

Analysing the Vagueness and Shortcomings of Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023

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Abstract:

Section 69 of the Bharatiya Nyaya Sanhita, 2023, makes it a crime to engage in sexual intercourse under false promises of marriage, thus offering legal protection to women against exploitation. While this provision recognizes the seriousness of such deceit, it does not categorize it as rape, presenting a significant legal hurdle. Additionally, the section expands the definition of "deceitful means" to encompass not only false marriage promises but also misleading assurances regarding employment or promotions, further complicating its enforcement. This article offers a critical examination of the provision's wording, highlighting its ambiguity related to deceit and consent, gender specificity, and its potential for diverse legal interpretations. It also examines the prosecution's difficulties in proving lack of marriage intent, compares it to current rape legislation, and considers the potential for frivolous lawsuits. Additionally, the relationship to Section 28 of the BNS, which addresses consent obtained through threats of harm or misconceptions about the act or its consequences, introduces another layer of complexity. In summary, although Section 69 aims to protect women, its broad scope and unclear definitions require further clarification and consistent guidance from the legislature and judiciary to avert misuse and ensure effective legal protection.

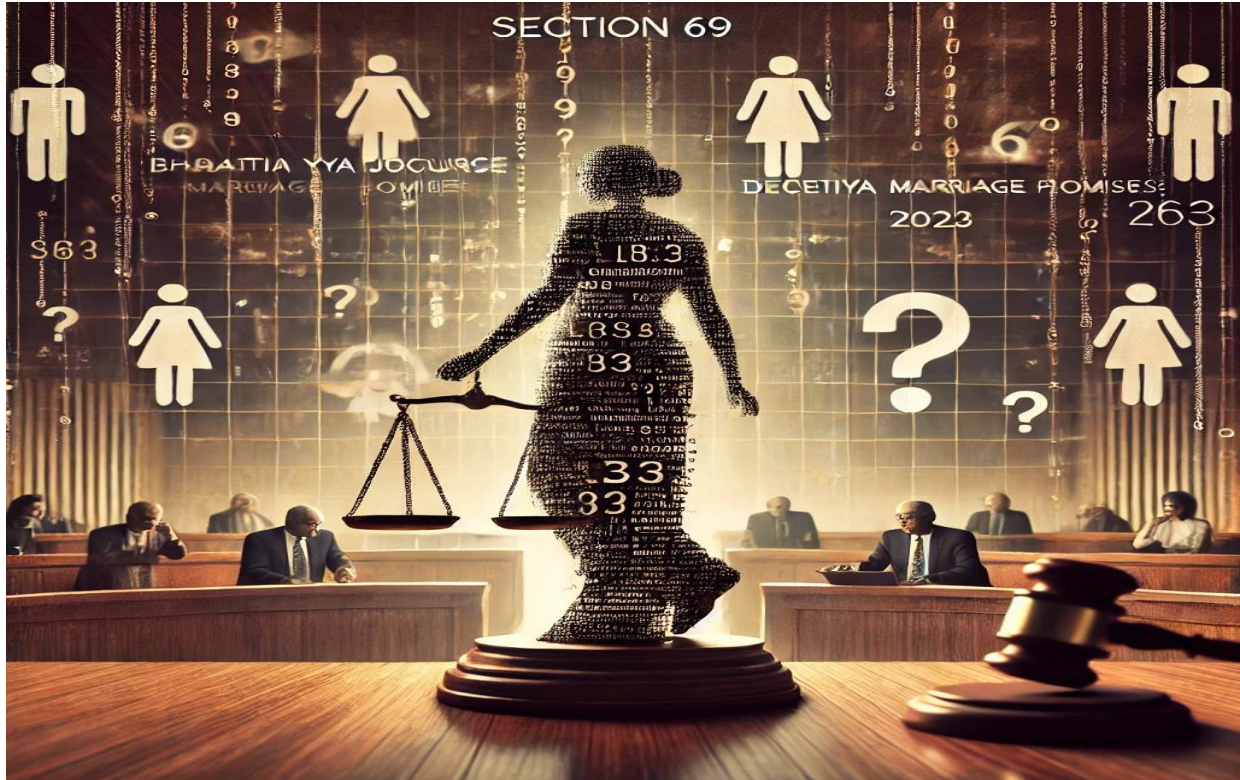
Keywords: Section 69, Bharatiya Nyaya Sanhita, sexual exploitation, gender specificity, deceit, false promise of marriage, intent, consent, rape, legal ambiguity, prosecution burden, judicial guidance.

