

## **SECTION 69 OF BHARATIYA NYAYA SANHITA: A CRIMINAL FRAUD**

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### **ABSTRACT**

*Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023 expressly criminalises sexual relations obtained through dishonest means such as false promises of marriage, employment, or promotion it marks a substantial change in Indian criminal law. While the provision seeks to address a persistent gap in the legal framework concerning deception-driven sexual exploitation, its enforcement raises several doctrinal, constitutional, and legal challenges. This essay offers a critical examination of Section 69, arguing that although it aspires to protect victims and promote sexual autonomy, it suffers from conceptual inconsistencies, reflects gender bias, and overlaps with other provisions of the Bharatiya Nyaya Sanhita, such as Sections 28 and 63. The use of gender-exclusive language poses constitutional issues under Articles 14 and 15 by marginalizing LGBTQ+ communities and reinforcing heteronormative assumptions. Furthermore, the lack of clear sentencing standards, ambiguous rules of evidence, and the potential for misuse raise concerns about procedural arbitrariness and disproportionate punishment. This analysis explores whether Section 69 serves as a necessary legal measure or merely adds complexity to the criminal justice system, drawing on case law, principles of statutory interpretation, and comparative legal perspectives. To promote fairness and align the provision with constitutional principles, the study proposes targeted reforms such as adopting gender-neutral language, establishing clearer evidentiary requirements, safeguarding privacy rights, and introducing structured sentencing norms. The paper concludes that while Section 69 targets a valid and pressing form of exploitation, its practical effectiveness will depend on nuanced judicial interpretation and a comprehensive legislative approach that balances the rights of victims with the principles of due process.*

**Keywords:** Section 69 (BNS), Consent, Deception, Fraud, False Promise of Marriage, Sexual Act

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## **INTRODUCTION**

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, signaled a significant transformation in India's criminal justice framework, replacing the colonial-era Indian Penal Code (IPC) of 1860. While much of the BNS retains the structural and linguistic framework of the IPC, several provisions reflect attempts to respond to contemporary social challenges. One such provision Section 69 has sparked considerable debate due to its distinctive formulation and the complex moral, legal, and constitutional questions it raises. Specifically, it criminalizes sexual acts obtained through "deceitful means," particularly in contexts involving false promises of marriage, employment, or professional advancement.

In the past, courts interpreted Sections 375 (rape) and 90 IPC (consent vitiated by misconception) to apply to situations involving deceptive consent.<sup>1</sup> Section 69 now provides a standalone statutory foundation for this form of exploitation. It distinguishes such acts from rape yet treats them as criminal offenses, punishable by up to ten years' imprisonment and a fine. At first glance, the law appears to confront a growing pattern of cases often involving women who are manipulated into sexual relationships under false emotional pretences, resulting in abandonment, psychological trauma, and social stigma.

Yet deeper legal dilemmas emerge. Was this new offense necessary when provisions on fraud (e.g., Section 28 BNS) and sexual assault already exist? Does Section 69 represent a reasoned response to contemporary social realities, or does it dangerously expand criminal law into the domain of failed relationships and personal conduct? This paper delves into the roots of the provision, its jurisprudential departure from prior interpretations, and the extent to which it distinguishes between manipulative deception and genuine relational breakdowns.

Section 69 states:

*"Whoever, by deceitful means or making by 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 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."<sup>2</sup>*

This clause outlines its core elements: the act of intercourse, consent induced through false representation (especially promises of marriage), and the accused's lack of genuine intent from

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<sup>1</sup> The Indian Penal Code, 1860 (Act 45 of 1860) s. 375; The Indian Penal Code, 1860 (Act 45 of 1860) s. 90.

<sup>2</sup> The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023) s. 69.

the outset. The provision introduces complex evidentiary issues like how can courts determine original intent? Once accused, how does a defendant prove innocence in such inherently subjective scenarios?

Further concerns relate to proportionality and fairness. The law provides only a maximum punishment, granting courts broad discretion in sentencing. Critics point to the gender-specific language targeting only men who deceive women as potentially violative of Article 14 (equality), and caution that it reinforces regressive assumptions about women's autonomy and sexual agency. Moreover, by excluding non-heterosexual relationships, the law fails to reflect the full diversity of contemporary social realities.

