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Broken Promises, Criminal Penalties: Section 69 BNS and the Legalization of Failed Relationships

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ABSTRACT

This paper critically examines Section 69 of the Bhartiya Nyay Sanhita, 2023. This new criminal law made a significant innovation in the jurisprudence of laws related to sexual crimes. This section deals with the gray area of law, which is consent. Consent is very personal to the victim, but its significance is such that it is a thin line between voluntary sexual intercourse and rape. The provision aims to protect women at the same time, but the law also leaves a gap in defining consent. Conditional Consent is the most vulnerable factor of this section. This section says that any voluntary sexual intercourse can retrospectively punish a man with imprisonment up to 10 years. Section 69, its jurisprudence and interpretation, is the interplay between sexual autonomy, misuse, and state intervention.

Keywords: *consent, deceitful means, promise, sexual intercourse*

I. INTRODUCTION

Section 69 - “Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.” This provision aims to criminalize all sexual intercourse arising out of false promises to marry, or employment, etc. There is a role of intention as well. If one has the intention contrary to the fulfillment of the promise, the same would be punishable by imprisonment, which may extend up to 10 years.

Legislative intent seems to protect women, but in the era that faces rapid breakups, is it reasonable to criminalize private emotional betrayals? The most questionable factor in the provision is how a voluntary sexual intercourse becomes punishable as involuntary due to the non-fulfillment of the promise. There is no differentiation clarified in the provision between genuine breakdowns of relationships and deceitful intent. The Judiciary holds responsibility in

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the interpretation of this provision and filling the gaps. This section seems to open the floodgates for a variety of cases.

II. LEGAL AMBIGUITIES IN INTENT AND CONSENT

Conditional Consent

This provision could also interpret consent's nature as contingent on the fulfillment of the promise. Consent that is free during sexual intercourse can subsequently be said to be obtained by deception when the promise is not fulfilled. Proving the *intention* will be one of the burdens. Sexual intercourse on the false pretext of marriage, employment, or promotion will now be a punishable offence.

Love affairs gone sour- vulnerable now

If there is voluntary sexual intercourse in a romantic relationship, and the intention to marry in the future, but the relationship genuinely breaks down. Such men are vulnerable in case a woman invokes Section 69. This Section is vulnerable to misuse. *Rajnish Singh v. State of U.P.*² The S.C. in this case said that a long cohabitation and frequent sexual relationship between the appellant and the resident was kept out of the scope of Section 69. It is not reasonable to say that all the sexual activity with that educated woman since 16 years purely under the false pretext of marriage.

III. JURISPRUDENTIAL AMBIGUITIES

Before the new criminal law, such matters were dealt with under section 376 of the IPC. Even earlier, it was vulnerable to misuse. Judiciary, with various cases interpreted and narrowed down, the scope of misuses.

- Deepak Gulati vs. State of Haryana³

The S.C. clarified the distinction between *false promise of marriage* and *breach of promise*. The former deals with the promise made without intention, and the latter is non-fulfilment due to subsequent changes in circumstances. This judgement narrowed the scope of misuse by women and also indicated that mere change in circumstances cannot be the reason for accusing the person by rape.

- Pramod Suryabhan Pawar vs. State of Maharashtra⁴

For availing the provision of sexual intercourse on the false pretext of marriage. There is a

² Rajnish Singh v. State of U.P., 2025 SCC OnLine SC 478.

³ Deepak Gulati vs. State of Haryana, 2013 (7) SCC 675.

⁴ Pramod Suryabhan Pawar vs. State of Maharashtra, (2019) 9 SCC 608.

requirement to prove the presence of malafide intent to not fulfill the promise from the very beginning. This case proved that the provision can be a weapon to punish the male in a failed romantic relationship. It eliminated the genuine breakdown of relationships from the scope of the law.

IV. CONTINUED AMBIGUITY

Although the new provision regarding the same has been made, i.e., Section 69 but it has not pondered over the foundational problem of establishing the *intention not to fulfil the promise*. The language is the main culprit in this section, language is broad and undefined. The words identity, deceitful mean are the words that can be interpreted in various ways. This law may be used as a political weapon if identity includes religion may be used for the politics of “love jihad,” and this section will fuel the same as a legal justification.

