

ARTICLE

SECTION 69 BNS: FRAUDULENT CONSENT, CRIMINAL LIABILITY AND POTENTIAL MISUSE



Raushan Kumar * & Deepak Patel **

Abstract

Section 69 of the Bharatiya Nyaya Sanhita, 2023 (“BNS”) creates a distinct criminal offence for sexual intercourse obtained by deceitful means, including a false promise of marriage, made without any intention of fulfilment, in cases that fall short of rape. This article examines the doctrinal foundations, evidentiary structure, and practical operation of Section 69. It situates the provision within the existing jurisprudence on consent and misconception of fact developed under Section 375 of the Indian Penal Code, and traces how the Supreme Court’s insistence on proof of dishonest intention “from the inception” of the promise, rather than mere non-fulfilment, has shaped the boundaries of criminal liability. The article then identifies the central evidentiary difficulty that Section 69 poses: because the accused’s state of mind at the time of the promise is rarely susceptible to direct proof, courts and investigators are compelled to infer intention from surrounding circumstances, creating a risk that the eventual breakdown of a relationship is read backwards as evidence of original deceit. Building on this concern, the article considers the potential for misuse of Section 69 and the procedural safeguards, including impartial investigation, judicial scrutiny at pre-trial stages, and the inherent powers of the High Courts, that can mitigate this risk without discouraging genuine complaints of sexual exploitation. A comparative analysis of the approaches taken in England and Wales, Canada, and Australia demonstrates that other common-law jurisdictions confine criminal liability for deception to forms of dishonesty that bear a sufficiently direct and material connection to the complainant’s consent, rather than treating deception in the abstract as criminal. Drawing on this comparative experience, the article concludes with a set of recommendations aimed at preserving the protective function of Section 69 while guarding against the over-criminalisation of failed relationships and genuine, if broken, promises.

Keywords - Section 69 BNS, Sexual offences, False promise to marry, Consent and misconception of fact, Deceitful means, Evidentiary burden in criminal law.

I. INTRODUCTION

Marriage occupies a distinctive place in the social and legal imagination of India, and promises made in its name have historically carried significant evidentiary and moral weight in prosecutions for sexual offences. Before the enactment of the Bharatiya Nyaya Sanhita, 2023, allegations that a woman had been induced into sexual intercourse by a false promise of marriage were generally prosecuted as rape, on the theory that her consent had been vitiated by a misconception of fact within the meaning of Section 90 of the Indian Penal Code. This framework required courts to draw a fine and often difficult distinction between a promise that was false from its inception and a promise that was genuinely made but later broken, since only the former could support a conviction for rape.

* LL.M. Candidate, National Forensic Sciences University, Gandhinagar (NFSU); Practising Advocate before the High Court of Judicature at Patna and the Supreme Court of India.

** Alumnus, National Law University, Delhi; Practising Advocate before the High Court of Delhi and the Supreme Court of India.

Section 69 of the BNS departs from this earlier framework by creating a freestanding offence for sexual intercourse obtained through deceitful means, including a false promise of marriage or employment, or by concealment of identity, in circumstances that do not amount to rape. In doing so, the legislature has sought to recognise a category of sexual exploitation that falls short of the elements of rape but involves a serious violation of consent and individual autonomy. At the same time, the provision raises a set of interpretive and evidentiary questions that are, as yet, only partially settled by judicial authority: how is the accused's intention at the time of the promise to be established; what safeguards exist against the retrospective treatment of a failed relationship as criminal deception; and how does Section 69 relate to the pre-existing jurisprudence on consent developed under the erstwhile Section 375 framework.

