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CRIMINALIZING THE BROKEN VOW: NAVIGATING THE EVIDENTIARY CHASM BETWEEN 'DECEITFUL INTENT' AND 'BREACH OF PROMISE' UNDER SECTION 69 OF THE BHARATIYA NYAYA SANHITA

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Introduction

The dynamic interplay between intimate autonomy and statal control is perhaps the most combustible frontier of contemporary criminal jurisprudence. While grounded in notions of personal autonomy, liberal democracies recognize a broad “right to love” that constrains the state’s ability to prescribe adult persons’ choice of sexual partner or to mandate them to participate in intimate conduct against their will.¹ Yet, autonomy is not a solitary value. The right to love is circumscribed by social realities and power relations, frequently but not always gendered, that strip individuals’ expressions of no-coerced consent of any substantive meaning. And, as discussed, the state possesses a *parens patriae* duty to take up the cudgels in response to unsound preferences for intimacy that are procured not from free will, but from fraudulence or coercion.

In India, for decades, the legal system tiptoed through this minefield based on an inconsistent reading of it by courts. But an earthquake occurred in this scenario after the Bharatiya Nyaya Sanhita, 2023 (BNS)², came into force with effect from July 1, 2024. Replacing the British colonial Indian Penal Code (IPC), 1860³, the BNS has expanded on use of indirect coercion to directly criminalize obtaining sexual intercourse by “fraudulent means.” This trend is encapsulated in a new provision, section 69⁴, which punishes the “false promise to marry” with punishment closely resembling that traditionally reserved only for some of the most heinous sex crimes.

¹ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

² Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

³ Indian Penal Code, No. 45 of 1860, India Code (1860).

⁴ Bharatiya Nyaya Sanhita, Section 69

The Legislative Gap: From "Misconception of Fact" to Section 69

In the former IPC regime, the offence of having a broken promise to marriage was more the child of judicial creativity than legislative drafting. Nothing in particular so far criminalized sexual intercourse performed as a result of a false promise. Because then the courts had to do some fancy interpretative acrobatics in applying Section 375 (Rape) and Section 90 (Consent known to be given under fear or misconception)⁵. The courts had difficulty in deciding when a 'misconception of fact' would operate to invalidate consent and so we find different verdicts according as the area between a predator liar, on one hand, and simply someone unable to keep a promise because of social necessity, is more or less clearly defined.⁶

It is this lacuna that the section 69 of the BNS seeks to cover by creating a statutory offence. It institutionalises a graded hierarchy of laws: characterizing the act as "sexual intercourse without any aggressive element" but attaching a harsh sentence of imprisonment up to ten years. The legislature's express characterization of "deceitful means" to include a false promise of employment, of a promotion, and of marriage following the suppression of identity is an indication that it has taken its stand as one not to countenance any form of what it describes as "luring" women into sexual relationships.

The Evidentiary Chasm and the Research Question

The codification of Section 69 makes the law clearer, but it also "creates an evidentiary drop in a mandrill-eaten netherworld." The main point of this legal dispute is still the retroactive consideration of a person's state of mind. The law says that the person who made the promise must have done so "without any intention to fulfilling the same." The "Inception Test" says that evil was present when the promise was made.⁷

But human relationships are always changing, and intentions rarely stay the same. The vow made in the heat of passion might be true in January, but by December it might not be true anymore because the family won't let it happen or because they can't afford it. This leads us to the core issue of this research: How can we constitutionally and autonomously address matters that lack immediate solutions? How do we, as a society, delineate the distinction between a

⁵ Id at 3.

⁶ Suhas Palshikar, *The 'Right to Love' and the Bharatiya Nyaya Sanhita*, Indian Express (July 3, 2024), <https://indianexpress.com/article/opinion/columns/the-right-to-love-and-the-bharatiya-nyaya-sanhita-9429402/>.

⁷ Id.

"breach of promise" (a civil wrong) and "deceitful intent" (a criminal offense) without infringing upon rights protected by the Constitution or undermining the decisional autonomy of adults?

This paper argues that while Section 69 is essential for safeguarding against identity theft and exploitation, it may inadvertently become an instrument of moral regulation if the 'Inception Test' is not rigorously implemented. This research delineates the parameters of this emerging crime by examining the statutory text, recent case law from 2024-25, and broader sociopolitical discourse on "identity politics." It asks if the BNS has been able to close the gap between punishing fraud and making heartbreak a crime, or if it has just given the state a new way to address personal failures in love.

