
REFORMING LAWS ON SEXUAL INTERCOURSE BASED ON FALSE PROMISES OF MARRIAGE: THE ROLE OF CONSENT, COERCION, AND LEGAL ACCOUNTABILITY

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ABSTRACT

The new provision of Section 69 of Bhartiya Nyaya Sanhita, 2023 is a major reform to specifically criminalize the offence of “Sexual Intercourse on False Promise of Marriage” which was not provided a specific provision under the old law of Indian Penal Code, 1860. Judiciary has for a long time criminalized “Sexual Intercourse on false promise of marriage” under offence of Rape under the old law which lead to various inconsistencies and in some cases justice may not serve adequately. The new law effectively addresses the crime of sexual contact with false promises of marriage, which is distinct from the crime of rape. However, the new law is also not perfect like the old and has many inadequacies. One such inadequacy is treating only woman as victims which undermines “Fundamental Rights” and may also cause injustice to Transgenders. The new law also has inconsistency with the concept of Live-in Relationship which was legally recognized in the recent past. The paper specifically discussed the comparison between the old and new law of India with the law of France and Singapore and highlighted the similarities and differences between them.

KEYWORDS: Sexual Intercourse, False promise, Marriage, Deceit, Misconception of Fact, Rape

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INTRODUCTION

Newly introduced statute of “Bhartiya Nyaya Sanhita, 2023”³ (herein referred to as “BNS”) has replaced the “Indian Penal Code, 1860”⁴ (herein referred to as “IPC”) to criminalize various offences in India. The new statute came into force on 1st July 2023 with other two statutes i.e. “Bharatiya Nagarik Suraksha Sanhita, 2023”⁵ and “Bharatiya Sakshya Adhiniyam, 2023”⁶.

The offence of “*Sexual Intercourse on false promise of marriage*” which was earlier criminalized under Section 375 of IPC i.e. Rape, is now criminalized under a specific provision i.e. Section 69 of BNS which states “Sexual intercourse by employing deceitful means etc”.

Section 69 of the BNS was introduced by the Parliament by using a special authority provided to it under “Article 15(3) of the Indian Constitution”. As we know Parliament of India comes under the purview of “*State*” under “Article 12 of the Indian Constitution”. Therefore, the Parliament has special power to make laws for women under Article 15(3) of the Indian Constitution as Article 15(3) was introduced under Indian constitution for upliftment of women. This intention of Constitution makers was depicted during the Constitution Assembly Debates on Article 15 where Prof. K.T. Shah said about Article 15(3) that “*Discrimination in Favor of women and children is covered under this clause. Certain groups within our society are the targets of this prejudice because of a regrettable historical legacy that has left them with infirmities or handicaps. In order to ensure true equality among citizens, they must be given special care and amenities*”⁷.

Due to the inadequacy of Section 375 & 376 under old law, there was a need for a specific provision to criminalize “Sexual Intercourse on false promise of marriage” in the new statute. Thus, the Parliamentarians introduced Section 69 under BNS as an offence separate from the Rape offense,

³ Bhartiya Nyaya Sanhita, 2023, No.45, Acts of Parliament, 2023 (India).

⁴ Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 (India).

⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, No.46, Acts of Parliament, 2023 (India).

⁶ Bharatiya Sakshya Adhiniyam, 2023, No.47, Acts of Parliament, 2023 (India).

⁷ Constituent Assembly Debates, Volume 7, 29th November 1949.

which is criminalized under Section 63 of BNS and punishable under Section 64 of BNS, as said by Dr Jayanta Kumar Roy, who was elected as Lok Sabha member from Jalpaiguri, West Bengal in Fourteenth Session of Seventeenth Lok Sabha: *“Although courts have heard various cases of women reporting rape on the ground of breach of promise of marriage, there is no such special provision in this IPC that causes confusion. So, section 69 criminalizing Sexual contact that does not qualify as rape by fraudulent means is eliminating confusion and is for women's welfare”*⁸.

