# Sexual Exploitation on the Pretext of a False Promise of Marriage: A Criminological and Socio-Legal Analysis

[1]Harish waskel, [2]Roshani Pandey
[12]Law and Legal Studies
[12]Sage University

***Abstract*—This research paper presents a deep criminological and socio-legal analysis of cases involving sexual exploitation on the pretext of a "false promise of marriage" established within the judicial system of independent India. In the socio-cultural fabric of India, standard boundaries have been set for relationships between men and women, due to which any violation of these values is viewed as a serious social stigma. The previous Bhartiya Danda Samhita, 1806 (IPC) did not provide any specific definition to criminalize this form of exploitation. Consequently, the judiciary relied on Section 375 and Section 90 of the IPC to treat sexual relations established under such false promises as equivalent to rape. However, this judicial approach was often vulnerable to broad definitions and ambiguity, sometimes creating discrepancies between protecting the victim and preventing the harassment of innocent men.**

**Addressing these flaws of the old provisions, the legislature introduced Section 69 under the new criminal law of modern India, the Bhartiya Nyaya Sanhita, 2023, to address this specific situation. This step marks a historic shift toward codifying this specific crime as a distinct offense rather than viewing it through the lens of rape. This research paper will analyze this transformation by combining criminology theories with principles of jurisprudence. Additionally, it will evaluate the changing dimensions of digital evidence, forensic sciences, and social media credibility in the context of Section 69 of the Bhartiya Nyaya Sanhita, 2023.**

**Ultimately, this research paper aims to present a comprehensive, balanced judicial framework that provides justice to the true victim while ensuring protection for the innocent.**

***Index Terms*—Bhartiya Nyaya Sanhita 2023, Section 69, False Promise, Criminology Theory, Victimization, Digital Forensics**

## I. Introduction and Conceptual Framework

### 1.1 Background of the Study

In human society, the relationship between two individuals is not just a civic contract, but an integration of emotional, social, and spiritual dimensions. In India, institutional framework of marriage regulates sexual relations and places emotional intimacy on a highly sacred pedestal. Due to this tradition, pre-marital sexual relations and efforts toward them are viewed with suspicion and social disregard in Indian society. However, globalization, urbanization, social media, and dating applications have completely transformed the perspective of modern youth towards relationships. Contemporary youth are increasingly open to pre-marital physical relationships and live-in relationships. Yet, when these relationships are based on deceit, false promises, and "pre-planned fraud," they pose a highly complex and challenging situation for the judicial system.

Legal frameworks globally have encountered complex questions regarding when physical relationships based on a "false promise" should be treated as criminal behavior. If a man engages in sexual relations with a woman by making a false promise of marriage, it is not merely a violation of her physical autonomy, but a fraudulent act that shatters her trust, dignity, and future life prospects, pushing her toward an existential crisis. This cannot be ignored by any civilized society.

For decades after independence, the Indian judiciary evaluated this complex issue through various judicial interpretations. In the Indian Penal Code (IPC), this specific act was not categorized as an independent offense; instead, it was prosecuted under the definition of rape. The judiciary utilized Section 90 of the IPC (which states that consent given under a misconception of fact is not valid consent) alongside Section 375 to establish a judicial perspective. Under this approach, if a woman consented to a physical relationship solely based on a promise of marriage, and that promise later turned out to be false, the consent was deemed legally void. Consequently, the act was treated as having been committed "against her will" or "without her consent," thereby fulfilling the criteria of rape.

References - 1. Bhartiya Danda Samhita, 1860 (Old Law)

Due to this judicial interpretation, many men faced charges of rape, which carries a minimum sentence of 10 years up to life imprisonment.

Over time, the judiciary encountered a deep internal conflict. They encountered a "two-fold dilemma" where the goal on one hand was to protect the self-respect and physical exploitation of an innocent woman, while on the other hand, it was to ensure that a man's entire life was not ruined due to a failed relationship or an inability to fulfill a promise due to unavoidable circumstances. To resolve this dilemma, the Indian Parliament enacted the Bhartiya Nyaya Sanhita, 2023, which introduced Section 69. This provision gave this judicial discourse a new shape and a distinct legislative status.

### 1.2 Statement of the Problem

The core problem of this study is to identify and legally analyze those delicate and sensitive legal boundaries that separate a genuinely malicious "false promise" from a relationship that breaks down due to changing social and family circumstances.