The Legislative Trajectory: From 'Misconception of Fact' to Statutory

Deceit

The equation of consensual sexual intimacy precipitated by a promise of marriage with a criminal offense has never been a simple legal calculation in India. It is a story of judicial metamorphosis, from the vague and interpretative forests that is the Indian Penal Code (IPC), 1860, to the granular and codified trees that are Bharatiya Nyaya Sanhita (BNS), 2023. To appreciate the significance of Section 69, BNS, one needs to unpack a legal architecture that it supplanted, A legal regime where courts were compelled to wield the sledgehammer of "rape" laws in order to wade through the shimmering greys of romantic duplicity. This chapter's central theme is story of the IPC's "misconception of fact" doctrine⁸ and its adaptation for the BNS into what is now enshrined as a statutory definition for 'deceitful means'⁹, the jurisprudential rift that made it necessary.

The Judicial Labyrinth: Section 375 and Section 90 IPC

Rape was defined under Section 375 of the IPC¹⁰. The code listed certain situations where sexual intercourse is non-consensual, for example against a woman's will or without her consent. It was important that it did not include "fraudulent promise of marriage" as one of the vitiating variables. Cases in which men obtained sexual favours by making false promises were dealt with under Section 90 of the IPC¹¹, which enumerated conditions for valid consent.

⁸ IPC, Sec 90.

⁹ BNS, Sec 69

¹⁰ IPC, Sec 375.

¹¹ IPC, Sec 90.

According to section 90, consent was not a valid defence if it was given under a "misconception of fact" and the perpetrator knows or has reason to believe that the consent was given in consequence of such misconception. For decades, the state's prosecutors had insisted that a promise of marriage was a "fact" and that if it was false the consent it generated was void ab initio. Therefore, the act was legally processed as if the consent was not given at all technically considered to be a rape.

This legal gymnastics made things very black and white: a man was either a rapist who could spend the rest of his life in prison or an innocent lover. There was no compromise for "sexual intercourse by deceit." This lack of nuance put courts in a tough spot, often mixing up a moral wrong (breaking a promise) with a horrible crime (rape). This led to verdicts that were all over the place, depending on how the judge understood "misconception."

The Precedential Struggle: Distinguishing Impulse from Intent

Two leading Supreme Court judgments, *Uday v. State of Karnataka* (2003)¹² and *Deelip Singh v. State of Bihar* (2005)¹³, demonstrate how the judiciary is grappling with applying Section 90. Yet, these cases established the intellectual foundation of the BNS as well as limitations of IPC framework.

The Supreme Court, in *Uday v State of Karnataka* (2003), had to deal with a case where two people living together could not be married because of their castes. The Supreme Court reversed the conviction and promulgated the "mixed motive" doctrine. It held that a woman in the forties, who willingly and lovingly carries on physical relations is not driven solely by such a compact of matrimony but also due to love and passion. The court recognized that that the prosecutrix was aware of the caste barriers and likely consented despite them. Court established that, consent cannot be retroactively nullified simply because the marriage failed to materialize; the promise must be the immediate and sole cause of the consent for Section 90 to apply.

Supreme Court laid down this defining limit two years later in *Deelip Singh v. State of Bihar* (2005) which would later influence BNS drafting. The court drew a line between a "false promise" and a "breach of promise."

¹² *Uday v. State of Karnataka*, AIR 2003 SC 1639 (India).

¹³ *Deelip Singh v. State of Bihar*, AIR 2005 SC 203 (India).

False Promise (Criminal): The person who made the promise didn't really want to marry the victim; they just wanted to have sex with them. This is a "misconception of fact" to start with, and it would make consent invalid.

Breach of Promise (civil): The person who made the promise may have really meant to marry at the time, but later changed their mind because of things they didn't know about, like family disapproval or finding out they weren't compatible. This does not invalidate consent.

Theoretically, Deelip Singh case¹⁴ had given theoretical clarity, the practical side was unfeasible. Without an explicitly-worded statute, the "intent at inception" to do harm under a rape charge was still a gamble for both defendants and prosecutors.

The Codification of Deceit: Section 69 BNS

The Bharatiya Nyaya Sanhita, 2023 shatters this interpretative haze by enacting Section 69. For the first time ever, Indian law admits explicitly that sexual intercourse by fraud is a separate crime: one serious enough to need ten years of imprisonment but not so life-destroying as "rape" itself as it was then called (now Section 64 BNS).¹⁵

But the novelty of the legislation is to be found in the terms employed in Section 69 "making a promise to marry a woman without any intention of fulfilling the same."¹⁶ The aforesaid provision is no more than an enactment of the ratio in Deelip Singh¹⁷. It codifies the "Inception Test" to be applied in the statute. In requiring that there be proof the promise was made "without any intention," the law says a change of heart is not criminal; only the original deception is.

