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Deciphering the Legal Implications of Section 69 in BNS: A Comprehensive Analysis

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ABSTRACT

The article titled "Deciphering the Legal Implications of Section 69 in BNS: A Comprehensive Analysis." explores the legal framework surrounding sexual relations under false promises of marriage in India. Beginning with a prelude that underscores the historical challenges faced in addressing such cases, the article delves into the interpretation of Section 69, which criminalizes sexual intercourse obtained through deceitful means or false promises of marriage. It examines the scope of the provision, differentiating between unfulfilled promises and deliberate deception, while also analysing its comparison with Section 493 of the Indian Penal Code. Further, the article provides a comparative perspective by examining similar laws in other countries and offers a detailed analysis of the implications of Section 69, including concerns regarding endogamy promotion, ambiguity, potential misuse, and impact on individual autonomy. Finally, the conclusion reflects on the significance of Section 69 in safeguarding women's rights while acknowledging the need for careful consideration and possible amendments to address its criticisms and ensure fairness within the legal framework.

Keywords: *False promise of marriage, Deceitful means, Sexual exploitation, Consent, Legal framework.*

I. INTRODUCTION

In many legal systems, cases involving sexual relations under a false promise of marriage have presented complex challenges, both morally and legally. Historically, the absence of explicit legal provisions to address this issue left a significant gap within the criminal law framework. This gap resulted in ambiguity and inconsistency in handling such cases, where the core of the dispute often revolved around the nuances of consent, deception, and the intent behind promises made in the context of intimate relationships.³

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³ *Bharatiya Nyaya Sanhita (BNS), 2023 on False Promise of Marriage* (March 18, 2024, 10:33 AM), <https://www.civildaily.com/news/nyaya-sanhita-false-promise-of-marriage/>

Victims of sexual intercourse obtained through deceptive promises of future marriage have frequently found themselves entangled in a legal dilemma. Their struggles were exacerbated by the legal system's inability to effectively differentiate between a mere breach of a promise and the deliberate deception of a false promise made with no intention of being fulfilled.⁴ This distinction is crucial as it touches upon the intent and the consent derived under false pretences, which are central to determining the criminality of the act.

The prevalence of these cases highlights the need for a legal framework that explicitly addresses the deception involved in false promises of marriage, clearly distinguishing it from situations where a change of circumstances or mind leads to a non-fulfilled promise of marriage. Such a distinction is vital for justice to be served appropriately, ensuring that victims can seek and find effective legal remedy, and that the accused are judged fairly, based on the intention behind their actions and the understanding of consent.⁵

II. INTERPRETATION OF SECTION 69 OF BNS

Within Chapter V of the Bharatiya Nyaya Sanhita, 2023 titled "Offences against Women and Children," Section 69 establishes two distinctive offenses under the heading of 'sexual intercourse by employing deceitful means, etc.' The provision delineates the first offense as engaging in sexual intercourse through deceitful means, and the second as perpetrating the act through a false promise of marriage.

By categorizing these acts separately, the law emphasizes the nuanced nature of sexual exploitation and seeks to address varying circumstances with appropriate legal procedures. This dual framework accentuates the importance of protecting individuals from both deceptive tactics and the misuse of promises, recognizing the harm caused by exploiting trust and consent in intimate relationships.

'Whoever, by deceitful means or making by the promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offense 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.'

The literal interpretation of the provision criminalizes the act of deceiving a woman into sexual intercourse through a false promise of marriage made by the perpetrator without any intention

⁴ Ibid

⁵ Aamir Khan, *How Section 69 of the Bharatiya Nyaya Sanhita proposes to criminalise sex on false promise of marriage* (19 March, 2024, 13:32 P.M.), <https://www.barandbench.com/news/law-policy/how-section-69-of-the-bharatiya-nyaya-sanhita-proposes-to-criminalise-sex-on-false-promise-of-marriage>

of fulfilling it. This provision also extends to sexual intercourse facilitated by deceitful means, such as false promises of employment, promotion, or marriage by concealing one's true identity. It specifies that while this act does not constitute rape, it is considered a serious offense punishable by imprisonment for up to ten years, along with a fine. The provision aims to deter individuals from exploiting women through deceitful means, acknowledging the harm caused by breaching trust and exploiting intimate relations under pretences.