1. Introduction:

A significant piece of legislation, Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023, forbids sexual relations obtained through fraudulent promises of marriage, thereby protecting women from exploitation. This clause covers commitments made with no sincere intention of getting married, in which case the sexual act is not considered rape. It is not without uncertainties and possible legal issues, though.

The law states that individuals who engage in sexual relations with a woman under deceitful claims of marriage - lacking a sincere intention to honour that commitment - may be subject to up to ten years in prison and fines, as long as the act does not constitute rape. Although this statute aims to combat exploitation stemming from false marital promises, its real-world enforcement raises critical issues regarding the interpretations of "intent," "deceit," and "consent." These ambiguities might undermine the law's intended purpose and create opportunities for abuse. The challenge lies in establishing clear

definitions to ensure justice without inadvertently weakening protections against exploitation in such complex circumstances.



At first glance, this provision seems to offer vital protections for women, especially against misleading practices that take advantage of vulnerable individuals. However, a closer examination shows that Section 69 may generate as many issues as it aims to solve, mainly due to its vague and overly broad language. This paper explores the difficulties associated with Section 69, focusing on the intricate relationships between consent, deception, and intent. Furthermore, it assesses the potential consequences of this provision on legal practices in India, emphasizing the necessity for clarity and precision. Ensuring that the intended safeguards are effective is crucial to prevent unintended legal challenges for those it seeks to protect.

2. Overview of the Legal Text: Section 69:

Section 69 explicitly forbids sexual contact obtained through deception, especially in cases where individuals marry without the intention of honouring their vows. Those found guilty may face a fine and imprisonment for a maximum of ten years. Notably, this section clarifies that such acts, while illegal, do not constitute rape. The Explanation further broadens the section by indicating that "deceitful means" could involve making false promises related to employment, promotions, or concealing one's identity, potentially leading to sexual intercourse under false pretenses. This clarification highlights the legal nuances surrounding consent and deception in sexual relations, emphasizing the serious repercussions for violating these laws.

3. Section 69 Targets a Specific Gender:

The Bharatiya Nyaya Sanhita (BNS) of 2023 introduces Section 69, a vital legal provision that criminali-

zes sexual relationships initiated through fraudulent promises of marriage. This section's primary objective is to protect women, particularly in circumstances where they may be coerced or deceived into engaging in sexual activities based on a false assurance of marriage that the perpetrator had no genuine intention to fulfill. However, a notable limitation of this provision lies in its gender-specific approach; it fails to offer any legal recourse for men who may find themselves victims of similar deceitful circumstances. This oversight raises concerns about equality before the law and the need for a more inclusive framework that addresses the rights and protections of all individuals, regardless of gender, in matters of consensual relationships and deception.

4. Vagueness Regarding Fulfilment of Promises:

Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023, makes it a crime to engage in sexual intercourse under a false promise of employment or promotion if such conduct does not meet the definition of rape, acknowledging the deceit and exploitation that occur. However, a key ambiguity exists: the law does not specify whether the crime still applies if the accused later honours the promise by providing the job or promotion. This uncertainty opens the door for different interpretations, particularly in situations where the intention behind the promise could be scrutinized. If the employment is eventually granted, it is not clear whether this would lessen the severity of the offence or if the initial deception alone is enough to establish criminal responsibility. The absence of explicit guidelines regarding this issue may lead to inconsistent judicial interpretations, with courts potentially evaluating both intent and the fulfillment of promises in diverse manners. This disparity could create challenges in ensuring uniformity in legal proceedings, as different courts might arrive at varying conclusions based on their individual assessments and interpretations of the same fundamental principles.

5. Ambiguity Surrounding 'Deceitful Means':

A significant issue with Section 69 is that it fails to provide a clear definition of what constitutes "deceitful means." While it certainly encompasses fabrications in marriage, it also includes misleading job offers or promotions as forms of deceit. This lack of clarity raises concerns that misleading claims about employment or promotions made before sexual intercourse could subject defendants to criminal prosecution for actions that the law was initially designed to address. The vague language may result in varying interpretations in court, making it difficult to predict how judges will rule in cases of deception unrelated to marriage. Additionally, Section 69 criminalizes sexual intercourse based on false marriage promises, yet it does not categorize this as rape. This distinction is important because Section 69 differs from Section 63, which pertains to rape, potentially leading to inconsistent legal interpretations. The line between "deceit" and "misunderstanding" is murky, which could result in unpredictable judicial outcomes, particularly in complex personal relationships.