V. SOCIOLOGICAL IMAGINATION OF SECTION 69

Intersectionality: Caste, Class, and Consent

Ignoring the omnipresent social hierarchies deeply rooted in Indian society cannot let the intent behind the provision be fulfilled. Despite the provision aims to empower women and is gender neutral. Its application is vulnerable to social bias when the caste, class, and religion intersect with sexual intercourse, which invokes the accusation. This provision may lead to legal weaponization in cases of pratilom relationships where the girl belongs to the upper caste or dominant religion, after the breakdown of the relationships their family accuses of *rape by deceit*. The accusation of “false promise of marriage” becomes a rationale for controlling women’s sexuality. Such provisions are often used as a weapon for politics of hate mongering and politics in the name of religion, e.g., *love jihad*.

Section 69- Proxy for caste purity and endogamy

Such provisions act as a tool for regulating the old norms existing in society, which hold little to no relevance in the present society. The legislature violated its duty to uphold personal liberty without reasonable cause and acted as an assistant to patriarchal and casteist norms.

The Feminist Dilemma: Victimhood vs. Agency

“When the law treats women solely as victims, it infantilizes them and strips them of sexual and emotional agency”⁵. This law jeopardizes men in some or the other way. Women are capable of making decisions about their sexual relations. Such criminalization may reinforce

⁵ Ratna Kapoor, Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern, 78, Denver Law Review, 855, (2001).

patriarchal protectionism, depriving women of their sexual choices. *Blanket Criminalization* is not the solution, this may invoke chilling effects:

- This may discourage voluntary sexual intercourse in the deterrence of retrospective criminalization.
- Social acceptance takes precedence over individual choice of sexual relations.

*Lata Singh vs. State of U.P.*⁶ the S.C. declared that it is a woman's choice whom to marry irrespective of family pressure, faith of the partner, and long-standing tradition of endogamy. Section 69, in its spirit, is paradoxical to what it appears to be, and weakens its feminist agenda.

VI. STRENGTHS OF SECTION 69

This provision provides for a deterrent against false promises. This fact cannot be denied that for very long women have been denied education, and hence a larger chunk of the female population has been left unempowered, This section aims to fill that empowerment gap. The film industry is infamous for such deception, where women are promised jobs if they sleep with them.

*Uday vs. State of Karnataka*⁷ the S.C. ruled that any man falsely promising any woman of marrying her and, under the same pretext, establishes a sexual relationship, with the intention of not fulfilling the promise, shall be punished. Section 69 is the furtherance of such cases.

VII. LIMITATIONS OF SECTION 69

This provision is vulnerable to being misused, its vagueness is the reason behind such vulnerability. Intention, deceitful words could be interpreted in a variety of ways. Without clarifying the foundational ambiguities law will fail to achieve its purpose. This provision is gender-biased, benefiting no one. Presumption of males as perpetrators and women as victims, and ignores the fact completely that any man or member of the LGBTQ+ community can also be vulnerable to such fraudulent promises. This also interferes with one's right to life and personal liberty under Article 21⁸. This intrudes on one's choice to marry the person whoever he or she desires⁹. Such a law can be abused against a person's liberty, and hence it raises a critical constitutional issue.

⁶ *Lata Singh vs. State of U.P.* 2006 INSC 407.

⁷ *Uday vs. State of Karnataka*, AIR 2003 SC 1639.

⁸ INDIA CONST. art. 21.

⁹ *Shafin Jahan v. Ashokan K.M.*, (2018) 16 SCC 368 .

VIII. CONCLUSION

Legislative clarity is needed as there is overlapping between the two provisions of the law, *Section 63*¹⁰ (Rape) and *Section 69*¹¹ (sex by deceitful means). Clarity is needed to establish harmony between the two. Now, after the enactment of such laws, the ball is in the court of the judiciary. The ambiguities arising out of the provisions are to be resolved by the precedents, eliminating the broad scope of misuse, misinterpretation, and vulnerabilities. The retrospective criminalization, despite having free consent at the moment of sexual intercourse, is unjustified. Despite such provision seeming to favor and empower women but it presumes women as victims and weakens its feminist agenda. There is an urgent need for recalibration of gender justice, emotional breakdown of relationships, and sex on the pretext of deceitful means to be harmonized, and blanket criminalization is not the solution.

¹⁰ *Supra* note.2.

¹¹ Bharatiya Nyaya Sanhita, 2023, § 63, No. 45, Acts of Parliament, 2023 (India).

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