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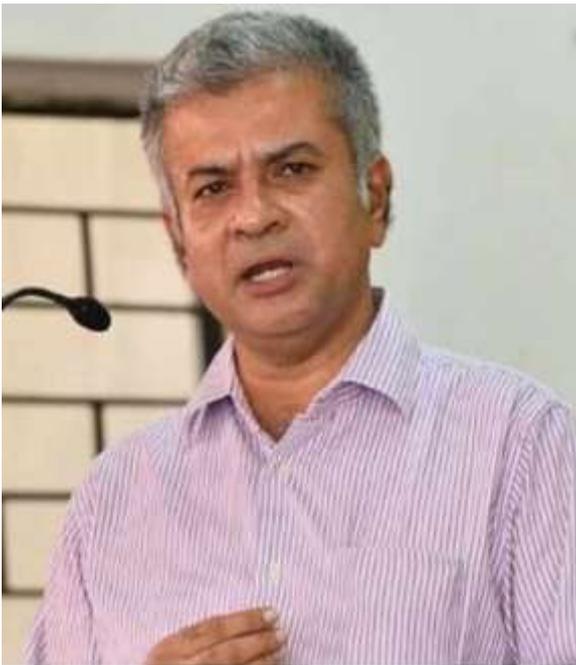
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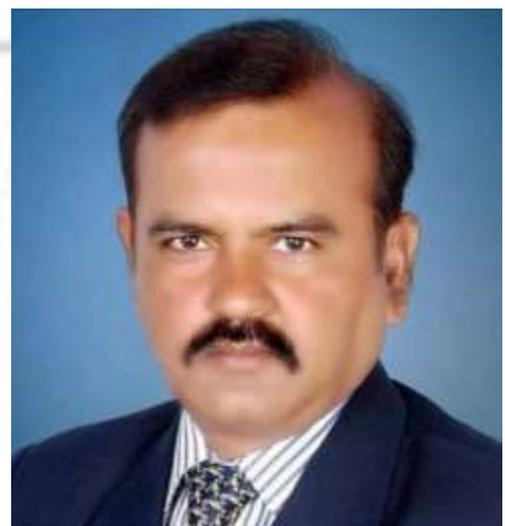


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PITFALLS OF SECTION 69 OF BNS (BHARATIYA NYAYA SANHITA) ON LIBERTY IN SOCIETY

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INTRODUCTION

A. Brief overview of Section 69 of Bharatiya Nyaya Sanhita (BNS)

The introduction of three bills in Parliament sparked a significant uproar within the legal community on social media. These bills, namely the Bharatiya Nyaya Sanhita Bill, Bharatiya Nagarik Suraksha Sanhita Bill, and Bharatiya Sakshya Bill, aim to replace the foundational "Codes" and "Acts" in criminal law, such as the Indian Penal Code, 1860 (IPC), Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872. While many provisions in the proposed "Sanhitas" and "Adhinyams" mirror those in the current and soon-to-be erstwhile "Codes" and "Acts," one particular section has sparked extensive debate: Section 69 of the Bharatiya Nyaya Sanhita.

Section 69 BNS is formulated as follows: Whoever engages in sexual intercourse with a woman through deceitful means or by making a promise to marry without any intention of fulfilling it, such that the act does not amount to the offense of rape, shall be subject to imprisonment for a term of up to ten years and also liable to a fine. The explanation clarifies that "deceitful means" include falsely promising employment or promotion, as well as inducing marriage after suppressing one's identity.¹

B. Significance of the proposed legislation in criminal law

The incorporation of Section 69 within the proposed Bharatiya Nyaya Sanhita (BNS) of 2023 assumes paramount significance due to its targeted approach in addressing the pervasive issue of sexual relationships grounded on false promises of marriage.

Historically, the absence of a specific legal provision dedicated to such cases resulted in their adjudication under other sections of criminal law, creating inherent ambiguities and

¹ *The Bharatiya Nyaya Sanhita, 2023, Section 69*

interpretation challenges. The prevalence of instances involving sexual relations under the pretext of a "false promise of marriage" further accentuated the need for a nuanced legal framework.²

The existing legal landscape lacked a clear demarcation between a 'false promise' and a 'breach' of promise to marry, complicating matters in terms of determining consent and intention. Section 69 emerges as a crucial response to this legal void, aiming to bring precision and clarity to legal proceedings by explicitly addressing cases of sexual relationships predicated on false promises of marriage.³

In doing so, it not only bridges historical gaps in the legal framework but also adapts to the evolving societal dynamics, providing a comprehensive and dedicated solution to an issue that was hitherto navigated through disparate legal provisions.⁴

Therefore, the significance of Section 69 lies in its attempt to rectify these historical and practical issues. By explicitly addressing cases of sexual relationships founded on false promises of marriage, the provision aims to bring clarity to legal proceedings, offering a more precise and focused approach to handling such situations. It not only fills a historical gap in the legal framework but also responds to the evolving societal landscape, providing a dedicated and comprehensive solution to an issue that was previously dealt with through disparate legal provisions.

