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DECEIT-BASED SEXUAL RELATIONS UNDER SECTION 69 OF THE BHARATIYA NYAYA SANHITA AND THE LIMITS OF LEGISLATIVE INTERVENTION

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1 Structure and Scope of Section 69

Section 69 of the *Bharatiya Nyaya Sanhita, 202*, represents a conscious legislative shift from judicially constructed interpretations toward a codified framework addressing deceit-based sexual relations. Unlike the earlier reliance on Section 375 of the *Indian Penal Code, 1860*, which subsumed such cases under rape through the doctrine of “misconception of fact,” Section 69 creates a distinct statutory offence that specifically targets sexual intercourse obtained through deception, while explicitly clarifying that such conduct does not amount to rape. At a structural level, Section 69 is designed around the concept of fraudulent inducement of consent, thereby marking a doctrinal departure from coercion-based sexual offences. The provision criminalises sexual intercourse where consent is obtained by employing deceitful means, which, as clarified in the Explanation clause, includes false promises of marriage, employment, promotion, or concealment of identity. This expanded formulation reflects legislative intent to capture a broader spectrum of manipulative conduct that may not involve physical force but nevertheless undermines the autonomy of the consenting party.

A. Structural Components of the Provision

A close reading of Section 69 reveals that its structure is built upon four essential components. First, there must exist a representation or promise, most commonly a promise of marriage, made by the accused. Second, such promise must be deceptive in nature, meaning that the accused had no intention of fulfilling it at the time it was made. Third, the consent for sexual intercourse must be causally linked to this deception, thereby establishing that the sexual act occurred because of the induced belief. Finally, the act must fall within the category of conduct that does not satisfy the legal threshold of rape, thereby justifying its classification as a separate offence. This structure demonstrates a deliberate legislative effort to distinguish between coercion and deception as independent grounds affecting consent. While rape jurisprudence traditionally focuses on

absence of consent or consent vitiated by fear or misconception, Section 69 isolates deception as a standalone basis for criminal liability. This doctrinal separation attempts to resolve long-standing judicial inconsistencies that arose when courts struggled to categorise such cases strictly within the framework of rape.

B. Expansion of “Deceitful Means”

One of the most notable features of Section 69 is the broad scope of “deceitful means.” The inclusion of inducements such as false promises of employment or promotion significantly expands the ambit of the offence beyond romantic or intimate relationships. This indicates a legislative recognition that sexual exploitation can occur not only through emotional manipulation but also through economic or hierarchical power imbalances. However, this expansion raises important doctrinal concerns. By clubbing together fundamentally different forms of inducement such as a promise of

marriage (rooted in emotional trust) and a promise of employment (rooted in transactional or economic considerations) the provision risks blurring conceptual boundaries between distinct forms of exploitation.

C. Gendered Application and Legislative Intent

Although Section 69 employs the term “whoever,” suggesting gender neutrality, its placement within the chapter dealing with offences against women and children reflects a protective legislative intent primarily oriented towards women. The provision is justified under Article 15(3) of the Constitution, which permits special legislation for women; however, this has also generated debate regarding its compatibility with principles of equality and inclusivity. The structural design of the provision implicitly assumes a power asymmetry in intimate relationships, where one party exploits the trust and vulnerability of the other. While this aligns with sociological realities in many cases, it also raises questions about whether the law adequately accounts for reciprocal agency and evolving relationship dynamics in contemporary society.

D. Relationship with the Concept of Consent

A defining feature of Section 69 is its nuanced treatment of consent. Unlike rape provisions, where consent is either absent or legally invalid, Section 69 acknowledges that consent may be formally present but substantively compromised due to deception. This reflects an evolving understanding of consent as not merely a physical agreement, but one that must be free, informed, and grounded in truthful representation. However, the provision stops short of equating deceptive consent with absence of consent, which explains its classification as a separate offence rather than rape. This creates a hierarchical distinction between types of invalid consent, where deception is treated as less severe than coercion or force. While this approach avoids over-criminalisation, it also raises normative questions about whether deception that fundamentally alters a person’s decision-

making autonomy should be treated with comparable seriousness.

