Uttar Pradesh*, 2021 SCC OnLine SC 181.

In *Naim Ahamed v. State (NCT of Delhi)*, the Court similarly distinguished between a false promise and a subsequent breach.²⁰ It considered the prolonged continuation of the relationship relevant to determining whether the complainant had consented under a misconception of fact.

In *Jaspal Singh Kaural v. State of NCT of Delhi*, the Supreme Court reaffirmed that a genuine promise followed by a later failure to marry does not automatically amount to rape, and restored the Sessions Court's order discharging the accused.²¹ The Court's reasoning reflects the contemporary position that criminal law cannot be used to punish every unsuccessful relationship.

H. Critical evaluation

The judicial doctrine provides a necessary distinction but creates difficult questions of proof. Intention is a mental state and must be inferred from conduct. A person who later refuses to marry may have genuinely intended marriage earlier, or may have concealed the absence of any such intention.

Courts must also avoid excessive reliance on continued contact, cohabitation or repeated intercourse. Such conduct may indicate consent, but it may also result from emotional dependence or social pressure. The most reliable inquiry focuses on chronology, communications, conduct, representations and the causal relationship between the promise and the sexual act.

The doctrine should therefore not be interpreted as a presumption against complainants. It is a requirement that the prosecution prove the ingredients of the offence.

IV. FAILED RELATIONSHIPS AND RETROSPECTIVE RAPE ALLEGATIONS

A. Retrospective re-characterisation

A relationship may begin voluntarily but later become legally contentious. The parties may have engaged in consensual intercourse and, after separation, one party may allege that the earlier intercourse was rape because the other refused to marry.

The legal character of the act must be determined according to the circumstances existing at the time. A later breakup may provide context, but it cannot by itself establish that consent was absent earlier.

²⁰ *Naim Ahamed v. State (NCT of Delhi)*, (2023) 15 SCC 385.

²¹ *Jaspal Singh Kaural v. State of NCT of Delhi*, 2025 INSC 457.

However, this principle does not mean that an entire relationship must be treated as consensual. A later sexual act may be non-consensual even where earlier acts were voluntary. Courts must examine each allegation separately.

B. When a relationship turns sour

Relationships may fail because of refusal to marry, family opposition, discovery of an existing marriage, financial disputes, infidelity or a change in emotional commitment. The failure may be painful without being criminal.

The decisive question is whether the accused intended to marry when the promise was made, and whether the promise directly caused the consent to sexual intercourse. If the intention existed at the beginning but later changed, section 63 may not apply merely because the promise failed. If the promise was deliberately false from the outset, the position is different.

C. Continued contact

Continued contact is often relied upon to prove consent. It may be relevant, but it cannot automatically defeat the allegation. A complainant may remain in contact because of emotional dependence, fear, financial circumstances, pregnancy, family pressure or the hope of marriage. Courts should examine the content and context of the communication. Affectionate messages may indicate a consensual relationship, but they do not establish consent to every later act. Threatening or manipulative messages may indicate coercion despite continued contact.

D. Delay in reporting

Delay in reporting may result from stigma, fear of the family's reaction, emotional attachment, economic dependence or the hope that the marriage will still take place. Delay does not automatically establish falsity.

At the same time, the circumstances surrounding the delay may be relevant. The court may consider when the complainant first discovered the alleged deception, whether communication continued and whether there is an explanation for the delay.

The correct approach is neither to treat delay as proof of falsity nor to ignore it in every case. Delay must be evaluated together with the entire evidence.

E. Digital evidence

Messages, emails, photographs, call records and social-media communications may illuminate the nature of the relationship. They may reveal promises, threats, admissions, discussion of marriage or mutual affection.

However, digital communications must be interpreted carefully. One message cannot determine the existence of consent. A sexually explicit message does not constitute consent to later intercourse, and consent to share an image or to engage in conversation is not consent to a separate sexual act.

Digital evidence must also satisfy the legal requirements of authenticity and admissibility. Private material should not be used to shame the complainant or to replace analysis of the statutory ingredients.

