

LEGAL STUDY OF SEXUAL INTERCOURSE ON THE FALSE PRETEXT OF MARRIAGE

Megha Kaintura¹, Harjas Gill², Dr. Sandhya Verma³, Prof. (Dr.) Poonam Rawat⁴, Dr. Radhey Shyam Jha⁵, Sachin Kumar⁶

¹Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

²Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

³Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

⁴Head, Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India,

⁵Associate Professor, Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India

⁶Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun-248007, Uttarakhand, India

ABSTRACT

In India, violence against women, including sexual assault and rape, is a serious issue. Laws relating to Women's protection have been amended by passing of the time. Instances of obtaining consent through fraud has increased through the years, although the crime has been in the society for more than a decade but have only gained voice in the past few years. "Sexual intercourse as part of a false promise of marriage" is considered Rape because consent is an essential part of sexual intercourse. Men's false promises to marry women do not indicate consent to a physical relationship. The Court in their various notable decisions has said that sexual intercourse received in exchange for a false promise of marriage constituted rape. These are acts of societal malfeasance. Through this article I aim to give an understanding of false promise of marriage just to acquire physical relation, whether or not this amounts to Rape and under what conditions does this amount to rape.

KEYWORDS: Rape, Sexual Assault, Breach of Trust, Consent, Breach of Promise.

I. INTRODUCTION

Marriages are seen as a holy bond between two individuals that crosses all physical, emotional, and spiritual barriers. It is more than just a ritual, rather a bond based on trust and using it as a form of deception just to acquire or form sexual intercourse is an offence and it invokes section 90 of Indian Penal Code (hereinafter used as IPC). The question that the court of law has been asked repeatedly is whether or not Sexual intercourse on the false pretext of marriage is to be considered rape. The Indian Judiciary has recognized marriage through deception a crime of rape, though the deciding factor varies from case to case.

In a leading case (Uday v State of Karnataka, 2003), the Supreme Court for the first time encountered the question whether or not the consent given on the false promise to marry would amount to Rape. In this case, the woman and man were both in love and the

woman also gave her consent for sexual intercourse which later led to her pregnancy, the court held that the question whether consent was given on a misconception of fact, was decided on a case-to-case basis; after examining several judgments of various High Courts, the Court in this case held that the consent was not given under false pretext, and the girl consented her because she was in love. She was also aware that possibility of marriage was low because of them being of different caste. So, it cannot be said that the consent was given under false impression.

Rape is widely viewed as one of society's most horrific offence. It can be said that it is an offence at global perspective, rape does not just include physical abuse but it leaves the victim with trauma to deal with the rest of her life.

A substantial percentage of instances go unreported in several countries, including

India. However, as a consequence of several rape cases getting significant media attention and public anger in recent years, there has been a rise in the willingness to expose rape offenses. As a consequence, the government updated its criminal law. As per the annual report published by the National Crime Records Bureau's in the year 2020, 28,046 rape incidences were reported throughout India (Women & Girls Victims of Rape (Age Group-wise) - 2020). One eye opening fact was found, that someone acquainted to the victim, committed 26,808 rape (95.5 percent of the cases), under this category. (Offenders Relation to Victims of Rape (Section 376 IPC) - 2020). Rajasthan recorded the greatest total number of rape complaints among Indian states, with 5,310, followed by Uttarakhand with 487, and Delhi, the national capital, with 977, the most among Union Territories, according to NCRB 2020 data. (Women & Girls Victims of Rape (Age Group-wise) - 2020)

Rape may also be perpetrated through obtaining consent via fraud, trickery, or inappropriate persuasion. In the crime of rape, consent is important. Sexual intercourse is lawful or prohibited based on the consent given or not. Consent might be implicit or explicit, compelled or uninformed, freely given or deceptively granted. Having physical relationship on false promise of marriage is an offence under the law in India. As a consequence, getting sexual consent by a false promise of marriage does not absolve someone of rape accusations. The man when falsely promise to marry a woman for having sexual relationship when he has no intention to do so, and the women agrees on such promise then the consent is obtained by fraud. According to Section 90 of IPC (Ranchhoddas, Thakore, Thomas, & Rashid, 2014), the circumstances are not a justification for the criminal; he has committed a horrible crime, namely "Rape" as defined in IPC (Ranchhoddas, Thakore, Thomas, & Rashid, 2014) Section 375, and is liable to be convicted of the crime. Rape is a heinous crime that may leave the victim suffering, so is sexual intercourse consent obtained through deception. The survivor of this heinous crime has suffered through so many years, blamed by the society and living with something this traumatic with no fault of theirs. Is giving consent based on trust, a fault of the woman?

2. THE QUESTION IS RAPE OR NO

RAPE?