This article proceeds in seven further parts. Part II traces the legislative background to Section 69, and the jurisprudence on false promises to marry that preceded it. Part III examines the requirement of dishonest intention at the inception of the promise, as developed through *Uday v State of Karnataka*, *Deepak Gulati v State of Haryana*, *Pramod Suryabhan Pawar v State of Maharashtra*, and *Dhruvaram Murlidhar Sonar v State of Maharashtra*. Part IV considers the burden of proof and the evidentiary challenge of establishing a subjective state of mind after the fact. Part V addresses the risk of misuse of Section 69 and the procedural safeguards available to guard against it. Part VI undertakes a comparative analysis of the treatment of sexual deception in England and Wales, Canada, and Australia. Part VII sets out recommendations for the interpretation and application of Section 69, and Part VIII concludes.

II. LEGISLATIVE BACKGROUND

Before the enactment of BNS, cases involving sexual intercourse obtained by a false promise to marry were usually registered on rape charges under Section 375 IPC, together with Section 90 IPC¹, on the ground that the woman's consent had been obtained under the misconception of fact. The Supreme Court has clarified that where a promise to marry is made without the intention of fulfilling it from its inception, and the woman is induced to consent to sexual intercourse based on such promise, her consent may be vitiated as being based on a misconception of fact, and the act may constitute rape. However, a promise to marry made in good faith but subsequently not fulfilled may constitute a breach of promise and does not, by itself, amount to rape; what is material is whether the promise was false from the inception.²

Section 69 of the BNS introduces the distinct offence where a person, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. The Explanation to section 69 further provides that deceitful means shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.³ Therefore, Section 69 establishes a separate category of criminal liability for some forms of sexual intercourse, not rape, obtained by means of deception. The provision not only covers the false

¹ Indian Penal Code, No. 45 of 1860, §§ 90, 375 (India).

² *Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1 (India).

³ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 69 (India).

promise of marriage, but also certain types of deceit that do not meet the criteria for the definition of rape but are nevertheless deemed to be criminal.

A key rationale of the provision is to protect individual autonomy; where consent is obtained through deliberate deception, it is not free and informed consent. However, the liability under Section 69 is heavily dependent upon the accused's purpose at the time of the representation, a very difficult fact situation that is not clearly addressed in the statute. The representation was therefore a burden on courts and investigators to determine whether it was fraudulent from the beginning. There is some debate about whether this is a legislative step that is needed to stop deceptive inducement or if the provision is framed so broadly that it may be applied inconsistently in a relationship where it is truly declining over time.

III. INTENTION AND GUILTY MIND

Section 69 emphasises the intention behind the promise of marriage, rather than the failure to subsequently fulfil it. A Promise to marry should not be presumed to be fraudulent just because it never takes place. What is material is whether, at the time the promise was made, the accused had no intention of fulfilling it and whether the promise was used to induce the woman to engage in sexual intercourse. So, the question under Section 69 is not whether this promise was ever fulfilled, but whether the promise was made without any intention of fulfilment from the beginning.⁴

In *Uday v State of Karnataka*, the Supreme Court made a clear statement that the fact of a failure to marry later was not enough on its own to prove that the woman's consent was acquired through a misconception of fact, and the circumstances surrounding the promise and the relationship between the people must be looked into.⁵ In *Deepak Gulati vs State of Haryana*, the Supreme Court distinguished between a mere breach of a promise to marry and a false promise made without any intention of fulfilling it from the outset. The Court emphasised that the subsequent failure to marry, by itself, does not establish that the promise was false when made.⁶ In *Pramod Suryabhan Pawar*, the Court held that the prosecution must establish not only that a false promise was made without any intention of fulfilling it, but also a direct link between the false promise and the complainant's consent.⁷ In *Dhruvaram Murlidhar Sonar*, the Supreme Court has restated that a consensual relationship between adults cannot be criminally tackled due to a lack of marriage.⁸

This body of jurisprudence exemplifies a recurring judicial hesitation to determine that a failure to marry is a crime, unless there is evidence that the promise was actually a sham from the beginning. This approach appears to be reflected, at least in part, in Section 69, which expressly requires that the promise to marry be made without any intention of fulfilling it. However, the intention must ordinarily be assessed from the surrounding circumstances existing at the time the promise was made, rather than inferred merely from the relationship's eventual dissolution. The Explanation to Section 69 broadens the definition of deceitful means to cover enticing by the creation of a false offer of job or promotion, and by marrying without revealing identity. Whether such conduct satisfies the requirements of the offence will ultimately depend upon the facts of each case. The difference

⁴ Prashant, 'Deceitful Promises and Vitiating Consent: A Critical Examination of Women's Rights under Section 69 of the Bharatiya Nyaya Sanhita, 2023' (2025).