The conceptual overlap between Section 69 and civil doctrines of fraud, specifically under Section 17 of the Indian Contract Act, 1872, is a crucial aspect examined in this paper. Both are predicated on the notion of dishonesty and malice. This analogy demonstrates how civil law rules that have historically been used in contract disputes are now being applied to criminal liability, posing issues with due process, proportionality, and culpability.

This essay explores the legal, constitutional, and practical implications of Section 69. It evaluates the provision's legitimacy, its susceptibility to misuse, its relationship with broader legal doctrines, and its societal impact. Ultimately, it seeks to determine whether Section 69 fills a genuine legal gap or whether it inadvertently paves the way for over-criminalisation and the unjust intrusion into private affairs.

## **HISTORY**

Section 69 of the Bharatiya Nyaya Sanhita, 2023, builds upon a longstanding legal approach in Indian criminal law concerning sexual relations obtained through deception particularly in cases involving false assurances of marriage, employment, or advancement. Historically, such situations were primarily addressed through Sections 375 and 376 of the Indian Penal Code, 1860, which defined and penalized rape, along with Section 90, which addressed consent obtained under a misconception of fact.

Section 90 established that consent obtained through fear or a misconception of fact was not legally valid. This provision played a pivotal role in judicial interpretation, especially in cases where courts had to assess whether a woman's consent to sexual activity was influenced by a false promise often of marriage. If such deception was proven, the consent was deemed invalid, potentially bringing the act within the scope of Section 375. However, this approach was far

from straightforward, as courts frequently had to grapple with the question of whether the accused had genuinely intended to marry or merely used the promise as a pretext. A patchwork of inconsistent decisions resulted from this subjective investigation.

Cases where consent was obtained under false pretences were covered by Section 375. Many women alleging deceit relied on this provision, but not all cases fit neatly within the definition of rape. For conviction, it had to be proven that the accused never intended to marry the complainant from the outset, placing a heavy burden of proof on the prosecution and resulting in uneven outcomes.

Section 415 IPC (cheating) also addressed such deception but imposed only minor penalties up to one year of imprisonment or a fine failing to capture the emotional and psychological harm suffered by victims.<sup>3</sup>

Judicial decisions highlighted several issues. Courts emphasized examining the accused's intent at the time of the promise. If the relationship ended for unrelated reasons, criminal liability would not follow. But where intent to deceive was proven, courts occasionally expanded the interpretation of rape under Section 375, even if it was not conceptually ideal. Concerns about misuse of rape provisions also surfaced, particularly in cases of failed relationships.

A notable gap in the IPC was the absence of a dedicated provision targeting sexual acts induced by deceit that did not qualify as rape. Although deception rendered consent invalid, there was no separate statutory category to address such conduct. This led to increasing calls for legislative clarity.

The Bharatiya Nyaya Sahita responded by introducing Section 69, creating a specific offense for sexual intercourse obtained through deceitful means, especially false promises of marriage, job, or promotion. This marked a significant reform, forming part of a broader reorganization under the BNS, which, unlike the IPC, introduced a dedicated chapter on offences against women and children. It also aligned provisions related to minors with the Protection of Children from Sexual Offences Act, recognizing the need for harmonized classifications and sentencing.

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<sup>3</sup> The Indian Penal Code, 1860 (Act 45 of 1860) s. 415.

## **ESSENTIAL ELEMENTS FOR THE APPLICATION OF SECTION 69 OF BNS**

Section 69 of the *Bharatiya Nyaya Sanhita, 2023* introduces a new offence that criminalises sexual acts obtained through deceitful means. Unlike traditional definitions of sexual offences, this section focuses not on physical force, but on the emotional aspect, including the abuse of trust, manipulation, and emotional coercion. It acknowledges that consent obtained through lies, false promises, or impersonation is not real consent. To better understand this new section, it is important to know what are the elements which attract the application of this section. The essentials to be fulfilled are:

### **1. Sexual Intercourse or Sexual Act Took Place**

The first element is the occurrence of a sexual relationship or act between the parties. In normal relationships, such acts may result from mutual trust or emotional connection. However, Section 69 focuses not on the act itself but on how consent was obtained. It does not criminalise consensual sex between adults but targets situations where consent was secured through deliberate deception. In *Uday v. State of Karnataka*, the Supreme Court held that consensual sex in a genuine relationship that later failed to lead to marriage does not amount to rape.<sup>4</sup>

### **2. Consent Was Obtained Through “deceitful means”**

This is the heart of the offence. Section 69 punishes individuals who use manipulative or false representations to obtain sexual consent. Several decisions support the idea that consent obtained under a misconception of fact is not valid:

#### i. *Deepak Gulati v. State of Haryana*

The Court distinguished between false promises and genuine relationships, ruling that if the accused did not intend to marry from the start, the consent is vitiated.<sup>5</sup>

#### ii. *Pramod Suryabhan Pawar v. State of Maharashtra*

This case clarified that a breach of promise to marry would amount to rape only if it is shown that the promise was false at the time it was made, reinforcing the importance of the accused's intent.<sup>6</sup>

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<sup>4</sup> (2003) 4 SCC 46.