As per the observation of legal commentator Radhika Gupta (2024), Section 69 aims to bridge a big loophole in current laws that do not speak to sexual exploitation when the consent is achieved by deceitful means. According to Gupta, the provision is in line with the overall aims of feminist legal reforms in India aiming to increase women's autonomy and avoid sexual coercion in the name of consensual sexual relations⁹.

ELEMENTS OF SECTION 69 OF BNS

According to the plain reading of section 69, it can be held that there are 4 essentials of false promise to marriage. They are:

Promise to Marry

The first and required essential of offence u/s 69 of the BNS is that there must be a promise to marriage. The woman must have been promised by the man that he will marry her. The first and most important prerequisite for a man to be deemed accountable u/s 69 is this. No offence u/s 69 of the BNS may be committed in the absence of a marriage pledge.

⁸ Lok Sabha Debates - Fourteenth Session of Seventeenth Lok Sabha.

⁹ Gupta, R., *Feminist Legal Reforms and Section 69 of the Bharatiya Nyaya Sanhita*, Women's Rights and Law Review, 12(3), 98-107 (2024).

No intention of marrying

The absence of a marital intention is the second component of the Section 69 offense. There is a difference between not intending to be married and breaking a marriage vow. It must be demonstrated that the accused did not plan to marry the woman at the time of the pledge and that it was a lie made to gain the woman's agreement.

Sexual intercourse on that promise

Ensuring that sexual relations are based on a false promise of marriage is also crucial. It implies that a guy must have promised a woman that he would marry her if she had sex with him before a woman could give her consent. Sexual activity must therefore be a means of fulfilling that promise and nothing else.

Does not qualify as Rape

For an act to qualify as a crime u/s 69, it must not constitute rape. This is the last requirement. It implies that the conduct shouldn't fulfil all of the requirements for rape. There should be a woman's consent. The male will not be prosecuted u/s 69 of the BNS, but he will be punished for the crime of rape if, for example, he promises to marry the woman but she refuses to have sex and he then commits the deed against her will.

SCOPE OF SECTION 69 OF BHARATIYA NYAYA SANHITA, 2023

Employment and promotion

Section 69 of BNS not only punishes "Sexual Intercourse on false promise of marriage" but it also punishes "Sexual intercourse on false promise of employment and promotion" as described in the Explanation clause of Section 69 that *"deceitful means" includes "inducement or false promise out of employment or promotion or marriage by concealing identity"*.

However, since the emotions involved are different, it might not be a good idea to combine sex for marriage commitment with sex for job and promotion commitment. This is due to the fact that while “Sexual Intercourse on false promise of marriage” is founded on love and trust, while “Sexual Intercourse on false promises of employment and promotion” is motivated by a woman's avarice as said by Senior criminal lawyer Shilpi Jain: *“Promise to marry cannot be compared with promise of employment/promotion because promise of marriage is also founded on love and trust, whereas promise of employment/promotion are Favours which women are receiving in exchange for sex. It's a give-and-take relationship”*.

Some Legal analyst also highlighted the inconsistency in putting together sex for commitment to marriage with sex for commitment to employment and promotion and on such is Ranjeet Kaur, who argues that *“adding such acts of deception might confuse the border between sexual exploitation and other frauds, complicating the judiciary in determining the real intention of the accused's actions. This might result in conflicting legal interpretations and challenges to prove the offense”*¹⁰.

Suppressing Identity

Besides punishing sexual intercourse on false promise of marriage, employment and promotion, Section 69 of BNS also criminalizes “Sexual Intercourse on false promise of marriage” by concealing identity as mentioned in Explanation clause of Section 69 that deceitful means. This part of the provision is indirectly inspired from Section 493 of IPC (which is now Section 81 of BNS), which reads *“Cohabitation caused by a man deceitfully inducing a belief of lawful marriage”*.

¹⁰ Kaur, R, *Deceptive Promises and Legal Implications under Section 69 of the BNS*, 2023, Indian Legal Journal, 19(5), 167-182 (2023).