F. Victim-blaming and automatic criminalisation

A complainant's premarital intimacy, continued contact or hope of marriage does not eliminate the right to complain of sexual violence. The law cannot make protection conditional upon socially approved conduct.

The opposite danger is the automatic criminalisation of failed relationships. A relationship ending badly does not prove that the accused was dishonest from the beginning. Criminal law should punish force, coercion and deliberate deception, not mere disappointment.

Feminist scholarship has criticised the use of sexual history and morality to assess credibility.²² At the same time, sexual autonomy includes the right of adults to enter and end relationships without automatically attracting criminal liability.

G. Analytical conclusion

A breakup is legally relevant but not decisive. It may reveal a genuine breach, deliberate deception or later sexual violence. The court must determine which conclusion the evidence supports.

Earlier consensual intercourse cannot be retrospectively converted into rape solely because the relationship ended. However, prior consent cannot justify a later act after consent has been withdrawn. The appropriate approach is fact-sensitive and free from both victim-blaming and automatic presumptions of criminality.

V. SECTION 69 BNS AND DECEITFUL SEXUAL RELATIONS

A. Statutory structure

Section 69 BNS creates an offence where a person, by deceitful means or by making a promise to marry a woman without any intention of fulfilling it, has sexual intercourse with her, and the intercourse does not amount to rape. The offence is punishable with imprisonment of either

²² See FLAVIA AGNES, *LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA* (Oxford Univ. Press 1999); NIVEDITA MENON, *SEEING LIKE A FEMINIST* (Zubaan 2012).

description for a term which may extend to ten years and shall also be liable to fine.²³ The provision is significant because it recognises a distinct category of deceitful sexual conduct.

The statutory ingredients are sexual intercourse; deceitful means or a promise to marry; the absence, at the time the promise was made, of any intention to fulfil it; and conduct that does not amount to rape under section 63.

B. Meaning of deceitful means

The Explanation to section 69 provides that “deceitful means” includes inducement for, or a false promise of, employment or promotion, or marrying by suppressing identity.²⁴ Beyond these enumerated instances, the expression may extend to deliberate misrepresentation, concealment of an existing marriage or other representations that materially influence the decision to engage in sexual intercourse.

The deception must have a direct connection with the sexual act. A representation unrelated to the decision to engage in intercourse should not ordinarily satisfy section 69. The prosecution must establish that the deception was material and causally connected with the conduct.

C. Difference from rape

Section 63 concerns rape where consent is absent, invalid or obtained in circumstances recognised by law. Section 69 applies where sexual intercourse is obtained through deceitful means but does not satisfy every requirement of rape.

The two provisions must not be treated as interchangeable. If deception destroys legally valid consent and the facts satisfy section 63, the conduct may constitute rape. If the conduct involves deceitful sexual intercourse but does not satisfy section 63, section 69 may apply.

The phrase “not amounting to the offence of rape” indicates that section 69 is intended to operate as a separate offence rather than as an automatic extension of rape law.

D. False promise and genuine promise

The reasoning in *Pramod Suryabhan Pawar* remains relevant. The promise must be false from the beginning and must directly influence the decision to engage in sexual intercourse.²⁵ A genuine promise later broken does not automatically amount to deceit.

²³ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 69 (India).

²⁴ *Id.* § 69, Explanation.

²⁵ *Pramod Suryabhan Pawar*, (2019) 9 SCC 608.

A later refusal to marry may result from family opposition, incompatibility, financial circumstances or a change of intention. These facts may cause emotional harm, but they do not necessarily prove original dishonesty.

Where the accused concealed an existing marriage, or made a promise while knowing that it could not be fulfilled, the inference of deceit may be stronger. The court must still examine the evidence and the causal link with the sexual act.

E. Evidentiary challenges

The principal difficulty under section 69 is proving intention at the time of the promise. Direct evidence of a mental state is rare, and it must usually be inferred from conduct.