The BNS also adds an Explanation to section 69, that provides a wide definition to the term "deceitful means" so as not only to cover matrimonial promises.¹⁸ It includes:

- False Offer of Employment/Promotion: Criminalizes quid pro quo abuse in work relationships by recognizing sexual exploitation in professional power dynamics as a criminal deception.

¹⁴ Id.

¹⁵ BNS, Section 64.

¹⁶ BNS, Section 69.

¹⁷ Supra note 11.

¹⁸ BNS, Explanation to Section 69.

- Inducement for marriage or marrying after concealment of real identity: This proviso is generally interpreted that it had been included with regard to sociopolitical consideration related to inter-religion dating and 'Love Jihad'. It is illegality for relationships predicated on misrepresented identity, in which someone hides who they are to secure consent.

A Tiered Approach to Culpability

The transition from IPC Section 375/90 to BNS Section 69 represents a shift from "implied coercion" to "codified deceit." The BNS recognizes that consent acquired through deception is defective; however, it distinguishes this defect from the complete absence of consent observed in forcible rape. The legislature has tried to make the punishment fit the crime by making "sexual intercourse not amounting to the offence of rape" a separate level of offense. However, as the following chapters will show, the law makes the crime clearer, but it doesn't make it easier to prove. The requirement to demonstrate "intention" at the outset persists as the primary evidentiary challenge, a remnant of the IPC era that continues to affect the new code.

As the pendulum swings from IPC Section 375 to BNS Section 69, it goes from "implied coercion" to "codified deceit." Consent obtained through deceit is deficient for the BNS; however, this deficiency is distinct from the total lack of consent typically present in forcible rape. The legislature has tried to link the amount of punishment to the severity and extent of the crime by creating this graduated scale, "Sexual intercourse not amounting to the offence of rape." But as the next chapters it is evident, the law does not make it easier to prove that the crime happened, even though it does give a definition of the crime. But the evidentiary hurdle of proving "intention" at the beginning, which is a remnant of the IPC remains.

Deconstructing 'Deceit': The Mens Rea Requirement

The Anatomy of a Promise

At the core of Section 69 BNS 2023, is nestled a puzzle in jurisprudence-reading the colour or shape of human intention that has been transpired. Whereas violence crimes (the guilty act) can often convey the intent in its action(stab wound as evidence of intention to provide harm), Sexual intercourse intercourse within these relations is nebulous at best. It can be a means of expressing love, or lust; of giving into habit, or hoping for something more. Under section 69, only "deceitful means" are prohibited. Therefore, the crime does not lie in the sex itself, nor

strictly in the failure to marry, but in the state of mind (*mens rea*) of the accused at the specific moment the promise was made.

This chapter discusses the legal standard of "deceit" necessary to obtain a conviction under Section 69. It is positing that the "Ab Initio" standard is a requirement for criminal liability i.e an alleged intention to deceive must have been from its inception. By discussing the landmark decision *Pramod Suryabhan Pawar v. State of Maharashtra*¹⁹ and differentiating between "fraud in the inducement" and "fraud in the factum," this chapter draws a line between a criminal and a fickle lover

The 'Ab Initio' Standard: The Legacy of Pramod Suryabhan Pawar

The transition from the Indian Penal Code (IPC) to the BNS has codified judicial precedents that sought to distinguish between a "false promise" and a "breach of promise." The cornerstone of this distinction is the judgment of the Supreme Court of India in *Pramod Suryabhan Pawar v. State of Maharashtra* (2019)²⁰. Although delivered under the IPC regime, its ratio decidendi forms the interpretative backbone of Section 69 BNS, specifically the statutory phrase "without any intention of fulfilling the same."

The change from the IPC to the BNS has crystallized common law principles on what constitutes a "false promise" being distinct from a "breach of promise." The foundation of such demarcation is the pronouncement by the Hon'ble supreme Court of India in *Pramod Suryabhan Pawar* case. Though rendered in the era of IPC, its ratio decidendi provides interpretative sinew to Section 69 BNS, i.e., specifically the statutory phrase "without any intention of fulfilling the same."