INADEQUACY OF OLD LAW IN CRIMINALIZING SEXUAL ACTIVITY ON FRAUDULENT MARRIAGE PROMISES WHICH LEAD TO THE NEED FOR SECTION 69 OF BNS

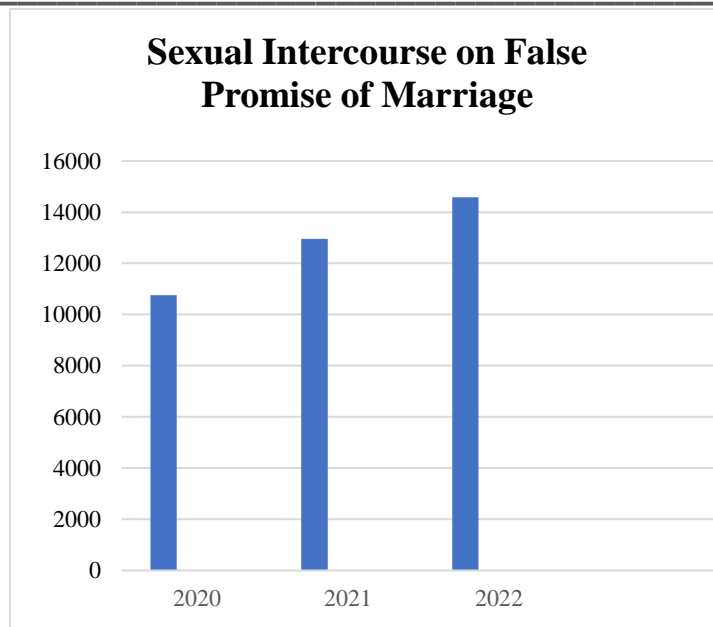
Before the introduction of BNS, Indian Judiciary has for a long time criminalize “Sexual Intercourse on false promise of marriage” under Clause (2) of Section 375 of IPC. However, due to lack of specific provision for sexual activity on fraudulent marriage promises, the old law not proved to be adequate in criminalizing “Sexual Intercourse on false promise of marriage”. Some of the major reasons are:

CASES OF “SEXUAL INTERCOURSE ON FALSE PROMISE” INCREASING EVERY YEAR

The below table and Bar Graph shows latest National Crime Records Bureau (NCRB) Report of 3 years¹¹ comparing the Number of cases of “Sexual Intercourse on False Promise”:

YEAR	Number of cases
2020	10751
2021	12951
2022	14582

¹¹ Indian Department of ‘National Crime Record Bureau’ under the ‘Ministry of Home Ministers, 2020, 2021 and 2022.



From the above table and Bar Graph, it is clear that cases of “Sexual Intercourse on false promise of marriage” have been increasing every year.

There has been 20.46% increase in cases of “Sexual Intercourse on false promise of marriage” from 2020 to 2021.

There has been 12.6% increase in cases of “Sexual Intercourse on false promise of marriage” from 2021 to 2022.

DIFFERING VIEWS OF INDIAN JUDICIARY IN CONSENT FOR “SEXUAL INTERCOURSE ON FALSE PROMISE OF MARRIAGE” AS FACT WITHIN THE PURVIEW OF “MISCONCEPTION OF FACT” U/S 90 OF IPC, 1860

Supreme Court

As we know Consent is an important element in criminalizing Sexual Offences and “*Consent is known to be granted under misconception of fact*” is “*no consent*” as per Section 90 of IPC. Thus,

to criminalize “Sexual Intercourse on false promise of marriage” u/s 376 of IPC, it is important to prove that consent for “Sexual Intercourse on false promise of marriage” is a fact under “*misconception of fact*”. However, the Hon’ble Supreme Court (herein referred to “SC”) has been confused for the long time now in deciding this aspect.