Broadly, this section can be segregated into two parts-

- (A) **Sexual intercourse by deceit**: - As the explanation clause of the section provides the meaning of 'deceitful means' is the inducement for the false promise of employment, promotion, or suppression of identity. In the history of the criminal justice administration system in India, it is the first time, that intercourse with a woman by the false promise of employment, promotion, and false identity will amount to a punishable offense.

Before the enactment of BNS in 2023 the issue of sexual intercourse under false promises, including those related to employment, was not explicitly defined as a criminal offense in Indian law. However, the IPC did address consent obtained through deception under Section 375 and Section 90, which could be interpreted to deal with such situations.

The Section 375 of IPC defines rape and includes instances where consent obtained through a "misconception of fact," which may apply to false promises. Section 90 of the IPC clarified that consent given under a misconception is not valid consent. Therefore, while not explicitly mentioned, the principles could be applied to cases involving false promises of employment.

The Apex court highlighted the importance of the promise-maker's or accused person's intent to deceive the complainant after examining Section 375/90 of IPC regarding consent in cases of rape and observed that consent must involve an active and reasoned deliberation. The court also emphasized that a false promise vitiates consent only if the promise was made in malafide and directly influenced the complainant's decision to engage in sexual activity⁶.

- (B) **Sexual intercourse by false promise of marriage**: - The latter part of the provision criminalizes engaging in sexual intercourse with a woman by securing her consent through the promise of future marriage. Under Section 493 of IPC, a similar offense is addressed, recognized as 'cohabitation caused by a man deceitfully inducing a belief of lawful marriage.' However, Section 69 expands the scope of the previous section by

⁶ Pramod Suryabhan Pawar v. The State of Maharashtra, AIR 2019 SC 4010

widening its ambit and enhancing the protection of women against any form of sexual exploitation.

In the case of *K. Hymavathi v. The State of Andhra Pradesh and Ors*⁷, the Supreme Court upheld the conviction of a man for rape based on a false promise to marry. The court considered the deception and its impact on the victim's consent.

In the case of *Naim Ahamed v. State (NCT of Delhi)*,⁸ the Apex court emphasizes that there is a significant distinction between making a false promise to marry and merely failing to fulfil a promise to marry. It cautions against treating every breach of promise to marry as a false promise and prosecuting individuals under Section 376 of the IPC which deals with the offense of rape. In addition, the court stated that not every broken promise to marry should automatically lead to a charge of rape.

III. NATURE AND SCOPE

The nature of the offense committed under Section 69 of the BNS includes cognizable, non-bailable, and non-compoundable attributes as specified under the statute. Thus, the police can make arrests without a warrant, and the non-bailable status denies the accused the right to secure pre-trial release through bail, reflecting the gravity of the offense and the potential risks involved. Furthermore, being non-compoundable means that the offense cannot be settled through compromise or mutual agreement between parties. The offense is triable exclusively by the Court of Sessions, indicating its complexity or severity, with trials conducted at a higher judicial level.

The scope of this provision appears to address the issue of sexual intercourse obtained under false pretences of marriage or through deceitful means. This section aims to clarify and strengthen the legal framework surrounding consent, false promise of marriage, and rape within the context of evolving societal norms.

The key aspects of the scope of Section 69 can be stated: -

- **Differentiation of Unfulfilled and False Promises**: This provision likely emphasizes the importance of differentiating between unfulfilled promises of marriage and false promises made with deceitful intent in consensual sexual relationships. This distinction is crucial in determining the validity of consent and in prosecuting cases involving sexual intercourse under deceitful premises.

⁷ K. Hymavathi v. The State of Andhra Pradesh and Ors, SLP (Cri) No. 7459 of 2019

⁸ Naim Ahamed v. State (NCT of Delhi), 2023 1 ALT (Cri) SC 249

- **Consent and Misconception of Fact:** The section probably delves into the nuances of consent obtained through a 'misconception of fact,' as outlined in Section 90 of the IPC. It may provide further clarity on how consent under false pretences, particularly false promises of marriage, is treated within the legal framework.
- **Legal Basis for Prosecution:** This provision likely serves as a legal basis for prosecuting individuals who engage in sexual acts under false pretences, especially when such actions amount to deceit or betrayal of trust linked to promises of marriage. It may establish guidelines for identifying and penalizing such behaviour under the new legal code.
- **Judicial Precedents and Interpretations:** The section could also incorporate insights from relevant judicial interpretations, such as the cases of *Yedla Srinibas vs. State of Andhra Pradesh*⁹ and *Pramod Suryabhan Pawar v State of Maharashtra*¹⁰. These interpretations may help shape the understanding of consent, deception, and the legal boundaries between rape and consensual sex within the context of Section 375 and Section 69 of the Bharatiya Nyaya Sanhita.

