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From deceptive agreement to Criminal Deceit: The Development of Judicial Doctrine and Emerging Interpretive Challenges in the Application of Section 69 of the Bharatiya Nyaya Sanhita, 2023

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ABSTRACT

Section 69 of the Bharatiya Nyaya Sanhita, 2023 (“BNS”) constitutes a significant legislative intervention in the criminal regulation of sexual intercourse procured through deception or a false promise of marriage made without an intention to fulfil it, where the conduct does not amount to rape. The provision seeks to address a doctrinal gap that emerged under the erstwhile legal framework by recognising deceptive sexual exploitation as a distinct form of criminality. This article examines the evolution of judicial principles concerning false promises of marriage and analyses their statutory incorporation under Section 69. It focuses particularly on the requirements of dishonest intention at the inception of the promise, the causal nexus between deception and sexual consent, and the evidentiary difficulties involved in retrospectively establishing mens rea. The article further evaluates the scope of the expression “deceitful means”, including deception relating to employment, promotion, identity, and marital status, and considers the potential for overbreadth and inconsistent judicial application. It also examines the relationship between Section 69 and the provisions governing consent vitiated by fear or misconception and the statutory definition of rape. Particular attention is given to questions of consent, sexual autonomy, gender equality, privacy, evidentiary uncertainty, potential misuse, and proportionality. The article argues that Section 69 should be interpreted through a precise, culpability-oriented and evidence-based framework, distinguishing deliberate fraudulent inducement from the subsequent failure of a genuine promise. It concludes that effective application of the provision requires a careful balance between protecting sexual autonomy and preventing the unwarranted criminalisation of consensual relationships that subsequently fail.

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I. INTRODUCTION

Section 69 of the Bharatiya Nyaya Sanhita, 2023 (“BNS”) marks a notable legislative development in the framework of Indian criminal jurisprudence by specifically penalising sexual intercourse procured through “deceitful means” or pursuant to an assurance of marriage made without any genuine intention of honouring such assurance, in circumstances where the act does not constitute the offence of rape. The provision prescribes a punishment of imprisonment for a term which may extend to ten years, in addition to liability to fine.¹ The provision is intended to resolve a longstanding question before Indian courts concerning the appropriate legal characterisation of sexual intercourse procured on the basis of a false assurance of marriage: whether such conduct constitutes rape, the offence of cheating, or warrants recognition as an independent form of sexual exploitation. The 246th Report of the Department-related Parliamentary Standing Committee on Home Affairs records Clause 69 among the newly added provisions of the Sanhita, addressing sexual intercourse procured through deceptive conduct, and the Committee recommended that the concealment of an individual’s existing marital status be expressly brought within the ambit of the expression “deceitful means”.²

Prior to the enactment of the BNS, the prevailing doctrinal framework was primarily derived from Sections 375 and 90 of the Indian Penal Code, 1860 (“IPC”). The judicial inquiry essentially centred on whether consent procured on the basis of a false assurance could be regarded as consent vitiated by a “misconception of fact” within the meaning of Section 90, and, consequently, whether sexual intercourse undertaken pursuant to such consent attracted the statutory definition and penal consequences of rape under Section 375 of the IPC.³ The ensuing judicial jurisprudence did not proceed on the premise that every subsequent failure to honour a promise of marriage would, by itself, constitute rape. Rather, the Supreme Court developed a nuanced distinction between a false promise, made *ab initio* without any intention of fulfilling the same, and a *bona fide* promise that was subsequently breached owing to intervening or

¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 69 (India).

² DEP’T-RELATED PARLIAMENTARY STANDING COMM. ON HOME AFFAIRS, *246th Rep. on the Bharatiya Nyaya Sanhita*, 2023, ¶¶ 1.11, 3.11.1 (2023), https://prsindia.org/files/bills_acts/bills_parliament/2023/SC_Report_Bharatiya_Nyaya_Sanhita_2023.pdf.

³ Indian Penal Code, No. 45 of 1860, §§ 90, 375–76 (India).

unforeseen circumstances. In *Uday v. State of Karnataka*,⁴ the Court underscored the necessity of examining the surrounding circumstances in which consent was given and determining whether the alleged promise of marriage was, in fact, the proximate and operative inducement for the complainant's consent to the sexual relationship.