<sup>5</sup> (2013) 7 SCC 675.

<sup>6</sup> (2019) 9 SCC 608.

This displays the careful differentiation between false and breach promises, aligning with the spirit of the section. Under Section 69, the law specifically lists four deceitful means:

a. False Promise of Marriage

In many cases, a woman may agree to a sexual relationship with the genuine belief that it is part of a committed relationship that will lead to marriage. If the man never intended to marry her, and made the promise only to obtain sexual access, that promise becomes a lie and the foundation of her consent is invalid.

b. False Promise of Employment or Promotion

Consent given because someone was told they would get a job, promotion, or professional help in return is also tainted. This is especially relevant in relationships where there is a power imbalance, where economic dependency or ambition is exploited.

c. Impersonation

This covers more extreme situations where someone pretends to be another person entirely maybe by using a false identity or even acting as someone trusted by the victim. If the victim consents thinking the other person is someone else, that consent is fundamentally flawed.

### **3. Intentional and Knowing Deceit by the Accused**

For the law to apply, it must be shown that the accused was fully aware that they were lying, and that the lie was told with the specific intent of securing sexual relations. This ensures that the section does not punish genuine relationship breakdowns, misunderstandings, or changes of heart. The focus is on the mental state of the accused: Did they intend to fulfil the promise? Or was the promise a calculated tactic to exploit the victim's emotions or circumstances?

### **4. Consent Was Not Truly Free or Informed**

As given under Section 28 of Bhartiya Nyaya Sanhita, for consent to be valid, it must be voluntary, informed, and uncoerced. Section 69 says that when someone consents based on a lie, that consent is not valid, because it was given without access to the truth. This reflects a more nuanced understanding of sexual autonomy. It recognises that emotional manipulation can be as harmful as physical force, especially in societies where sex outside marriage can carry stigma or long-term consequences for women.

### **5. Punishment and Legal Classification**

Section 69 is a cognisable and non-bailable offence, punishable by up to ten years of imprisonment along with a fine. This provision reflects a progressive understanding that sexual violence is not limited to physical force; deceit, manipulation, and betrayal particularly when exploiting a person's trust or vulnerability can be equally damaging. By distinguishing genuine consent from consent obtained through deliberate deception, the section aims to ensure accountability for manipulative conduct while upholding the legitimacy of consensual relationships.

To establish culpability under Section 69 of the BNS, the prosecution must prove that the accused intentionally made a false representation such as a promise of marriage, employment, or affection with the aim of inducing the woman into a sexual relationship. It must also be shown that the consent was vitiated by this deception and that the accused was aware the promise was false or never intended to fulfil it.

### **UNNDERSTANDING THE LEGISLATIVE PURPOSE AND VALUE OF SECTION 69**

To establish guilt under Section 69 of the BNS, the prosecution must demonstrate that the accused deliberately misled a woman into engaging in sexual activity by making a false promise or representation such as one concerning marriage, employment, or affection that induced consent tainted by deception, and that the accused either knew the promise was untrue or never intended to fulfill it.

In previous years, Indian courts have handled cases involving rape under Section 375 IPC and have struggled to decide whether deception rendered consent void. When their experiences did not involve physical force, victims frequently lacked effective remedies, which led to either excessive penalisation or total legal inaction. By establishing a specific offence that punishes sexual acts obtained through deception and acknowledging that exploitation can take place without physical violence, Section 69 fills this gap. The Court held that criminal liability occurs when a false promise is made exclusively to gain sexual access, distinguishing deception from a simple breach of promise.<sup>7</sup>

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<sup>7</sup> *Pramod Suryabhan Pawar v. State of Maharashtra* (2019) 9 SCC 608.