This is because in the Landmark Judgement of *Uday v. State of Karnataka*¹², SC held that a woman's consent provided with the intention of getting married in the future, particularly when she is incredibly in love, does not qualify as “*misconception of fact*”.

However, after three years i.e. 2005, the view of Supreme Court on the same issue was differed. This because in the Landmark Judgement of *Deelip Singh v. State of Bihar*¹³, the Hon’ble Apex Court ruled that giving consent to “Sexual Intercourse on false promise of marriage” comes within the purview of phrase “*misconception of fact*” and it is criminalized u/s 376 of the IPC.

Thus, the views of SC were conflicting in order to adequately criminalize “Sexual Intercourse on false promise of marriage” u/s 376.

High Court

Like the Hon’ble Supreme Court, the views of High Court (herein referred to as “HC”) of different states were conflicting in deciding consent for “Sexual Intercourse on false promise of marriage” is a fact under “*misconception of fact*”.

This is because in the judgement of *Jayanti Rani Panda v. State of West Bengal*¹⁴, the Hon’ble HC of Calcutta held that a fraudulent marriage promise is insufficient to invoke Section 90. The court in this case rightly held that a false promise does not constitute a “*fact*” within the meaning of the statute, and therefore, consent obtained under such circumstances cannot be considered void on the grounds of a misconception. However, the view of the Hon’ble HC of Patna was different as

¹² Uday v. State of Karnataka, (2003) 4 S.C.C. 46 (India).

¹³ Deelip Singh v. State of Bihar, (2005) 1 S.C.C. 88 (India).

¹⁴ Jayanti Rani Panda v. State, 1983 S.C.C. OnLine Cal 98 (India).

in the *Saleha Khatoon v. State of Bihar*, it was held that false promise was understood as fraud and deceit covered under “*misconception of fact*” and consequently, sexual intercourse, on such consent amounts to be rape.

The view of the High Court again differed. This is because in the Judgement of *Harshvardhan Yadav v. State of Uttar Pradesh*¹⁵, the Hon’ble HC of Allahabad held that consent for a “Sexual Intercourse on false promise of marriage” should be termed as Consent that is granted under “false promise” and must be considered rape. Thus, the views of High Court of Different states were inadequate to criminalize “Sexual Intercourse on false promise of marriage” u/s 376.

DIFFERING VIEWS OF INDIAN JUDICIARY IN CRIMINALIZING SEXUAL ACTIVITY ON FALSE PRETEXT AS RAPE UNDER IPC

Rape is an offence defined u/s 375, in which Having sex with a woman without getting her permission. Judiciary has been interpreting “Sexual Intercourse on false promise of marriage” as Rape under IPC for long time. However, due to lack to specific clause u/s 375 defining “Sexual Intercourse on false promise of marriage”, there has been conflicting views of Indian Judiciary in criminalizing “Sexual Intercourse on false promise of marriage” as Rape.

For Example, in the landmark of *Anurag Soni v State of Chhattisgarh*¹⁶, the Hon’ble Supreme Court interpreted “Sexual Intercourse on false promise of marriage” as Rape. Hence, the accused was convicted for rape offence under IPC.

¹⁵ Harshvardhan Yadav v. State of Uttar Pradesh, 2021 S.C.C. Online All 500 (India).

¹⁶ Anurag Soni v. State of Chhattisgarh, (2019) S.C.C. Online S.C. 509 (India).

However, in the judgement of *G. Achyut Kumar v/s State of Odisha*¹⁷, where a Bail application was filed before the HC of Orissa and the offender was given bail as in the seven grounds listed in section 375, nowhere has it been mentioned that “*Sex on false promise of marriage is a ground for rape*”.

Thus, the Indian Judiciary has always been confused in criminalizing Sexual Activity on Fraudulent Marriage Promises as Rape due to lack specific clause defining “Sexual Intercourse on false promise of marriage” as rape under Section 375. Hence, the old law was inadequate in criminalizing “Sexual Intercourse on False Promise of Marriage”.