E. Doctrinal Significance

From a broader doctrinal perspective, Section 69 represents an attempt to codify judicial principles that had previously evolved through case law, particularly those concerning false promises of marriage under Section 90 IPC. By doing so, the legislature seeks to bring clarity and uniformity to an area marked by conflicting interpretations. At the same time, the provision illustrates the limits of legislative intervention. While it succeeds in identifying and criminalising a specific form of exploitation, its broad wording, conceptual overlaps, and evidentiary challenges indicate that statutory reform alone may not fully resolve the complexities inherent in intimate relationships and consent.

2 Distinction from the Offence of Rape

Section 69 of the *Bharatiya Nyaya Sanhita, 2023* marks a deliberate legislative departure from the earlier approach under the *Indian Penal Code, 1860*, wherein cases of sexual intercourse induced by false promises of marriage were often subsumed within the offence of rape. The most fundamental distinction between Section 69 and the offence of rape lies in the nature and quality of consent. In cases of rape, consent is either entirely absent or is vitiated by factors such as force, fear, coercion, or incapacity, thereby rendering the act inherently non-consensual. In contrast, Section 69 operates in a domain where consent is ostensibly present but is procured through deception, thereby raising questions about its validity rather than its existence. This distinction reflects a doctrinal shift from understanding consent as a binary concept, either present or absent to recognising a more nuanced category of “deceptive consent.” While earlier judicial interpretations, particularly under Section 90 of the IPC, treated consent obtained under a false promise of marriage as “consent under misconception of fact,” and therefore equivalent to no consent, Section 69 consciously refrains from equating such cases with rape. Instead, it creates a

separate category of offence, explicitly stating that the act must be one “not amounting to rape,” thereby establishing a hierarchical differentiation between coercion-based and deception-based sexual offences. Another significant point of distinction lies in the burden of proof and evidentiary framework. In prosecutions for rape, particularly after the introduction of Section 114A of the Indian Evidence Act (now Section 120 of the Bharatiya Sakshya Adhiniyam, 2023), the law incorporates a reverse burden mechanism, whereby once the prosecutrix asserts absence of consent, the burden shifts to the accused to rebut this presumption. However, under Section 69, no such presumption operates. The burden remains entirely on the complainant to establish not only that sexual intercourse occurred, but also that it was induced by a false promise made without intention of fulfilment, thereby making proof significantly more complex and subjective.

Furthermore, the mental element (*mens rea*) required under Section 69 differs in character from that in rape. While rape focuses on the absence of consent irrespective of the accused’s broader intentions, Section 69 requires proof of a pre-existing fraudulent intent, namely that the accused never intended to fulfil the promise at the time it was made. This introduces an additional layer of complexity, as courts must engage in retrospective evaluation of the accused’s state of mind, often relying on circumstantial evidence and conduct, which can lead to interpretative inconsistencies. The distinction is also evident in the normative gravity attributed to each offence. Rape is recognised as one of the most serious violations of bodily autonomy and is punished accordingly with stringent penalties. Section 69, while criminalising exploitative conduct, implicitly treats deception-based sexual relations as a lesser wrong in comparison to forcible or coercive sexual acts, thereby justifying its classification as a separate offence with a different penal framework. However, this differentiation has been subject to critique, as it raises the question of whether consent obtained

through deliberate deception—particularly where it fundamentally alters an individual’s decision to engage in sexual relations—should be treated as qualitatively distinct from absence of consent. Additionally, Section 69 introduces a broader conceptual framework by including forms of inducement such as false promises of employment, promotion, or concealment of identity, which are not traditionally associated with rape jurisprudence. This expansion indicates that the provision is not merely a subset of sexual offences but rather a hybrid category addressing sexual exploitation through diverse forms of manipulation, thereby further distinguishing it from the narrowly defined contours of rape.

In essence, the distinction between Section 69 and the offence of rape lies in the transition from a coercion-centric model of sexual offences to a deception-sensitive framework. While rape law addresses violations of bodily autonomy through force or absence of consent, Section 69 addresses violations of autonomy through manipulation and fraudulent inducement. This separation, though intended to bring doctrinal clarity, simultaneously introduces new complexities, particularly in determining the threshold at which deception becomes sufficiently grave to warrant criminal sanction, thereby highlighting the evolving and contested nature of consent within contemporary criminal law.

3 Constitutional Justifications of Section 69 of the Bharatiya Nyaya Sanhita, 2023

The constitutional validity of Section 69 of the Bharatiya Nyaya Sanhita, 2023 may be robustly defended by situating it within the broader framework of constitutional principles that seek to balance individual autonomy with social justice and protection against exploitation. While the provision has attracted criticism on grounds of arbitrariness and overbreadth, a closer doctrinal analysis reveals that it is firmly rooted in established constitutional doctrines such as the presumption of constitutionality, protective discrimination under Article 15(3), and the

evolving jurisprudence of dignity and substantive equality under Article 21.