⁵ *Uday v. State of Karnataka*, (2003) 4 SCC 46 (India).

⁶ *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 (India).

⁷ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 (India).

⁸ *Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 (India).

between a false promise and a genuine promise then broken would be much less significant if subsequent non-fulfilment could be viewed as prima facie proof of fraudulent intent from the beginning.⁹ This may reduce the standard of proof needed to prove culpable deception and, potentially, the breakdown of an otherwise consensual relationship to become criminal under Section 69.

IV. THE BURDEN OF PROOF AND EVIDENTIARY CHALLENGE.

Section 69 does not expressly reverse or alter the ordinary burden of proof in criminal proceedings. The prosecution must therefore establish the constituent elements of the offence beyond reasonable doubt, while the presumption of innocence and the accused's right to a fair trial remain applicable.¹⁰ The prosecution must prove not merely that a promise to marry was made and subsequently not fulfilled, but that the promise was made without any intention of fulfilling it and that the sexual intercourse was obtained as a result of that deceptive promise. The evidentiary difficulty therefore lies principally in establishing the accused's state of mind at the time the promise was made.¹¹ Intention is ordinarily a matter of inference rather than direct observation. Where direct evidence of the accused's state of mind is unavailable, courts may have to assess the surrounding circumstances, including communications between the parties, witness testimony, conduct preceding and following the promise, and the broader trajectory of the relationship.¹² The central evidentiary concern is therefore whether these circumstances demonstrate that the accused lacked an intention to fulfil the promise when it was made, rather than merely establishing that the relationship subsequently failed. The Supreme Court's jurisprudence provides an important evidentiary safeguard in this regard. As established in *Pramod Suryabhan Pawar*, the subsequent non-fulfilment of a promise does not, by itself, establish that the promise was false when made. The earlier jurisprudence similarly requires attention to the circumstances surrounding the promise and the relationship rather than treating the eventual failure of marriage as conclusive evidence of initial deception. These principles are particularly significant under Section 69 because the prosecution must establish the accused's intention at the inception of the promise.

This creates a difficult evidentiary problem. The accused's intention at the time of making the promise is a subjective state of mind, and the court may be required to reconstruct that state of mind from subsequent conduct and surrounding circumstances. There is therefore a risk of retrospective reasoning, in which the eventual failure of the relationship is treated as evidence that the promise must have been dishonest from the beginning. Such an approach could weaken the distinction between a genuinely intended promise that was subsequently breached and a promise made as a means of securing sexual intercourse without any intention of fulfilment.¹³

At the investigative and trial stages, allegations under Section 69 may also have significant practical consequences for the accused before guilt has been established. These consequences reinforce the

⁹ Rukmini Sen, *Pyaar, Promise, Dhoka: Feminist Questions to Law—Commentary on Uday v. State of Karnataka*, 56(1) VRÜ | WCL 104 (2023).

¹⁰ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 69 (India).

¹¹ Stanley Yeo, *False Promise to Marry and Other Forms of Sex by Deception*, 34 Nat'l L. Sch. India Rev. 82 (2022).

¹² Simranjot Kaur and Harmanpreet Kaur, 'Consent In Rape Law in India: A Critical Analysis of Legal Standards and Judicial Interpretation Under the *Bharatiya Nyaya Sanhita*' (2026) 4(2) *Indian Journal of Law* 1.