In *Pramod Suryabhan Pawar*, the Court was concerned with a situation where the complainant and the accused were in some sort of long relationship. As per the FIR, the accused had lured the victim by making false promises of marriage to have sexual relations and later refused because of differences of caste reservation and family resistance. The Court, in applying its power to quash the proceedings, formulated that "Ab Initio" standard.

¹⁹ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 (India).

²⁰ *Id.*

The breach of a promise, the Court said, was not equivalent to a false promise. A breach suggests that at the time of promise, one meant to marry and some unforeseen event interfered, like parental opposition or a change in relationship dynamics stopped him from marrying. By contrast, a "false promise", The deception which brings criminal liability exists if the accused never intended to marry and gave the promise as false guise or lure (to satisfy lust).

This distinction is critical. The Court emphasized:

"There is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled."

Pursuant to section 69 "Inception Test", the prosecution must prove the accused mens rea at time of inception. If it amounts to evidence that the accused has introduced the partner, to his relatives or planned to marry and/or cohabited for some time (as observed in *Ravish Singh Rana Vs. State of Uttarakhand, 2024*²¹), it is "silent proof" of bona fide intent. Subsequent failure to marry, though it may be the occasion of moral or civil liability, cannot breathe retroactive vitality into the initial consent into a product of deceit. The Pramod Suryabhan Pawar ruling acts as a judicial shield to deter the misuse of criminal law to penalise the "emotional fallout" of a consensual relationship.

Fraud in the Factum vs. Fraud in the Inducement

To appreciate the full reach of section 69, one must place it in a theoretical context concerned with fraud as regards to sexual offenses generally. Common law jurisdictions have not settled upon a uniform terminology for fraud, but generally they recognize two types: fraud in the factum and fraud in inducement.

Fraud in the Factum (Identity and Nature)

Fraud in the factum occurs when the deception relates to the very nature of the act itself or the identity of the participant. The classic example is a medical practitioner telling a patient that he is inserting a surgical instrument when, in fact, he is engaging in sexual intercourse. In such cases, the victim does not consent to the act of sex; they consent to a medical procedure. The

²¹ *Ravish Singh Rana v. State of Uttarakhand*, 2025 INSC 635 (India).

consent is entirely absent regarding the sexual act.

Fraud in the Factum (Identity and Summary)

Fraud in the factum occurs when the deception relates to the very nature of the act itself or the identity of the participant. The classic example is the doctor who says to the patient he is putting in a surgical instrument when what he is really doing, of course, is having intercourse. The victim does not consent to sex in those instances; they consent to medical treatment. There is not even consent as to the sexual act Under the BNS (and the previous IPC Section 375), fraud in the factum is unequivocally Rape. The victim is not aware of the act, or who is committing it.

Fraud in the Inducement (Domain of Section 69)

This is not so for fraud in the inducement. At this point, the victim is aware they are having sex and knows it's the other participant. The "fraud" has to do with the additional reasons why they are agreeing. The victim agrees to sex because something has been promised them, "I will marry you," "I'll find you work," or "I'm a wealthy bachelor."

In most Western legal systems, for example the United Kingdom (in England and Wales through the Sexual Offences Act 2003²²), fraud in the inducement is no defence against rape laws except where the deception relates to a matter of "fact" or goes not just to perpetration but to the very purpose of activity itself. R v Lawrance (2020)²³ observed that where lies about nonphysical features (for example, financial or marital status) were involved, those behaviors would amount to a moral wrong, not a sexual offense.

With section 69 of the BNS, there is an exception to such approach. It makes fraud in the inducement an aggressive crime. By criminalizing seduction by "making promise to marry...without any intention of fulfilling the same" envisioned in the Indian Penal Code, the Indian legislature has made a determination that some inducements are so central to the calculus of decision making for a victim (at least given our understanding of social relationships with marriage etc. in an Indian context where marriage is much more valued) that a lie here amounts to violation against bodily integrity.

²² Sexual Offences Act 2003, c. 42 (Eng.).

²³ R v Lawrance [2020] EWCA Crim 971

But this is a slippery slope. If “deceitful means” includes getting married under false pretenses, can you condition relations on anything else? This is clarified by the Explanation to Section 69 as, “false promise of service or employment”. This demonstrates that the law is dealing with transactional fraud, where the body is “compensated” for in counterfeit (“fake job,” or “fake marriage”) currency. The problem for the courts is to find the line: when does a lie about income or height qualify as “deceitful means”? Modern precedent indicates that the line is crossed by inducements that alter their recipient’s social status or future security, in particular through offers of marriage and employment.