C. DETAILED ANALYSIS OF THE PROVISION

A comprehensive analysis of Section 69 of the proposed Bharatiya Nyaya Sanhita reveals its intricate components and legal implications. This section delineates that an individual who, by deceitful means or by making a promise to marry to a woman without any genuine intention of fulfilling that promise, engages in sexual intercourse with her—where such sexual intercourse does not amount to the offense of rape—shall face legal consequences.⁵

²*Bharatiya Nyaya Sanhita (BNS), 2023 on False Promise of Marriage, available at www.civildaily.com/news/nyaya-sanhita-false-promise-of-marriage/ (last visit 12 February 2024)*

³ *Ibid*

⁴ *Ibid*.

⁵ *Section 69 of Bharatiya Nyaya Sanhita (BNS): Safeguarding Women Against Deceptive Promises/ Insights on how Section 69 BNS can be useful for victims. available at www.myjudix.com/post/section-69-of-bharatiya-nyaya-sanhita-bns-insights-section-69-bns-can-be-useful-for-victims (last visit 12 February 2024)*

The provision prescribes imprisonment for a term extended up to ten years and imposes a fine. The accompanying explanation adds depth to the understanding of "deceitful means," elucidating that it encompasses inducement for, or the false promise of employment or promotion, as well as marriage under the concealment of identity. This detailed examination underscores the section's focus on addressing situations where individuals exploit false promises of marriage to engage in sexual relationships, providing a legal framework to deter and penalize such deceptive conduct while offering clarity on the specific forms of deceit covered by the provision.

On further analysis of the relevant terms of the provisions, it can be understood that

- i. **Deceitful Means:** The BNS clause explicitly characterizes "deceitful means" to encompass various situations such as making fraudulent promises related to employment, promotion, inducement, or entering into matrimony while concealing one's true identity. This specificity establishes a clear framework for discerning instances of deceit.
- ii. **Intent to Fulfill Promise:** The individual involved in the sexual act must lack the genuine intention to fulfill the promise made. In simpler terms, if someone makes a commitment of marriage or employment solely to engage in sexual activity with another person, they can face legal consequences under this provision.
- iii. **Not Equivalent to Rape:** A notable aspect of Section 69 is its distinction from categorizing the offense as rape. This differentiates it from existing IPC provisions, emphasizing that while consent may not be absent, it is obtained under false pretenses.
- iv. **Penalties:** Violating this provision can lead to imprisonment for a maximum of ten years and a fine. It is noteworthy, however, that no specific minimum punishment is stipulated.⁶

This precision establishes a robust framework for identifying instances of deceit within the provision. The section underscores the necessity for the absence of genuine intent in the individual engaging in the sexual act, clarifying that legal consequences await those who make commitments of marriage or employment solely for the purpose of engaging in sexual activity.

Importantly, Section 69 distinguishes itself by not categorizing the offense as rape, emphasizing that while consent may be present, it is obtained under false pretenses. The legal

⁶ *Section 69 of BNS: Learn Section 69 Bharatiya Nyaya Sanhita available at www.advocatesuresh.in/section-69-bns/ (last visit 12 February 2024)*

ramifications for violating this provision include imprisonment for a maximum of ten years and a fine, with no specific minimum punishment stipulated.

Overall, Section 69 aims to address deceptive practices in sexual relationships with a nuanced approach, providing clarity in defining and penalizing such conduct within the legal framework.

In conclusion, Section 69 of the Bharatiya Nyaya Sanhita (BNS) provides a meticulous definition of "deceitful means," encompassing scenarios involving fraudulent promises related to employment, promotion, inducement, or concealed identity in matrimonial matters.

