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"CONSENT UNDER MISCONCEPTION: REVISITING THE 'FALSE PROMISE TO MARRY' DOCTRINE IN INDIAN RAPE LAW"

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ABSTRACT

False promise to marry (FPM) is a peculiar offense under Indian criminal jurisprudence ever since the old regime of IPC. Anchored with the principles of consent, misconception and rape, this has undergone a series of development in both the pre- colonial and the post- colonial times. This paper is an attempt to understand the provision and the way in which the same has been dealt in with two separate provisions under the IPC to that of Section 69 of BNS. It engages with the two-pronged “intent-from-inception” as held in Pramod Suryabhan Pawar v. State of Maharashtra, and towards judicial pronouncements in the contemporary era from that of Naim Ahmed to that of Makwana, to argue that even if law moves towards sexual autonomy and bodily autonomy of individuals, these decisions in hand convey a different answer. With the advent of rising number of live in relationships, call for a more gender-neutral laws and the practical realm in dealing with these cases are also analyzed in this paper. In toto, this paper is an attempt to analyze the trajectory of FPM from IPC to BNS amidst the ideas of sexual autonomy, privacy and the effectiveness of law in dealing with it alongside few suggestions.

(Keywords: *false promise to marry; consent; Section 69 BNS; rape jurisprudence; sexual autonomy; live-in relationships).*

INTRODUCTION

In India, criminal law intersects with personal morality of individuals rarely. Even if it does so, the intersection getting blended with sexual autonomy is another rarity. This unique doctrinal category is a result of a specific provision where criminalization of sexual intercourse which is preceded by a false promise of marriage. Under the Indian criminal justice system, both empirical and institutional studies showcase a gaining magnitude of this phenomenon. A data published by Vidhi Centre for Legal Policy shows us that 42% of rape cases adjudicated in the Courts of Mumbai involve allegations around false promise to marry.¹ This situation reflects an inherent dilemma that lies at the heart of contemporary Indian criminal law: Is the penal machinery actually designed to safeguard sexual autonomy, or does it, perhaps unintentionally, moralize premarital sexual activity through the process of transforming a violation of a private agreement into the utmost sexual crime rape?

This paper attempts a doctrinal examination of this doctrine. The subsequent part shall be an intro to the historical background of this doctrine through the relationship between Section 375 and Section 90 of the IPC 1860. The next part examines the statutory change brought about by Section 69 of the Bharatiya Nyaya Sanhita (BNS) 2023. Followed by it, a doctrine map in chronological order of Supreme Court jurisprudence, demonstrating the constant gap between the standard set by the apex court and the ground reality. Then comes the socio-legal and constitutional critique of the doctrine. It is then followed by a frame of reference of a comparative perspective from England and South Africa.

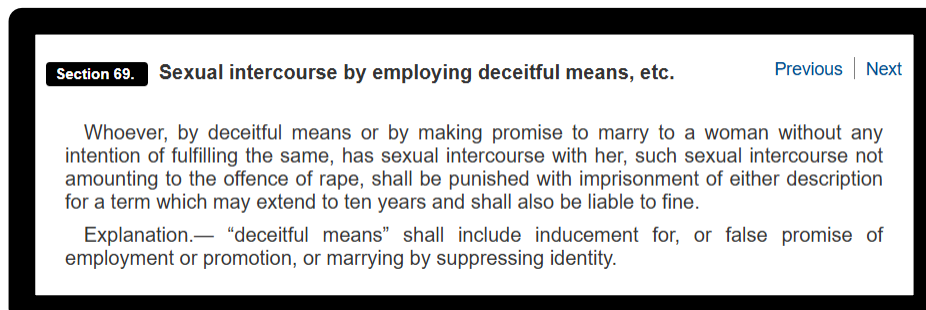
CHAPTER I: THE PROVISION, ITS ORIGINS, AND THE CONSTITUTIONAL QUESTION

An introductory element to this provision when tried to be given in a laymen's perspective would be 'rape on false promise to marry' (FPM). This has a very unusual place under existing criminal jurisprudence of India. For decades, the Indian Penal Code did not have a dedicated provision for this offense which means that the erstwhile Section 375 of the Code² in which rape by reference to the absence of consent, enumerating discrete situations where intercourse against a woman's will, without her consent, consent obtained under fear of hurt, and so on and none of which mentioned marriage or deception as to future conduct. Instead of invoking it directly, courts employed a twin test like setting where rape is read along with Section 90 of

¹ Tajamul Islam, A Promise to Marriage: What Is the Legal Position in India?, Nyaaya (Jan. 9, 2023), <https://nyaaya.org/guest-blog/a-promise-to-marriage-what-is-the-legal-position-in-india/>.

² Indian Penal Code, No. 45 of 1860, § 375 (India).