At the outset, it is essential to acknowledge the principle of presumption of constitutionality, which operates as a foundational doctrine in constitutional adjudication. This principle mandates that every legislative enactment is presumed to be constitutionally valid unless proven otherwise, placing the burden of proof on the party challenging the law. The Supreme Court in **R.K. Garg v. Union**¹¹⁹ of India emphasised that laws enacted by the legislature must be viewed with deference, particularly when they address complex socio-economic issues, and should not be invalidated unless there is clear and manifest unconstitutionality. Similarly, in **Nand Kishore v. State of Punjab**¹²⁰, the Court reiterated that legislatures are presumed to act within constitutional limits, and judicial intervention must remain cautious. Applying this principle, Section 69 must be interpreted as a legislative response to a long-recognised gap in criminal law, where courts struggled to consistently address deceit-based sexual relations under the framework of rape. The provision reflects a considered policy choice to criminalise a specific form of exploitation that had previously led to doctrinal inconsistencies. Therefore, unless the provision is shown to be manifestly arbitrary or violative of fundamental rights, it ought to be upheld.

A more substantive justification emerges from Article 15(3) of the Constitution, which expressly empowers the State to make special provisions for women. The Supreme Court in **Government of Andhra Pradesh v. P.B. Vijayakumar**¹²¹ clarified that Article 15(3) is not merely an enabling provision but a transformative tool aimed at achieving substantive equality by addressing historical disadvantages faced by women. The Court further emphasised that Articles 14, 15, and 16 must be read harmoniously, and that special provisions for women are constitutionally permissible so long as they seek to remedy

structural inequalities. Section 69 can be justified within this framework as a form of protective discrimination, designed to address a specific pattern of gendered harm namely, sexual exploitation through false promises. The provision recognises that women, due to entrenched social norms and unequal power dynamics in relationships, are disproportionately vulnerable to such forms of deception. In this context, the classification is neither arbitrary nor unreasonable but is instead based on intelligible differentia with a rational nexus to the objective of preventing exploitation and safeguarding dignity. The constitutional legitimacy of such protective measures is further reinforced by **Independent Thought v. Union of India**¹²², where the Supreme Court acknowledged that Article 15(3) permits affirmative action to dismantle patriarchal structures and promote the autonomy and dignity of women. Section 69 aligns with this objective by recognising that consent obtained through deception undermines a woman's ability to make an informed and autonomous decision, thereby constituting a violation of her dignity.

Another important dimension of constitutional justification lies in the expanding interpretation of Article 21, which encompasses the right to dignity, bodily autonomy, and meaningful consent. The Supreme Court has consistently held that the right to life under Article 21 is not confined to mere physical existence but includes the right to live with dignity and self-respect. Deceit-based sexual relations, particularly those induced by false promises of marriage, can have profound emotional, psychological, and social consequences, especially in a socio-cultural context where such acts carry stigma and affect a woman's social standing. Section 69, therefore, serves as a protective mechanism that reinforces the dignity and autonomy of individuals, particularly women, by criminalising conduct that manipulates consent through false representations. It acknowledges that consent

¹¹⁹ R.K. Garg v. Union of India, MANU/SC/0074/1981.

¹²⁰ Nand Kishore v. State of Punjab, MANU/SC/0831/1995.

¹²¹ Government of Andhra Pradesh vs P.B. Vijayakumar & Anr, MANU/SC/0317/1995.

¹²² Independent Thought vs Union of India, MANU/SC/1298/2017.

must be not only voluntary but also informed, thereby aligning with the modern constitutional understanding of sexual autonomy. Furthermore, the provision can be justified on the ground of legitimate state interest in preventing exploitation and maintaining social order. Criminal law has long recognised that certain forms of deception, even in the absence of physical coercion, may warrant penal sanction where they result in significant harm. By criminalising sexual relations obtained through fraudulent promises, Section 69 seeks to deter exploitative behaviour and promote ethical conduct within intimate relationships, which is a legitimate objective of the State. The argument that Section 69 is overbroad or susceptible to misuse does not, in itself, render the provision unconstitutional. The Supreme Court has repeatedly held that mere possibility of misuse cannot be a ground for striking down a law, as seen in multiple precedents dealing with criminal statutes. Instead, such concerns are to be addressed through judicial interpretation, procedural safeguards, and evidentiary standards, rather than invalidation of the provision itself. Additionally, Section 69 may be viewed as part of a broader constitutional commitment to gender justice, which requires the State to actively intervene in areas where private relationships intersect with structural inequalities. The law does not criminalise consensual relationships per se but targets situations where consent is vitiated by deception, thereby ensuring that the boundary between personal autonomy and exploitation is carefully maintained.