COMPARATIVE ANALYSIS BETWEEN SECTION 69 OF BNS AND SECTION 493 OF IPC

Section 69 of the Bharatiya Nyaya Sanhita (BNS) delineates that an individual engaging in sexual intercourse with a woman through deceitful means or by making a promise of marriage without genuine intent, where the act doesn't amount to rape, will face imprisonment for up to ten years and be subject to a fine. The explanation within the section specifies that "deceitful means" includes false promises related to employment or promotion, as well as inducement or marriage after concealing one's identity.⁷

On the contrary, the existing IPC Section 493 deals with situations where a man deceitfully causes an unmarried woman to believe that she is lawfully married to him. The punishment involves imprisonment for a term of up to ten years and a fine.

While both provisions share common elements, such as involving deceitful inducement and prescribing imprisonment and fines, there are notable distinctions:

1. **Specific Scenarios:** Section 69 of BNS explicitly lists scenarios like false promises of employment or promotion, inducement, or marriage after suppressing identity as part of "deceitful means." In contrast, IPC Section 493 does not provide specific scenarios.
2. **Focus on Cohabitation and Marriage:** IPC Section 493 emphasizes inducing a woman to cohabit or engage in sexual intercourse under the false belief of lawful marriage. In

⁷*Comparative table of IPC provisions with Bharat Nyaya Sanitha available at www.sahodar.in/comparative-table-of-ipc-provisions-with-bharat-nyaya-sanitha/ (last visit 12 February 2024)*

contrast, BNS does not explicitly center around cohabitation and marriage, presenting a broader scope.

3. Potential to Amount to Rape: A significant difference lies in the fact that BNS explicitly states that the offense does not amount to rape. In contrast, IPC Section 493 does not exclude the possibility of the offense being categorized as rape. This distinction reflects variations in the legal intent behind the two provisions.
4. Degree of Detail: BNS provides a more detailed explanation of "deceitful means," specifying various scenarios. IPC Section 493, while encompassing deceitful inducement, lacks the specific details provided by BNS.⁸

In summary, although both provisions address deceitful inducement and impose similar penalties, the nuanced differences in language and focus underscore the need for a meticulous analysis of their respective applications and implications in legal contexts. The specificity and clarity offered by BNS, especially in defining "deceitful means," contribute to a more detailed and comprehensive legislative framework compared to IPC Section 493.

PROBLEMS: A Detailed Exploration of Challenges within Section 69 of BNS

The incorporation of Section 69 into the Bharatiya Nyaya Sanhita (BNS) has sparked a nuanced discourse, unveiling a spectrum of challenges that extend beyond the legal framework, transcending into constitutional dimensions and societal intricacies. At the forefront of these challenges lies a contention rooted in the potential unconstitutionality of the law, specifically concerning its alignment with Article 14 and Article 15. This contention stems from the presupposition embedded within the legislation, suggesting that only men can wield deceitful means to induce a sexual relationship. This presumption overlooks the dynamic reality where women, too, may occupy positions of power capable of leveraging deceptive inducements. The resulting gender bias, discrimination, and prejudice pose significant questions about the law's commitment to foundational principles of equality and its responsiveness to evolving gender roles.⁹

Furthermore, the law's deficiency in critical definitions accentuates its vulnerabilities. Notably,

⁸ *Ibid*

⁹ [REPEAL SECTION 69 OF BHARATIYA NYAYA SANHITA 2023](https://www.change.org/p/repeal-section-69-of-bharatiya-nyaya-sanhita-2023) available at www.change.org/p/repeal-section-69-of-bharatiya-nyaya-sanhita-2023 (last visited on 12 February 2024)

it fails to specify the temporal dimension within which a consensual relationship can transform into a false promise case. This lack of clarity becomes a focal point of concern, as the absence of a misuse clause leaves Section 69 susceptible to potential exploitation. This concern is particularly pronounced given the law's cognizable and non-bailable nature, raising the specter of immediate arrest based solely on the woman's statement. The severity of the prescribed punishment—imprisonment for up to ten years coupled with a fine—further raises apprehensions about the potential for hasty arrests in the absence of concrete evidence or definitive proof of a promise.¹⁰

Transitioning into the examination of existing legal frameworks, the challenges associated with proving deceitful means emerge as intricate and multifaceted. The subjective nature of terms such as 'deceitful means' and 'false promise' introduces elements of potential abuse and manipulation of evidence, creating formidable obstacles for the accused in disproving allegations. The inherent subjectivity and ambiguity surrounding these terms further introduce the risk of inconsistent application, allowing for selective interpretations based on individual perspectives and potentially leading to disparate legal outcomes.¹¹