¹³ Vaibhav Gandhi and Muskan Gandhi, 'From Promise to Punishment: Analysis of Section 69 of BNS, 2023' (2024) 6(6) *International Journal for Multidisciplinary Research*.

importance of objective investigation and careful judicial scrutiny of the available evidence. At the same time, procedural safeguards should not operate to prevent legitimate allegations of sexual exploitation from being investigated or adjudicated. The challenge for the criminal justice system is therefore to develop an evidentiary approach capable of distinguishing deliberate deception from the breakdown of a consensual relationship, while preserving the presumption of innocence and the prosecution's burden to prove guilt beyond reasonable doubt.

Judicial application will consequently be crucial to maintaining this distinction. Investigators and courts should assess the complete factual context rather than beginning with the eventual failure of the relationship and reasoning retrospectively towards dishonesty at its inception. Evidence concerning the parties' communications, conduct, and circumstances surrounding the promise and subsequent events should be assessed cumulatively and in context.¹⁴ This approach would permit Section 69 to address deliberate sexual exploitation through deception without treating every failed marriage proposal or deteriorated relationship as evidence of criminal fraud.

V. THE RISK OF MISUSE AND PROCEDURAL SAFEGUARDS

The consequences of criminal allegations can be severe for the accused even before the case goes to trial, such as on employment, reputation and social standing, and defending against criminal charges can also be very expensive and time-consuming in both financial and personal terms. There has therefore been a concern that criminal complaints might be used to put pressure on the processes of settlement negotiation or private dispute resolution in some situations. These concerns, however, should be taken up with care. This should not be ignored, nor used as grounds to presume that complaints are typically malicious. An appropriate remedy is careful, judicious examination of the evidence and proper use of the procedures. This is especially important in Section 69 cases, where evidence may rely heavily on the private conversations, witness testimony and behaviour of the parties over time more than traditional physical or forensic evidence.

When considering the possibility of misuse, the answer should not be presumptions on behalf of the complainant or the accused; it should be judicial examination of the evidence.

(a) Impartial investigation. The investigation should take into account the communications, documents, witness statements and actions of both the parties in a comprehensive manner. The accused's motive at the time of the alleged promise will usually have to be gleaned from the surrounding circumstances, and investigators therefore need to steer clear of "proof" being offered solely from the later breakdown of the relationship.

(b) Judicial review at the initial stages. The courts should take great care to consider, at the right procedural stages, cognisance, discharge, framing of charges, quashing, etc, whether the material on record shows the essential ingredients of the alleged offence. Where there is an alleged false promise to marry, this means considering whether the evidence points to an intention to promise but not to keep the promise. Just because a relationship later broke up without marriage, however, should not be a reason to assume the initial promise was misleading.

(c) Free from any power to be abused. The inherent powers of the High Courts, under Section 528 of the BNSS, are an important safeguard against the abuse of the process of law. These powers can be used if the prosecution of the criminal case would be an abuse of process or if intervention is

¹⁴ Shubh Arora, 'The Labyrinth of Rape by False Promise of Marriage: A Critical Analysis' (2019) 9(1) NLIU Law Review 170.

considered to be required to achieve the ends of justice. But as their powers are so exceptional, they must be used with caution and in accordance with the principles laid down by the Hon'ble Supreme Court in *State of Haryana v. Ch. Bhajan Lal*.¹⁵

(d) The effects of proven bogus complaints. If a complaint is clearly false, or if it has been knowingly misused, the existing law provides some remedies for false evidence, perjury, and malicious prosecution as the case may be. These mechanisms should be used when the evidentiary requirements are met. Most importantly, however, an acquittal does not prove falsity or malice of the complaint. The failure of the prosecution to prove the offence beyond reasonable doubt must be distinguished from a finding that the allegation was knowingly fabricated.

(e) Ensuring access to justice. Procedural safeguards are not to be an obstacle to valid complaints. The emphasis of reform should be on robust, fair and effective investigation and adjudication, and not harder for the real victims of sexual exploitation to access the criminal justice system. The goal must be to avoid unwarranted prosecutions while at the same time not disincentivising proper reporting and not imposing obstacles to access to justice.