Contemporary jurisprudence acknowledges that coercion need not be physical deception, emotional manipulation, and societal pressure can significantly compromise the validity of consent. Section 69 reflects this evolving understanding by criminalizing acts such as impersonation, fraudulent promises of marriage, and exploitation rooted in emotional or financial dependency. This approach upholds individual autonomy by affirming that true consent must be both voluntary and informed, grounded in honesty and free will.

Historically, survivors had to depend on Section 375 of the IPC, which courts often declined to apply in cases lacking physical force. In *Maheshwar Tigga v. State of Jharkhand*, for instance, the Supreme Court acquitted the accused, holding that a mere breach of promise does not constitute rape unless it can be shown that the accused never intended to fulfil the promise from the outset. Such interpretations led to inconsistent judicial outcomes. Section 69 addresses this gap by offering a specific legal remedy for sexual exploitation through deception, introducing a balanced legal response that neither dilutes the survivor's experience nor stretches the traditional definition of rape beyond its intended scope.

In a society where premarital sexual relations continue to carry social stigma particularly for women consent obtained through deception can result in profound emotional and reputational harm. Section 69 acknowledges this socio-cultural reality by offering legal protection against deceptive conduct and reinforcing the importance of informed and voluntary consent. In doing so, it seeks to remedy the disproportionate burdens often placed on women, while advancing the constitutional principles of equality and dignity.

Section 69 provides survivors with both legal acknowledgment and moral validation by explicitly criminalizing sexual consent obtained through deceit. It affirms that securing sexual access through manipulation is not only ethically reprehensible but also legally impermissible under criminal law.

Earlier, individuals who experienced this form of deception had limited or ill-fitting legal avenues, often being forced to rely on laws that didn't truly reflect their circumstances. Section 69 marks a shift towards a more victim-focused understanding of justice it offers a remedy tailored to cases where there may be no physical force, yet the harm is deeply real. By removing the burden of proving traditional definitions of rape, it spares survivors further trauma. At the same time, it acts as a safeguard against the misuse of trust and authority, especially in relationships where emotional or professional power imbalances exist.

In earlier cases involving deception, courts often arrived at inconsistent conclusions, leaving both survivors and legal practitioners uncertain about outcomes. With clearer statutory guidance now in place, authorities and judges are better equipped to apply the law consistently, making justice more predictable and remedies more accessible for those affected.

Ultimately, Section 69 embodies a modern understanding of consent not as a mere physical act, but as a conscious and informed choice that must be made freely and truthfully. By recognising the importance of autonomy, dignity, and bodily integrity, the provision marks a shift away from patriarchal narratives and embraces a more rights-based, inclusive approach to gender justice.

Section 69 of the BNS, 2023, represents a meaningful step toward addressing a long-standing gap in the legal response to sexual exploitation. It offers a balanced remedy that reflects society's evolving understanding of consent and the complexities of intimate relationships. While its enforcement may present challenges and the potential for misuse cannot be ignored, the provision itself signals progress. It reinforces the constitutional promises of human dignity and personal autonomy, standing as both a legal innovation and a reaffirmation of core rights in the context of gender justice.

## **IS SECTION 69 REDUNDANT?**

The claim that Section 69 of the Bharatiya Nyaya Sanhita (BNS) is essentially redundant is one of the primary objections that are being raised during academic discussions. Critics contend that the behaviours it punishes are already addressed in other parts of the BNS, particularly in Section 63, which deals with rape, and Section 28, which defines consent under misconception. They contend that Section 69 offers no significant addition to the current framework and needlessly adds to the legislative clutter.

There are two main points of contention in this argument. First, Section 28 BNS makes it clear that consent acquired through deception is not valid. Critics argue that existing legal provisions already cover instances where consent is obtained through fraud or deception, including false promises of marriage. They argue that Section 63, which criminalizes sexual activity without valid consent, read with Section 28 defining when consent is not legally valid, sufficiently addresses such situations. For instance, if a woman consents to sex believing in good faith that the man intends to marry her, and it later emerges that he never had such intentions, her consent would be rendered invalid under Section 28, thereby making the act punishable as rape under

Section 63. Additionally, they argue that similar instances of deception can be covered by other general BNS provisions on cheating or fraud, and that enacting a specific section like Section 69 runs the risk of unnecessarily criminalising failed personal relationships that could be settled through civil remedies such as compensation or breach of promise lawsuits.