The "Evidentiary Chasm" and the Fluidity of Intent

In court, the differences between "breach" and "false promise" are put to the test in the Evidentiary Chasm. The human mind is not a reservoir of crystallized intention; it is dynamic. There are many reasons why someone might want to get married in January (Time A) but change their mind by June (Time B). These could include losing interest, financial stress, or finding out that they aren't compatible.

Section 69, which requires the court to establish the intention at Time A by reference to evidence frequently taken after Time B; it is a process fraught with risks. In *Deepak Gulati v. State of Haryana* [2013]²⁴, the Supreme Court cautioned "not every failed relationship should be converted into a criminal offence." The Court accepted that a man could begin with the best intentions in an intimate relationship but “desire can fade”.

To span this chasm, courts seek “objective dealbreakers” that existed at the time of the start.

- The Subsisting Marriage Test: As seen in *Naim Ahamed v. State* (2023)²⁵ and explicitly covered under the "suppressing identity" clause of Section 69, if the accused is already married and conceals this fact, the ab initio deceit is proven. A married man cannot legally fulfill a promise to marry another; thus, the promise is false per se at inception.
- The “Sole Basis” Test: The state is required to show that the promise of marriage was the sole inducement for consent. If the evidence establishes the case of a “mixed motive”, in that, though the woman consented (as she did) for sexual intercourse not solely on account of deception at such promise but also due to her love, passion or

²⁴ *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 (India).

²⁵ *Naim Ahamed v. State (NCT of Delhi)*, 2023 SCC OnLine SC 89 (India).

feelings towards or companionship with the person who obtained it by making that promise – the causal link required for Section 69 is broken. In *Uday v. State of Karnataka* (2003), the Hon'ble Court acquitted the accused on claims that because prosecutrix falling in love with him and knowing the caste barrier was deemed to have consented due to affection rather than a blind reliance on the promise.

In legislative view this rather belated piece of legislation- indeed, it was thought prudent to include section 69 in the BNS somewhere along the line in order to protect women's dignity from debasement as something that is purely an exploitable commodity. But the mechanism of that protection is based on an unstable legal fiction: that intent is fixed and readily separable. The mental part of section 69 puts a lot of pressure on the prosecution to show "deceit in its inception."

The jurisprudence, led by Pramod Suryabhan Pawar and Deepak Gulati, is what keeps things in balance. It makes it clear that a "broken vow" and a "criminal lie" are not the same thing. If the Ab Initio standard isn't strictly followed, Section 69 could punish men not for lying, but for the natural human tendency to fall out of love. As the law changes in 2025 and beyond, the courts' ability to follow this rule that fraud in the inducement needs proof of a pre-planned trap will decide whether the BNS is fair or just punishes people.

The legal opinions of Pramod Suryabhan Pawar and Deepak Gulati, which are completely different from each other, provide the necessary balance. It shows that a "broken vow" is not the same as a "criminal lie." If the Ab Initio threshold is not applied with full rigor, Section 69 may be perceived as penalizing men not primarily for deceit, but for a universally acknowledged behavior: falling out of love. As the law changes in 2025 and beyond, the courts' ability to follow this rule that fraud in the inducement needs proof of a pre-planned trap will decide whether the BNS is fair or just punishes people.

The Evidentiary Gap: Proving the Unprovable Mind

The Subjectivity of Deceit

The criminalization of "false promise to marry" as delineated in Section 69 of the Bharatiya Nyaya Sanhita, 2023 (BNS), poses a jurisprudential challenge concerning the criminal prosecution of an individual's mental state. The heart of the crime under s 69 is not (on the surface) the act of sexual intercourse itself (which seems to be consensual at some point in time

when it happens) but the man's secret intent. This is different from other crimes that cause real harm to the body, like assault or murder. This leads to what this study calls the "Evidentiary Chasm," which is the big gap between the real-world situation where a promise was broken and the claimant's need to show some kind of planned deceit from the start.

The language of Section 69 is specifically aimed at a promisor who makes a promise "without any intention of fulfilling the same." This language makes the difference between a "false promise" (a crime) and a "breach of promise" (a civil wrong) into law. But after this difference in court, there is a psychological flip that goes backwards. The court must go back to the start of the relationship and decide if the person who is being accused was a controlling liar. or, less condemnatory, a partner who simply did not find it necessary honourably to translate into action what would appear later to be an entrenched commitment This chapter analyzes the standard of proof required to bridge this chasm, the reliance on circumstantial tests, and the "reasonable doubt" dilemma that plagues "he-said/she-said" narratives.