The foundational principle of criminal law dictates that no person can be held guilty of a crime unless malicious intent (mens rea) is present at the time of the act. In cases of a false promise of marriage, identifying this malicious intent is highly complex because relationships usually start with love, but often end with bitterness.

The challenge arises when a case transitions from a private relationship to a courtroom. The court has to determine through technical paths whether the dynamic between the parties was romantic or exploitative. Under the guise of the old law, the prosecution often misused provisions to jail innocent men, whereas under the new law, perpetrators find loopholes to escape by portraying the situation as a mutual breakup rather than a pre-planned fraud. Thus, a balanced legislative and evidentiary framework needs to be developed to ensure justice for both sides.

### 1.3 Concept of "Consent" and "Deceit" and the Criminological Approach

To understand this entire dynamic, it is necessary to analyze the psychological and philosophical concepts of "Consent" and "Deceit". From a philosophical standpoint, consent is not just physical submission but a conscious surrender of the soul. It requires a conscious, independent, and rational choice made without any external fear or delusion.

In legal terms, if consent is obtained by hiding any material fact, or through force or fraud, that consent becomes void ab initio.

## II. Legal Analysis – IPC to BNS till 2023

### 2.1 Indian Penal Code, 1860: Historical Context and Judicial Interpretations

The Indian Penal Code, enacted in 1860, was a colonial document created primarily to maintain the imperial rule's law and order. The social realities of that era could not conceive that a woman could establish physical relations with a man outside of marriage based on her free will. Therefore, this subject was not directly added to the IPC. For decades after independence, the judiciary utilized Section 90 of the IPC to fill this gap, interpreting sexual relations built on a false promise of marriage under Section 375 Clause (2) ("under the fear of hurt or misconception of fact"). Section 90 establishes that:

> *"A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such misconception."*

Courts applied this principle to rule that if a marriage promise was a "misconception of fact" from the very beginning, and the accused made the promise knowing he would not fulfill it, the victim's consent was legally invalid. Consequently, the physical relationship established due to that invalid consent was categorized as rape under Section 376.

### 2.2 Standard Markers Established by the Judiciary

Recognizing the severity of this issue, the Honorable Supreme Court established detailed guidelines from time to time to distinguish between a genuine break-up and an intentional fraud:

***1. Uday vs. State of Karnataka, (2003) 4 SCC 46 (Fact vs. Intent)***

Facts of the Case: In this case, the accused and the victim loved each other and established physical relations. The victim belonged to a different caste and wished to marry, but the accused later married within his own caste due to family resistance. The victim then filed a case of rape against the accused.

Supreme Court's Ruling: The Supreme Court delivered a historic judgment, stating: "There is a clear distinction between a false promise made by a man who, at the time of making it, has no intention of keeping it, and a promise which is made in good faith but cannot be fulfilled later due to unforeseen circumstances." The court ruled that if an educated and mature woman establishes physical relations out of love, she cannot later claim her consent was vitiated under the guise of a broken promise of marriage.

References - 1. Bhartiya Danda Samhita, 1860 2. Uday vs. State of Karnataka, (2003) 4 SCC 46. 3. Anurag Soni vs. State of Chhattisgarh, (2019) 13 SCC 1.

***2. Anurag Soni vs. State of Chhattisgarh, (2019) 13 SCC 1 (Examination of Malicious Intent from the Beginning)***

Facts of the Case: The accused was a doctor who established physical relations with another female doctor by promising marriage. Investigation revealed that his marriage had already been fixed elsewhere by his family, yet he continued to maintain physical relations with the victim and hid the news of his engagement.

Supreme Court's Ruling: Analyzing the malicious intent of the accused, the Court stated: "If the accused knew from the very beginning that he could never fulfill his promise, and still used that promise to obtain the victim's consent for physical relationships, it is a clear case of fraud. Such consent cannot be called valid consent, and it falls under the definition of rape under Section 376."

***3. Pramod Suryabhan Pawar vs. State of Maharashtra, (2019) 9 SCC 608 (Final Verdict on the Distinction)***

In this landmark judgment, a bench of the Supreme Court clearly distinguished between a "false promise" and a "breach of promise". The court emphasized that to sustain a charge of rape, the prosecution must prove beyond reasonable doubt that the accused had no intention of marrying the victim from the inception of the relationship.