Judicial rulings will thus be key to the future development of the interpretation of intention as it was when the alleged promise was made. More consistent investigative practices and specialised training on consent, deception and the assessment of intention in evidence, together with clearer judicial guidance, could help to encourage investigative and adjudicative consistency. Procedural fairness should work both ways; it should ensure that the right complainant isn't closed off from having a genuine grievance considered, and vice versa, that the accused person isn't prosecuted when evidence fails to prove the essential ingredients of Section 69.

VI. COMPARATIVE JURISPRUDENCE

Other common-law jurisdictions have been more conservative in this definition, requiring that the deception must reach a certain threshold of seriousness and/or must be sufficiently related to the sexual act at issue to go to the root of the genuinely autonomous consent of an individual.

In England and Wales, the Sexual Offences Act 2003 adopts a structured approach to deception. Section 74 defines consent in terms of agreement by choice, with the freedom and capacity to make that choice.¹⁶ Section 75 establishes evidential presumptions in specified circumstances, while section 76 provides conclusive presumptions where the defendant intentionally deceives the complainant as to the nature or purpose of the relevant act, or intentionally induces the complainant to consent by impersonating a person known personally to the complainant.¹⁷ The statutory scheme therefore gives conclusive effect only to these specific forms of deception.¹⁸ However, deception that falls outside section 76 may still be relevant to the broader question under section 74 of whether the complainant agreed by choice and had the freedom and capacity to make that choice, as demonstrated by *R v McNally*.¹⁹

Canadian jurisprudence similarly demonstrates that not every deception associated with sexual activity is criminalised. In *R. v. Hutchinson*, the Supreme Court of Canada held that deception concerning condom use does not affect whether there was voluntary agreement to the sexual activity

¹⁵ *State of Haryana v. Ch. Bhajan Lal*, (1992) Supp. (1) SCC 335 (India).

¹⁶ Sexual Offences Act 2003, c. 42, § 74 (UK).

¹⁷ Sexual Offences Act 2003, c. 42, §§ 75–76 (UK).

¹⁸ Sexual Offences Act 2003, c. 42, § 76(2) (UK).

¹⁹ *R v. McNally*, [2013] EWCA Crim 1051 (Eng.).

in question under s. 273.1(1) of the Criminal Code, but may nevertheless vitiate apparent consent as fraud under s. 265(3)(c), where the requirements of dishonesty and deprivation, or a risk of deprivation, are established.²⁰ *R. v. Kirkpatrick* subsequently reaffirmed this two-step framework, emphasising that condom use falls outside the scope of the sexual activity in question for s. 273.1(1), while recognising that the accused's failure to disclose non-use of a condom may constitute fraud where the evidence establishes dishonesty and a sufficiently serious deprivation or risk of deprivation.²¹ The Canadian approach therefore illustrates that criminal liability for deception in sexual contexts depends not merely on the existence of deception, but on its legally significant relationship to consent and the specific requirements of the statutory fraud provisions.

Australia presents a more fragmented position because sexual offences are principally governed by the legislation of the individual States and Territories. The circumstances in which deception may negate or vitiate consent therefore vary between jurisdictions.²² Nevertheless, the Australian experience similarly demonstrates the importance of identifying the particular form of deception recognised by the applicable legislation rather than treating every form of dishonesty within an intimate relationship as automatically negating consent.

A common principle emerging from these comparative approaches is that criminal liability for deception should depend upon the nature, significance and connection of the deception to the sexual act, rather than upon deception in the abstract. It is therefore helpful to the comparative experience to consider this section of the statute within that context, but not to take it beyond the words in the statute. In particular, the provision should be retained to differentiate between the deliberate deception to gain sexual intercourse and the subsequent non-fulfilment of a genuine promise or the normal disintegration of a consensual relationship.