Finally, from a doctrinal perspective, Section 69 represents an attempt to harmonise criminal law with evolving constitutional values, particularly the shift from a narrow, coercion-based understanding of sexual offences to a more nuanced recognition of manipulation, power imbalance, and informed consent. While the provision may require careful judicial application to prevent overreach, its underlying objective is

consistent with the constitutional mandate of promoting dignity, equality, and protection against exploitation. In conclusion, Section 69 of the Bharatiya Nyaya Sanhita, 2023 can be constitutionally justified as a valid exercise of legislative power aimed at addressing a specific and historically neglected form of harm. It draws legitimacy from the doctrines of presumption of constitutionality, protective discrimination under Article 15(3), and the expansive interpretation of dignity and autonomy under Article 21. Rather than violating constitutional principles, the provision seeks to operationalise them within the domain of intimate relationships, thereby reinforcing the State's role in safeguarding individuals from deceit-based exploitation.

4 Constitutional Challenges to Section 69 of the Bharatiya Nyaya Sanhita, 2023

A. Violative of Right to Equality: Article 14

Deception in relationships can be carried out by both men and women. A woman could similarly make false promises or deceive a man into a relationship or even a sexual act. By criminalizing only the conduct of men, the provision disregards the possibility that women could engage in deceitful behaviour as well. This selective targeting of men violates the principle of substantive equality, as it treats similarly placed individuals (those engaging in deceit, regardless of gender) differently. Article 14 of the Indian Constitution allows reasonable classification, but the classification must have a rational connection to the objective. While protecting women from deceit is a valid goal, the law unjustifiably targets men, as deception is not exclusive to them and this makes it a gender specific offense, assuming men as perpetrators and women as victims. In **Anuj Garg v. Hotel Association of India**¹²³, the Supreme Court struck down provisions of the Punjab Excise Act that prohibited women from working in establishments where alcohol was served, holding that such provisions were based on gender stereotypes and violated the right to equality. Such laws, which are based on

¹²³ Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

entrenched gender biases, fail the test of constitutional validity because they create unjustified distinctions between men and women. Similarly, this provision enforces a stereotype that only men are capable of deception in intimate relationships. The law implies that women lack the capacity to understand the dynamics of a relationship or protect themselves from deceit, placing them in a position of legal paternalism. While women's protection is essential, this law reinforces a stereotype that women are passive, dependent, and require special legal protection in every context of a sexual relationship. This kind of paternalistic approach undermines women's autonomy, suggesting they are incapable of making informed decisions in relationships. The SC in **Navtej Singh Johar v. Union of India**¹²⁴ upheld the principle that laws must respect the dignity and autonomy of all individuals, regardless of gender, and should not reinforce discriminatory stereotypes. There is no talk about the third gender, however after the NALSA judgement¹²⁵ and section 2(9) BNS itself has recognized transgender as a gender but the provision fails to safeguard their rights.

B. Contradiction between BNS and Sexual Harassment Laws

It is humbly submitted that BNS Section 69 only criminalizes the situation where the promise for job, promotion or marriage is false or not fulfilled. This implies that if the promise is honoured, the sexual act is not considered a crime under this section. This creates a loophole where sexual favours may be "legally" obtained if the promise is fulfilled. The act becomes punishable only if the promise made to obtain sexual favours is false or unfulfilled. If the promise is fulfilled, there is no crime, Section 2(n) of POSH Act defines "sexual harassment" and states that it includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: (ii) a demand or request for sexual favours. BNS Section 75 criminalizes the mere demand or request for sexual favours,

irrespective of any promises or outcomes. There is no condition requiring the promise to be false for the act to be deemed a crime. Thus, Section 69's conditional approach to criminalizing sexual favours based on promise fulfilment undermines the broader protections provided under the BNS and POSH Act and weakens efforts to prevent sexual exploitation in the workplace.