The aforesaid distinction was subsequently refined in *Deepak Gulati v. State of Haryana*,⁵ wherein the Supreme Court clarified that the attribution of criminal culpability necessitates a careful judicial assessment of whether the accused, at the inception of the relationship, possessed a dishonest or *mala fide* intention to make a false assurance of marriage, rather than merely having failed to solemnise the marriage at a later stage due to subsequent developments or changed circumstances. The Court thus emphasised that a subsequent inability or refusal to marry, without proof of fraudulent intent existing at the time the promise was made, would not, by itself, suffice to attract criminal liability. In *Pramod Suryabhan Pawar v. State of Maharashtra*,⁶ the Supreme Court further crystallised the governing legal principle by holding that the alleged promise of marriage must have been dishonest or false at the time of its inception, having been made without a *bona fide* intention to honour the assurance. The Court further underscored that such deceptive assurance must possess a proximate and direct causal nexus with the woman's decision to consent to sexual intercourse; a mere subsequent failure to fulfil the promise, in the absence of fraudulent intent at the time of its making, would not by itself attract criminal culpability.

The subsequent judicial pronouncements illustrate the application of these principles across materially divergent factual matrices. In *Anurag Soni v. State of Chhattisgarh*,⁷ the evidence on record was found sufficient to establish that the accused possessed a dishonest intention at the inception of the promise of marriage. In contrast, *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*⁸ and *Maheshwar Tigga v. State of Jharkhand*⁹ underscored the significance of the complainant's informed, conscious, and voluntary exercise of choice, particularly where the surrounding circumstances failed to demonstrate that the sexual relationship had been procured through fraudulent inducement. Similarly, *Mahesh Damu Khare v. State of Maharashtra*¹⁰ reaffirmed the requirement of a proximate causal nexus between the alleged deception and the consent to sexual intercourse, cautioning against retrospectively attributing criminal character

⁴ *Uday v. State of Karnataka*, (2003) 2 SCR 152 (India).

⁵ *Deepak Gulati v. State of Haryana*, (2013) 6 SCR 544 (India).

⁶ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 11 SCR 423 (India).

⁷ *Anurag Soni v. State of Chhattisgarh*, (2019) 6 SCR 972 (India).

⁸ *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2018) 13 SCR 920 (India).

⁹ *Maheshwar Tigga v. State of Jharkhand*, (2020) 9 SCR 482 (India).

¹⁰ *Mahesh Damu Khare v. State of Maharashtra*, (2024) 11 SCR 886 (India).

to a prolonged consensual relationship merely because the contemplated marriage subsequently failed to materialise. More recently, in *Samadhan s/o Sitaram Manmothe v. State of Maharashtra*,¹¹ the Court reiterated that criminal prosecution must be founded upon cogent and credible evidence demonstrating deception and dishonest inducement, rather than upon moral assumptions, conjectural inferences, or the mere dissolution or failure of a relationship.

II. THE DOCTRINAL EVOLUTION, INTERPRETIVE CHALLENGES AND CONSTITUTIONAL DIMENSIONS OF SECTION 69 OF THE BNS

A. From Judicial Doctrine to a Distinct Criminal Offence

Prior to the enactment of the BNS, the relevant jurisprudence evolved progressively in the absence of any distinct statutory offence under the IPC specifically criminalising sexual intercourse procured through deceptive means in circumstances falling short of the legal threshold for rape. Consequently, the courts were required to examine such cases predominantly within the framework of Sections 375 and 90 of the IPC, particularly in determining the legal validity of consent allegedly obtained under a misconception of fact.¹² The judicial analysis ultimately came to focus upon the accused's state of mind at the inception of the alleged promise. A mere subsequent refusal or inability to solemnise the marriage was not, in itself, sufficient to attract criminal culpability; rather, the prosecution was required to establish that the promise was dishonestly conceived from the outset and that such deceptive assurance constituted the proximate and operative basis for the complainant's consent to sexual intercourse. The decisions in *Deepak Gulati*, *Pramod Suryabhan Pawar*, and *Sonu @ Subhash Kumar v. State of Uttar Pradesh*¹³ progressively crystallised and affirmed this essential distinction.