In this comparative context, several protections could be applied to Section 69 without compromising its purpose. In the first instance, when a marriage is contracted on a false promise, the prosecution should prove that the accused did not intend to keep that promise when it was made, and not merely by failing to keep it later. Second, investigations should, where possible, systematically review contemporaneous communications, documentary evidence, witness evidence and other factors relating to the promise. Thirdly, each of the elements of the crime should be presumed guilty beyond a reasonable doubt. Lastly, it is worth bringing Section 69 into the public, legislative and judicial awareness on a regular basis in view of the challenges arising out of its use. The experience of other jurisdictions thus indicates that the effectiveness of Section 69 requires the existence of criminal liability for deceptive sexual inducement, as well as the maintenance of a clear distinction between the intentional deception at the beginning of the sexual relationship and the failure of a genuine relationship or promise. A narrowly drawn interpretation of Section 69 would enable prosecutions for 'genuine' sexual exploitation of minors and minimise the danger that the ordinary breakdown of consensual relationships will be *ex post facto* defined as 'criminal deception'.

²⁰ *R v. Hutchinson*, [2014] 1 S.C.R. 346, 2014 SCC 19 (Can.).

²¹ *R v. Kirkpatrick*, [2022] 2 S.C.R. 480, 2022 SCC 33 (Can.).

²² Jianlin Chen, *Fraudulent Sex Criminalisation in Australia: Disparity, Disarray and the Underrated Procurement Offence*, 43(2) UNSW L.J. 581 (2020).

VII. RECOMMENDATIONS

The comparative issues discussed above show that criminal law has a legitimate role in responding to deliberate sexual misinformation, but that it should not be the only response to deception in intimate relationships. The principal question, therefore, is whether the protection afforded by Section 69 can be retained while preserving a clear distinction between deliberate deception to obtain sexual intercourse, the breach of a genuine promise, and the ordinary failure to sustain a consensual intimate relationship. A balanced approach requires careful attention to intention, causation, evidentiary standards, procedural safeguards, and sexual autonomy.

Firstly, courts should require proof of intention at the time when the promise was made. In cases involving a promise to marry, primary importance should be given to whether the accused had no intention of fulfilling the promise at the time it was made. There should be no presumption that an initial promise was fraudulent merely because the accused subsequently failed or refused to marry. The prosecution should establish, through the surrounding circumstances and available evidence, that the promise was false when it was made and that it was made with the purpose of securing the complainant's consent to sexual intercourse. Such an approach would preserve the distinction between a deliberately false promise and a genuine promise that was subsequently not fulfilled. It would also remain consistent with the principles articulated in *S. Uday*, *Deepak Gulati*, and *Pramod Suryabhan Pawar*, particularly the emphasis placed by these decisions on the accused's intention at the inception of the promise.

Secondly, there should be proof of a direct link between the deception and the sexual act. The mere existence of deception, even where subsequently established, should not automatically give rise to criminal liability. Courts should examine whether the particular deception was material to, and actually caused, the complainant's consent to sexual intercourse. This requirement is particularly significant in the context of Section 69, which creates liability for sexual intercourse obtained through specified means and circumstances while expressly distinguishing such conduct from rape. Section 69 should therefore not become a general criminal remedy for dishonesty, relationship disputes, or the failure to maintain an intimate relationship in the absence of a demonstrable causal connection between the deception and the sexual act.

Thirdly, the investigation of Section 69 allegations should adopt a scientific, structured, and fact-sensitive approach. Where available, investigations should systematically examine contemporaneous communications, documentary material, witness statements, conduct of the parties, and other evidence relating to the alleged promise or representation. Particular attention should be given to evidence originating at or around the time when the alleged promise was made, rather than relying predominantly upon subsequent developments. Such an approach would reduce the risk of retrospective reasoning, whereby the eventual failure of a relationship is treated as conclusive evidence that the accused never intended to marry in the first place. At the same time, a structured investigative process should not impose unnecessary evidentiary burdens upon complainants beyond those ordinarily required within the criminal justice system. The purpose should not be to create a rigid checklist of evidence necessary to establish deceptive conduct, but rather to ensure that all relevant evidence is assessed objectively, comprehensively, and within its proper factual context.