C. Ambiguity in the law and the risk of misuse.

The law fails to specify the duration or nature of a sexual relationship between a man and a woman that can be considered before she can charge the man under this section. This lack of clear definition creates ambiguity and potential misuse, as it opens the door for long-term affairs, live-in relationships, or any premarital relationship to be retrospectively framed as cases of false promises of marriage. For instance, in a long-term relationship where both parties have shared mutual affection and understanding, a sudden breakdown might lead one party to accuse the other of deceit, alleging that promises of marriage were made to induce sexual relations. Similarly, in live-in relationships where partners have cohabited and shared their lives without formalizing their relationship through marriage, one partner might later claim that the cohabitation was based on false promises of marriage. Furthermore, this provision could be weaponized during disputes, separations, or breakups, turning personal disagreements into legal battles. Individuals might use it as a tool for revenge or threatening to file charges unless certain demands are met. Such misuse not only burdens the legal system with potentially fake cases but also diminishes the credibility of genuine victims seeking justice and as result court of law will become a relationship counselling centre.

In 2020, the police closed 3,375 rape cases during investigation due to being deemed false. Of the 9,713 rape cases that went to trial, 5,403 resulted in acquittals, accounting for over 50% of the accused being found not guilty. Similarly, 5,520 cases of cruelty by husbands or relatives

¹²⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

¹²⁵ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

were reported as false, and of the 18,967 cases tried in court, 14,340 individuals were acquitted. A similar trend is observed in cases involving assault on women with intent to outrage modesty, where 5,821 cases were closed as false, and out of the 20,182 cases that went to trial, 13,649 accused were acquitted.¹²⁶

Despite these existing issues, the state has introduced yet another provision, further increasing the potential for misuse. Given the documented abuse of such laws, adding more provisions without ensuring stronger safeguards against false accusations exacerbates the problem, undermining both justice and the credibility of genuine victims. The state's approach risks further weaponizing legal tools, disproportionately harming the accused. The term "suppressing one's identity" in the provision is vague and lacks clear definition. It does not specify what aspects of a person's identity fall under this term whether it includes name, religion, marital status, financial background, or any other personal detail. This ambiguity creates room for arbitrary interpretation, allowing any undisclosed or unknown fact about the man to potentially be used against him, claiming that he suppressed his identity. This lack of clarity in defining identity could lead to misuse of the law, where even minor or irrelevant omissions might be construed as deceitful suppression, thus exposing men to unfair prosecution. The ambiguity and vagueness in these terms result in a law which lacks clarity and allows for a subjective interpretation of the law which leads to arbitrariness.

According to the landmark judgment in **Maneka Gandhi v. Union of India**¹²⁷,⁵ the SC of India articulated that any law which is arbitrary and unjust is violative of Art. 14 of the Constitution. In the case of **State of West Bengal v. Anwar Ali Sarkar**¹²⁸, SC held that any law that allows for arbitrary discretion is violative of art.14 as it leads to unequal treatment and in the **E.P. Royappa v.**

State of Tamil Nadu.¹²⁹ The Court emphasized that arbitrariness is antithetical to equality, and any law allowing arbitrary action is inherently discriminatory. In **Bhupesh Thakur vs. State of Himachal Pradesh**¹³⁰, the transgender complainant was deceived into undergoing sex reassignment surgery under the false promise of marriage. However, when she sought legal recourse under Section 69 of BNS, the court ruled that the provision applied only to "women" as defined under Section 2(35) of BNS, which does not include transgender persons. This unjust exclusion forced her to rely on the Transgender Persons (Protection of Rights) Act, 2019, which carries a lesser punishment (up to two years) compared to ten years under Section 69. 19. Similarly, in Prosecutrix's case, she was deceived into believing that Deepak would marry her, leading her to undergo sex reassignment surgery. However, when she filed a complaint under Section 69 of the the lower court refused to grant her justice, citing that she was not a "woman" at the time of the promise. Both cases highlight the arbitrary legal distinction between "women" and "transgender persons," which results in the denial of justice for transgender victims of deception and sexual exploitation. The failure of the law to recognize gender identity beyond rigid binary definitions leads to systemic discrimination. In the case of **Shreya Singhal v. Union of India**¹³¹ Section 66 A of IT Act was struck down on the grounds that it was vague, ambiguous and was more likely to be misused.

