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## Decoding Section 69: Exploring the Fine Line Between Consent and Deception

### Introduction:

The introduction of the Bhartiya Nyaya Sanhita in 2023<sup>1</sup> marked a significant legal milestone in India, replacing the longstanding Indian Penal Code<sup>2</sup> and signalling a notable shift in the country's legal landscape. Spearheaded by Home Minister Amit Shah and receiving the President's assent in December 2023, this comprehensive overhaul aimed to modernize and nationalize the legal framework, moving away from remnants of the colonial era. One noteworthy provision of the Bhartiya Nyaya Sanhita is Section 69<sup>3</sup>, which addresses cases involving deception in sexual offenses. Unlike the Indian Penal Code, which lacked explicit provisions addressing deception in rape cases, the Bhartiya Nyaya Sanhita also does not explicitly define such offenses. However, Section 69 of the Bhartiya Nyaya Sanhita attempts to bridge this gap by broadening the scope of deception to criminalize deceit for sexual purposes, even if it does not amount to rape. This addition brings forth crucial considerations regarding sexual encounters obtained through deceitful means or false promises. By aiming to protect individuals from exploitation and ensuring genuine consent, Section 69 of the Bhartiya Nyaya Sanhita seeks to address a previously overlooked aspect of sexual offenses in Indian law.

### What You Need to Know:

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<sup>1</sup> Bhartiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

<sup>2</sup> Indian Penal Code, 1860, § 420, Act No. 45 of 1860 (India).

<sup>3</sup> Bhartiya Nyaya Sanhita, 2023, § 69, No. 45, Acts of Parliament, 2023 (India).

Section 69 may sound complex at first, but its core concept is quite simple: it addresses instances where someone engages in sexual activity by deceiving another person. Let's break it down:

In plain language, Section 69 deals with situations where someone uses trickery or deceit to engage in sexual activity with another person. This could involve making false promises or employing other sneaky tactics to obtain sexual consent. When we talk about "deceitful means," we're referring to any cunning or dishonest methods used to obtain sexual consent. For example, if someone lies about their identity, their intentions, or makes promises they have no intention of keeping, that falls under the category of deceitful means. False promises are particularly significant here. Suppose someone makes a promise to marry another person solely to convince them to engage in sexual activity, but they never actually intend to fulfill that promise. In that case, it constitutes a violation of Section 69. Essentially, Section 69 aims to protect individuals from being misled or manipulated into engaging in sexual activity under false promises.

### **Understanding Consent in a Deceptive World:**

Consent goes beyond a simple 'Yes' or 'No'; it requires genuine understanding and willingness from all parties involved. Deception can obscure this understanding, making it difficult for individuals to give true consent. As the saying goes, "Lies Cloud Consent." Section 90 elaborates on this, stating that if someone gives consent due to fear of harm or because they are under a misconception about a fact, that consent is not genuine. This is known as obtaining consent through deception by threat. If the person obtaining consent knows or suspects that the other person is agreeing due to fear or misunderstanding, that consent is not lawful. In the case of *State of Uttar Pradesh vs. Naushad*<sup>4</sup>, the Supreme Court of India affirmed that if a promise to marry is made falsely, and the accused never intended to fulfill that promise but used it to deceive the victim into giving consent for sexual intercourse, it constitutes a "misconception of fact" under Section 90 of the Indian Penal Code<sup>5</sup>. This misconception of fact vitiates or nullifies the woman's consent, rendering the sexual act non-consensual and potentially criminal.

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<sup>4</sup> *State of Uttar Pradesh vs. Naushad*, (2013) 16 SCC 651.

<sup>5</sup> Indian Penal Code, 1860, § 90, Act No. 45 of 1860 (India).

Furthermore, Section 90 clarifies that consent from a child under twelve is not considered valid unless the context suggests otherwise. This is because children of that age are generally deemed incapable of giving informed consent. This provision safeguards children from deception by adults who might seek to obtain their consent for inappropriate activities. Similarly in the landmark case of *Independent Thought v. Union of India*<sup>6</sup>, the Supreme Court of India made a significant ruling regarding the rights of minor girls. The Court held that sexual intercourse with a minor wife below the age of 18, even if the marriage is considered legal under personal laws or customs, amounts to rape under Section 375 of the Indian Penal Code<sup>7</sup>.

Additionally, Section 90 specifies that if a person gives consent but is unable to comprehend the nature and consequences of their actions due to being intoxicated or of unsound mind, that consent is not valid. In such cases, deception can also play a role if someone exploits a person's impaired state to obtain consent.

### **Conclusion:**

As we wrap up our discussion, it's crucial to evaluate whether Section 69 of the *Bhartiya Nyaya Sanhita* represents a progressive or regressive step in Indian law. The introduction of this section serves several purposes:

**Firstly**, it aims to protect individuals from sexual intercourse obtained through deception or false promises.

**Secondly**, it seeks to address the gaps in the Indian Penal Code regarding deceptive sexual acts.

**Thirdly**, it aims to safeguard individuals from being falsely accused and convicted of rape in cases where the sexual act was consensual, with no deceptive intentions involved.

Previously, under the IPC, obtaining sex through deception or a false promise that wasn't fulfilled was considered rape. This led to concerns about the fairness of convicting someone for rape when the accused failed to fulfill a promise without deceptive intentions. Section 69 was introduced to differentiate between consensual sex and rape involving deception.

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<sup>6</sup> *Independent Thought vs Union Of India*, (2017) 12 SCALE 621.

<sup>7</sup> Indian Penal Code, 1860, § 375, Act No. 45 of 1860 (India).

In the *Deepak Gulati vs. State of Haryana* case<sup>8</sup>, the Supreme Court provided clarity on the concept of 'consent.' The Court highlighted that consent can be expressed or implied, coerced or misguided, obtained willingly or through deceit. The Court made it clear that there's a distinction between rape and consensual sex, as well as between merely breaching a promise and not fulfilling a false promise. The Court further elaborated that there may be instances where the complainant agrees to sexual intercourse out of love or passion for the accused, not solely due to misrepresentations by the accused. Alternatively, there might be cases where an accused, due to unforeseen circumstances beyond their control, is unable to marry despite genuine intentions to do so. In such cases, the Court emphasized that an accused can only be convicted of rape if it's proven that they had malicious intentions and deceptive motives.

Considering these aspects, Section 69 of the *Bhartiya Nyaya Sanhita* appears to be a progressive step. It offers a more nuanced approach to cases involving deceptive sexual acts, ensuring that genuine cases of rape are distinguished from cases where the failure to fulfill a promise is involved without malicious intent. This provision strikes a balance between protecting individuals from exploitation and ensuring that justice is served fairly. It creates a fine line between consent and deception, reflecting a thoughtful and nuanced understanding of the complexities involved in cases of sexual offenses.

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<sup>8</sup> *Deepak Gulati vs State Of Haryana*, (2013) 7 SCC 675.