DIFFICULTY IN DIFFERENTIATING “BREACH OF PROMISE” AND “FALSE PROMISE OF MARRIAGE”

Earlier, Section 376 of IPC has been applied by Judiciary for criminalizing the Offence of “Sexual Intercourse on False Promise of Marriage”. However, due to lack of specific provision addressing the said offence, there has been a major issue faced by the Judiciary as they failed differentiate whether the marriage in alleged case was broken due to “*false promise of marriage*” or “*breach of promise*” due to unforeseen circumstances which were not within the control of any of the partners. As highlighted by Hon’ble Supreme Court in judgement of *Deepak Gulati v. State of Haryana*¹⁸ and *Pramod Suryabhan Pawar v. State of Maharashtra*¹⁹ that there exists a difference between “*false promise*” and “*breach of promise*” and only earlier one should be criminalized for “Sexual Intercourse on False Promise of Marriage” and not the latter one. But despite this difference, many cases were wrongly prosecuted and the frequency of these cases emphasizes the requirement of a legal structure that specifically handles the deceit involved in fraudulent marriage

¹⁷ G. Achyut Kumar v. State of Odisha, 2020 SCC OnLine Ori 417 (India).

¹⁸ Deepak Gulati v. State of Haryana, (2013) 7 S.C.C. 675 (India).

¹⁹ Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 S.C.C. 608.

promises, making a clear distinction between them and scenarios where a change of circumstances or a change of heart results in a marriage vow that is not honoured. This was necessary so that justice is administered properly and victims must be able to seek and obtain an effective legal remedy and actions of the accused are fairly evaluated on the basis of valid consent²⁰.

CONSTITUTIONAL VALIDITY OF SECTION 69 BNS

The constitutional validity of the Section 69 of BNS was challenged before Kerala High Court in the writ petition of “*Vimal Vijay v. Union of India*”²¹. In this Petition, Section 69 of the BNS was challenged on the following grounds:

Violative of Article 14, 15 and 19 of Indian Constitution

As per the Petitioner, Section 69 of BNS is violative of Article 14 i.e. “*Equality before law*” and Article 15 i.e. “*Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*” the provision is couched from a patriarchal perspective, with the implication that promises of marriage can only be made by men, thereby depicting women as helpless victims lacking decision-making authority over relationships and marriage and such a provision serves to reinforce misogynist stereotypes, undercutting the dignity of women and infringing upon their Fundamental rights.

Section 69 of BNS also violates “Article 21 of the Indian Constitution” i.e. “*Right to Life and Personal Liberty*” as it violates “*Right to Privacy*” of an Individual which was declared as a “Fundamental Right” under Article 21 by the decision of SC in *K.S. Puttaswamy v. Union of*

²⁰ Aamir Khan, *How Section 69 of the Bharatiya Nyaya Sanhita proposes to criminalise sexual intercourse on false promise of marriage* (19 March, 2024, 13:32 P.M.), <https://www.barandbench.com/news/law-policy/how-section-69-of-the-bharatiya-nyaya-sanhita-proposes-to-criminalise-sex-on-false-promise-of-marriage>.

²¹ *Vimal Vijay v. Union of India & Ors.*, [W.P.(C) No: 31598/ 2024] (India).

*India*²². This is because this provision weakens individual's right of meaningful life and autonomy.

Violative of Rights of LGBTQ+

Section 69 of BNS treats only women as victim of false promise and doesn't provide protection to others. SC in the Landmark Judgement of *Navtej Singh Johar v. Union of India*²³ has decriminalized consensual sexual intercourse between LGBTQ+ individuals but then Section 69 doesn't criminalize false promise made against LGBTQ+ individuals. This is evident from the Landmark judgement of Hon'ble Himachal Pradesh High Court i.e. *Bhupesh Thakur v. State of Himachal Pradesh*²⁴ where it was held that "Transgenders cannot invoke Section 69 of BNS on the ground that woman and transgenders are defined separately and given separate identity under Section 2 of BNS". Thus, this provision only criminalizes only false promise against woman and not against others.

