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# DRAWBACKS AND ADVERSE LEGAL IMPLICATIONS OF SECTION 69 OF THE BHARATIYA NYAYA SANHITA 2023: A CRITICAL ANALYSIS

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## ABSTRACT

*Section 69 of the Bharatiya Nyaya Sanhita, 2023 introduces a new offence addressing sexual intercourse obtained through deceitful means, particularly false promises of marriage and other inducements. While the provision aims to strengthen the legal framework for protecting women from sexual exploitation, it raises significant concerns regarding its interpretation and practical application. The section suffers from vague and ambiguous language, lack of clarity in defining “consent” and “deceitful means,” and the absence of comprehensive safeguards against misuse. It also reflects a gender biased approach by recognizing only women as victims, thereby excluding men and LGBTQ+ individuals from its protection. This study adopts a doctrinal methodology, drawing on primary sources such as statutory provisions and judicial decisions along with secondary sources including books, research articles, journals and credible electronic resources. It follows analytical, descriptive and exploratory methods to critically examine the scope, limitations and implications of the provision. The findings reveal that Section 69 of BNS, despite its progressive intent, creates legal uncertainty, difficulty in proving intention and potential for misuse, which may lead to inconsistent judicial outcomes. The study concludes that clearer judicial interpretation, precise legislative drafting and well-balanced safeguards are needed to ensure that the provision achieves its intended objective without undermining fairness and justice.*

**KEYWORDS:** *Free Consent, Deceitful Means, False Promise of Marriage, Misuse of Law, Gender Biasness, Misuse of Law, Section 69 of BNS*

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## 1. INTRODUCTION

There is no doubt that the section 69 of the BNS is a significant piece of legislations, which addresses offence of sexual relations obtained through false promise. Thereby it provides protection to the women from the sexual exploitation. By the virtue of this section, now a sexual relationship with a woman based on a false promise of marriage or any other inducements recognized as an offence in the eyes of law. However, the section has inherent defects in it. Vague and ambiguous language, along with its lack of incomprehensiveness nature of this section creates more legal confusion rather than ensuring protection of women. Due to several loopholes, the section can be easily intentionally misused against any innocent person.

The paper explores the drawbacks in section 69 of BNS, focusing on deep interpretation of the section, evolution of such offences from IPC to BNS and enforcement challenges supported by relevant case laws etc. Furthermore, this article assesses the potential consequences of this provision on legal practice in India and also provides evidence-based recommendations/suggestions to remove the shortcomings in this section as well as trying to improve the criminal justice system in India in some extent.

## 2. OBJECTIVES OF RESEARCH

- (i) To critically interpret the entire section 69 of BNS.
- (ii) To find out the shortcomings/drawbacks of section 69 of BNS.
- (iii) To analyze the extent to which section 69 of BNS may be misused.
- (iv) To examine gender-based discrimination within the section 69 of BNS.
- (v) To develop the evidence-based recommendations to reform the section 69 of BNS.

## 3. SUPPOSITION

The intent behind the section 69 of BNS is to protect the woman is really commendable. However, the non-comprehensive nature, ambiguous and vague language of this section creates a risk of possible harm/injury to men rather than achieving the intended protection. By virtue of this section, genuine pre-marital relations such as live-in-relations, long term affairs between woman and man may become legally risky if marriage does not eventually take place. This provision grants immense power to women, which may be misused for personal benefit and for these reasons legal safeguards for men are very much compromised.

## 4. METHODOLOGY

The study adopts completely a doctrinal research methodology. It is based on detailed examination of both primary and secondary sources of data to identify the drawbacks and adverse legal implications of section 69 of BNS. The Primary sources of data include The Bharatiya Nyaya Sanhita 2023, The Indian Penal Code 1860 along with relevant case laws. Secondary sources of data include books, research articles, journals and credible electronic resources. The research follows analytical, descriptive and exploratory approaches to critically analysis the drawbacks and adverse legal implications of section 69 of BNS.

## 5. REVIEW OF LITERATURE

In the article 'Decoding Section 69 of The BNS 2023: Legal Implications and Threat to Misuse' by Shantanu Shekhar, published in Indian Journal of Law and Legal Research (Volume VII Issue II) stated that only women can seek redressal for consent that was obtained deceitfully, it neglects to offer any legal remedies to men who may become victims of such fraudulent circumstances. Since the burden of proof lies on the victim, it is very difficult to prove that the accused did not have serious intentions to marry, particularly if the accused claim to have had plans to marry but later changed that plan. Moreover, there is a legitimate concern that the provision may be misused as a means of coercion,

particularly through filing of complaints with the intent to extract monetary settlements from the accused or weaponized for personal gain.

In Kinjal Majumdar's article 'Deciphering the Legal Implications of Section 69 in BNS: A Comprehensive Analysis' published in *International Journal of Law Management & Humanities* (Vol. 7 Issue 2) highlighted that the nature of the offence committed under Section 69 of the BNS classified as cognizable, non-bailable and non-compoundable as specified in the statute. Being non-compoundable means that the offence cannot be settled through compromise or mutual agreement between the parties. The article further notes that the offence is triable exclusively by the Court of Sessions, reflecting its seriousness and the need for adjudication at higher judicial level. 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 women rights within the legal framework.