6. The Prosecution's Challenge: Establishing Deceit and Intention:

Under Section 69, it is the job of the prosecution to show that the marriage vow was made without any real intention to follow through. This puts a lot of pressure on the victim, who has to prove that the accused never meant to marry her when the promise was made. It can be hard to show that the accused didn't really intend to marry, especially if they say they did plan to get married but later changed their minds. The courts will need to decide what the accused really meant, which could lead to unfair strategies and different outcomes in similar cases. In simple terms, the victim faces a tough challenge in

proving the truth about the accused's intentions, and the system may not always treat everyone equally.

7. Comparing Section 69 and Section 63 of the BNS: Inconsistencies:

One of the main problems with Section 69 BNS is that it treats consent differently from how rape is defined in section 63 BNS. Under section 63 of the BNS, a man is considered to commit rape under several circumstances: (i) if he engages in sexual intercourse with a female against her will; (ii) without her consent; (iii) with her consent, but obtained through threats of death or harm; (iv) with her consent, if he knows he is not her husband and she believes he is someone she is lawfully married to; (v) with her consent, if she is impaired by mental unsoundness, intoxication, or the influence of a drug he administered; (vi) regardless of consent, if she is under eighteen years of age; and (vii) if she is unable to communicate her consent. However, Section 69 of the Bharatiya Nyaya Sanhita (BNS) makes it a crime to engage in sexual intercourse through deceptive tactics or dishonest assurances, which includes making empty marriage proposals without any genuine intent and employing other fraudulent methods like false job offers, promotions, or concealing one's identity. This inconsistency can confuse both victims and the courts, leading to unfair legal decisions and hindering the fair application of justice.

8. The Role of Consent in Section 69:

Consent is very important in laws about sexual offences. Section 69 says that if someone is tricked into a sexual act, their consent isn't valid. However, it doesn't clearly explain the difference between valid and invalid consent, which can lead to different interpretations. This brings up important questions about when a promise of marriage goes from being a genuine commitment to a way to manipulate someone and cloud their consent. For example, if a woman agrees to have sex because she was promised marriage but that promise is false, should that act be seen as coercive or just a broken promise? Stroud's Judicial Dictionary defines consent as a "thoughtful choice based on understanding what might happen," while the BNS 2023 lists reasons why consent might not be valid, including being forced or confused. Section 28 of the BNS says consent isn't valid if the person committing the offence knows or should know that the consent isn't real. This idea is supported by a 2013 Supreme Court of India ruling, *Kaini Rajan v. State of Kerala*, which emphasizes that consent should be an "active choice," stressing the importance of being aware and intentional.

9. Implications for Personal Relationships and Consent:

Section 69 BNS could have serious effects on personal relationships. It might make consensual sexual activities illegal if promises of marriage are made and then taken back. This creates a problem because it tries to protect women's rights while also making it hard for people to have personal relationships without worrying about getting in trouble with the law. There's a risk that this law could be misused to settle personal arguments, especially when relationships go sour. This can lead to more chances for abuse and make it difficult for people to trust each other. Overall, while the intention might be to protect individuals, it could end up complicating personal lives and putting unnecessary pressure on relationships. It's important for laws to protect rights without making relationships harder or creating fears of punishment for personal choices.

10. Risk of Frivolous Litigation:

The broad language of Section 69 presents the danger of frivolous litigation, particularly in circumstanc-

es where relationships are marked by misunderstanding or emotional turmoil. Since false accusations of sexual exploitation are not uncommon, this provision may inspire individuals to file malicious false promise complaints, knowing the substantial legal consequences the accused could face, even in the absence of a clear intent to deceive. Since the courts are already strained by caseloads, such disputes could further slowdown the judicial process and increase the backlog of cases, adversely affecting the administration of justice.

11. Challenges in Proving Intent:

The main problem with Section 69 is proving whether someone really intended to marry. It requires showing that the person promised to marry but never planned to go through with it. This can be difficult to prove and may lead to unfair situations when a relationship goes bad. The unclear language about what "intent" means can be misused, especially if the two people involved have different stories about what happened. In the case of *Xxx v. State of Madhya Pradesh* (6 March, 2024), the Supreme Court threw out a complaint against someone who was wrongly accused of getting consent by pretending to promise marriage. The Court noted that the complainant was already married and had a sexual relationship with the accused, knowing there was no real intention of marriage. This case highlights the challenges courts face in telling the difference between real trickery and simple misunderstandings in personal relationships.