Moreover, the emphasis on consent obtained through deceit in Section 69 introduces complexities in determining the gray areas of consent and intentions. This nuanced landscape may result in false accusations and protracted legal battles, potentially undermining the expeditious delivery of justice. The limited scope of Section 69, distinct from rape laws, may inadvertently discourage victims from reporting offenses, potentially leading to under-reporting and inadequate legal protection.¹²

The alarming prevalence of the misapplication of the clause pertaining to rape based on false promises of marriage has raised profound questions about the legislative process and the need for a nuanced understanding of the complexities inherent in intimate relationships. In a significant development in December 2022, the Orissa High Court underscored the imperative for a meticulous reassessment of the automatic extension of Section 90 of the Indian Penal Code, urging a critical examination of its rationality in determining the validity of consent for sexual acts under the pretext of a false promise of marriage. Dr. Justice Sanjeeb Kumar

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*

Panigrahi, while granting bail to an individual facing analogous charges, provided valuable insights into the legislative intent. He stressed that rape laws should not be applied to regulate consensual intimate relationships, particularly when women actively exercise agency and willingly enter into such relationships.¹³

The court's scrutiny extended to the contested notion that a false promise of marriage automatically equates to rape. Dr. Panigrahi, in his astute observation, pointed out that such an interpretation appears inherently flawed, especially in light of the specific circumstances outlined in Section 375 of the Indian Penal Code. This critical judicial stance challenges prevailing legal narratives and underscores the need for a comprehensive review of the legislative framework surrounding sexual offenses.¹⁴

A case from December 2021 in Ahmedabad, Gujarat, adds a nuanced layer to this discourse. A sessions court acquitted a man of rape charges stemming from a false promise of marriage, filed by a woman with whom he shared a live-in relationship. The court, in its insightful observation, highlighted the victim's awareness of the moral implications associated with the relationship. It asserted that her consensual participation in the relationship indicated a willing and informed partner, irrespective of her complex marital history involving three marriages without legal divorces. This case illustrates the intricacies involved in navigating the blurred lines between consensual relationships, false promises, and legal culpability.¹⁵

The landscape of these legal matters becomes even more intricate when considering instances in India where married women have accused their extramarital partners of rape based on false promises of marriage. Similarly, there are cases where women have levied rape charges against men after enduring affairs lasting 5, 10, or 15 years. Astonishingly, there have been instances where adult women have filed cases against minor boys, alleging sexual encounters occurred due to false promises of marriage. Additionally, boys under the age of 21 have faced accusations of rape on false promises of marriage from much older women, even when legal marriage is not feasible.¹⁶

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

This cumulative weight of instances raises profound questions about the due diligence exercised by the government before introducing a new law. Given the evident misuse of the provision on rape based on false promises of marriage, especially in the context of broken affairs and complex relationships, the need for comprehensive deliberation and nuanced considerations becomes even more imperative. The introduction of legislation requires an in-depth understanding of the diverse scenarios and potential ramifications to ensure the creation of a balanced legal framework that genuinely addresses the complexities inherent in cases involving deceptive promises and consensual relationships. The inter-sectional of legal, societal, and individual dynamics in these cases necessitates a thorough examination and potential revisions to safeguard justice and fairness in intimate matters.¹⁷

It shall be pertinent to note that the misuse of IPC Section 498A has been extensively documented in numerous judgments, spanning high courts and even the Supreme Court of India. This misapplication of the law has wreaked havoc on countless families in India, leading to the arrest of numerous men and women. Notably, Section 498A is susceptible to misuse in various situations of marital breakdown, irrespective of whether the husband or his family is at fault. This misuse has raised serious concerns about the destruction of families and the unjustified arrest of individuals.¹⁸

Similarly, Section 69 of the Bharatiya Nyaya Sanhita (BNS) is also prone to potential misuse in cases of consensual relationships turning sour. This renders any man vulnerable to charges solely due to the termination of a relationship. The law lacks sufficient checks and balances to safeguard innocent individuals from protracted criminal trials without any culpability. The absence of a specified duration for the continuation of a sexual relationship based on a certain promise adds complexity to the matter. In such cases, medical evidence becomes irrelevant, turning legal proceedings into a scenario of conflicting statements without a clear resolution, where the weight of her statement may overshadow his evidence.¹⁹