The Standard of Proof: The Burden on the Prosecution

The Presumption of Innocence Continues to be a Fundamental Rule in India Under the Bharatiya Sakshya Adhiniyam, 2023 (BSA), presumption of innocence is still recognized as a cardinal principle under the criminal jurisprudence. In contrast to the implied guilt in custodial rape or under a special statute such as POCSO, here Section 69 unequivocally places mens rea on the prosecution to be proved beyond reasonable doubt.

The burden of proof here is very heavy. Prosecution has to establish not only that marriage did not occur but also that the accused never intended even momentarily, to marry. As held in *Deelip Singh v. State of Bihar* and reiterated in the context of BNS, there has to be a proof that, 'at the very start', accused must have harboured "clandestine motive". That requires a level of "Certainty of Deceit. If the evidence indicates that at the time of initial promise made to the complainant, accused had really a genuine intention to marry her but subsequently there was a change of mind set in because of some selfish motive or seduction for meeting lusty passion or reason like family background then the mens rea is absent.

So, it seems that the prosecution only has to show that there are other possible reasons for the breakup. If the defense presents a "reasonable hypothesis" of a genuine relationship deteriorating, substantiated by the "Fluidity of Intent" plea, then Section 69 is ineffective. This

elevated standard serves as the primary safeguard against the statute being misused to penalize emotional infidelity instead of criminal fraud.

The "Inception Test" and Temporal Retroactivity

"The Inception Test" is his main test for determining intent. Doctrine solidified in *Deepak Gulati v State of Haryana* has been rigorously applied by the High Courts in 2024-2025 to construe Section 69. The test compels the court to exclude all link between the promise and the sexual act except at that moment, to ascertain whether or not this intent was at that particular time malicious.

This practice of "temporal retroactivity" is intricate. Creating a relationship with another individual, human relationships are dynamic and intent is not often fixed. A man may have the best of intentions regarding his marriage for January (Intent A), but may not be able to marry, or simply does not want to in December after going financially bankrupt or during parental compulsion (Intent B). Section 69 only renders illegal the deception at Stage A; so if the change of mind does not occur until after intercourse, the act cannot be retrospectively criminalized.

The "Evidentiary Chasm" grows here because the change of heart in the accused's own mind is invisible. To discern a "trap" from a "change of heart," courts must resort to evidence of external indicators instead of just internal intentions. New case law, like *Saravanan C. v. State of Tamil Nadu* (Madras High Court, 2025), shows that the law can't handle emotional effects. The court said that unless the prosecution could show that there was some objective "dealbreaker" at the start of the relationship (like a marriage that already existed or an undisclosed identity), there was no reason to believe that the relationship wasn't consensual, and not getting married was just a civil breach.

Circumstantial Proxies: Constructing Intent from Conduct Because the defendant's mind cannot be read, the court relies on "circumstantial proxies", objective indicators that it pieces together from evidence of what the parties did or refrained from doing to discern whether there was deceit behind those actions. The synthesis of IPC precedents and recent BNS judgments has resulted in three main tests:

The Chronological Test (Duration of Relationship)

The duration of the relationship is the most powerful intention indicator. With regard to Pramod Suryabhan Pawar, the Court held that "conscious consent" as opposed to "misconception of fact" is inferred from a consensual sexual relationship over period of time in Anil Verma v. State (NCT of Delhi) (2025). In Anil Verma the Delhi High Court set aside an FIR under Section 69 holding that a long-standing relationship of over 15 years requiring cohabitation and sharing of monetary resources do not support the theory of "Predatory trap". It's evidentiary logic: a man who impersonates someone with the sole goal of getting sexual gratification is not one to sustain a multi-decade, orchestrated domestic fraud. Time, therefore, corrodes the accusation of deceit; as the relationship lengthens, any claim that sex was induced by mere representation of marriage becomes much weaker.

The Social Visibility Test

Deceit usually thrives in shadows. Thus courts look at public perceptions of the relationship. In Uday v. State of Karnataka, the introduction of prosecutrix to members of accused's family was treated as an evidence of bonafide interest. Under Section 69, if an accused integrates the woman into his social and familial life, it serves as powerful circumstantial evidence against the claim of "deceitful means.". On the other hand, Morse noted, "suppressing one's identity" or keeping a relationship completely secret (and specifically hiding it from any other potential partners or spouses) is considered statutory aggravation under Explanation to Section 69.

