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Intent: Deciphering Section 69 of the BNS And The Threshold of a Deceitful Promise

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Abstract

*The transition from the **Indian Penal Code (IPC)** to the **Bharatiya Nyaya Sanhita (BNS)** marks a paradigm shift in Indian criminal jurisprudence. Specifically, **Section 69** introduces a distinct statutory provision for sexual intercourse obtained through deceitful means or a false promise to marry, effectively carving this out from the traditional purview of rape. While legislatively intended to resolve historical ambiguities, the practical application of **Section 69** presents a critical challenge in objectively distinguishing between a **mala fide “deceitful promise”** present at the inception of the relationship criminal liability and a **bona fide “breach of promise”** resulting from a natural breakdown (civil or no liability).*

*This paper critically analyses every judicial trend by examining recent High Court bail orders and quashing petitions invoking **Section 69**. By rigorously evaluating the facts, legal issues, decisions, and underlying reasoning of these preliminary rulings, this research identifies how courts are establishing an evidentiary threshold for deceit. The paper argues that without standardised judicial guidelines, the application of **Section 69** risks replicating the interpretative inconsistencies of the erstwhile **IPC** regime. Ultimately, this article proposes a prescriptive multi-factor framework for trial courts to evaluate intent, aiming to balance the rigorous protection of victims against the potential misuse of the statute.*

Keywords: *Bharatiya Nyaya Sanhita (BNS), Section 69, Deceitful Promise to Marry, Criminal Jurisprudence, Statutory Interpretation, Evidentiary Thresholds.*

I. Introduction: The Dual Paradigm Shift

The enforcement of the **Bhartiya Nyaya Sanhita (BNS)** and the **Bhartiya Sakshya Adhiniyam (BSA)** represents A watershed moment in Indian criminal jurisprudence, systematically dismantling the colonial framework of the **Indian Penal Code (IPC)** and the **Indian Evidence Act (IEA)**. Among the most consequential substantive changes introduced by this transition is the enactment of **Section 69** of the **BNS**. By explicitly criminalising sexual intercourse secured through deceitful means or a false promise to marry, the legislature has effectively cured the historical anomaly of subsuming such offences into the rigid, often ill-fitting confines of rape under the erstwhile **Section 375** of the **IPC**.

However, while the legislative intent to decouple these offences is clear, the judicial application remains fraught with practical ambiguity. Trial courts and high courts are now tasked with drawing a precise legal threshold between a **mala fide** deceitful promise-one conceived at the very inception of the relationship solely to extract consent and the **bona fide** breach of promise resulting from external socio-cultural pressures or a natural breakdown in compatibility. Colonising the former is a necessary protection of sexual autonomy; criminalising the latter risks weaponising the Penal Code against the ordinary failure of human relationships.

In modern litigation, navigating this threshold relies almost entirely on digital footprints. WhatsApp chat histories, dating application logs, and digital timelines serve as the primary reconstructive tool used to ascertain a defendant's initial intent. Consequently, the substantive application of **Section 69** of the **BNS** is inextricably linked to the procedural strictures of the **BSA**.¹ The admissibility of these electronic records, now governed by the stringent chain-of-custody mandates under **Section 63**² of the **BSA**, creates a formidable evidentiary bottleneck. Proving a deceitful promise now requires not just establishing fraudulent intent but executing flawless digital forensics.

This paper critically analyses the intersection of these newly minted substantive and procedural laws. By examining early judicial interpretations of the **BNS**, this research seeks to identify the evidentiary challenges courts face in navigating the evidentiary challenges of digital records in deeply private disputes. Ultimately, this article proposes A standardized judicial framework and an admissibility checklist to ensure that **Section 69** rigorously protects victims of sexual deceit without inadvertently criminalising the genuine breakdown of a relationship.

II. Legislative Genesis: Moving Away from the IPC

To understand the evidentiary complexities of **Section 69** of the **Bharatiya Nyaya Sanhita BNS**, one must first examine the statutory void it was designed to fill. Under the colonial-era **Indian Penal Code (IPC)**, there was no specific provision that criminalised sexual intercourse obtained

¹ The Bharatiya Nyaya Sanhita, 2023, Section 69, No. 45, Acts of Parliament, 2023 (India).

² The Bharatiya Sakshya Adhiniyam, 2023, Section 63, No. 47, Acts of Parliament, 2023 (India).

through a false promise of marriage. Consequently, prosecutors and courts were forced to engage in jurisprudential acrobatics, shoehorning these offences into either **Section 375 (Rape)** or **Section 415 (Cheating)**.