Second, critics claim that acquiring sexual relations through a false marriage promise as a distinct crime muddies the conceptual distinction between sexual offences. Situations where consent is tainted by deceit, coercion, or fear are already covered by Section 63. Because courts may prosecute similar fact patterns under different provisions, they contend that adding Section 69 fragments the legal landscape by creating overlapping offences for the same conduct. This could result in inconsistent application.

Nevertheless, despite their apparent persuasiveness, these criticisms ignore important subtleties in the intent, wording, and implementation of Section 69.

First off, even though Section 28 outlines what constitutes valid and invalid consent, it only establishes the parameters for other offences and does not, by itself, constitute a crime. Rape, a strictly defined crime involving sexual acts performed without consent or with consent obtained under duress or force, is the subject of Section 63. However, sexual activity that is induced through dishonest means specifically, a false promise of marriage or employment made with no intention of fulfilling it is the only kind of misconduct that is isolated by Section 69.

It is important that the word “deceitful” be used in Section 69. In particular, Section 17 of the Indian Contract Act, 1872, which calls for proof of *mala fide* intent at the time of making a promise, is conceptually aligned with this term with civil law definitions of fraud. In contrast, Section 28 addresses any misconception of fact, without necessarily focusing on whether the accused had deliberated the intent to deceive. This distinction narrows the scope of Section 69 to target only those cases where the accused actively used deception, not situations of mutual misunderstanding or genuine relationship breakdown.

This point is crucial in rebutting the claim that Section 69 fails to distinguish between deliberate deception and a genuine promise made in good faith that could not be fulfilled due to unforeseen circumstances. By requiring proof of deceitful means, Section 69 inherently demands that the prosecution show *mens rea*, a guilty mind, at the time the promise was made. The law does not criminalise every unfulfilled promise of marriage; rather, it targets calculated, exploitative deception designed solely to secure sexual consent.

Additionally, Section 69 plays a clarifying and gap-filling role. Historically, courts stretched the definition of rape under Section 375 IPC to cover false promise of marriage cases, but this practice was inconsistent and often controversial. Some judgments held that a failed promise could amount to rape, while others required proof of intent to deceive from the outset. There is also a distinction between mere breach of a promise and not fulfilling a false promise.<sup>8</sup> By introducing Section 69, the legislature provides a dedicated, clearly defined offence, offering prosecutors and judges a more tailored tool to address such cases without forcing them to apply the heavy and sometimes ill-fitting label of rape or rely on minor offences like cheating.

For instance, imagine a situation where a man falsely promises marriage solely to obtain sexual favours but later claims that the act was consensual. Under Section 63, proving rape requires demonstrating lack of valid consent, which can be difficult if the sexual act was initially consensual. However, under Section 69, the deceit itself becomes the crux of the offence, filling a crucial legal gap and allowing punishment more proportionate to the wrongdoing.

Furthermore, by compelling all cases involving trickery to fall under the rape framework, Section 69 reduces the possibility of overcriminalization. Although deceitful sexual exploitation is a serious crime with harsh punishments, it may not always involve the violent or physical violation that is commonly associated with rape. By acknowledging the psychological and social harm that deceit causes and maintaining proportionality in sentencing, Section 69 guarantees that the law can effectively address this type of harm.

Finally, the claim that Section 69 is unnecessary downplays the nuanced legal distinctions integrated into its wording and intent. Section 69 classifies a particular type of intentional, deception-based enticement sexual exploitation and gives it a unique legal status, rather than repeating already-existing provisions. Fairness and proportionality issues are tackled by highlighting intent that is not honest in nature, which makes an interesting difference between exploitative behaviour and sincere partnerships. Though it has its own shortcomings, Section 69 ultimately improves the legal system by providing clarity, specificity, and a punishment that is appropriately regulated where previous provisions failed.

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<sup>8</sup> *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra* (2019) 18 SCC 191.

## **EXAMINING THE PITFALLS OF SECTION 69**

Despite being passed with the intent to protect victims and serve the public interest, Section 69 has a number of disadvantages that should not be overlooked. Although the provision aims to protect people and advance justice, there have been problems in implementing the same practically. These drawbacks include the possibility of overreach, unclear implementation, and unforeseen repercussions for vulnerable populations. Furthermore, there have been discussions concerning the general efficacy and fairness of the law in practical situations as a result of the occasional compromise of the balance between upholding the public interest and guaranteeing equitable treatment under the law.