Similar ingredients as the offence of Adultery

Section 497 of IPC provided for the offence of "Adultery" which was struck down for being declared unconstitutional for being violative of "Article 14, 15 and 21 of the Indian Constitution" by the decision of SC in *Joseph Shine v. Union of India*²⁵.

As per the Petitioner, Section 69 of BNS also liable to be struck down like "Section 497 of IPC" as they both have similar ingredients i.e.

Whoever;

Commit against woman only; and

²² K.S. Puttaswamy v. Union of India, (2019) 1 S.C.C. 1(India).

²³ Navtej Singh Johar v. Union of India, (2018) 1 S.C.C. 791(India).

²⁴ Bhupesh Thakur v. State of Himachal Pradesh, 2024 S.C.C. OnLine HP 4513(India).

²⁵ Joseph Shine v. Union of India, (2018) 2 S.C.C. 189 (India).

Not amounting to rape

Both these offences consider only women as victims and doesn't punish them despite the fact that they may have themselves abetted the alleged offence. Thus, Section 69 of BNS also perpetuates gender-bias like Section 497 of IPC. Hence, it should also be declared unconstitutional.

OTHER REASONS OF SECTION 69 OF BNS IS VIOLATIVE OF "ARTICLE 14 OF THE INDIAN CONSTITUTION"

Section 69 of BNS violates "Article 14 of Indian Constitution" i.e. 'Equality before law' which states that *'the state shall not deny to any person equality before law and equal protection of laws.'* This is because Section 69 of BNS is introduced only to protect women as it is enshrined in Chapter V of BNS i.e. *"of Offences against woman and children"*. So, this provision believes that only women can be victims of *"sexual intercourse on false promise of marriage"* and addresses only their grievances. This provision provides arbitrary protection to women due to which woman tends to misuse this provision to cause legal injury to man just because he didn't adhere to her demands.

Equal protection of laws is also denied to men under Section 69 of BNS because under this provision, despite men and women being alike people are treated differently as this provision creates class legislation in favour of women which leads to improper treatment of man. This can be proved by the tests that were introduced in the *State of West Bengal v. Anwar Ali Sarkar*²⁶ to test the constitutionality of a legislation i.e., *"The classification must be founded on an intelligible differentia which distinguishes those that are grouped from others are left out of the group The differentia must have a rational relation to the object sought to be achieved by the Act"*. These tests are failed in the present case because the classification to provide protection to only women u/s 69 of BNS is not an intelligible differentia because Men might sometimes fall prey to sexual activity by women who falsely promise them a job or a promotion. Another test is also failed

²⁶ State of West Bengal v. Anwar Ali Sarkar, A.I.R. 1952 S.C. 75 (India).

because this differentia u/s 69 of BNS has no rational relation to the object and this can be proved by conflicting judgements of SC on deciding: “*Whether consent for sexual intercourse on false promise of marriage is a fact within the meaning of misconception of fact or not*”?

The Supreme Court in 2002 in Landmark Judgement of *Uday v. State of Karnataka* meticulously held that consent granted by a woman with the intention of being married in the future, particularly when she is incredibly in love, does not fall within the ambit of “*misconception of fact*” u/s 29 of BNS, 2023. Whereas after three years i.e. in 2005, the view of Supreme Court on the same issue was differed. This because in the Landmark Judgement of *Deelip Singh v. State of Bihar*, the Hon’ble Apex Court ruled that consent for sexual activity by falsely promising marriage comes within the purview of phrase “*misconception of fact*”. Thus, this provision failed to fulfil the object for which this provision was introduced.

The new tests of Article 14 introduced in the Landmark Judgement of *E.P. Royappa vs. State of Tamil Nadu* ²⁷ i.e. (1) Arbitrariness and (2) Rational nexus, are also failed under Section 69 of BNS. This is because as we have already discussed, this provision provides arbitrary protection to only woman and the object which the Legislature wanted to achieve with this provision is also not fulfilled.