Section 69 likely plays a pivotal role in modernizing and fine-tuning the legal landscape concerning sexual relationships, consent, false promises of marriage, and the prosecution of offenses related to sexual intercourse under deceitful means within contemporary India.

IV. DIFFERENCE BETWEEN SECTION 493 OF THE IPC AND SECTION 69 OF BNS

Section 69 of the Bharatiya Nyaya Sanhita (BNS) is more similar to Section 493 of the Indian Penal Code (IPC). Both sections deal with offenses involving deceit in sexual relationships, but there are differences in their specifics: -

Section 493 IPC focuses on a man deceiving an unmarried woman into believing that she is lawfully married to him, leading her to cohabit with him under this false belief. The punishment can be imprisonment for up to ten years and a fine.

In this case of *Ram Chandra Bhagat v. State of Jharkhand*,¹¹ the Supreme Court of India analysed the provisions of Section- 493 IPC and upheld the conviction of the appellant under this section as the court emphasized that deceitful inducement to cohabit, under the pretence of a lawful marriage, constitutes an offense under this provision.

⁹ Yedla Srinibas vs. State of Andhra Pradesh, AIR OnLine 2006 SC 40

¹⁰ Pramod Suryabhan Pawar v State of Maharashtra, 2019 (3) SCC (CRI) 579

¹¹ Ram Chandra Bhagat v. State of Jharkhand, (2013) 1 SCC 562

Section 69 of BNS addresses the issue of sexual intercourse obtained through deceitful means, including a false promise of marriage or false promises of employment or promotion, and to exploit the woman sexually. The punishment for these offenses can also be imprisonment for up to ten years and a fine.

While both sections address deceit in the context of sexual relationships, however, there is a thin line difference between these two provisions. Section 69 of BNS has a broader scope, including any deceitful means, not just the false inducement of a lawful marriage. It also specifically addresses the issue of a false promise of employment or promotion, which is not covered under Section 493 of IPC.

(A) Comparative Perspective-

Section 69 of the Bharatiya Nyaya Sanhita, 2023 in India criminalizes sexual intercourse with a woman by obtaining her consent through a false promise of marriage. However, there are countries with laws that criminalize obtaining consent for sexual acts through deception, fraud, or false promises, which can include promises of marriage. In German law, obtaining consent for sexual acts through deception can be considered sexual assault. Swiss law also considers it a crime to obtain sexual acts through abuse of a position of power or through deception. In Canada, consent obtained through fraud can invalidate consent to sexual activity, potentially leading to sexual assault charges. Procurement of sexual activity by deception or false representation is treated as offence in Singapore.¹²

V. ANALYSIS OF SECTION 69

Analysing Section 69 of the Bharatiya Nyaya Sanhita, 2023 requires consideration of several key points, those are as follows:

- i. **Solemnization of Marriage-** Section 69 of the BNS addresses situations where sexual intercourse occurs under the false promise of marriage. By criminalizing sexual activity obtained through deceitful means or false promises of marriage, the law aims to protect the institution of marriage and ensure that individuals engage in sexual relationships based on genuine intentions while aiming to deter individuals from exploiting marriage promises for sexual gratification.
- ii. **Deceitful Means-** The section explicitly outlines that engaging in sexual intercourse through deceitful means, such as false promises of marriage, constitutes a punishable

¹² Wing Cheong Chan, *False Promise to Marry and Other Forms of Sex by Deception in India and Singapore*, 34 NLSI Rev. 97-98 (2022)

offense. This provision acknowledges the potential harm caused by deceit in intimate relationships and seeks to hold individuals accountable for exploiting trust and consent through deceptive tactics.