If lawmakers intend to introduce this new provision into the legal framework, a comprehensive and thorough consultation process with the citizens of the country should precede its passage. In its present form, Section 69 of the BNS should be subject to repeal, given the potential for

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

misuse and the absence of safeguards to protect innocent individuals from unwarranted legal complications.²⁰

Therefore, in light of these multifaceted challenges, a comprehensive reevaluation and potential revisions to Section 69 become imperative. This process is essential to ensure the development of a balanced, constitutionally sound, and socially just legal framework that not only addresses the complexities of deceptive practices in sexual relationships but also aligns with evolving societal norms and expectations.²¹

RECOMMENDATIONS & SUGGESTIONS

Addressing the complexities and potential misuses of legal provisions demands a multifaceted and detailed approach. The proposed strategies outlined herein delve into nuanced aspects of legal frameworks, aiming not only to mitigate misuse but also to strengthen the overall effectiveness of the legal system.

First and foremost, the need for precise and unambiguous definitions of key terms such as 'deceitful means' and 'false promise' cannot be overstated. This goes beyond a semantic exercise; rather, it is foundational for constructing a legal framework that can withstand varied interpretations. Clarity in definitions not only reduces ambiguity but also establishes a solid ground for consistent application across diverse legal scenarios.

The proposal to implement rigorous evidentiary standards represents a significant stride toward fortifying the integrity of legal proceedings. This entails a careful calibration of the quality of evidence required, a calibration that seeks to strike a balance between protecting the accused from baseless claims and ensuring that legitimate grievances are substantiated with credible proof. Such a nuanced approach is crucial in upholding the principles of justice.

In the realm of legal safeguards against false accusations, the proposal to penalize individuals for making unfounded claims introduces a layer of accountability. Beyond acting as a deterrent, this safeguard creates a legal environment where accusations are made in good faith and supported by substantial evidence. It contributes not only to the prevention of misuse but also to the maintenance of public trust in the legal system.

²⁰ *Ibid*

²¹ *Ibid*

The continuous legal education of professionals within the legal sphere represents an ongoing commitment to excellence. Regular training programs not only keep legal practitioners abreast of changes in the legal landscape but also address inconsistencies in the application of laws. This dedication to ongoing education enhances the overall competence of legal professionals, fostering a legal system that is adaptive and responsive.

Ensuring the consistent application of the law is a multifaceted endeavor that involves encouraging the development of guidelines or precedents. This initiative seeks to establish a sense of uniformity in treating similar cases, promoting fairness, predictability, and adherence to established norms. Such guidelines act as a compass, navigating the legal system through the complexities of diverse cases.

The proposal for periodic reviews of existing legislation is pivotal for maintaining the relevance and effectiveness of legal frameworks. By creating mechanisms for regular evaluations, the legal system can adapt to changing societal norms, emerging challenges, and evolving perspectives. This iterative process ensures that laws remain dynamic, responsive, and reflective of the society they serve.

Strengthening support systems for victims within the legal process is a human-centric approach that recognizes the vulnerabilities faced by those navigating the legal system. Reinforcing these support mechanisms not only empowers victims to come forward but also enhances the overall effectiveness of legal frameworks in addressing issues of abuse and injustice. This involves not only legal but also social and psychological support, creating a holistic approach to victim advocacy.

Finally, the proposal to foster collaboration between legislators and advocacy groups for continuous legislative improvements is a recognition of the need for diverse perspectives. Involving stakeholders ensures that legal frameworks remain responsive to the needs of survivors, aligning with evolving societal norms and expectations. This collaborative approach contributes to the creation of legislation that is not only comprehensive but also sensitive to the realities of those it is designed to protect. It is an acknowledgment that the legal system operates within a broader societal context, and its effectiveness is intertwined with the well-being of the communities it serves.

CONCLUSION

Section 69 of the proposed Bharatiya Nyaya Sanhita (BNS) addresses deceptive sexual relationships but faces challenges. The provision penalizes individuals for engaging in consensual intercourse through deceitful means or false promises of marriage. Despite its intent, concerns arise, including the definition of "deceitful means," potential misuse, and constitutional issues. A comparative analysis with IPC Section 493 reveals differences. Recommendations advocate for precise definitions, rigorous evidentiary standards, legal safeguards, continuous education, consistent application, periodic reviews, and collaboration with advocacy groups. The need for comprehensive deliberation before introducing such laws is emphasized, drawing parallels with the misuse of related provisions like IPC Section 498A.