The "Sole Basis" or "But-For" Test

The causal nexus is the most problematic in terms of evidence. The promise of marriage needs to be the only consideration on which her consent was based and such consent being fraudulently obtained. This is applied as a "But-For" cause: But for the promise, would there have been sexual intercourse?

If there was "evidence of mixed motives"—the woman acted out of love, lust, mutual desire or companionship for which the promise was merely an inducement—the "direct nexus" for conviction is broken. The courts are divided between passive submission caused merely by the promise itself and active consent stemming from desire. Evidence of the woman initiating sex, booking hotels together, or continuing the relationship after breaking her promise that they wouldn't be business partners makes it clear that the promise was ancillary to their relationship, not the sine qua non of her consent.

The "He-Said/She-Said" Dilemma and the Privacy Paradox

Section 69 cases turn into "he-said/she-said" trials when there is no physical proof of the private promises. The "Reasonable Doubt" issue is very serious here. The court has to weigh the victim's sworn testimony against the accused's, which usually doesn't have much support other than digital breadcrumbs.

This has caused the "Privacy Paradox" in modern lawsuits. Anil Verma (2025) says that the answer to Section 69 is often an invasion of the complainant's privacy. To show "true love" (and, by extension, that there was no lying), he or she has to show private WhatsApp chats, call recordings, and pictures in open court. This "digital trail of affection" is a double-edged sword. It establishes consensual sexual relations and negates "misconception-of-fact," but it does so at the cost of revealing how close the complainant had become with the respondent in private.

The "Educated Woman" standard put forth by Dr. Dhruvaram Murlidhar Sonar adds another layer to the reasonable doubt calculus: Courts are becoming more skeptical of cases where a well-educated, mature woman says she was "misled" into starting a physical relationship just because someone told her to, and that it happened so long ago. The underlying assumption is that any sensible adult would evaluate the risks associated with pre-marital intimacy and recognize that a promise does not constitute a legally binding agreement. When that happens, and both stories are equally likely—one of lying and the other of taking risks together—it is the principle of generosity, which is at the heart of everything BSA stands for, that gives the accused the benefit of the doubt.

The Necessity of Judicial Gatekeeping

The evidential void in Section 69 BNS encompasses an over-criminalization aspect. The law bases criminal liability on the vague idea of "intent to fulfill," which means that courts have to figure out if people are really feeling something. The fact that High Courts granted a lot of relief in 2025 (about 96% in quashing/bail petitions) shows that the courts know about this gap. Crucially, the "Inception Test" and the "Sole Basis" test serve as necessary gatekeepers. Removal of them effectively erases the distinction between a "broken vow" and "criminal deceit," rendering even every broken engagement an act of rape. As the en banc analysis shows that the law is useful for protecting against identity theft and possible exploitation, but it should be used very carefully in romantic relationships. The court needs to be sure that the person who complained didn't just feel cheated, but that the person who was accused had been wearing a

mask of a lover from the beginning and was a lovelorn person. Anything less than this "certainty of fraud" falls into the murky waters of reasonable doubt, which means the person is not guilty.

Constitutional Balance: Paternalism, Privacy, and the Sword of Vengeance

Section 69 of the Bharatiya Nyaya Sanhita (BNS) changes how the modern Indian state and private lives are connected. By making sex that is gotten through a "false promise of marriage" illegal, the legislature has made it easier for the criminal justice system to get into our most private space, the bedroom. This lawmaking action creates a serious conflict with the Constitution. On the other hand, the states have a duty to protect weak citizens from being taken advantage of and lied to. On the other hand, Article 21 of the Constitution gives him the right to privacy and freedom.

This chapter looks at this fragile balance. It says that while there is a good reason for the state to punish real predators with an interest-based approach like 69, using a broad definition of "sexual" in the Criminal Code could make short-term relationships illegal, even if adults are free to start and end them for any reason. The analysis walks the line between "paternalistic protection" and "adult autonomy," which has led to more discussion about how this law can be used as a weapon for revenge in broken relationships.

A fundamental criticism of Section 69 is its inadequacy in recognizing feminist jurisprudence and the concept of sexual agency. The provision is based on a sexist idea: it assumes that a woman agrees to have sex before marriage because she thinks she will be safe in her future husband's home. The law says that the sexual act was not an expression of current desire, but a deal for a future status by making the consent obtained through "false promise" invalid.