Section 69 confers an independent statutory character upon the principle that sexual intercourse procured through deliberate deception may warrant criminal sanction even where the constituent elements of rape are not established. The provision may, therefore, be understood as a legislative response to a perceived lacuna in the pre-existing criminal-law framework, seeking to occupy the normative space between the expansive application of rape provisions and the comparatively limited scope of the conventional offence of cheating. The scholarly literature has accordingly characterised Section 69 as a potential gap-filling provision, intended to address instances of calculated sexual exploitation that may fall outside the statutory parameters of rape

¹¹ *Samadhan s/o Sitaram Manmothe v. State of Maharashtra & Anr.*, 2025 INSC 1351 (India).

¹² *Kaini Rajan v. State of Kerala*, (2013) 10 SCR 196 (India).

¹³ *Sonu @ Subhash Kumar v. State of Uttar Pradesh & Anr.*, (2021) 2 SCR 137 (India).

while nevertheless involving a serious infringement of sexual autonomy.¹⁴ Such an objective constitutes a legally defensible basis for legislative intervention, provided that criminal liability remains contingent upon proof of intentional deception, the requisite causal nexus with the sexual act, and satisfaction of the statutory ingredients prescribed by the provision.

B. “Deceitful Means” and the Problem of Overbreadth

A principal interpretive concern arising from Section 69 is the scope and legal construction of the expression “deceitful means”. The Explanation adopts a broader conception of deception, extending beyond a false assurance of marriage to encompass inducement for, or the false promise of, employment or promotion, and marrying by suppressing identity. The breadth of this formulation gives rise to questions concerning the threshold at which deceptive conduct assumes criminal character. Significantly, the Parliamentary Standing Committee recommended that the concealment of an existing marital status also be brought within the ambit of “deceitful means”, recognising that a person who is already married may procure sexual intercourse by deliberately withholding or misrepresenting that material fact.¹⁵ The proposed expansion reflects an attempt to address forms of deception extending beyond matrimonial promises, while simultaneously raising important questions concerning the limits, scope, and judicial interpretation of criminal liability under Section 69.

The broadened scope of Section 69 acknowledges that sexual exploitation may be facilitated by factors such as economic dependence, professional influence, or deliberate deception concerning personal identity. Nevertheless, the provision does not expressly delineate the requisite threshold for distinguishing criminally culpable deception from ordinary misrepresentation occurring within interpersonal relationships. A mere false representation regarding employment or professional advancement, for instance, should not, in the absence of further circumstances, automatically attract penal consequences solely because sexual intercourse subsequently took place. For criminal liability to arise, the alleged deception must be material, deliberate, and sufficiently proximate and causally connected to the sexual act. The existing scholarly discourse likewise identifies interpretive uncertainty surrounding deceptive representations relating to employment and promotion and cautions that the breadth of the statutory terminology may result in divergent or inconsistent judicial application.¹⁶

¹⁴ Amolika Maheshwari & Anant Sharma, *Section 69 of Bharatiya Nyaya Sanhita: A Criminal Fraud*, 5 VISHWAKARMA U. L.J. 1 (2025), <https://vulj.vupune.ac.in/archives8/Section%2069%20of%20BNS%20A%20Criminal%20Fraud.pdf>.

¹⁵ DEP’T-RELATED PARLIAMENTARY STANDING COMM. ON HOME AFFAIRS, *supra* note 2, ¶ 3.11.1.

¹⁶ Md. Imran Wahab, *Analysing the Vagueness and Shortcomings of Section 69 of the Bharatiya Nyaya Sanhita (BNS)*, 2023, 6 INT’L J. FOR MULTIDISCIPLINARY RSCH., no. 6, IJFMR240631101 (2024), <https://www.ijfmr.com/papers/2024/6/31101.pdf>.

Accordingly, applying the principles of *ejusdem generis* and purposive interpretation, courts should ascertain whether the representation was knowingly false, intended to procure sexual intercourse, and materially influenced the complainant's decision to consent. Such an interpretation would advance the protective object of Section 69 while preventing the criminalisation of every morally objectionable representation.