**2.3 Bhartiya Nyaya Sanhita (BNS), 2023: Analysis of Section 69**

Following extensive discussions between the legislature and judiciary, and to modernise archaic laws, the Parliament of India introduced a historic and unified step. In the Bhartiya Nyaya Sanhita, 2023, this offense was separated from the category of rape and established as an independent crime under Section 69.

***Structural Framework of Section 69:***

> *Section 69 of the Bhartiya Nyaya Sanhita:*
>
> *"Whoever, by deceitful means or by making a promise to marry 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 this section explicitly states that "deceitful means" shall include the inducement of a false promise of employment or promotion, inducement to marry by marrying another woman, or suppressing one's true identity.

By creating this independent provision, the legislature has reduced the stigma of being labeled a "Rapist" for relationships that fail later, while establishing strict penalties (up to 10 years of imprisonment) to curb intentional fraud.

This research paper is divided into 6 Chapters (Parts 1-6). This academic document comprises 6–7 pages in total. Phase 1 (Introduction and Background) ends here. Phase 2 will focus on Chapter 3 (Criminological

Theories and Foundations), Chapter 4 (Socio-Legal Challenges and Misuse), Chapter 5 (Western Perspectives and Comparative Analysis), and Chapter 6 (Conclusion, Suggestions, and Forensic/Digital Analysis).

## III. Criminological Theories and Foundations

### 3.1 Perspective of Victimology

Historically, criminology focused almost exclusively on the criminal, their psychology, and the reasons behind the crime. However, in the mid-20th century, Benjamin Mendelsohn and Hans von Hentig pioneered the field of Victimology. Victimology argues that to truly understand justice, it is vital to analyze the physical, social, and psychological impact of a crime from the victim's perspective.

In cases of sexual exploitation based on a "false promise of marriage," the impact on the victim extends far beyond the physical act. It causes deep psychological trauma that can be categorized into three dimensions under victimology:

#### *a) Acute Post-Traumatic Stress and Psychological Impacts*

The trauma in these cases is not temporary; it leaves lasting scars on the victim's consciousness and mental health. The victim experiences deep emotional betrayal, self-blame, and anxiety disorders like Post-Traumatic Stress Disorder (PTSD). Criminologists note that the emotional trauma is often intensified because the perpetrator was someone the victim deeply trusted.

#### *b) Social Stigma and Alienation*

In conservative pockets of socio-cultural systems, a woman's pre-marital physical relationships are often viewed critically. If a relationship breaks down after intimacy, society tends to question and blame the victim instead of the perpetrator—a phenomenon known as "Victim Blaming". This isolates the victim from her social support systems.

#### *c) Secondary Victimization*

When a victim seeks justice through the legal system, she often faces another layer of trauma. Insensitive questioning by police, invasive cross-examinations by defense lawyers, and public scrutiny in courtrooms put her through what criminology terms "Secondary Victimization". The legal process itself becomes a source of secondary trauma, occasionally forcing victims to withdraw their cases out of sheer exhaustion.

References - 1. Bhartiya Nyaya Sanhita, 2023, Section 69.

### 3.2 Mental Structure and Psychology of the Offender

To understand this crime, criminologists analyze the psychological structure of the offender. These offenders rarely use physical force; instead, they rely on "Strategic Deceit" and psychological manipulation. Criminology categorizes the psychological profile of these offenders into three major theories:

### *1. Rational Choice Theory*

This theory suggests that a criminal is a rational actor who evaluates the rewards and risks before committing an offense. In these cases, the offender calculates that the immediate pleasure of a physical relationship outweighs the remote risk of legal consequences, assuming they can later dismiss it as a mutual breakup.

### *2. Neutralization Theory (Sykes and Matza)*

This theory explains how offenders justify their behavior to silence their own conscience. In false promise cases, offenders often use techniques of neutralization such as:

• Denial of Injury: Convincing themselves that "she consented and enjoyed it too, so no harm was done."

• Denial of the Victim: Believing that the victim is equally responsible because she chose to enter a modern relationship.

### *3. Machiavellianism (The Dark Triad)*

Offenders with Machiavellian traits exhibit high levels of manipulation, a cynical disregard for morality, and a lack of empathy. They systematically identify vulnerable targets, exploit their emotional needs by promising marriage, and abandon them once their desires are fulfilled.