- iii. **Sexual Autonomy of Women and Consent-** This section emphasizes the importance of safeguarding the sexual autonomy of women and ensuring that sexual activity occurs with valid consent. By criminalizing sexual intercourse obtained through false promises of marriage, the law recognizes that consent obtained under false pretences is not genuine consent. This provision seeks to empower women to make informed decisions about their sexual relationships and protects them from being misled or exploited.
- iv. **Legislative Intent-** The inclusion of Section 69 in the BNS reflects the legislative intent to address gaps in existing laws related to sexual offenses and deception. By specifically criminalizing sexual intercourse obtained through deceitful means or false promises of marriage, employment, or promotion, the legislature demonstrates its commitment to protecting individuals from exploitation and ensuring justice for victims of deceptive practices. In the case of *Moideen Kutty Haji v. Kunhikoya*¹³, the court observed that section 493 of IPC shall not be attracted in this though the accused person left the place of marriage registration office in spite of being involved in sexual relationship with the woman. The reason behind this that there was no certain provision dealing with the same offence.
- v. **Nature of the term 'whoever'**- The term 'whoever' under this provision is broad and inclusive in nature, as it incorporates not only natural persons but also groups or associations. Precisely, the term 'whoever' refers to 'anyone' or 'any person' without exception¹⁴. Thus, in the context of Section 69, the term 'whoever' is gender-neutral, applying to individuals of any gender. This inclusivity ensures that the law pertains to all persons, regardless of their gender identity, reflecting a broad approach to legal interpretation and enforcement, especially in the event of legal recognition by Indian legislature of marriage within LGBTQ+ community in future.

Thus, Section 69 of the BNS serves to reinforce the importance of trust, transparency, and genuine consent in intimate relationships while holding perpetrators accountable for exploiting trust and deceiving individuals for sexual gratification.

¹³ *Moideen Kutty Haji v. Kunhikoya*, AIR 1987 Ker 184

¹⁴ R RAMACHANDRAN, SUPREME COURT WORDS AND PHRASES, 647-48 (2023)

VI. IMPLICATION

Section 69 of the Bharatiya Nyaya Sanhita (BNS) has sparked considerable debate due to its potential implications. Critics often argue that the provision might inadvertently reinforce endogamy by narrowly focusing on the perpetrator's intent to marry, possibly perpetuating societal norms. Additionally, concerns have been raised regarding the provision's ambiguity and discretionary nature, which could lead to unfair treatment and reliance on gender stereotypes, particularly disadvantaging women.¹⁵ While the law outlines consequences, there are worries that it may not adequately address the comprehensive support needed for victims of sexual exploitation, potentially perpetuating cycles of injustice. Moreover, the broad definition of "deceitful means" raises concerns about possible misuse, with the law being exploited for false accusations and unjust outcomes. Criminalizing consensual sex based on a broken promise of marriage also raises questions about individual autonomy and agency in intimate relationships. Furthermore, the provision could be misused by earmarking couples who face societal disapproval due to their backgrounds, exacerbating societal prejudices and as well as marginalizing vulnerable groups. Irrevocably, this provision aims to safeguard women's rights, its potential implications warrant careful consideration and possible amendments to ensure fairness and protect individual rights within the legal framework.

VII. CONCLUSION

Section 69 of the Bharatiya Nyaya Sanhita, 2023 represents a significant step forward in addressing the complexities surrounding sexual relations under false promises of marriage or deceitful means. By criminalizing such acts, the law aims to protect individuals from exploitation and uphold the principles of trust, transparency, and genuine consent in intimate relationships.

The provision's broad scope, providing various forms of deceitful means beyond false promises of marriage, reflects a comprehensive approach to combat sexual exploitation of women. Additionally, its gender-neutral language ensures inclusivity and applicability to all individuals, irrespective of their gender identity.

However, Section 69 does not come without its implications and criticisms. Concerns regarding reinforcement of societal norms, ambiguity in interpretation, and potential misuse highlight the need for careful consideration and possible amendments to ensure fairness and protection of

¹⁵ *Bharatiya Nyaya Sanhita (BNS), 2023 on False Promise of Marriage* (March 20,2024, 9:27 AM), <https://www.civildaily.com/news/nyaya-sanhita-false-promise-of-marriage/>

women rights within the legal framework.

Further, balancing the protection of women from exploitation with safeguarding their rights and autonomy remains a challenge, requiring ongoing debate, examination, and refinement of legal provisions to ensure justice for all.