C. The Evidentiary Problem of Proving Intention

The principal evidentiary difficulty under Section 69 lies in establishing the accused's state of mind at the inception of the promise. While subsequent refusal to marry is objectively demonstrable, the absence of an intention to marry at the time of making the promise must ordinarily be inferred from circumstantial evidence. *Anurag Soni v. State of Chhattisgarh*¹⁷ illustrates circumstances supporting such an inference, whereas *Uday v. State of Karnataka*, *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*, and *Maheshwar Tigga v. State of Jharkhand* caution against imputing fraudulent intent where the surrounding circumstances indicate a genuine relationship or voluntary consent.¹⁸ Accordingly, courts should assess contemporaneous communications, conduct, existing marital commitments, marriage preparations, concealment of material facts, inducements, and the chronology of events, without treating any single circumstance as conclusive. The 2025 decision in *Samadhan s/o Sitaram Manmothe v. State of Maharashtra*¹⁹ further emphasises that criminal liability must rest on concrete evidence of deception or inducement, rather than retrospective moral assessment following the failure of a relationship.

D. Section 69, Section 28 and Section 63: Overlap and Differentiation

Section 69 raises an interpretive issue vis-à-vis Section 28, which addresses consent vitiated by fear or misconception, and Section 63, which defines rape. While it may be contended that deceptive consent is already encompassed within Sections 28 and 63, Section 69 is better construed as creating a distinct and subsidiary offence by expressly criminalising specified forms of deceit where the conduct falls short of rape. Accordingly, courts should first determine whether the facts satisfy Section 63; only upon such determination failing should they examine the constituent elements of Section 69. This sequential approach preserves the statutory demarcation between the offences and prevents Section 69 from operating either as a substitute for rape or as an unduly broad residual offence.²⁰

¹⁷ *Anurag Soni v. State of Chhattisgarh*, *supra* note 7.

¹⁸ *Uday v. State of Karnataka*, *supra* note 4; *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra*, *supra* note 8; *Maheshwar Tigga v. State of Jharkhand*, *supra* note 9.

¹⁹ *Samadhan s/o Sitaram Manmothe v. State of Maharashtra & Anr.*, *supra* note 11.

²⁰ Maheshwari & Sharma, *supra* note 14.

E. Consent, Autonomy and Gender

Consent constitutes the foundational element in the operation of Section 69. The relevant scholarship underscores that valid consent entails an informed and autonomous exercise of choice, while deliberate deception may impair the individual's sexual autonomy.²¹ Nevertheless, criminal liability must be confined to deception that materially vitiates the voluntariness of sexual consent, rather than extending to mere disappointment, emotional harm, or the subsequent failure of an intimate relationship.

The provision also raises significant constitutional questions concerning gender. Although the expression "whoever" may be construed broadly, the operative language of Section 69 is gender-specific: the promise must be made "to a woman" and the offence lies in having sexual intercourse "with her".²² This gender-specific formulation warrants examination under Articles 14 and 15 of the Constitution, particularly in light of *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, and *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.²³ The broader concern is whether the statutory framework, grounded in a conventional male-perpetrator and female-victim paradigm, adequately accommodates contemporary understandings of gender equality, sexual autonomy, and protection against deceptive sexual exploitation.

At the same time, the protective purpose of Section 69 must not assume a paternalistic character. An adult woman retains decisional autonomy to enter an intimate relationship, notwithstanding its eventual failure to culminate in marriage. Criminal sanction should therefore be directed towards deliberate and calculated exploitation through deception, rather than imposed merely because a consensual relationship subsequently deteriorated or the contemplated marriage failed to materialise.

F. Privacy, Misuse and Proportionality

Section 69 necessarily engages the privacy and autonomy interests inherent in intimate relationships and personal communications. The Parliamentary dissent raised concerns that criminalising promises of marriage may intrude upon individual autonomy, particularly given

²¹ Dharmendra Yadav & Rajeev Kumar, *Deceit, Consent, and Justice: A Critical Review of Section 69 of the BNS 2023*, 7 INDIAN J. L. & LEGAL RSCH., no. 2, at 1899, 1900 (2025), <https://www.ijllr.com/post/deceit-consent-and-justice-a-critical-review-of-section-69-of-the-bns-2023>.

²² Bharatiya Nyaya Sanhita, *supra* note 1, § 69; cf. Kinjal Majumdar & Basupriya Chattopadhyay, *Deciphering the Legal Implications of Section 69 in BNS: A Comprehensive Analysis*, 7 INT'L J.L. MGMT. & HUMANS., no. 2, at 853, 860 (2024), <https://ijlmh.com/wp-content/uploads/Deciphering-the-Legal-Implications-of-Section-69-in-BNS.pdf>.