D.Violative of Article 21

The provision allows for the criminalization of private conduct between consenting adults, which runs contrary to the right to privacy. Unless there is evidence of coercion, force, or exploitation, the state should not intrude into consensual acts between adults. In romantic relationships, consent often evolves based on mutual trust, emotional attachment, and the complexities of human interaction. Criminalizing

¹²⁶ NCRB Report 2020 | Crimes Against Women | Cases Registered V/s False; Conviction Vs Acquittal. <https://voiceformenindia.com/ncrb-report-2020-crimes-against-women-cases-registered-v-s-false-conviction-vs-acquittal/> (Last visited 24 March 2026)

¹²⁷ Maneka Gandhi v. Union of India, (1978) AIR 1978 SC 597

¹²⁸ West Bengal v. Anwar Ali Sarkar, (1952) AIR 1952 SC 75.

¹²⁹ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3

¹³⁰ Bhupesh Thakur vs. State of Himachal Pradesh MANU/HP/2423/2024

¹³¹ Shreya Singhal v. Union of India, (2015) SC 1523.

such acts based on one party's perception of deceit undermines the essential tenets of privacy and autonomy. In December 2022, in the case of **Santosh Kumar Nayak vs State of Orissa**¹³², Orissa HC stated, "The intention of the law makers is clear on the issue. "The laws should not be used to regulate intimate relationships, especially in cases where women have agency and are entering a relationship by choice." The law, being cognizable and non-bailable, allows for the immediate arrest of a man solely based on the woman's statement, as seen in other sexual offenses where the woman's testimony is often considered sufficient evidence. This process can severely harm the man's reputation and subject him to unnecessary legal procedures, even before any thorough investigation takes place. Such an approach is a direct violation of the right to live with dignity, a core aspect of the right to life under Article 21.

In **Maneka Gandhi v. Union of India**¹³³, the Supreme Court emphasized that the right to life and personal liberty under Article 21 is fundamental and should not be curtailed arbitrarily. Such a harsh punishment up to 10 years for a consensual intercourse which does not amount to rape is arbitrary and violates the principles laid for the protection of personal liberty against unreasonable restrictions. The provision's punishment of up to ten years' imprisonment appears disproportionate. The state has effectively institutionalized a theory of "corporate prostitution" through this provision, as it implies that a woman lacks autonomy over her own body and dignity in sexual matters. It suggests that she might succumb to demands or inducements for sex merely on the promise of a job, or a promotion. Moreover, a glaring loophole exists that if a person in authority solicits sexual favours in exchange for a job or promotion and subsequently delivers on that promise, the act would be considered legal. However, if they fail to follow through, it becomes illegal. For instance, even if the job is initially granted in exchange for sexual favours and is

later revoked, this would still not be classified as a crime. How can a job or promotion be justified when it is awarded based not on merit but on sexual favours? This clearly violates the right to live with dignity under Article 21, as it undermines a woman's character and assumes she is willing to trade her body for career advancement. Such a provision reflects a misogynistic ideology that in no way contributes to the empowerment of women.

5 Joseph Shine v. Union of India as a Precedent.

BNS is a recently enacted statute, no legal precedent has yet been established for Section 69. Therefore, I respectfully urge the court to consider the case of **Joseph Shine v. Union of India**¹³⁴ as a relevant precedent, as the circumstances bear notable similarities. In this case, Section 497 of the Indian Penal Code, which dealt with adultery, was struck down for its gender-biased nature. The law punished only the man involved in adultery, while the woman, even if a willing participant, was not penalized. Additionally, if a husband engaged in adultery with another married woman, he alone was punished, further reinforcing the gender disparity. This law was declared unconstitutional for failing to uphold gender equality, as it treated women as the property of their husbands if the husband consented to the extramarital act, it was not considered illegal. The SC highlighted that this provision was deeply flawed, as it disregarded the dignity, autonomy, and agency of women.

Similarly, Section 69 of the BNSS, which is also gender-biased, effectively promotes a form of corporate prostitution by implying that women lack autonomy over their bodies and dignity in sexual matters. Therefore, it should be declared unconstitutional for violating the principles of equality, dignity, and individual agency.

¹³² Santosh Kumar Nayak vs State of Orissa, MANU/OR/1306/2022.

¹³³ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

¹³⁴ Joseph Shine v. Union of India, (2019) 3 SCC 39



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