### **1. Gender-Specific Language and the Exclusion of LGBTQ+ Identities**

The wording of Section 69, which expressly refers to “women,” excludes non-binary, transgender, and other LGBTQ+ people because it takes a heteronormative and binary view of victimhood. This is not only socially exclusionary but constitutionally suspect. The Supreme Court recognized the right of individuals to self-identify their gender and affirmed that all fundamental rights under the Constitution apply equally to transgender persons.<sup>9</sup> The continued use of gender-specific terminology in criminal law, despite such jurisprudence, renders the provision constitutionally vulnerable under Articles 14 and 15.

### **2. Undermining Women’s Agency through Over-Protective Legal Framing**

Although Section 69 aims to protect women from exploitation under the guise of marriage, job, or promotion, it may also inadvertently perpetuate a paternalistic view that treats women as inherently vulnerable and devoid of agency. This concern echoes the Supreme Court’s reasoning in *Joseph Shine v. Union of India*, where the adultery law was struck down for treating women as property of their husbands.<sup>10</sup> Similarly, the Court stressed the need to uphold dignity and autonomy over regressive social norms.<sup>11</sup> A law that frames women solely as victims’ risks reinforcing outdated stereotypes and undermining their constitutional status as equal citizens.

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<sup>9</sup> *National Legal Services Authority v. Union of India* (2014) 5 SCC 438.

<sup>10</sup> AIR 2018 SC 4898.

<sup>11</sup> *Independent Thought v. Union of India* (2017) 10 SCC 800.

### 3. Violation of Article 14: Unequal Legal Treatment Based on Gender

By criminalizing the act only when it involves a woman being deceived, Section 69 violates Article 14 of the Constitution, which guarantees equality before the law and equal protection of the laws. It has been held that laws based on gender stereotypes must be subjected to strict scrutiny and cannot be justified on the basis of archaic notions of protectionism.<sup>12</sup> Similarly, court has also affirmed that equal treatment must extend across the spectrum of gender and sexual orientation, reinforcing that legislative classifications must not be arbitrary or exclusionary.<sup>13</sup>

### 4. Procedural Concerns

The enforcement of Section 69 often necessitates an invasive examination of intimate personal relationships, such as determining the genuineness of a promise to marry. Such inquiry can violate an individual's right to privacy, a fundamental right affirmed in *Justice K.S. Puttaswamy (Retd.) v. Union of India*. The Court emphasized that privacy includes decisional autonomy in personal matters, including relationships and bodily integrity.<sup>14</sup>

The structure of Section 69 may encourage a presumption of guilt, particularly in disputes where the veracity of a promise to marry is ambiguous, thereby undermining the presumption of innocence, a cornerstone of criminal jurisprudence. Due to the nature of section 69 which victimises the women simultaneously also villainises the men and therefore, despite the burden of proof of proving the guilt rests on the prosecution, the man will be considered guilty in the eyes of the society. The Supreme Court has underscored that guilt must be established beyond a reasonable doubt.<sup>15</sup> Without clear evidentiary standards, Section 69 risks reversing the burden of proof, violating these essential principles.

### 5. Lack of Sentencing Guidelines Leading to Judicial Arbitrariness

Section 69 prescribes only a maximum punishment without stipulating a minimum, thereby providing no framework to guide sentencing. This may lead to arbitrary discretion in pronouncing the punishment and may lead to injustice for the accused. The Court noted that inconsistent sentencing undermines public faith in the criminal justice system.<sup>16</sup>

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<sup>12</sup> *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1.

<sup>13</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1.

<sup>14</sup> 2017 AIR SC 4161.

<sup>15</sup> *Sharad Birdhichand Sarda v. State of Maharashtra* (1984) 4 SCC 116.

<sup>16</sup> *Swaran Singh v. State of Punjab* 2011 SCC Online P&H 10128.

The lack of clear sentencing guidelines in Section 69 often results in inconsistent and unpredictable outcomes.

## **6. Potential for Misuse and Frivolous Litigation**

Because matters involving sexual conduct based on promises of marriage, employment, or promotion are deeply personal and subjective, Section 69 is particularly vulnerable to misuse. False allegations can sometimes be made out of revenge or pressure, which not only weaken genuine claims but also strain the legal system and cause serious harm to the lives of the accused. The Supreme Court recognized this issue in *Preeti Gupta v. State of Jharkhand*,<sup>17</sup> where it acknowledged the misuse of Section 498A of the IPC and emphasized the importance of safeguards. This precedent highlights the need for similar procedural checks in vulnerable provisions like Section 69.