IPC³ that talks about the consent which is obtained by misconception of fact is seen as no consent at all. Under these circumstances, the consent is obtained by a misconception of a fact and so it is not consent in law under the erstwhile section 90 of IPC thereby making it falling under the definition of rape under section 375 of the act.⁴



The practical efficacy that this listing out of a new offense creates or not is dealt under the subsequent chapters of this paper where the difference in the analysis of the provision under the older statute and the newer one alongside other analyses are dealt in detail under the next lines of this paper in detail. The codification of rape happened 150 years ago but the fact that the codification of FPM took only in 2023 itself raises a large question that this paper tries to answer.⁵

1.1.Tracing the Roots:

The Indian Penal Code encompasses provisions regarding rape which were drafted under the colonial era where the primary concern that the code had to protect the chastity of a woman and considered her to be a propriety as a matter of social interest. Any regards to the bodily autonomy of an individual or sexual autonomy or even regards to the decisional autonomy or reproductive rights were given no regard at all. In short, she was not seen as an individual that is right bearing but as one that is childbearing to be precise. Even after many attempts of reattempting to define section 375, the changes did not bring anything forward. This means that the way in which consent was defined remained negative. There were only vitiating circumstances but no means of affirmation existed even back then as an expression of will. But it started to be a tool to try cases related to false promise of marriage from the late twentieth century onwards.

In other words, despite 151 years of legal tradition behind it, the Supreme Court could not initially risk a bold approach on that question; as early as *Uday v. State of Karnataka* (2003)⁶

³ Indian Penal Code, No. 45 of 1860, § 90 (India).

⁴ Supra 3

⁵ Kriti Malik, False Promise to Marry, LiveLaw (May 22, 2026).

⁶ *Uday v. State of Karnataka*, (2003) 4 SCC 46 (India).

we got an overly tentative ruling trying to draw a line between giving a false promise at inception and simply failing to honor that promise later, the latter being treated differently than the former: this would be revisited, honed but structurally unimproved all over again in virtually every judgment after. This was an entire decade in which FPM would undergo a mass recodification of the penal law through implementation of the BNS, until it was statutorily codified into law.

1.2. Constitutional angle to FPM:

The jurisprudence of ‘false promise to marry’ cannot be read in isolation from that of the development of the constitutional development of right to life and personal liberty under article 21 of the Constitution of India. As held in *Justice K. S. Puttaswamy v. Union of India*⁷ with the recognition of right to privacy under the Indian Constitution alongside the landmark ruling held in *Navtej Singh Johar v. Union of India* (2018)⁸ which explicitly declared the legality and the rights associated with making intimate choices by an individual and even sexual partners which are all now a part and parcel of article 21 of the Constitution of India.⁹ These all can be invoked to come to an assertion or analysis that the doctrine which effectively gives rise to a legal validity involving a woman’s consent in sex which is conditional upon the sincerity of her partner’s intention in marrying her.¹⁰ The problem, explored in further detail in Chapter III, is not one of the constitutional legitimacies of criminalizing bad faith deception but rather a legal system and now legislative text that have problems distinguishing between calculated deception and the natural breakdown of a relationship.

CHAPTER II: THE PROVISION IN PRACTICE - A CRITICAL READING OF THE CASE LAW

Section 69 of the Bharatiya Nyaya Sanhita 2023 is the actual reality where the false promise to marry became a reality with the advent of this new criminal code. This description of the offense in real terms require a scrutiny by us rather than merely accepting it. It is to be noted that the description of this offense under the law is meant to criminalize the offenses that are categorized as sexual intercourse obtained by deceitful means. It is to be noted that a false promise to marry with no intention of actually keeping it is suffice enough to constitute this

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

⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India)

⁹ INDIA CONST. art. 21.

¹⁰ See *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

offense in general.

It was held in the case of *Pramod Suryabhan Pawar v. State of Maharashtra*¹¹ in which the twin requisite of bad faith as an intention at the time of promise being made by the accused alongside the mandatory linkage that a casual link to be established between the promise made and it's resultant linkage with that of the complainant's consent.

This is because the determination is very retrospective in nature such that the courts has to lean in to reconstructing a phenomenon where the mental state has to be read first, to that of the conduct of the accused and the complainant before and after and even during the relationship. The very change of bringing a coupled read along provisions of section 375¹² and Section 90¹³ of the erstwhile Indian Penal Code to that of a standalone offense under Section 69 of BNS.¹⁴ This still had left any harder question to be still remaining the same. It was an individualistic attempt by courts but cannot be categorised as a principled ones that provides for a uniform standard.

