

## False Promises to Marry

### Why in news?

In the recently proposed [Bharatiya Nyaya Sanhita \(BNS\) bill 2023](#), if a man promises to marry a woman but never intends to, and still has 'consensual' sex with her, it will amount to a criminal offence under Section 69.

### Bharatiya Nyaya Sanhita Bill 2023

- The BNS is one of three new draft criminal law Bills brought by the Union Government.
- **IPC, 1860**- The Bill, which seeks to replace the Indian Penal Code, 1860, identifies 'sexual intercourse on false promise of marriage' as an offence.
- **Review**- A Standing Committee on Home Affairs has 3 months to review, carry out consultations and submit its report on the Bills.
- At present, the offence is not carved out separately in the IPC, but courts have previously dealt with similar cases through other provisions within the criminal law framework.

### What does Section 69 say?

- **Chapter 5 of the Bill**- It is titled as "Offences against woman and children" and describes sexual intercourse by employing deceitful means.
- **Section 69** - Whoever, by *deceitful means* or *by making promise* to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.
  - **Deceitful means**- It will include false promise of employment or promotion, inducement or marrying after suppressing identity.
  - **False promise to marry**- It will be attracted only when a man makes a promise to marry a woman, with the intention of breaking it, for the purpose of getting her consent and sexually exploiting her.
- **Penalty**- Both offences will extract a penalty of up to 10 years of imprisonment.

### How has IPC dealt with cases of 'false promise to marry'?

### Data on Cases of False Promise to Marry

- **Delhi police data**-In 2016, a quarter of the total rape cases registered in Delhi pertained to sex under "false promise of marriage".
- **NCRB data**- The National Crime Records Bureau in 2016 recorded 10,068 similar cases of rape by "known persons on a promise to marry the victim".

- **Causes**
  - When rape is committed and the promise of marriage is used to silence the victim or
  - Where the promise is made to 'convince' the person into entering a sexual

relationship.

- **IPC-** They were dealt with joint reading of Sections 375 and 90 of the IPC.
- **Section 375-** It defines rape and defines consent as “an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act.”
- This section lists 7 types of consent which would amount to rape if violated including the consent taken through fear of death, hurt or intoxication.
- **Section 90-** Consent, given under “fear of injury” or “misconception of fact,” cannot be considered as consent.
- **Court rulings-** In 2021, the Supreme Court reiterated that under Section 375, a woman’s consent must involve an active and reasoned deliberation towards the proposed act.
- Karnataka Court has said that educated women in a pre-marital relationship cannot claim rape after the relationship is over for she is *‘mature’* enough to be aware of the consequences of being in a premarital relationship.

### What is the difference between false promise of marriage’ vs ‘breach of promise’?

- Both are distinguished on the basis of proving if the man intended to marry at the time of engaging in sex. They are dealt under two parameters.
  - **Rape-** If the promise was false, with the intention of being broken later on, this would disregard a woman’s consent through a misconception of fact and would be considered rape.
  - **False promise-** The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act, as argued in *Sonu alias Subhash Kumar vs State of U.P. And Another* in 2019.
- **Supreme Court observations-** It observed that
  - **False promise-** It is given on the understanding by its maker that it will be broken.
  - **Breach of promise-** It is made in good faith but subsequently not fulfilled.
- **Activists argument-** ‘Circumstances’ are shorthand for social norms that uphold the status quo, reinforcing gender roles, patriarchy and caste lines.
- **Consensual sex-** The Supreme Court in 2022 held that consensual sex on genuine promise of marriage does not constitute rape.
- The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust.

### What are the issues involved in proving ‘intention’ to marry?

- **Central issue-** It involves
  - How consent is obtained— through deceitful means, or by misconception
  - Whether the man ever intended to marry the woman.
- **Codification of offence-** Section 69 in the BNS codifies the offence instead of creating a new one.

- In its present form, the Bill doesn't dissolve the confused distinction between 'false promise' and 'breach of promise'.
- **Affect women autonomy**- Section 69 if unscrutinised may promote restrictive ideas about women, marriage and consent which hinder women's autonomy and re-victimise them.
- **Victim blaming lens**- Delhi High Court verdict on pre-marital sex shifts the burden to women to prove their consent is vitiated.
- **Law as weapon**- The women may use the law as a weapon for vengeance and personal vendetta.
- **Promotes endogamy**- The law shifts the conversation away from the real harm and abuse that women face.
- **Caste factor** - Taking the "impossibility of an inter-caste marriage" as a ground to acquit the accused of rape in fact amounts to upholding the archaic practice of marrying within one's own caste.

## References

1. [The Hindu- False promises to marry in new criminal law bill](#)
2. [PIB- Criminal Justice Bills](#)
3. [PRS- Bharatiya Nyaya Sanhita Bill](#)