References - 1. Bhartiya Nyaya Sanhita, 2023, Section 69.

## 3.3 Application of Classic Criminological Theories

### *1. Routine Activity Theory (Cohen and Felson)*

This theory requires three elements for a crime to occur: a motivated offender, a suitable target, and the absence of a capable guardian. Modern digital platforms and dating apps have created environments where motivated offenders can easily find suitable targets away from traditional social guardians (like family or community oversight), increasing the frequency of such crimes.

### *2. Social Control Theory (Travis Hirschi)*

Hirschi argues that individuals refrain from crime when they have strong bonds to society through attachment, commitment, involvement, and belief. Offenders in these cases often lack deep integration into traditional social value systems, or they utilize the anonymity of urban life to detach themselves from the social consequences of their actions.

# IV. Socio-Legal Challenges and Misuse

## 4.1 Discourse on the Potential Misuse of the Provision

While Section 69 of the Bhartiya Nyaya Sanhita was introduced to protect women from systemic deceit, the judiciary and legal scholars have raised serious concerns regarding its potential misuse. The practical implementation of this law introduces several significant challenges:

• Consensual Relationships and Evolving Social Dynamics: In modern urban societies, casual relationships, pre-marital intimacy, and live-in arrangements have gained wider social acceptance. When such relationships break down due to incompatibility or personal differences, there is a risk that one party might retroactively characterize the entire relationship as "exploitation under a false promise of marriage" out of anger or distress.

• Extortion and Malicious Prosecutions: Courts have noted instances where allegations under Section 69 (and previously under Section 376 IPC) have been used as leverage to force a marriage against the family's wishes, settle financial disputes, or tarnish a person's social standing.

• Statistical Ambiguity: Data from the National Crime Records Bureau (NCRB) indicates that a substantial number of acquittals in cases involving allegations of rape or sexual exploitation stem from cases where relationships soured after consensual intimacy. This underscores the need for strict evidentiary standards to separate genuine fraud from relationship failures.

### 4.2 Evidentiary Challenges and the Requirement of Proof

Proving a charge under Section 69 involves complex evidentiary requirements:

• Proving Initial Intention: The prosecution must prove that the accused had a malicious intention from the very beginning of the relationship. If the accused can demonstrate that he genuinely intended to marry the victim but could not do so due to subsequent events (such as intense family opposition or financial ruin), the charge of fraudulent intent cannot be sustained.

• Corroborative Evidence: Since these interactions typically occur in private settings, courts cannot rely solely on oral testimony. Objective evidence, such as text messages, call logs, and digital trails, is critical to establishing whether the promise of marriage was a core condition for the relationship or just an incidental element.

References - 1. Bhartiya Nyaya Sanhita, 2023, Section 69.

### 4.3 Importance of the Indian Evidence Act, 2023, and Digital Forensics

In the modern digital era, relationships and promises are largely recorded on electronic devices. Therefore, proving guilt or innocence under Section 69 depends heavily on digital forensics and the provisions of the Indian Evidence Act, 2023:

• Admissibility of WhatsApp Chats and Call Recordings: Digital trails serve as crucial evidence to evaluate the nature of the relationship. They help determine whether the conversations reflected mutual affection or systemic inducement based on a specific promise.

• Section 63 of the Indian Evidence Act, 2023: This new provision updates the legal framework for electronic records, clarifying how digital evidence must be certified and presented in court to ensure its authenticity and prevent tampering.

• Role of Forensic Labs: Digital forensic analysis ensures that text messages, audio recordings, or video clips presented in court have not been fabricated, altered, or selectively edited. This scientific verification protects innocent individuals from false implications while securing convictions in genuine cases.

## V. Western Perspectives and Comparative Analysis

### 5.1 Western Legal Systems and Traditions

Western legal systems approach the intersection of broken promises and physical intimacy through a fundamentally different paradigm compared to Indian jurisprudence. In most Western countries, laws are deeply anchored in individual autonomy and personal liberty, drawing a sharp distinction between civil wrongs and criminal liabilities.

#### *a) United Kingdom*

In English law, a breach of a promise to marry was historically treated as a civil wrong (Breach of Promise). However, the Law Reform (Miscellaneous Provisions) Act, 1970 abolished the right to claim damages for a broken promise of marriage.