## **POSSIBLE SUGGESTIONS FOR ADDRESSING THE DOCTRINAL AND PROCEDURAL LACUNAE IN SECTION 69 OF THE BNS, 2023**

Section 69 of the Bharatiya Nyaya Sanhita, 2023, marks a progressive move in acknowledging deceit-based sexual exploitation. However, it suffers from significant doctrinal inconsistencies and procedural flaws. These shortcomings raise concerns about its constitutional validity and open the door to potential misuse, misapplication, and the inadvertent exclusion of vulnerable groups it aims to protect. The following suggestions are proposed to strengthen the legal efficacy and fairness of the provision:

### **1. Reframe the Provision Using Gender-Neutral Language**

Section 69 currently applies exclusively to situations where a man deceives a woman. This binary and gendered construction excludes male, transgender, and non-binary victims. It also perpetuates stereotypes about male perpetrators and female victims. Replacing gendered terms with gender-neutral language such as “person” would ensure inclusivity and align the provision with Articles 14 and 15 of the Constitution. Judicial recognition in *NALSA v. Union of India* and *Navtej Singh Johar v. Union of India* mandates protection for gender-diverse and queer individuals under the law.<sup>18</sup>

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<sup>17</sup> *Preeti Gupta v. State of Jharkhand* 2010 AIR SC 3363.

<sup>18</sup> (2014) 5 SCC 438; (2018) 10 SCC 1.

## **2. Extend Applicability to LGBTQ+ and Non-Heterosexual Relationships**

The language of Section 69 implicitly limits its applicability to heterosexual relationships. Given the post-Navtej jurisprudence, any legal provision that excludes non-heterosexual relationships is constitutionally vulnerable. The scope of the provision should explicitly cover deceit in all consensual sexual relationships, regardless of sexual orientation or gender identity, thereby embracing a rights-based understanding of personal autonomy.

## **3. Establish Sentencing Guidelines to Prevent Arbitrary Discretion**

The absence of minimum sentencing under Section 69 allows wide judicial discretion, leading to inconsistent and potentially disproportionate punishments. Codifying sentencing ranges based on severity of deceit (e.g., impersonation versus emotional manipulation) can enhance uniformity and predictability.

## **4. Safeguard the Presumption of Innocence Through Clear Evidentiary Standards**

The provision's structure may implicitly reverse the burden of proof. To uphold the principle of "innocent until proven guilty," the statute must clearly place the onus on the prosecution to establish:<sup>19</sup>

- i. That the promise or representation was made,
- ii. That it was false at the time of making,
- iii. That the accused had knowledge of its falsity and intent to deceive.

## **5. Introduce Preliminary Inquiry to Prevent Frivolous Litigation**

Owing to the personal and emotional nature of disputes under Section 69, there is a risk of misuse through false or retaliatory claims. A mandatory preliminary inquiry, akin to the one endorsed in *Rajesh Sharma v. State of U.P.* for Section 498A IPC, should be instituted.<sup>20</sup> This would filter out *prima facie* frivolous complaints before formal registration of FIRs.

## **6. Ensure Privacy-Protective Procedures During Investigation and Trial**

Investigating deceit-based sexual offences often involves deeply personal matters. Procedural safeguards must be legislated to ensure privacy and dignity of both parties. All proceedings should be conducted in-camera, with restrictions on media reporting and access to records.

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<sup>19</sup> (2003) 4 SCC 46; (2019) 9 SCC 608.

<sup>20</sup> 2017 AIR SC 3869.

## **7. Add Explanation to Distinguish Between Deceit and Genuine Relationship Breakdown**

Section 69 fails to differentiate between genuine relationship breakdowns and intentional deceit. Including an explanation that criminal liability arises only where there was mala fide intent at the inception of the promise would prevent the criminalisation of failed relationships.<sup>21</sup>

## **8. Codify a “Good Faith” Exception**

Introducing a statutory exception for individuals who acted in good faith at the time of making the promise (but later failed to fulfil it due to unforeseen circumstances) would protect against over-criminalisation. A clause such as, “Nothing in this section shall apply to promises made in good faith that could not be fulfilled due to circumstances beyond the control of the accused,” can serve this purpose.

## **9. Permit Compounding for Lesser Forms of Deceit**

To reduce burden on courts and respect victim autonomy, the law should permit compounding in non-aggravated cases (e.g., non-impersonation deceit, first-time offenders). This allows for amicable resolution where the victim seeks closure without prolonged litigation.