Some people say this model is "paternalistic" and makes women feel like children. It could make the patriarchal idea that a woman isn't smart enough to tell the difference between a romantic wish and an irreplaceable, lifetime-restricting contract, or that her sexuality can only be "traded" for marriage stronger. The Supreme Court said in *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra* (2019) that there is a different expectation from a "educated woman" in court. The Court read between the lines and figured that modern people should have known better and understood what they were getting into when they had relationships before marriage. When the state punishes a broken promise with ten years of imprisonment, it arguably denies

the woman her agency to take emotional risks, effectively treating her decision-making capacity as lesser than that of a man in a similar position.

The main problem with Section 69 is how to understand Article 21 (Right to Life and Personal Liberty). The right to privacy as expressed in *K.S. Puttaswamy* says that people have the right to make private choices without government interference. This includes not only the "right to love," but also the "right to break up."

The petitioners in the ongoing Writ Petition (PIL) of *Vimal Vijay v. Union of India* (Kerala High Court, 2024) say that Section 69 violates people's "decisional autonomy." Relationships change, and the reasons to stay together fade away. By making it illegal to break off an engagement to marry, the state is forcing people to keep promises they wish they had never made and may now want to break for their own good. If a man knows he can't get along with his partner but is afraid of going to jail for ten years if he leaves, he can't leave the relationship. This creates a "forced union" situation that goes against the Constitution's values of freedom and dignity.

The law was meant to protect people from being taken advantage of, but new evidence shows that it is often used as a weapon of revenge. The "Evidentiary Chasm" talked about in earlier sections makes it possible for the provision to be used as a weapon after a bitter breakup.

The case of *Atul Subhash* (2024)²⁶, a suicide attributed to legal harassment by an estranged partner, exemplifies the human toll of weaponization. When a consensual relationship goes bad, the person who is "abandoned" may feel like they did something wrong. But making this moral wrong into a criminal FIR gives too much power to those who want to extort or get revenge. This trend has been noticed by the courts. In *Anil Verma v. State* (NCT of Delhi)²⁷ (2025), the High Court made the complainant pay for abusing the law by calling the FIR a "revenge tactic" after a 15-year consensual relationship.

Such concerns are supported by statistical figures. The higher judiciary seems to be signalling that at least 96% of these cases are sub-criminal and barely measure up to criminal deceit, with

²⁶ *Atul Subhash: A Man's Suicide Leads to Clamour Around India's Dowry Law*, BBC News (Dec. 23, 2024), <https://www.bbc.com/news/articles/c4gp3p1z2zmo>.

²⁷ *Anil Verma v. State* (Govt. of NCT of Delhi), 2025:DHC:5602 (India).

a relief rate, bail or quashing of 96%.²⁸ This gap between registered FIRs and trials convicted is an evidence that the process, in-news-report-imagearrest, stigma and trial becomes the punishment for the accused at large impacting his right to reputation, fair trail etc.

Section 69 is gender-specific, on a man giving a promise to a woman. This is challenged on the ground of Article 14 (Right to Equality). Men's rights groups contend that men too can be "honeytrapped/caged" and forced to extend material favours after the lure of marriage. By restricting the idea of victims to women, the law fails to account for contemporary sexual relations in which sole possession of agency and deception of a sexual nature is not only that of one sex. Even as the state is shielded by Article 15(3) (special provisions for women), that lack of neutrality helps to sustain an impression around the law being biased against male freedom.

Conclusion

In the constitution, Section 69 of the BNS is a dangerous move. It's trying to make rules about morals in a place that is made of water and feelings. The state wants to punish "fraud in the factum," which is identity theft or hiding valid marriages. However, the "constitutional balance" is off when this doctrine applies to long-term relationships.

The judiciary must be a strong and reliable protector of Article 21's importance. Section 69 must be interpreted narrowly, confined to those distinctly exceptional instances of unequivocal predatory fraud established from the outset. If the line between a "broken heart" and a "broken law" can be erased, Section 69 will no longer be a way to get justice. Instead, it will make the state stronger because we will freeze-frame and stop the natural flow of people coming together, which will turn it into what would be like another crime scene.

²⁸ Section 69 BNS False Promise of Marriage: Analysis of 132 High Court Cases, Khemka & Associates (Oct. 24, 2025), <https://www.khemkaassociates.com/post/section-69-bns-false-promise-of-marriage-analysis>.