12. The Explanation: Broadening the Scope:

Section 69 addresses the issue of cheating, which includes dishonesty about employment opportunities, promotions, or concealing one's true identity. The scope of this law extends beyond instances where a person feigns interest in marriage as a means to obtain sexual favors. However, this broad definition could lead to complications, as it may render many actions illegal, even when the connection between the deceitful behavior and sexual interaction is tenuous. For instance, if an individual offers a job or a promotion in exchange for sexual relations, one must consider whether such a scenario should fall under the purview of Section 69, particularly if the arrangement does not involve marriage. These scenarios prompt important questions regarding the fairness of the legal consequences, especially when the act of cheating does not explicitly exploit someone in a sexual manner. Thus, the implications of Section 69 warrant careful examination to ensure just outcomes in various contexts of interpersonal relations.

13. Distinction between False Promise v. Breach of Promise:

Distinguishing between a false promise and a breach of promise can be challenging. If an individual genuinely intended to marry but ultimately did not follow through, it does not necessarily mean that they deceived the other person solely to engage in sexual relation. Conversely, if evidence reveals that the individual never intended to marry from the outset, the situation may be interpreted as one where sexual relation was based on falsehoods. This important distinction was examined in two notable legal cases: *Uday v. State of Karnataka* (2003) and *Pramod Suryabhan Pawar v. State of Maharashtra* (2019). In these cases, the Supreme Court clarified that a broken promise cannot be classified as rape or sexual exploitation unless it is demonstrated that the promise was intentionally deceitful from the very beginning. Therefore, intent plays a crucial role in determining the nature of the relationship and the implications of the promises made.

14. Literature Review: Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023:

Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023, introduces an important legal provision that criminalizes sexual intercourse induced by false promises of marriage. This section, designed to offer legal protection to women, particularly addresses cases where women are coerced or manipulated into sexual relations under the guise of a marriage promise that the perpetrator has no intention of fulfilling. The provision aims to prevent exploitation and misuse of personal relationships, but its implementation and interpretation have raised significant concerns in legal scholarship. This literature review critically examines the key academic and legal perspectives on Section 69, focusing on its intent, scope, implications, and potential legal challenges.

The primary objective of Section 69, as articulated in the literature, is to protect women from sexual exploitation that arises from deceit, especially in the context of promises of marriage. Several scholars argue that this provision is a much-needed intervention in Indian law, where sexual exploitation under the guise of a marriage promise has been a longstanding issue (Bhardwaj, 2024). According to legal commentator Radhika Gupta (2024), Section 69 seeks to fill a significant gap in existing laws that fail to address sexual exploitation in cases where consent is obtained through fraudulent means. Gupta notes that the provision aligns with the broader goals of feminist legal reforms in India, which seek to enhance women's autonomy and prevent sexual coercion masked as consensual sexual relations.

Moreover, some scholars emphasize that Section 69 helps recognize the manipulative and coercive nature of such promises, which often lead to emotional and psychological harm to the victim. Choudhury and Sinha (2023) argue that sexual intercourse based on a false promise of marriage undermines the true autonomy of women, as it inherently involves deceit and manipulation. The provision, therefore, acknowledges the harm caused not just by physical coercion but also by emotional and psychological manipulation that results in the victim's loss of agency in deciding whether to consent.

A significant issue raised in the literature concerns the definition of "deceitful means," which Section 69 uses to describe fraudulent conduct leading to sexual intercourse. While the section clearly mentions false promises of marriage, it also expands the scope to include other types of deceit, such as false claims about employment or promotion, as explained in the section's "Explanation" clause. Legal scholars like Mehta (2024) argue that this broad definition introduces significant legal ambiguity, especially in cases where sexual intercourse occurs under circumstances that are not directly related to marriage promises. Mehta points out that while the provision aims to address deceit, it might inadvertently encompass scenarios where sexual exploitation is not the central issue, leading to overcriminalization.

For instance, scholars have raised concerns about the potential for Section 69 to be misapplied in situations where deceitful means relate to job promises or identity concealment, but marriage is not mentioned at all. Legal expert Ranjit Kaur (2023) contends that the inclusion of such deceitful acts could blur the line between sexual exploitation and other forms of fraud, making it difficult for the judiciary to discern the true intent behind the accused's actions. This, in turn, could lead to inconsistent legal interpretations and difficulties in proving the crime.