Consensual sex can be defined as sexual intercourse between the parties, where both of them agrees to do so. Rape occurs when a man forcefully has sexual relations with a woman against her will and without her consent.

Sex is no longer considered a taboo in today's world, when couples and cohabitation are frequent, particularly in urban areas, and are also tolerated by society. In today's changing atmosphere, consensual physical relationship between two men and women is being seen as a liberating act rather than a sin. As a result, in certain circumstances, a line has been drawn between consensual intercourse and rape, particularly where the risk of abuse is high. Several women have also alleged that they were 'raped' by their lovers after they pledged to marry them off.

On many instances, Indian courts have been asked, "Whether sexual intercourse with a false promise of marriage considered valid consent or cheating?" (Consensual Sexual Intercourse on False Pretext of Marriage If Rape: A Socio -Legal Study, 2019)

In one case (Saleha Khatoon v. State of Bihar, 1988), the prosecution gained consent for sexual intercourse in exchange for a false promise of marriage. A police investigation was performed after the submission of a complaint, with the police report submitted under Section 173 Criminal Procedure Code establishing a case of violation under Section 376 of the IPC. However, rather than convicting the defendant for rape under Section 376, the judge tried him under Section 498 for detaining a married woman, most likely, because the prosecutor was already married.

The verdict of the magistrate was appealed to the Patna High Court, which overturned it and remanded the accused to face charges under Section 376. The Patna High Court overturned the magistrate's verdict, ruling that the false promise (also known as fraud and deceit) was protected by "misconception." In reality" and, as a result, sexual intercourse with the consent so gained was a violation, a fraud on her, and she had been tricked by a false security. This kind of consent should be referred to as consent gained without your consent. Consent obtained through deceit is not consent and falls within the definition of rape under Section 375.

In the case of Jayanti (Jayanti Rani

Panda v. State Of West Bengal, 1983), the question "Whether consent gained by a false pretext is void under Section 90 or not?" was first brought before the Calcutta High Court as a motion for review. The defendant was charged with rape under Section 376 of the IPC for having sexual intercourse with the petitioner, whose consent was secured via a fraudulent promise of marriage. The lower court upheld the defendant's acquittal, ruling that Section 90 does not apply since a false promise is not a fact and so does not come within Section 90's definition of "misconception of fact." Then The Calcutta High Court decided that "it cannot be stated that the accused had no intention of marrying the complainant" and that it was a case of "breach of engagement" after a reconsideration of the facts. As a consequence, the Court determined that the present case constituted a breach of promise rather than a fraudulent promise, and thus Section 90 did not apply. Furthermore, the Court concluded that the misrepresented truth must be relevant in order to use Section 90, rather than relating to an "uncertain future date," as in this instance. The Calcutta High Court disregarded the accusation and declined to find the defendant guilty of rape under Section 376 of the Indian Penal Code".

So, there is a situation that distinguishes between Consensual Rape and Rape. However, in the case of Deepak (Deepak Gulati v. State Of Haryana, 2013), the victim in this case was 19 years old girl. She was in love with the accused and was promised that they will get married by the accused. As a consequence, the prosecutor intentionally divorced her family and married the accused. She called the defendant's phone number to find out why he hadn't located her at the agreed-upon location. She waited a long time for him to arrive, and when he finally arrived, she led him to Lake Karna, where they had sexual intercourse. She never raised an objection or made a complaint to anybody. She subsequently traveled to different places with the accused and lived with her family too. In this instance as well, the prosecutor openly interacted with the defendant. She subsequently took up unlawful residency in a hostel at Kurukshetra University, where she reconnected with the defendant at Mandir. Police apprehended the defendant at a bus stop where they were about to board a bus for Ambala where they were about to get married.

The court found that the physical relationship between the parties was created with

the prosecutor's consent since she did not resist or protest at any point; moreover, she was living with the accused for so long and had also traveled with the accused at different places. The Court also struggled to define the circumstances under which a rape allegation against the defendant may be filed. "Consent may be spoken or inferred, compelled or misdirected, gained voluntarily or by trickery," the Court said. Consent is a rational act that is accompanied by deliberation, with the intellect evaluating the benefits and drawbacks on both sides like a scale. Since the latter comes under the heading of cheating or cheating, the court must carefully evaluate whether the defendant actually desired to marry the victim or had bad faith motivations and made a false commitment to that effect only to indulge his desires. It's important to distinguish between merely breaking a promise and failing to keep a deceptive promise. As a result, the court must determine if the defendant ever made a false promise of marriage and whether the consent was achieved after the defendant had fully understood the nature and implications of sexual indulgence." (Deepak Gulati v. State Of Haryana, 2013)

Does sexual intercourse on the false promise of marriage always constitute rape?