Relevant evidence may include communications, discussions with family members, concealment of marital status, simultaneous relationships, repeated false assurances, threats and the absence of any genuine step towards marriage. The existence of a long relationship or of repeated sexual intercourse may be relevant, but it cannot conclusively establish that the promise was genuine.

The prosecution must establish that the deception materially influenced the complainant's decision. The mere existence of a promise is insufficient.

F. Constitutional concerns

The phrase "deceitful means" is broad. If interpreted without clear limits, it may produce arbitrary application contrary to Article 14 and excessive interference with liberty under Article 21.

A constitutionally sound interpretation requires proof of intentional deception, materiality and causation. The provision should not punish a mere failure to marry, ordinary disappointment in a relationship or a subsequent change of circumstances.

G. Recent interpretation

Recent High Court decisions have emphasised that section 69 punishes deceit rather than disappointment. Courts have indicated that a consensual relationship that later ends cannot automatically be treated as an offence unless the evidence shows that the promise was dishonest from the beginning.²⁶

²⁶ See *Zahid Shanavas v. State of Kerala*, 2026:KER:67526 (Ker. HC Sept. 7, 2026); see also *Kunal Rameshbhai Kalyani v. State of Gujarat*, 2026 INSC 987 (quashing proceedings under section 69 where the accused's refusal to marry followed his mother's objection); Abhinav Ravi, *Rethinking the Criminalisation of Sex Secured by False Promise of Marriage*, JILS BLOG (Jan. 22, 2025).

At the same time, where the accused concealed an existing marriage or used an impossible promise to obtain sexual relations, proceedings may properly continue for determination at trial.²⁷

H. Critical evaluation

Section 69 may improve legal classification by providing a separate offence for deceitful sexual intercourse. It recognises that deceptive sexual exploitation may cause serious harm even where the prosecution cannot prove rape under section 63.

However, the provision may also produce overlapping charges and inconsistent interpretations. It must not become a general remedy for failed relationships. Its focus should remain intentional deception rather than the social morality attached to premarital sex.

The courts should ask whether there was a clear representation, whether the accused lacked the intention to fulfil it at the beginning, whether the representation caused the sexual act and whether the facts amount to rape under section 63.

I. Analytical conclusion

Section 69 BNS should punish deliberate deceit, not emotional disappointment. A genuine promise that later fails is different from a promise made dishonestly from the beginning. The provision must protect genuine complainants without converting every failed relationship into a criminal case.

VI. CRITICAL ANALYSIS, FINDINGS AND RECOMMENDATIONS

A. Failed relationships do not automatically become rape

The first finding is that a failed romantic relationship cannot, by itself, retrospectively transform consensual intercourse into rape. Rape is determined by the circumstances existing at the time of the act. A later breakup, refusal to marry or personal dispute does not establish the absence of consent during earlier intercourse.

This does not mean that every complaint arising from a failed relationship is false. It means that the prosecution must prove force, coercion, absence of consent, legally recognised deception or the ingredients of section 69.

²⁷ See *Kuldeep Verma v. State of U.P.*, 2026 LiveLaw (AB) 20 (All. HC Jan. 13, 2026) (declining to quash proceedings under section 69 where the accused, allegedly already married, had promised to marry the complainant).

B. False promise and breach of promise are different

The second finding is that the accused's intention at the time of the promise is central. A false promise is made without any intention of fulfilment and is used to obtain sexual relations. A breach of promise occurs when the promise was genuine but later failed.

The Supreme Court's decisions have correctly placed emphasis on original intention and causation. The final outcome of the relationship cannot alone establish the original state of mind.

C. Previous consent is not permanent consent

The third finding is that previous consent cannot authorise future sexual acts. Consent is specific to the act and may be withdrawn. A relationship, an engagement or previous intercourse cannot justify force, or sexual intercourse after refusal.

Courts must therefore examine each allegation separately, instead of classifying the entire relationship as wholly consensual or wholly coercive.

D. Section 69 creates a distinct offence

Section 69 creates a separate offence of deceitful sexual intercourse. It should not be treated as identical to rape under section 63. The provision may apply where the conduct is deceptive but does not satisfy every ingredient of rape.