Legal Position: English law establishes that a promise to marry is not a legally binding contract, and its breach does not constitute a criminal offense. If an adult woman engages in a consensual physical relationship, a subsequent breach of a marriage promise does not convert that consent into rape or any other criminal offense.

References - 1. Indian Evidence Act, 2023. 2. Law Reform (Miscellaneous Provisions) Act, 1970 (United Kingdom).

#### *b) United States of America*

In the early 20th century, US courts dealt with cases under the "Heart Balm" actions, which allowed individuals to sue for financial and emotional damages caused by a breach of a marriage promise. However, by the mid-20th century, most states abolished these actions through "Heart Balm Acts."

Legal Position: The modern American legal consensus views sexual relationships between consenting adults as a private matter, and breaking a promise to marry does not invite criminal prosecution, respecting individual privacy and personal autonomy.

### 5.2 Cultural and Socio-Legal Specifics of the Indian Context

The divergence between Western legal approaches and Indian jurisprudence stems from unique socio-cultural factors:

1. Socio-Cultural Value of Chastity and Marriage: In traditional Indian society, a woman's sexuality is deeply tied to the institution of marriage. If a relationship terminates after physical intimacy, the woman often faces severe social ostracization, reducing her prospects of entering a socially accepted marriage later. This distinct vulnerability requires a protective legal framework that may not be necessary in more individualistic Western societies.

2. Economic Dependence and Social Vulnerability: Despite economic progress, many women in India remain financially and socially dependent on family structures. When a man secures consent through a false promise and subsequently abandons the woman, it can severely compromise her social security. This unique structural vulnerability is why Indian law treats pre-planned deceit in relationships as a serious public offense under Section 69, rather than a purely private or civil matter.

## VI. Conclusion and Policy Suggestions

### 6.1 Conclusion

The legal framework addressing sexual exploitation on the pretext of a false promise of marriage requires a delicate balance. The legal system must protect genuine victims from calculated deception while ensuring that the law does not become an instrument for criminalizing the natural breakdown of consensual relationships.

The evolution from the judicial interpretations of Sections 375 and 90 of the IPC to the formal codification of Section 69 in the Bhartiya Nyaya Sanhita, 2023, represents a significant legislative advancement. This separation clarifies the legal distinction between the trauma of rape and the specific injury of fraud, mitigating the undue application of rape charges to failed relationships while maintaining a robust mechanism to punish intentional deceit.

References - 1. Bhartiya Nyaya Sanhita, 2023, Section 69.

### 6.2 Policy Suggestions

To ensure the equitable implementation of Section 69 and protect the rights of all individuals, the following measures are recommended:

***1. Standardization of Preliminary Inquiry:***

As observed by the Supreme Court in Lalita Kumari vs. Government of Uttar Pradesh (2014), a mandatory preliminary inquiry should be conducted by senior police officers before registering a First Information Report (FIR) under Section 69. This initial check helps verify if there is prima facie evidence of pre-planned deception, reducing malicious or reactionary filings.

***2. Reliance on Digital and Forensic Evidence:***

Investigating agencies should prioritize the collection of objective digital evidence (such as verified messaging history, emails, and location data) rather than relying solely on oral statements. Forensic certification of these electronic records under Section 63 of the Indian Evidence Act, 2023, should be a prerequisite to avoid prosecution based on manipulated or incomplete records.

***3. Objective Assessment of Consent:***

Courts should evaluate consent based on clear objective indicators to distinguish between an intentional fraud from inception and a relationship that disintegrated over time due to familial, financial, or personal compatibility issues.

### *4. Specialized Training for Law Enforcement:*

Given the psychological and technical nuances involved in distinguishing between "mutual consent," "good faith promises," and "deceitful means," law enforcement officers should receive specialized training to handle these investigations objectively, protecting the constitutional rights of innocent citizens against procedural errors.

### Key Judicial Precedents:

• Sonu alias Ramakant vs. State of Uttar Pradesh, (2021) SCC OnLine SC 181.
• Dhurruvam Murlidhar Sonar vs. State of Maharashtra, (2019) 18 SCC 191.

## References

[1] Bhartiya Nyaya Sanhita, 2023, Section 69