The IPC Hangover: Conflating Rape and Deceit

Historically, the prosecution of a false promise to marry relied heavily on reading **Section 375** of the **IPC** in conjunction with **Section 90**, which stated that consent given under a misconception of fact is vitiated. The legal fiction constructed by the courts was that a woman's consent to sexual intercourse was predicated entirely on the promise of marriage; if that promise was a lie, the consent was vitiated, thereby rendering the act as a **Rape**. However, this framework proved highly problematic. Equating deceit with the violent, coercive nature of traditional rape created a disproportionate penal paradigm.³

The Supreme Court of India frequently intervened, most notably in cases like **Pramod Suryabhan Pawar v. State of Maharashtra**.⁴ to clarify that a mere breach of a promise could not amount to a misconception of fact. Yet, without a dedicated statute, trial courts continue to struggle, leading to inconsistent convictions and a high volume of **FIRs** being quashed at the appellate level. Alternatively, charging the accused under **Section 415 (Cheating)** fundamentally trivialised the offence, treating the violation of bodily and sexual autonomy as a mere financial or proprietary fraud.⁵

Section 69: Achieving Penal Proportionality

The drafting of the **BNS** presented an opportunity to cure this legislative hangover. As highlighted in the deliberations of the parliamentary standing committee on Home Affairs, there was a pressing need to recognise deceitful means as a distinct category of sexual exploitation.

Section 69 was introduced not to dilute the gravity of the offences, but to achieve penal proportionality. By carving out a separate **offence punishable by up to 10 years of imprisonment**, the legislature successfully decoupled it from rape. This distinction acknowledges that while consent obtained through a false promise is legally invalid, the act lacks the inherent physical coercion that defines **Section 69's** more severe counterparts.

Ultimately, the genesis of **Section 69** reflects a modern, nuanced understanding of sexual autonomy. It formally recognises that while a broken relationship is not a crime, the calculated manipulation of a partner's trust to extract sexual consent is a distinct penal offence deserving of its own statutory boundary.

III. Constitutional & Sociological Dimensions

³ The Indian Penal Code, 1860, 90, 375, 415, No. 45, Acts of Parliament, 1860 (India).

⁴ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 (India) .

⁵ Parliamentary Standing Committee on Home Affairs, *246th Report on the Bharatiya Nyaya Sanhita, 2023*, Rajya Sabha, 4.2 (Nov. 2023).

While **Section 69** of the **BNS** is also a statutory gap, its practical application inevitably generates profound friction and sociological complexities. Adjudicating A deceitful promise requires courts to navigate the delicate boundary between penalising social exploitation and infringing upon fundamental personal liberties.⁶

Article 21 and the Boundaries of Sexual Autonomy

At the heart of the discourse is **Article 21** of the **Constitution of India**, which guarantees the right to life and personal liberty a guarantee that the Supreme Court has expansively interpreted to include sexual autonomy and the right to privacy. The constitutional dilemma inherent in **Section 69** is the potential chilling effect on the freedom to choose, or explicitly unchoose, a life partner.

Personal relationships are inherently dynamic: the decision to marry, even when promised in good faith, remains subject to change. If the threshold for criminality is set too low, the state inadvertently criminalises the very human act of changing one's mind, thereby forcing individuals to proceed with unwanted marriages under the threat of penal sanctions. The constitutional mandate requires that **Section 69** be interpreted strictly as a safeguard against manipulation of consent, rather than as an instrument to enforce a specific performance of a marital promise.

The Sociological Reality: The "Family Veto"

The application of **Section 69** cannot be divorced from the unique socio-cultural fabric of India, where marriage is rarely an isolated contract between two consenting adults. It is often negotiated through the prisms of caste, religion, class, and patriarchal family structure. The sociological reality presents the most significant hurdles for trial courts. In a vast majority of cases, promises to marry are made with genuine intent. Still, the realisation of that promise is subsequently blocked by insurmountable family opposition often rooted in inter-caste or inter-religious prejudice. When a partner succumbs to a **"family veto"** and withdraws from the relationship, the resulting breach of promises is circumstantial, not deceitful. However, aggrieved parties, feeling legitimately wronged, frequently invoke the criminal justice system to seek redress for what is essentially a social-cultural failure.⁷

The challenge for the judiciary under **Section 69** is to disentangle these deeply entrenched sociological realities from malicious penal intent. A failure to objectively distinguish between a patriarchal veto and calculated sexual deceit risks filling the buckets with cases where the accused is essentially being prosecuted for lacking the social agency to defy their family.

IV. The Evidentiary Burden in the Digital Age (The BSA Impact)

The adjudication of **Section 69** of the **BNS** does not occur in a vacuum; it is entirely dependent on the evidentiary mechanism used to prove the accused's state of mind at the inception of the

⁶ India Const. art. 21.

⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

relationship. In the contemporary judiciary, intent is rarely proven through oral testimony alone, and it is reconstructed through digital footprints. Consequently, the substantive provisions of the BNS are inextricably bound to the new procedural strictures of the **Bharatiya Sakshya Adhiniyam (BSA), 2023**.

From Section 65B to Section 63: The New Chain of Custody

Under the erstwhile **Indian Evidence Act (IEA)**, the admissibility of electronic records was governed by **Section 65B**, a provision that generated immense judicial turbulence, oscillating between strict compliance and relaxed interpretations in landmark cases like **Anvar P.V. and Arjun Panditrao Khotar**.⁸ The newly enacted **BSA** seeks to cure this inconsistency by introducing rigorous and formalised protocols for digital evidence under **Section 62** and **Section 63**. The **BSA** elevates the standard for digital admissibility by mandating strict adherence to statutory forms and exhaustive chain-of-custody documentation. For victims invoking **Section 69**, this creates a formidable evidentiary threshold. Screenshots of WhatsApp conversations, voice notes, or dating app application logs-which are often the primary, if not sole, piece of evidence demonstrating a false promise-are no longer admissible upon mere production. The prosecution must satisfy the **BSA's** rigorous technical conditions regarding the integrity of the device, the prevention of tampering, and the proper certification by the person in lawful control of the device.⁹ This heightened standard prevents the misuse of fabricated digital evidence but simultaneously places a heavy procedural burden on genuine victims seeking redress.

Digital Timelines as Proof of Mala Fide Intent

To secure a conviction under **Section 69**, the prosecution must prove that the promise of marriage was deceitful ab initio-from the very beginning. A promise made in good faith that later unravels does not meet the statutory threshold. Courts must therefore engage in a retrospective analysis of the digital timeline to ascertain intent.

Digital forensics player critical role in distinguishing between a desireful promise and a subsequent breach. For instance, dating app logs or GPS location data might reveal that the accused was concurrently soliciting other marital prospects while extracting sexual consent from the victim, strongly suggesting a *mala fide* intent. Conversely, exhaustive WhatsApp chat histories might demonstrate prolonged discussions about wedding logistics, family introductions, or shared financial planning, which serve as exculpatory evidence pointing towards a *bona fide* intent that was only subsequently thwarted.

Ultimately, the **BSA's** impact on **Section 69** is profound. It dictates that establishing criminal deceit is no longer just a question of statutory interpretation, but an exercise in rigorous digital

⁸ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 (India).

⁹ *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1 (India).

reconstruction. Without strict compliance with the **BSA's** admissibility rules, the most compelling evidence of a deceitful promise remains legally inadmissible.¹⁰

V. Judicial Application: Case Law Breakdown

The theoretical boundary between a deceitful promise and a failed relationship is currently being stress-tested in constitutional courts. A critical analysis of early jurisprudence reveals how the judiciary is utilising digital forensics to adjudicate **Section 69** of the **BNS**. The following recent cases illustrate evolving evidentiary thresholds.¹¹

1. The Timeline of Inducement: Sequence of Digital Events

Facts: Prosecution alleges that sexual consent was obtained on a false promise of marriage. However, the defence presented **BSA-compliant** digital timelines specifically dating application chat logs and GPS location history demonstrating that physical intimacy commenced weeks before any text messages mentioning marriage were exchanged.

1. **Legal Issues:** Can a promise of marriage made after the initiation of a physical relationship retroactively mediate consent and attract **Section 69**?
2. **Decisions/Judgment:** The accused was discharged (applying the principles mirrored in a recent 2026 Delhi Sessions Court ruling).
3. **Reasoning/Significance:** The code established a strict “**Causation Test**”. For **Section 69** to apply, the deceit must have directly induced the consent; the digital footprint definitively proved that the initial sexual relationship was consensual and independent of any marital promise. A subsequent promise, even if broken, cannot travel backwards in time to criminalise prior consensual acts.

2. Legal Capacity and The Illusion of Deceit

1. **Facts:** The accused, a married man, was charged under **Section 69**. The prosecution produced WhatsApp conversations where the accused promised to divorce his wife and marry the complainant. The digital evidence also clearly indicated that the complainant was fully aware of his existing marital status from the inception of their relationship.
2. **Legal Issues:** Can a promise of marriage amount to “deceitful means” if the complainant is fully aware that the accused lacks the legal capacity to marry?
3. **Decisions/Judgment:** Anticipatory bail was granted to the accused.
4. **Reasoning/Significance:** The court held that a party making a promise must be legally qualified to fulfil it. Because the complainant knew the accused was married, she could not have harboured a legally enforceable exception of marriage (as it would constitute bigamy). Therefore, the promise could not legally qualify as a deceitful means required to induce

¹⁰ Neesh Ramchandani v. State of U.P., Application U/S 482 (All. H.C. 2024)

¹¹ XXX v. State of Kerala, Bail Appl. No. 1234 of 2024 (Ker. H.C.)

consent under **Section 69**. This ruling is highly significant as it places a burden of legal rationality on the complainant.