However, the phrase "deceitful means" must be interpreted narrowly enough to require material deception and causation. It should not criminalise a mere change of mind or failure to marry.

E. Evidence must be assessed without stereotypes

Continued contact, delay, cohabitation or repeated intercourse may be relevant, but none is conclusive. Courts must not assume that a genuine complainant will immediately terminate contact or report the allegation.

At the same time, relationship history cannot be ignored. The proper approach is to assess it together with the communications, chronology, threats, promises, financial dependence and surrounding conduct.

F. Recommendations

Courts should adopt a structured test. They should determine whether there was a clear promise or representation, whether the accused lacked the intention to fulfil it at the time, whether it directly caused the sexual act and whether the facts satisfy section 63 or section 69.

Investigating agencies should identify whether the complaint concerns rape, deceitful sexual intercourse or both. The investigation should collect evidence concerning the chronology, communications, marital status, threats, promises and each alleged sexual act.

Police should remain survivor-sensitive and avoid moral judgments. A complainant should not be disbelieved merely because she continued contact or delayed reporting. Investigators should also examine emotional dependence, economic pressure and coercive control.

Arrest should not be automatic in relationship-based cases. The investigating officer should record reasons demonstrating why arrest is necessary. The presumption of innocence and personal liberty must remain meaningful.

Judgments should avoid language evaluating a complainant's morality, sexual history or maturity as a substitute for legal reasoning. The focus should remain on consent, intention, causation, force and deception.

The legislature or the Supreme Court should clarify the meaning of "deceitful means" under section 69. The provision should expressly be understood as targeting intentional deception and not ordinary relationship failure.

G. Overall assessment

The present legal framework contains the foundations of a workable distinction but depends heavily on judicial sensitivity and evidentiary discipline. The Supreme Court has correctly distinguished false promises from genuine promises subsequently broken. Courts must also ensure that this doctrine does not become a rigid presumption against complainants.

The most balanced approach recognises sexual autonomy as including the freedom to consent, to refuse, and to continue or end a relationship. Criminal law should intervene where autonomy is destroyed through force, coercion or deliberate deception. It should not intervene merely because a relationship ends.

VII. CONCLUSION

The expression "consensual rape" captures a difficult legal question concerning the consequences of failed intimate relationships. Indian criminal law cannot treat consensual sexual intercourse as rape merely because the relationship later ends, the accused refuses marriage or the parties become involved in a personal dispute. The legal character of the act must be determined according to the circumstances existing when consent was given.

Consensual sexual intercourse therefore cannot automatically be prosecuted as rape merely because the relationship has failed. A breakup may provide context, but it cannot retrospectively

establish that consent was absent. However, prior intimacy does not create permanent consent. A later sexual act may constitute rape if it occurs after consent is withdrawn, or through force, threats or coercion.

A false promise, a genuine promise subsequently broken and consent withdrawn during a later act must also be kept distinct. A false promise exists where the accused never intended to marry and used the promise as an instrument to obtain sexual relations. A genuine promise that later fails is legally different. The determining factors are the accused's intention at the time of the promise and the causal connection between the promise and the sexual act.

Sections 63 and 69 BNS operate in different fields. Section 63 addresses rape where consent is absent, invalid or obtained in legally recognised circumstances. Section 69 creates a separate offence of sexual intercourse obtained through deceitful means, or through a promise to marry made without any intention of fulfilling it, where the conduct does not amount to rape. The provisions must not be treated as interchangeable.

The principal conclusion is that both survivor protection and protection against misuse require a fact-sensitive approach. Courts must not reject complaints merely because the parties were intimate, continued contact or delayed reporting. At the same time, courts must not convert every failed relationship into a rape prosecution without proof of force, coercion, absence of consent or deliberate deception.

Indian criminal law should focus on autonomy, intention, causation and the particular sexual act alleged. The most balanced approach rejects both retrospective criminalisation and retrospective absolution. It protects the survivor whose consent was destroyed by force or fraud while preserving the liberty of adults whose consensual relationship simply came to an unhappy end.