Fourthly, the ordinary burden of proof and the presumption of innocence must continue to govern the application of Section 69. The prosecution should be required to establish every constituent element of

the offence in accordance with the applicable rules of evidence and beyond reasonable doubt. In cases involving consensual sexual intercourse allegedly obtained through deception, this would include establishing, where relevant, the absence of intention to fulfil the promise at the time it was made, the deceptive conduct itself, and the causal connection between such deception and the complainant's consent to sexual intercourse. The subsequent refusal or inability to marry, by itself, cannot satisfy the statutory ingredients. Likewise, the mere existence of an intimate relationship, the refusal or inability to marry, or a general allegation of deception should not be treated as sufficient to establish criminal liability.

This principle assumes particular significance because an accused person's intention at the time of making a promise will ordinarily have to be inferred from surrounding circumstances. In such cases, courts should avoid treating subsequent conduct as automatically establishing a prior state of mind or evaluating later events in isolation. Rather, the evidence should be considered as a whole and assessed in its complete factual and temporal context. This approach is necessary to prevent the criminal law from converting every failed promise or unsuccessful relationship into evidence of an offence that existed from its inception.

Fifthly, procedural safeguards should be strengthened in a manner that protects both access to justice and against over-criminalisation. Concerns regarding the potential misuse of Section 69 should be addressed through careful investigation, prosecutorial scrutiny, and judicial review rather than through assumptions that complaints concerning sexual exploitation are generally false, misleading, or malicious. At the same time, the serious consequences of criminal prosecution for an accused person require courts to ensure that the essential ingredients of the offence are supported by the material available on record.

Such scrutiny should operate at the appropriate procedural stages, ensuring that the material before the court is capable of disclosing the essential ingredients of Section 69 without creating barriers that effectively deny access to justice to persons alleging sexual exploitation. Importantly, the legal distinction between an acquittal resulting from the prosecution's failure to establish guilt beyond reasonable doubt and a finding that a complaint was knowingly false or malicious must be preserved. The inability to prove an offence cannot, without more, be equated with the falsity or maliciousness of the complaint itself.

Sixthly, Section 69 should be interpreted in a manner consistent with sexual autonomy rather than through marriage-centred standards of sexual morality. The protection offered by Section 69 should not evolve into an interpretation under which consent to sexual activity is implicitly regarded as legitimate only where marriage is contemplated. The appropriate inquiry should instead focus upon whether the complainant's sexual choice was obtained through deliberate and legally cognisable deception, rather than upon normative assumptions concerning how an intimate relationship ought to be conducted.

This consideration becomes particularly important when courts examine the duration of the relationship, the expectations of the parties concerning marriage, family involvement, or the conduct of the parties following the alleged promise. Such circumstances may be relevant in determining intention and causation, but they should not become blanket presumptions concerning women's sexual agency or the legitimacy of particular forms of intimate relationships. The underlying objective should be to protect individuals from sexual exploitation through deliberate deception, rather than to use

criminal law as an instrument for enforcing socially preferred norms concerning marriage and intimate relationships.

Seventhly, greater doctrinal clarity is required concerning the relationship between Section 69 and the existing law governing rape and consent. Further judicial and legislative consideration is warranted regarding the interaction between Section 69 and the provisions relating to rape, consent, and misconception of fact. Sexual intercourse that does not constitute rape may nevertheless fall within the specific circumstances contemplated by Section 69, while questions of consent and misconception of fact may also arise under the broader framework of criminal law. A clearer doctrinal distinction between conduct amounting to rape and conduct falling within the distinct statutory category created by Section 69 would assist courts, investigators, and prosecutors in applying the provision consistently. Such clarification is important because the effectiveness of Section 69 depends not merely upon recognising deliberate sexual deception as a legitimate concern of criminal law, but also upon maintaining principled distinctions between different forms, degrees, and consequences of deceptive conduct. Without such distinctions, there is a risk that conceptually different forms of wrongdoing will be treated as legally equivalent, thereby creating uncertainty in both investigation and adjudication.