In the article 'Criminalisation of False Promise to Marry and Deceptive Sex in Bharatiya Nyaya Sanhita, 2023' by Dr. Bhoopendra Karwande, observed that the section 69 starts with the word, "Whoever" that clearly indicates that only male would be prosecuted under the provision, but a women having sexual relationship with another women by making a false promise of employment or in promotion could be punished under the act. Ambiguity nature of this provision and the broad definition of "deceitful means" raise concerns about possible misuse, with the law being exploited for false accusations and unjust outcomes.

## **6. SECTION 69 OF BNS: SCOPE, INTERPRETATION AND ESSENTIALS**

In chapter V sec. 69 of BNS 2023 recognizes two distinct types of offences i.e. first as engaging in sexual intercourse by deceitful means and the second as carrying out sexual intercourse based on a false promise of marriage. The essentials ingredients of this section are as follows-

- a) Proof of sexual intercourse between the accused and the complaint.
- b) Sexual intercourse was obtained through the deceitful means or false promise of marriage.
- c) Accused had no genuine intention of fulfilling the marriage or deceitful promise from the beginning.
- d) Sexual intercourse must not constitute the offence of rape under existing statutory provisions.
- e) Complaint's consent was obtained specifically due to deceitful means or false marriage promises.
- f) Deceitful includes inducement through false promises of employment, promotion or marriage by concealing true identity.

If we minutely go through the section 69 of BNS, the section is starting with the word 'whoever' that critically indicates that accused can be any of the gender, not necessarily it must be a male person. If a woman did similar things by making a false promise of employment or in promotion could be punished under the act. But when we talk about victim, the offence of section 69 is always against a woman. The point of sexual harassment of man has been overlooked again in the new law. The section also implies that the act should not fulfill the elements of rape.

In this section 'deceitful means' explained as it shall include the false promise of employment or promotion, inducement or marrying by suppressing identity of accused person.

The core point is deceitful intention at the time of promise made by accused which is very difficult for prosecution to prove the offence in this section. The nature of the offence under the section is cognizable, non-bailable, non-compoundable and trial will be proceeded by the court of session, so it easily reflects that the seriousness of the offence under this section and the accused shall be arrested solely on the basis of the statement of the victim.

The convicted person under the section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

## 7. IDENTIFYING KEY PROBLEMS IN SECTION 69 OF THE BNS

Section 69 of the BNS contains multiple drawbacks and loopholes as the provision is highly ambiguous and vague in nature and fails to elucidate on so many possible situations. First of all, sec. 69 is a gender biased, the concept of equality before law is not followed since only the woman can be victims under his section. Men, LGBTQ+ communities are completely excluded from seeking redress under Section 69.

The nature of the offence under the section is cognizable, non-bailable, non-compoundable and trial will be proceeded by a Court of Sessions. So, it easily reflects that the seriousness of the offence under this section and the accused shall be arrested solely on the basis of the statement of the victim.

If an accused under this section deceitfully obtained consent and engages sexual intercourse with the victim and later the accused anticipates that victim may be filed suit under this sec. against him and fulfill the promise which was made to victim at the time of obtaining consent. Now the question is that whether the offence still subsists if the accused later fulfills the promise. The section remains silent on this issue.

In the explanation of 'deceitful means' the section specifically mentioned that suppression or concealment of identity is essentially required to constitute offence in sec. 69. However, if there is no concealment of identity and the consent of the victim is obtained using the actual identity of the promisor, it remains unclear whether such an act would fall within the ambit of this provision.

The distinction between mere breach of promise and deliberate deception through a false promise is also ambiguous in sec. 69. An accused may have the genuine reasons for not fulfilling the promise. All breach of promises not necessarily involves the deceit motive. This fact has been completely ignored in this section. Thus, the legal safeguards for men are very much compromised.

Further, consider a situation where a man having power in position makes false promise of employment or promotion to a woman and she gives consent for sexual intercourse with him. The woman already aware that such a method of obtaining employment or promotion is improper, yet she gives the consent for that just for her personal benefit. If the promise will be fulfilled by man, then no issue arises; however, if the promise is not fulfilled, she becomes a victim under this section. In this scenario, the woman also contributes to the circumstances leading to the offence and she was not morally/ethically justified. Therefore, imposition of sole liability on the male promisor is not justified. This also creates the possibility of misuse of the provision for purposes such as exploitation, revenge, coercion or personal gain.

In this section burden of proof lies on the prosecution and it is extremely difficult to prove that the accused had no intention to fulfill the promise at the time it was made.

Finally, live-in-relationships, long term affairs or any other forms of premarital relationships between a man and a woman may be retrospectively interpreted as deceitful promises of marriage. This creates a constant legal risk in such relationships.