The court has been dealing with this question for almost a decade now; the answer to this question varies from case to case. Many times, a man has been falsely accused but that does not mean that can never dominate the claims of so many victims of such a crime who had experienced the wrath and pain of the same. The court reached a number of conclusions about whether repeated breaches of the marriage commitment constituted rape. Similar incidents have urged the Indian court to be cautious.(Sexual intercourse based on false promise to marry, 2021)

3. STATUTORY PROVISIONS

Indian Penal Code, 1860

Section 90 and Section 375 of the Indian Penal Code is what the person is charged with when he has sexual relationship with a woman on false promise of marriage.

Section 375 defines the Rape and Section 90 talks about the Consent when obtained using fear or misinformation. If the person consent because of fear or misconception of facts

and the other person who is performing the act knows and is well aware of the state of mind of the person from whom he obtained consent that consenting person is in fear state of mind or has misinterpreted the fact. Then such consent is not as it should have been under this Code.

This section also states that the consent of any insane person, who is not able to process and understand the nature and repercussions of the act owing to his condition, cannot be considered as consent.

If the consent is granted by a person, under the age of twelve, unless the context indicates otherwise doesn't amount to consent.

The Indian Evidence Act, 1872

“Section 114A talks about the Presumption as to absence of consent in certain prosecutions for rape” this sections states that if the woman testifies in the court of law that she had given consent under false pretext of marriage then it will be considered as consent given under false promise of marriage.

If a guy told her that he would marry her and continued to meet her needs until she got pregnant, it was apparent that he did not want to marry her, according to the laws of failed love relationships. In the false notion that he would marry her, the woman indulges in the man's ardor. As a consequence, the sexual connection that develops as a result cannot be deemed as consented relation or it may constitute rape

Consent given by a victim based on a false assumption would be a violation of section 375 IPC and Section 90 IPC, respectively (Ranchhoddas, Thakore, Thomas, & Rashid, 2014).

Meaning of Consent under Indian Penal Code

The multiple grounds on which a sexual act with a woman constituted rape are defined in Section 375. One of the explanations is a woman's "lack of consent." In Section 90, the word "consent" is defined in a negative way.(Consent In Indian Rape Law: A Case For An Objective Standard Of Determining Consent | OHRH, 2017)

As per it, consent provided out of fear of harm and later due to a misinterpretation of the facts isn't really consent. Both parties to a sexual connection must consent to it, and at any time, any party may decide that they no longer consent to it and discontinue the conduct for

which prior consent was obtained. You are not bound to consent to any further action just because you consented to one. Consent given once does not bind the other person to provide consent in the future. But for it to become an offense or constitute Rape, mens rea to commit such an offense must be there from the beginning. For instance, if a man promised to marry a woman but afterwards was not able to fulfill his promise due to unavoidable reasons such as family pressure or so, it would not amount to Rape through deception.

4. JUDICIAL OPINIONS

The Supreme Court of India in many cases has described that there is difference between a promise and a false promise and breaching them.

In the case of Naushad (State of Uttar Pradesh v. Naushad, 2013), the Defendant, was having an affair for the last two-year with the prosecutor, and she had assumed he would marry her. Based on this promise, the defendant Naushad swore to get married to the victim and frequently made physical relations with her. She was raped and became pregnant as a result. The defendant was found guilty of betraying her trust by declining to marry her and sentenced to life in prison for raping her for having sex under the guise of a fake marriage commitment. According to the Court, the defendant also obtained her consent under Section 90 of the IPC under the erroneous belief that he could marry her.

In the case of Sachin (Sachin @ Devendra Gajanand Sangray v. State of Gujarat, 2015), both the accused and the victim were living together in a live-in relationship in Surat, Gujarat for a year and were cohabiting with their consent. They were co-workers as well. They split up after a year owing to a personal feud that erupted between them on March 1, 2012. He went to the girl's residence on March 10, 2012, to invite her to his wedding on March 12, 2012. The defendant allegedly raped the girl after making a fake promise to marry her, according to the girl's complaint. Since there was a breach of promise and both parties were in a consensual relationship, the Gujarat High Court concluded in March 2015 that the defendant was not guilty of rape. Sangray's relationship with his inside lover was voluntary, thus it can't be considered "rape."

In the case of Rajeev Patil (Rajeev Kisan Patil v. State of Maharashtra, 2003), the Bombay

High Court declared that "Any violation of the promise of marriage does not amount to rape". Judge Mridula Bhatkar described the situation as "unfortunate but normal," explaining that both a girl and a boy can wish to marry and have sincere feelings, resulting in a sexual connection, but that anyone can choose to withdraw from the relationship after a period of time due to compatibility defects. As a consequence, no one may be compelled to marry someone purely on the basis of their sexual attraction. It is vital to have a robust and unbiased legal reaction to such incidents. It is not rape in any way, even if a woman suffers more than a male. As a result, in this case, the Court said that the most crucial aspect in a rape case is forceful sexual encounters with women who do not consent.