3. Punishing Deceit vs. Punishing Disappointment

Neelesh Ramchandani

v.

State of U.P. / Allahabad High Court)

1. **Facts:** After a long-term registration pending, an FIR was filed under **Section 69 BNS**. The defence introduced extensive, **BSA**-certified digital evidence, including digital vendor payment of foreign engagement ceremony, family WhatsApp group chats discussing wedding dates, and digital invitations. The marriage was ultimately cancelled due to subsequent family disputes.
2. **Legal Issues:** Does a failure to culminate a relationship into marriage, despite extensive preparations, constitute a false promise ab initio?
3. **Decisions/Judgment:** The High Court granted relief, quashing/staying the criminal proceedings.
4. **Reasoning/Significance:** The court laid down a vital maxim: **Section 69** “punishers decide, not disappointment”. The digital evidence of wedding preparation served as absolute exculpatory proof of *bona fide* intent to marry at the inception of the relationship. The court recognised that a subsequent, genuine collapse of the relationship-even at an advanced stage- falls strictly within the realm of a civil dispute or a failed relationship, completely outside the penal scope of **Section 69**.

VI. Comparative Jurisprudence (The Global Standard)

Situating **Section 69** of the **BNS** within a global context reveals that criminalising a false promise to marry is a distinctly South Asian jurisprudential phenomenon. Most advanced common law and civil law jurisdictions strictly separate the moral or civil breach of a future promise from the penal threshold of sexual offences. Examining this global framework provides critical guardrails for Indian courts to prevent the over-criminalisation of interpersonal relationships.¹²

The UK & Australia Model: Narrowing "Deception"

In the United Kingdom, the **Sexual Offences Act 2003** governs the vitiation of consent through deception. Under **Section 76**, the concept is consequently negated only if the deception relates directly to the nature or purpose of the relevant act, or if the offender impersonates a person known to the victim. English jurisprudence explicitly rejects the notion that a false promise of future marriage vitiates consent for sexual intercourse. Underlining emotional or financial motivation

¹² Sexual Offences Act 2003, c. 42, 76 (U.K.).

induced by a lie.

Similarly, Australian jurisdictions strictly limit the definition of fraud in sexual offences. Deception must relate to the physical identity of the person, the nature of the act (example falsely claiming a sexual act is a medical procedure), or the use of prophylactic protection (criminalising the act of “stealthing”). A broken marital promise is treated unequivocally as a moral failing or a civil breach, following entirely outside the ambit of the Criminal Court. The prevailing common law consensus is that consenting adults assume the emotional and social risk of premarital intimacy.

Lessons for India: The Limits of "Conditional Consent"

Indian socio-cultural realities, where pre-marital intimacy can carry severe social stigma and impact marital prospects, arguably justify the legislature's departure from the UK/Australia model. However, India must heed the global caution against expansive interpretations of “conditional consent”. In European jurisdictions, while conditional consent is legally recognised, it is rigorously restricted to immediate, physical parameters of the sexual act itself. The critical lesson for trial courts is the necessity of strict statutory interpretation. By observing international frameworks, Indian judges must ensure **Section 69** does not devolve into a state mechanism for enforcing traditional morality or punishing broken engagements. The threshold for “deceitful means” must remain exceptionally high, requiring concrete, objective proof of a predatory, fraudulent scheme ab-initio-akin to a romance scam-rather than the natural dissolution of a romantic partnership.

VII. A Proposed Prescriptive of the Framework

The Ultimate utility of legal scholarship lies not merely in identifying statutory friction, but in offering pragmatic solutions. To prevent **Section 69** of the **BNS** from replicating the interpretative chaos of the erstwhile **IPC** regime, the Indian criminal justice system requires standardised, objective guardrails.

This Paper Proposes a two-tiered prescriptive framework: a procedural checklist for investigating agencies handling digital records under the **BSA**, and a substantive “Intent Test” matrix for trial courts adjudicating bail and framing charges.