2.1. Recent Judicial Trends:

2.1.1. The Objective Corroboration Problem- The case of Jaspal Singh:

In the Case of Jaspal Singh Kaural¹⁵, the Supreme Court of India was dealing with a discharge order where the court held that the conduct of the appellant is in a way such that he had mangalsutra engraved with his initials is suffice enough factor to prove that they were acting in furthering a genuine promise that was made and this to be noted that a subsequent falling out in natural scenes do not result in retroactivity or in converting that promise which is genuine naturally into a false one. The Court also noted that there was 5 years of relationship that existed between them both but these parties were still married to other people when their relationship began complicating it furthermore.

2.1.2. Credibility on Trial and the case of Naim Ahmed:

The modern jurisprudence regarding the false promise to marry rests on Naim Ahmed case¹⁶ where the breach and promise distinction has been extensively dealt by the Courts of law. In this case, apart from the established standards the court was keener on looking into the factor which is nothing but the marital status of the complainant and the resultant conduct of her from the frame of reference of the same.

¹¹ (2019) 9 SCC 608

¹² Supra

¹³ Supra

¹⁴ Supra

¹⁵ *Jaspal Singh Kaural v. State of NCT of Delhi*, (2025) 5 SCC 756 (India)

¹⁶ *Naim Ahmed v. State (NCT of Delhi)*, (2023) 15 SCC 385 (India).

2.1.3. Judicial moralizing as doctrine: Yashwinder Kumar v. State Govt. of NCT of Delhi (February 2026)¹⁷

The oral observation made in the case of Yashwinder Kumar where the remark sparked a debate as to where boy and girl are strangers before marriage. The court went on to say that there should be no physical relationship that should exist between people before marriage at the bail stage. Although it has no binding ratio to any extent, the fact that we need to understand here is that the significance that this paper tries to achieve is that it reveals the way in which how the judiciary in its all senses instead of applying a two-pronged test focused on the moral vocabulary of the individuals in the committed relationship. The bench even scrutinized the fact that the complainant has decided to go to Dubai with the accused which in no way has any relation to decide the merits of the case.



*Figure 1 Judicial Observations on Pre-Marital Intimacy and the False Promise to Marry Doctrine*¹⁸

The fact that the court should have considered is the plausibility of the relationship of the individuals but the opinion of the court was made in such a way that the bearing upon the fact if she has consented at all.

2.1.4. Timing as proxy for truth: Shaileshbhai Govindbhai Makwana v. State of Maharashtra (May 2026)¹⁹

In this case of Makwana, the Supreme Court of India quashed the proceedings on a very weak ground that the complainant had a profile being created on a matrimonial website and has grown a relationship that has soon become intimate with the accused. It is to be noted that the complainant had a divorce proceeding that was pending at the time when all the events took

¹⁷ Yashwinder Kumar v. State Govt. of NCT of Delhi, Criminal Appeal No. ____ of 2026, 2026 SCC OnLine SC ____ (Feb. 18, 2026) (India).

¹⁸ Firstpost News, *The Supreme Court of India Cautioned Young Men and Women Against Engaging in Pre-Marital Physical Relationships*, Facebook (Feb. 2026).

¹⁹ Shaileshbhai Govindbhai Makwana v. State of Maharashtra, 2026 SCC OnLine SC 459 (India)

place. The Court was too convenient to treat this timeline as a factor that ultimately undercuts the claim of deception by the complainant woman. The more analytically pertinent issue is whether the accused ever intended to marry the complainant, receives comparatively limited independent consideration in the Court's reasoning as presented; instead, the complainant's timeline often takes its place.²⁰

2.4. The Pattern Beneath the Precedents

Analyzing four decisions within an eighteen-month period reveals a consistent evidentiary pattern: courts focus more intensely on evaluating the complainant's behavior, credibility, and marital history than on assessing the accused's state of mind at the time the promise was made. This emphasis persists despite both Pramod Pawar and Section 69 BNS identifying the accused's intent as the central question.²¹ This tendency does not necessarily indicate judicial bad faith, as determining a person's past intent is inherently challenging, and the complainant's conduct frequently serves as the only available indicator.²²

A related question arises from the *Yashwinder Kumar*²³ and *Makwana*²⁴ rulings: if the Supreme Court employs language emphasizing premarital propriety even while officially applying a deception-based test, what implications does this have for the constitutional argument in Chapter I? That argument asserts that the FPM doctrine should align with the sexual autonomy principles established in *Puttaswamy*²⁵ and *Navtej Singh Johar*.²⁶

Chapter III: Toward a Coherent Regime, Live-In Relationships, Gender Neutrality, and the Case for Reform

An analysis on the theory of false promise of marriage (FPM) must account for a demographic that it was never designed to work against. 42% of the 4500 rape cases that came before the Mumbai City Civil and Sessions Court from 2015-20 were related to the allegations of a promise of marriage, according to a study by the Vidhi Centre for Legal Policy. Therefore, it is the tussle between the existing doctrine under FPM and evolving law, which seems to govern people in live-in relationship. The Protection of Women from Domestic Violence Act, 2005

²⁰ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 69 (India).