OTHER REASONS OF SECTION 69 OF BNS IS VIOLATIVE OF “ARTICLE 21 OF THE INDIAN CONSTITUTION”

Section 69 of BNS violates “*right to choose a life partner*” of an individual which is declared as a “fundamental right under Article 21 of Indian Constitution” by the Landmark judgement of SC in *Shafin Jahan v. Asokan K.M.*²⁸. This is because there is a differentiate between a breach of a promise and a false promise as held by Hon’ble Supreme Court in *Deepak Gulati v. State of*

²⁷ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3 (India).

²⁸ *Shafin Jahan v. Ashokan K.M.*, (2018) 16 S.C.C. 368 (India).

*Haryana*²⁹ but Section 69 penalises a male partner on the complaint of the female partner even though there is breach of marriage due to unforeseen circumstances and this violates “right of a person to choose his life-partner”.

SECTION 69 OF BNS – INCONSISTENT WITH LIVE-IN RELATIONSHIP

A live-in relationship is a relationship where two lovers live together but are not married. The two individuals share a common residence and have a sexual relationship but fail to legalize their union by getting married.

The occurrence of such kinds of relationships are increasing in modern times and the Hon’ble Supreme Court also held that engaging in such kinds of relationship is not a criminal offence. Justice PN Bhagwati also held in Landmark Judgement of *M.C. Mehta v. Union of India*³⁰ that law cannot remain static and it needs to change to adhere to the needs of changing society and culture. Thus, with changing institution of marriage and societal norms, it becomes important to recognize and accommodate emerging concepts such as live-in relationships within the legal framework. Hon’ble Supreme Court also observed in the Landmark Judgement of *Indra Sarma v. V.K.V. Sarma*³¹, where it was held that “*Live-in relationship is neither a crime nor a sin although it may not be socially accepted in our country*”.

Hon’ble Supreme Court legally recognized live-in relationship in the Landmark judgement of *Lata Singh Vs. State of U.P. & Anr.*³², where it was held that *live-in “relationship between two consenting adults of heterogenic sex is not equal to any offence, though it may appear immoral. An adult girl has the liberty of marrying anybody she wants” or “living with anybody she likes”*.

²⁹ DEEPAK, *supra* note 18.

³⁰ *M.C. Mehta v. Union of India*, (2004) 60 S.C.C. 588 (India).

³¹ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 S.C.C. 755 (India).

³² *Lata Singh v. State of U.P. & Anr.*, A.I.R. 2006 S.C. 2522 (India).

This decision was reiterated by the SC in the Landmark Judgement of *S. Khushboo v. Kanniammal*³³, where it was also noted that “*Live-in relationship is neither illegal nor immoral*”.

Not only this, SC treated Live-in relationship as equal to marriage as it provided right to maintenance to woman in Live-in relationship in its decision in *D. Velusamy v. D. Patchaiammal*³⁴, where it was decided that “*where a relationship meets certain requirements like long-term cohabitation and mutual dependency it can be treated like marriage for legal purposes like maintenance*”.

Section 2(f) of “*Protection of Women from Domestic Violence Act, 2005*”³⁵ also extended the definition of “*domestic relationship*” to recognize live-in relationship as a relationship equal to marriage.

Despite such recognition of Live-in relationship by the Hon’ble Apex Court, Section 69 of BNS may act against this decision of SC as it functions as a weapon in the woman’s hands, who themselves consented to such relationship but are misusing this provision in case any conflicts arise between the partners and may land male in such relationship in jail for ten years. Thus, the Parliament and SC made conflicting decisions.

There have many measures undertaken to prevent misuse of Section 69 of BNS by couple in live-in relationship. One such measure is registration of live-in relationship which is explicitly provided in Section 378 of “*Uttarakhand’s Uniform Civil Code Bill, 2024*” which was tabled in Uttarakhand State Legislative Assembly, held on 6TH February, 2025.