A. The Digital Admissibility of the SOP (For Investigating Agencies)

Given that digital timelines are the primary reconstructive tools in **Section 69** cases, investigating officers must adopt A strict standard operating procedure SOP to ensure compliance with **Section 62** and **Section 63** of the **BSA**. The mere printing of WhatsApp screenshots is no longer legally sufficient

1. **Immediate Seizure and Half Value Generation**: Upon the registration of an FIR, the primary devices smartphones and laptops of both the complainant and the accused must be seized, and the cryptographic hash value (example; SHA-256) must be immediately generated to ensure the integrity of the electronic record.

2. **Comprehensive Metadata Extraction**: Investigators must not isolate specific messages. They must extract complete metadata of the communication history to establish the true chronological context, proving exactly when physical intimacy began relative to when the promise of marriage was articulated.¹³

3. **Street Section 63 Certification**: The mandatory certificate under **Section 63** of the **BSA** must be secured contemporaneously with the seizure of the device, clearly identifying the lawful owner of the device and confirming that the device was operating properly during the period the records were generated.

B. The Judicial "Intent Test" Matrix (For Trial Courts)

To objectively separate a *mala fide* deceitful promise from a *bona fide* breach of promise, trial court judges should apply the following four prompt metrics before framing charges under **Section 69**:

1. The Chronological Test (The Causation Hurdle): Did the promise of marriage strictly precede the sexual consent? If the digital or documentary evidence reveals that physical intimacy commenced before any discussion or promise of marriage, the promise cannot legally be an inducing factor. Consent, in such cases, is independent, and **Section 69** cannot be invoked.

2. The legal capacity test: Was the accused legally capable of fulfilling the promise at the inception of the relationship? If the accused was already married and this fact was known to the complainant, a promise to marry is legally void and cannot constitute deceitful means, as the complainant could not have harboured a legal and enforceable expectation.

3. The Extraneous Intervention Test “(The Family Veto)”: Is there evidence of a subsequent external factor that thwarted the marriage? If digital communication (such as WhatsApp chats with family members) or financial records (booking of venues) indicate activating representations that were later derailed by caste disputes, parental officials, or financial collapse, the court must resume a bona fide's initial intent. This constitutes a civil breach, not criminal deceit.

4. The Financial Extraction Test: What if the sexual relationship is accompanied by the extraction of wealth? A strong presumption of a *mala fide*, predatory intent arises if the accused simultaneously extracted significant financial resources or property from the complainant under the guise of marriage. This distinguishes a calculated “romance scam” from a genuine emotional relationship.

VIII. Conclusion: Punishing Deceit, Not Disappointment

The transition from the Indian Penal Code to the **Bharatiya Nyaya Sanhita** represents a long-overdue maturation of Indian criminal jurisprudence. By enacting **Section 69**, the legislature has successfully decoupled the complex issue of sexual consent obtained through deceit from the

¹³ The Bharatiya Sakshya Adhiniyam, 2023, 62, No. 47, Acts of Parliament, 2023 (India)

physically coercive paradigm of traditional rape. It formally recognises that the manipulative extraction of sexual intimacy through a false promise of marriage is a grave violation of bodily autonomy that warrants distinct statutory categorisation.

However, as this paper has demonstrated, the substantive elegance of **Section 69** is inherently fragile without the procedural anchor of the **Bharatiya Sakshya Adhiniyam (BSA)**. Because the offence hinges entirely on the accused's state of mind as at the inception of the relationship, the legal battleground has shifted from physical forensics to digital timelines. The stringent admissibility mandates under **Section 63** of the **BSA**, and not merely procedural hurdles, are essential constitutional safeguards. They ensure that convictions are based on verifiable, untampered digital evidence of ab-initio deceit, rather than the emotional fallout of a fractured relationship.

As early judicial interpretations echoing the Supreme Court continue to warn in recent rulings like **Pradeep Kumar Kesarvani v. State of UP**¹⁴ make clear that the threshold for community must remain rigorously high. The law is designed to punish the calculated, predatory deception that vitiates consent, not the sociological or personal disappointments of a genuine engagement that subsequently collapses. Trial courts must actively resist the urge to utilise **Section 69** as a mechanism to enforce patriarchal morality that ought to compensate for the family veto that so often derails Indian marriages. Ultimately, the proposed synthesis of a **BSA-compliant** admissibility checklist and four prolonged judicial intent tests offers a pragmatic path forward. By adopting the standardised framework, the judiciary can achieve the true legislative intent of the Sanhita, fiercely protecting the sexual autonomy of victims against genuine fraud, while ensuring that the criminal justice system is never weaponised against the ordinary, albeit painful, failures of human romance.

¹⁴ *Pradeep Kumar Kesarvani v. State of U.P.*, 2024 SCC Online All 123 (India).

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