²¹ See Bharatiya Nyaya Sanhita, No. 45 of 2023, § 69 (India); *Jaspal Singh Kaural v. State of NCT of Delhi*, (2025) 5 SCC 756, 760–61 (India).

²² Supra

²³ Supra

²⁴ Ibid

²⁵ See *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1;

²⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

provides for maintenance and protection to women in relationships based on marriage.²⁷

Once the law will accept live-ins as legitimate relationships, does the idea that a broken promise to marry may amount to rape still hold water? This is a question that this paper argues has not been fully examined. If the law offers a legal remedy for a couple's relational claims in maintenance, property and protection orders, then the criminal law's willingness to treat "he never married me" as potentially equivalent to "he raped me" seems less an exercise in protecting autonomy than an anachronism. It is an echo of a legal culture that treated the sexual choice of women as legitimate only when it culminated in a wedding. Section 69 like its predecessor, is drafted only in heterosexual one-directional terms: a man deceiving a woman.²⁸ A common reform suggestion is to create a rebuttable presumption of marriage similar in framework to Section 29 of the POCSO Act under which, once foundational facts are shown (a promise was made, sexual relations followed, and promise was not honored, the burden shifts to the accused to show he intended, in good faith, to marry. This proposal is rejected, at least with a strong counterargument



Figure 2 From Judicial Improvisation to Constitutional Coherence: Reimagining the False Promise to Marry Doctrine under Section 69 of the Bharatiya Nyaya Sanhita, 2023.²⁹

²⁷ Supra 1

²⁸ See Bharatiya Nyaya Sanhita, No. 45 of 2023, § 69 (India)

²⁹ Author's illustration, based on *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608; *Jaspal Singh Kaural v. State of NCT of Delhi*, 2025 INSC 457; Indian Penal Code, No. 45 of 1860, §§ 90, 375 (India); Bharatiya Nyaya Sanhita, No. 45 of 2023, § 69 (India).

CONCLUSION/ SUGGESTION

“Twenty years and a full re-codification later, the Bharatiya Nyaya Sanhita has given that improvisation a proper statutory home in Section 69, but a home is not the same as a foundation”

This paper is an attempt to analyze the historical, societal, constitutional and a criminal jurisprudence perspective on the false promise to marry doctrine where we had discussed the way in which the provisions was used in the old regime with no separate offense created and at the same time with the advent of the BNS in which the need of twin test seems to be necessary to be in practice at still were all analyzed. There are criminal offenses and doctrines of criminal jurisprudence separately. This is an invention of the judicial improvisation in which a peculiar sexual offense like that of rape is coupled with a general provision like that of misconception of fact that gets coupled to analyze whether consent is vitiated. This is the bedrock of protecting the sexual autonomy of individual from the exploitation and also a means to protect the modesty of women. **“Until Indian law builds that architecture, Section 69 BNS will remain what its predecessor was: a doctrine that speaks the language of consent while continuing, case after case, to put the wrong person on trial.”**

SUGGESTIONS:

1. **Codify two- part test:** The standard set out in Pramod Suryabhan Pawar should be amended to include the bad faith at the start coupled with the direct connection of the bad intent with that of consent being vitiated.
2. **Extending Evidentiary Shield:** The Indian Evidence Law has a protective shield that talks about the irrelevancy of character especially when related to sexual history of the person in question can be applied to that of the cases under section 69 of BNS as well.³⁰ This is because the judicial reasonings that we discussed included a part of moral vocabulary than the actual merit of the case.
3. **Gender Neutrality:** Section 69 should be applied symmetrically regardless of the sex of the either party such that a gender- neutral provision is achieved.³¹

³⁰ Love, Lies, and the Law: The Quandary of Criminalising False Promise to Marry in India, Oxford Hum. Rts. Hub Blog (2024), <https://ohrh.law.ox.ac.uk/love-lies-and-the-law-the-quandary-of-criminalising-false-promise-to-marry-in-india/>.

³¹ Breach of Promise to Marry Is Not Always Rape: Jaspal Singh Kaural v. The State of NCT of Delhi, Sup. Ct. Observer (2025), <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/breach-of-promise-to-marry-is-not-always-rape-jaspal-singh-kaural-v-the-state-of-nct-of-delhi/>.

4. **Judicial sensitization:** The trial judges who has the responsibility of dealing with such cases has to be trained with the grave responsibility that comes with dealing in these cases through judicial academies on the cases of distinguishing the state of the mind of the accused as evidence rather than relying on the character evidence.
5. **Revisit through a Law Commission reference.** Given that neither the 172nd Report (2000)³² nor the Justice Verma Committee (2013)³³ failed to address FPM, a dedicated Law Commission study informed by the empirical material cited above is overdue.

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³² Supra 35

³³ Supra 35

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