²³ Maheshwari & Sharma, *supra* note 14, at 12–13.

the inherent difficulty of proving an accused's subjective intention at the inception of the promise.²⁴

Scholarly commentary similarly identifies concerns relating to privacy, evidentiary uncertainty, potential misuse, and limited sentencing guidance. These concerns, however, do not warrant diminishing the legal protection available to genuine victims; rather, they necessitate strict procedural safeguards and proof beyond reasonable doubt of each statutory element, namely: (i) the representation or promise; (ii) its falsity at inception; (iii) knowledge and dishonest intent; (iv) a proximate causal nexus between the deception and sexual intercourse; and (v) that the conduct falls outside the statutory definition of rape.²⁵

The distinction between a false promise and a subsequent breach of a genuine promise remains fundamental. *Mahesh Damu Khare* recognised that the circumstances of a prolonged relationship may militate against an inference of fraudulent intent at inception, while cautioning that duration alone cannot constitute a conclusive test.²⁶

III. DISCUSSION

Section 69 is more appropriately construed as a legislative endeavour to transcend the conventional binary between rape and absence of criminal liability. It acknowledges that deliberate and culpable deception may substantially impair sexual autonomy even where the factual circumstances do not satisfy the statutory ingredients of rape. The legislative purpose is therefore legitimate and finds support in the preceding judicial development. Nevertheless, the provision continues to confront the central doctrinal difficulty that shaped the earlier jurisprudence, namely, distinguishing a fraudulent promise made without an intention to honour it at inception from a *bona fide* promise subsequently rendered incapable of performance.

The judicial progression from *Uday* through *Deepak Gulati*, *Pramod Suryabhan Pawar*, *Anurag Soni*, *Maheshwar Tigga*, *Mahesh Damu Khare*, and *Samadhan* reflects a consistent underlying principle: criminal culpability must be founded upon intentional deception existing at the relevant point in time and a proximate causal nexus between such deception and the decision to engage in sexual intercourse. Greater interpretive uncertainty, however, persists with respect to deception concerning employment, promotion, identity, and marital status, where sufficiently developed judicial standards remain absent.

²⁴ DEP'T-RELATED PARLIAMENTARY STANDING COMM. ON HOME AFFAIRS, *supra* note 2, Dissent Note of Derek O'Brien, pt. B.III (Clause 69: Promise to Marry).

²⁵ Maheshwari & Sharma, *supra* note 14.

²⁶ *Mahesh Damu Khare v. State of Maharashtra*, *supra* note 10.

The appropriate approach, therefore, lies neither in permitting unrestricted criminal prosecution nor in imposing excessive judicial restraint. Section 69 warrants an evidence-based and culpability-oriented construction, rather than an assessment founded upon moral disapproval. Legislative clarification would further assist in expressly distinguishing fraudulent intent existing at the inception of a promise from a subsequent inability, refusal, or failure to solemnise the contemplated marriage.

IV. CONCLUSION

Section 69 of the Bharatiya Nyaya Sanhita, 2023 constitutes a significant legislative intervention addressing deceptive conduct affecting sexual autonomy by creating a distinct penal category for intentional deception employed to procure sexual intercourse where the conduct falls short of rape. However, its application raises substantial interpretive concerns concerning the scope of “deceitful means”, retrospective assessment of *mens rea*, the distinction between genuine consent and subsequent dissatisfaction, and its reconciliation with Sections 28 and 63. Its gender-specific formulation further raises constitutional questions concerning equality and sexual autonomy, while the Parliamentary Committee’s recommendation regarding concealment of marital status demonstrates the need for further legislative refinement.

Accordingly, Section 69 should be construed with precision, proportionality, and evidentiary rigour, requiring proof that the deception existed at inception, was deliberate and material, and bore a proximate causal nexus to the sexual act. A subsequent refusal or failure to marry, absent initial fraudulent intent, should not by itself attract criminal liability, nor should genuine cases of calculated deception be disregarded merely because the relationship involved consensual intimacy. The jurisprudential progression of the Hon’ble Apex Court supports a calibrated framework founded upon consent, *mens rea*, causation, constitutional equality, and proportionality, thereby protecting sexual autonomy without criminalising ordinary relational uncertainty.