## 8. LEGAL BACKGROUND OF SECTION 69 BNS IN LIGHT OF SECTION 493 IPC

Sexual intercourse by employing deceitful means or by making a false promise of marriage is a very new type of criminal offence which is introduced under The Bharatiya Nyaya Sanhita, 2023. There is no specific provision dealing explicitly with this offence under the Indian Penal Code, 1860. However, the section 493 of IPC bears some extent similar with section 69 of BNS. Section 493 of IPC dealt offence relating to cohabitation caused by a man deceitfully inducing a woman to believe that she is lawfully married to him. In section 493 of IPC the scope was very limited as it primarily focused on deceitful inducement leading to a false belief of lawful marriage.

The essential ingredients of Section 493 IPC are:

- a) Deceit causing a woman false belief of existence of a lawful marriage.
- b) Cohabitation or sexual intercourse with the person causing such belief.

In contrast, section 69 of BNS significantly expands the scope of the offence and provides broader legal protection to women. It criminalizes not only sexual intercourse based on a false promise of marriage but

also covers situations involving inducement through false promises of employment, promotion or other forms of deception.

In section 493 of IPC, the mode of obtaining consent for sexual intercourse was limited to deceitfully belief of lawful marriage and however, under Section 69 of the BNS, consent may be obtained through various means, including false promises of marriage, employment, promotion, or other inducements, thereby considerably widening the ambit of the offence.

## 9. ROLE OF JUDICIARY IN CRIMINALIZING FALSE PROMISE OF MARRIAGE CASES

Before the enactment of BNS there was no specific provision on offence of sexual intercourse by employing deceitful means or by false promise of marriage in IPC. But this offence has existed in the society for a few years now, due to which judiciary has used its power to criminalize the offence by interpreting consent as free consent under sec. 375 of IPC and thus included the offence of false promise of marriage. Few important case laws are follows-

- a) **Anurag Soni v. State of Chhattisgarh AIR 2019-** In this case, a female pharmacy student gave consent for sexual activity to a man only after he made a commitment to marry her, As a result, the Court decided that it was reasonable to draw the conclusion from the evidence that the accused never intended to wed the female person and that he had deceived her by saying he would marry her, which is why she agreed to have physical contact with him. Consequently, her consent was considered invalid under section 90 of the IPC, as it was given under a misconception of fact. The accused was therefore held guilty.
- b) **Yedla Srinivasa Rao vs. State of A.P. AIR 2006-** In this instance, the accused used to visit the prosecutrix sister's home every day and beg her for a sexual favor. Although she initially refused, he continued to pressure her. On one occasion, he entered the house, shut the door, and forced himself on her against her will and without her consent. When she questioned him about ruining her life, he assured her that he would marry her. Thereafter, their physical relationship continued on the basis of this promise and he repeatedly reaffirmed his intention to marry her. After considering all of the above information, the court determined that the consent was given believing the accused would marry her. As a result, this permission will be interpreted as giving no consent and the accused will be found guilty in accordance with Section 375 of the IPC and given the punishment specified in Section 375 of IPC.

## 10. CONCLUSION

The section 69 is a newly added offence in BNS. The scope of this section is significantly wider than that of the IPC. Although the intent behind of this section is commendable but yet it is not far from the criticism, as it creates legal confusion instead of protection. The provision suffers from vague languages, difficulties in proving intent, ambiguous definition of consent and risk of misuse, which may lead to unnecessary legal disputes and inconsistent judicial outcomes. To enable effective enforcement of this provision, it is crucial to establish clear judicial interpretations and precise definitions of key terms such as 'consent' and 'deceitful means.'

## 11. SUGGESTIONS/RECOMMENDATION

Based on a comprehensive analysis and the findings of this research, the following suggestions and recommendations are proposed-

- a) Courts should exercise greater caution while determining offences under Section 69 of the BNS. A careful and balanced approach must be adopted, especially considering the gender-biased and ambiguous nature of the provision.
- b) In the cases, where it is proven that a false complaint suit has been filed u/s 69 of BNS unreasonably to maline the accused, then appropriate penalty should be imposed on the

- complainant. This would help reduce the incidence of false cases and prevent misuse of the law as a tool against innocent individuals.
- c) The nature of offence in sec. 69 of BNS should be reconsidered. It may be appropriate to reclassify it from a non-bailable offence to a bailable one in order to safeguard the interests of innocent accused persons.
  - d) Law-making authorities should reconsider the perspective that treats men as the sole perpetrators of such offences. The possibility of similar offences being committed by women against men should also be recognized within the legal framework.
  - e) Until legislative amendments are made, it is the responsibility of the judiciary to address the ambiguities and vagueness of the provision by laying down clear guidelines through judicial pronouncements.
  - f) In situations where a woman consents to sexual intercourse in exchange for promises of employment or promotion, with full awareness of the improper nature of such arrangements, the law may consider shared accountability, as such conduct may also involve elements of unethical or corrupt practices for personal gain.
  - g) The ingredient of concealment or suppression of identity as an essential element of “deceitful means” should be reconsidered. It creates interpretational loopholes that may allow perpetrators to escape from liability. Removing or clarifying this essential ingredient would strengthen the provision.
  - h) There is a need for clear legal recognition and regulation of pre-marital relationships, such as live-in relationships and long-term partnerships, in order to reduce ambiguity and legal complications arising under this provision.

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