Finally, the implementation of Section 69 should be supported by specialised training and periodic institutional review. Investigators, prosecutors, and judicial officers should receive appropriate training concerning consent, deception, intention, causation, and the distinction between a false promise and the subsequent breach of a genuine promise. Consistent investigative and adjudicative practices would reduce the risks of both under-enforcement and over-criminalisation and would promote greater uniformity in the application of the provision.

The operation of Section 69 should also be periodically reviewed by the legislature and relevant institutions in light of accumulated judicial experience. Such review should consider emerging litigation patterns, recurring evidentiary difficulties, inconsistencies in judicial interpretation, and the broader practical impact of the provision. Where necessary, legislative intervention should be informed by empirical experience and judicial decisions, including evidence concerning both instances of misuse and situations in which the provision may have been inadequately enforced. A periodic review mechanism would allow the law to respond to emerging patterns without compromising the underlying principles of criminal responsibility.

Taken together, these recommendations would enable Section 69 to retain its protective function while ensuring that criminal liability is imposed only where deliberate deception and the requisite legal connection with sexual intercourse have been sufficiently established. The objective should not be to expand the criminalisation of intimate relationships, but to ensure that Section 69 is applied consistently with its statutory language, established principles of criminal responsibility, the presumption of innocence, and the autonomy and dignity of individuals. A carefully calibrated approach would therefore allow the law to address genuine instances of sexual exploitation without transforming ordinary relationship breakdown, unfulfilled promises, or changing personal circumstances into criminal offences.

VIII. CONCLUSION

Section 69 of the Bharatiya Nyaya Sanhita, 2023 responds to a genuine gap in the criminal law: forms of sexual exploitation achieved through deliberate deception that, while serious, do not meet

the threshold for rape. The provision is, in principle, a legitimate legislative recognition that consent obtained through calculated dishonesty is not the free and informed consent that the criminal law seeks to protect. The analysis in this article, however, shows that the provision's practical operation turns almost entirely on a single, difficult question: whether the accused lacked any intention of fulfilling the promise at the time it was made. The Supreme Court's consistent jurisprudence, from Uday to Pramod Suryabhan Pawar, insists that subsequent non-fulfilment cannot by itself establish that a promise was false from its inception, and Section 69 must be read and applied in light of this settled position.

The central risk identified in this article is one of retrospective reasoning: the temptation, at the investigative and adjudicatory stages, to treat the eventual failure of a relationship as proof that it was fraudulent from the outset. Because intention is ordinarily a matter of inference rather than direct evidence, this risk cannot be eliminated, but it can be substantially reduced through impartial investigation that gives weight to contemporaneous evidence, careful judicial scrutiny at the stage of cognisance and framing of charges, and disciplined use of the inherent powers of the High Courts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in appropriate cases.

The comparative experience of England and Wales, Canada, and Australia reinforces this conclusion. Each of these jurisdictions confines criminal liability for deception in sexual contexts to forms of dishonesty that bear a sufficiently direct and material connection to the complainant's consent, rather than criminalising deception in the abstract. Section 69 can draw on this comparative learning without departing from its statutory text: by requiring clear proof of dishonest intention at the time of the promise, a demonstrable link between the deception and the complainant's consent, and adherence to the ordinary burden of proof and presumption of innocence.

Ultimately, the value of Section 69 will depend less on the text of the provision itself than on how consistently it is applied. Sustained judicial guidance, specialised training for investigators and prosecutors, and periodic legislative review of its operation in practice offer the most realistic path towards a provision that protects genuine victims of sexual exploitation without exposing the ordinary, painful breakdown of intimate relationships to the machinery of the criminal law.