Incorporating all the above-mentioned suggestions, a new draft of Section 69 can be:

### *“Section 69. Sexual Intercourse by Deceitful Means*

*(1) Whoever, irrespective of gender, by deceitful means, including but not limited to a false promise of marriage, employment, promotion, or impersonation, and with the intention of obtaining sexual consent, engages in sexual intercourse with another person, such intercourse not amounting to rape, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

*(2) For the purposes of this section, ‘deceitful means’ shall include any representation that the accused knew to be false at the time it was made and that was intended to induce the other person to consent to sexual intercourse.*

*Explanation 1: A mere failure to fulfil a promise, without evidence of mala fide intent at the time of making such promise, shall not attract liability under this section.*

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<sup>21</sup> *Deepak Gulati v. State of Haryana* 2013 AIR SC 2071.

*Explanation 2: Nothing in this section shall apply to consensual sexual relations entered into in good faith.*

*Explanation 3: This provision shall apply irrespective of gender identity or sexual orientation of the persons involved.”*

These recommendations are made with the purpose of improving the effectiveness, equity, and constitutionality of Section 69. They also highlight the need to prevent overreach, strike a balance between victim protection and the right to a fair trial, and establish a legal framework that is sensitive to the modern concepts of justice, autonomy, and gender.

## **CONCLUSION**

Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023, represents a significant legislative development by criminalizing sexual acts obtained through deception, particularly in cases involving false promises of marriage or employment. It addresses a long-standing moral and legal dilemma in Indian law: should individuals who use false promises solely to obtain sex be held criminally liable, and under what conditions? Previously, such cases were often pursued under Section 375 (rape) or Section 415 (cheating) of the Indian Penal Code, but these provisions led to legal ambiguity and interpretive inconsistencies. By introducing Section 69, the legislature aims to fill these gaps and provide a clearer legal framework to tackle deceit-based sexual exploitation.

One of the key strengths of Section 69 is its recognition of the evolving understanding of consent. Indian courts, including the Supreme Court, have consistently held that consent obtained through deceit is not valid. By explicitly criminalizing sexual acts secured through false promises of marriage or employment, Section 69 strengthens legal protections for individual autonomy, dignity, and sexual agency. This is particularly significant in the Indian social context, where premarital sex often carries serious cultural, emotional, and social consequences especially for women.

Despite its intentions, Section 69 has faced considerable criticism. A central concern raised by legal scholars and practitioners is whether the provision is even necessary. Critics argue that the kinds of conduct it seeks to address are already covered under Section 63 (rape) and Section 316 (cheating) of the Bharatiya Nyaya Sanhita. This raises questions about the need for creating an entirely new offence. According to them, instead of adding potentially overlapping or

conflicting provisions, legislative efforts would have been more effective if directed toward refining the interpretation and application of existing laws.

Another major concern surrounding Section 69 is the potential for misuse. Courts have previously cautioned most notably in *Pramod Suryabhan Pawar v. State of Maharashtra* that not every failed relationship or unfulfilled promise amounts to a criminal offence. Distinguishing between deliberate deception from the outset and genuine romantic intentions that simply didn't work out is both factually sensitive and legally complex. This ambiguity creates a real risk that Section 69 could be weaponized in cases of personal vendetta or emotional grievance, leading to unjust criminal prosecution and serious harm to the accused.

From a constitutional standpoint, Section 69 also raises concerns related to equality and proportionality. While the text of the provision is gender-neutral, its application has largely been viewed as protecting women from deceit by men, which could potentially conflict with the principles of Article 14 of the Constitution that guarantee equality before the law. Moreover, extending criminal liability into the realm of private and intimate relationships risks overreach. It could lead to the criminalisation of situations that might be more appropriately addressed through civil remedies, such as claims for emotional distress or breach of promise, rather than through the penal system.

Concluding our analysis, we can assert that the true test of Section 69 will lie in how it is interpreted and applied by the judiciary. Courts will need to establish clear, consistent standards for evaluating evidence, determining intent, and drawing a distinction between genuine but failed relationships and cases of deliberate deception. For Section 69 to effectively address the serious issue of deceit-based sexual exploitation, its enforcement must be both cautious and balanced protecting real victims while preventing its misuse as a tool for retaliation or personal vendetta. Only through thoughtful and nuanced jurisprudence can this provision achieve its intended purpose without creating new avenues for injustice.