The role of consent in Section 69 is another point of debate in the legal literature. Consent, as a core principle in sexual offences law, is central to the provision's applicability. However, as pointed out by Kapoor and Sharma (2024), Section 69 does not clearly define what constitutes "valid" and "invalid" consent, which is critical when determining whether the victim was truly deceived. The legal precedent

regarding consent in cases of deceit has evolved over time. In *Kaini Rajan v. State of Kerala* (2013), the Supreme Court clarified that consent obtained under a false belief or misconception is invalid, but this judgment also emphasized the importance of establishing intent. Kapoor and Sharma argue that Section 69, while protecting women, still leaves room for inconsistent interpretations of consent. They note that the absence of a clear definition may create challenges for victims in proving their case, especially when deceitful promises are not directly related to marriage.

The issue becomes more complicated when distinguishing between "deceptive consent" and "coerced consent." According to researchers Singh and Bhagat (2023), Section 69 of the law raises important questions about when a misleading promise stops being harmless and crosses into coercion. They investigate if deceptive behaviors can genuinely be classified as coercion, and whether the consent provided by the victim is genuinely voluntary. While Section 69 is intended to safeguard women from exploitation, its vague definition of consent may create confusion in legal proceedings when distinguishing between cases of false promises and situations where both parties have unintentionally consented.

Legal experts have pointed out a major issue with the conflict between Section 69 BNS and the Indian Penal Code (IPC) rape laws, especially Section 375, now called Section 63 BNS. Section 69 allows for certain exceptions, particularly when people are tricked into sexual relations under false promises of marriage. Das and Reddy (2023) argue that even if the consent in these situations isn't valid, it doesn't meet the definition of rape under Section 69. This creates confusion because, under Section 375, which is now Section 63 BNS, any sexual activity based on false marriage promises should typically be classified as rape, but Section 69 treats it differently. This discrepancy raises concerns about the fairness of legal protections, suggesting that the two sections should be harmonized.

In their research, Sushila and Kumar (2024) contend that this particular category undermines the essential principle of consent, a crucial element in determining instances of sexual assault. They propose that the concept of the 'false promise of marriage' should be considered on equal footing with rape when evaluating other forms of sexual coercion. According to their perspective, any action that compromises genuine consent should be classified as rape under the Indian Penal Code, now *Bharatiya Nyaya Sanhita*. However, they caution that the complex interplay between the definition of rape and the stipulations of Section 69 complicates legal interpretations, which may ultimately lead to unjust outcomes in court proceedings. This highlights the need for clarity in the legal system to ensure fair treatment for victims of sexual assault.

The burden of proof in cases under Section 69, particularly in proving the accused's intent to marry, presents another challenge, as highlighted by Prakash and Thakur (2023). They argue that the subjective nature of intent, particularly in personal relationships, makes it difficult to establish the accused's state of mind when the promise was made. Since the provision requires proving that the accused never intended to marry the woman, it places an additional burden on the prosecution to demonstrate deceit, which may not always be straightforward. The difficulty of proving "lack of intent" could lead to the wrongful acquittal of perpetrators or create opportunities for malicious accusations, increasing the potential for misuse of the law.

Moreover, scholars like Sharma (2023) warn of the risk of frivolous litigation, where individuals may use false promises to exploit personal conflicts and emotional distress in relationships. This could contribute to the already overloaded judicial system, as cases of this nature would likely require

extensive examination of personal interactions and subjective emotions, making the legal process slow and cumbersome.

The legal literature on Section 69 of the BNS highlights its potential as a protective measure for women, yet underscores significant challenges in its application. Legal scholars agree that the provision requires clearer definitions, especially regarding consent and deceitful means, to avoid inconsistent interpretations and misuse. The intersection between Section 69 and rape law, as well as the burden of proving intent, calls for judicial clarity to ensure that the provision serves its intended purpose without creating legal ambiguity or procedural difficulties.

15. Conclusion:

Section 69 of the Bharatiya Nyaya Sanhita, 2023 aims to safeguard women from exploitation due to misleading marriage promises; however, it encounters substantial challenges in implementation. The provision suffers from vague language, difficulties in proving intent, ambiguous consent definitions, and risks of misuse, which may lead to unnecessary legal disputes and varying judgments. To enable effective enforcement, it is crucial to establish clear judicial interpretations and precise definitions for terms like "consent" and "deceit." There is an immediate need for more explicit language and consistent judicial guidance to ensure the law effectively protects victims of fraud while avoiding legal complexities or unfounded claims. The success of this section hinges on the courts' ability to address the intricacies of intent and false promises; without clarification, it risks creating legal confusion instead of protection. Therefore, further legislative amendments and judicial clarity are essential for its proper functioning. Ultimately, though Section 69 has the potential to transform sexual exploitation law in India, its implementation hinges on careful revisions and interpretations.

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