³³ *S. Khushboo v. Kanniammal*, (2010) 5 S.C.C. 600(India).

³⁴ *D. Velusamy v. D. Patchaiammal*, (2010) 10 S.C.C. 469 (India).

³⁵ The Protection of Women from Domestic Violence Act, 2005, No.43 of 2005, Acts of Parliament (India).

COMPARISON WITH LAWS OF OTHER COUNTRIES

France

The France Penal Code of 1994³⁶ is major legislation which punishes criminal offences in France. “Sexual Intercourse on False Promise of Marriage” is not specifically criminalized in this legislation. However, such offence is covered under the ambit of “Article 222-23” of the Code.

As we know that, Sexual activity by deceit doesn't amount to rape u/s 69 of BNS. However, Sexual activity by deceit in France Penal Code amounts to Rape under “Article 222-23 of the France Penal Code of 1994” as this provision specifically punishes Sexual intercourse by one person on other person by constraint and surprise as rape.

It is worth noting that in India, Section 69 only considers women as victims making a Gender-Specific Offence. However, in France, “Article 222-23” is a Gender-neutral provision as it punishes anyone who commits such offence against any person.

Singapore

In Singapore, major criminal offences are punished in Singapore Penal Code, 1871³⁷ (Herein referred to as “SPC”). SPC has many similarities with the old Indian Legislation of IPC. Like France, in Singapore also, obtaining sexual activity through deceit or false representation is treated as an offence of rape³⁸. However, SPC has some similarities with BNS also. Such similarity is in relation to “*Consent given under Misconception of fact*”. Like Section 29 of BNS, “*consent given under misconception of fact*” is also present in Section 377CB of SPC. Not only this, like in Section 29 of BNS, “*consent given under Misconception of fact*” is considered as “*no consent*” in the said provision of SPC also.

³⁶ The France Penal Code, 1994 (France).

³⁷ Singapore Penal Code, 1871 (Singapore).

³⁸ Wing Cheong Chan, *False Promise to Marry and Other Forms of Sex by Deception in India and Singapore*, 34 NLSI Rev. 97-98 (2022).

CONCLUSION

In conclusion, the new law depicting “sexual intercourse on false promise of marriage” presents a significant shift in the legal landscape, yet it also raises several critical concerns. Historically, the legal system pertaining to sexual offenses related to promises of marriage was vague and insufficient, often leaving victims with limited legal recourse. The absence of specific statutes led to a situation where numerous cases involving “false promises” were either dismissed or inadequately prosecuted. The introduction of this new law aims to fill this gap, providing specific focus on this offence. However, this attempt to address an important issue also brings with it certain shortcomings. One of the primary criticisms of the new law is its potential violation of “fundamental rights”, particularly in the way it treats only women as the victims of such crimes. By doing so, it inadvertently reinforces gender stereotypes that women are inherently vulnerable to exploitation in romantic relationships, which may not always be the case. This reductionist view fails to account for the complexities of individual agency and choice, effectively placing a significant portion of the responsibility on the female gender while overlooking the broader dynamics of power and consent. The new law also failed to address the crime against Transgenders whose consensual relationships are decriminalized by the SC and it also may be inconsistent with the legal recognition grant to Live-in Relationship by the Apex Court by punishing the male even if consent is the foundation of the relationship.

Moreover, the old and new law has similarity to legal frameworks in countries like France and Singapore – where no specific provisos are provided to criminalize the said offence, However, some similar provisions exist to criminalize “sexual intercourse on false promises of marriage”. Such of these provisions related to Consent given under misconception of fact and Sexual Intercourse by Deception. Despite its shortcomings, the new law represents a step forward in addressing an important social issue. However, in order to ensure that such legal changes do not erode fundamental freedoms or result in more negative impacts rather than positive, particularly by overgeneralizing victimhood or criminalizing behaviour, lawmakers should work to refine this law to strike a balance between protecting individuals and preserving personal rights, while also considering the practical implications of its enforcement.