In 2022 the case of Ramchandran (Ramachandran @ Chandran v. State of Kerala, 2022), was highlighted. In this case the Hon'ble Kerala High Court set aside the life imprisonment of the appellant. In this case the High Court observed that having sexual relationship after promising to marry and marrying someone else later cannot be considered as rape until and unless the person state of mind and intention at the time of making promise to marry was to deceive the girl. The Intention and state of mind has to be considered at the time of doing sexual act, not what he did afterwards.

In the case of R. Meena (Radhakrishna Meena v. State of Rajasthan, 2022), the Hon'ble High Court of Rajasthan observed that the educated and married women should be well aware of the repercussions of having physical relationship with a man, when the marriage is yet to be finalized, in such cases the recorded material should be produced to prove that was induced to have physical relationship. And in case of illiterate women the false promise of marriage to have physical relationship should be considered a consent obtained by fraud.

In a famous case of Sonu (Sonu @ Subhash Kumar v. State of Uttar Pradesh, 2021), the Hon'ble Supreme Court dismissed a FIR filed by ex-lovers under Section 376 IPC, stating that "there is no allegation that the promise of marriage given to the second defendant (prosecutor) was initially fake." Justice Dr. D. Y. Chandrachud's judgment cited in the case of (Pramod Suryabhan Pawar v. State of Maharashtra, 2019), in which the Supreme Court established the following as a litmus test for regulating similar instances.

There is a "misconception of reality"

that vitiates the woman's "consent" when the promise of marriage is false and the maker's intention at the time of making the promise was to fool the women into having sex. On the other hand, a broken pledge cannot be labeled a false promise. To make a false promise, the promise maker must not have meant to fulfill his word at the time he made it.

To conclude the legal position from the aforementioned judgments the consent of the women should be of free will, not be obtained by inducement or misrepresenting the facts. The women should also be aware of repercussions that may arise in the life ahead as life is too vague to be chosen, anything can happen and noting is in control of man. For considering a sexual activity based on consent rape it should be seen that the person who obtained consent to have sexual act between the two indeed really vowed false for marriage and should not be because of misrepresentation of facts. The person making the promise should also not have any evil state of mind at the time of sexual activity.

The prosecution confessed in the case of Sonu (Sonu @ Subhash Kumar v. State of Uttar Pradesh, 2021) that her physical interactions with the defendant were voluntary and the product of "loving infidelity" between the two, but only because the defendant pledged to marry her. As a consequence, both the accused and defendant's families refused to solemnize their marriages. The primary concern that arises from the Sonu judgment and others of similar origin in terms of facts and circumstances is the presence of an intimate/loving connection between the complainant and the perpetrator. It is uncommon for the defendant to have married someone during the claimed induction, or to have been in an active relationship with another individual during or shortly after declining to marry, compelling law enforcement officials to file a FIR under Section 376 IPC.

In a case of Jharkhand State (Maheshwar Tigga v. State of Jharkhand, 2020), the Supreme Court, led by Nariman, J., stated: "Both of them were entangled with one another, and their passions won over their brains and emotions." The sexual encounters that followed were not one-off or unusual, but rather occurred on a regular basis throughout time. The prosecution had even taken up residence in the appellant's home. The prosecution's four-year delay in filing the FIR, at a convenient moment of seven days before the appellant's marriage to another girl, on the basis of a

promise to the prosecutor, raises major issues about the prosecutor's sincerity and authenticity in our trial. Given that the prosecution conceded during cross-examination that no incident happened on 4-9-1999, the case's whole inception is in serious question."

"Under Section 90 IPC, consent provided under a distorted understanding of the facts is not consent in the eyes of the law," the Court continued in the Maheshwar Tigga case (Maheshwar Tigga v. State of Jharkhand, 2020). The true misinformation, on the other hand, must be present at the moment of the occurrence and cannot be distributed for four years. Appellant's consent was, without a doubt, a deliberate and informed choice taken after considerable thought, over a lengthy period of time, and followed by a conscious affirmative action not to protest. According to the prosecutor's letters to the appellant, she "would regularly have confrontations in her house with members of her family about the relationship, and she would be beaten."

5. CONCLUSION

"While a murderer destroys the physical frame of the victim, a rapist degrades and de les the soul of a helpless female."(Tulsidas Kanolkar v. State of Goa, 2003)

Above importantly, breaking off a marriage engagement after having sex does not inherently constitute rape under Indian law. Due to the lack of probate legislation, rape by false promise of marriage is resolved at the discretion of the court, which considers the facts and circumstances of each case.

To demonstrate the first characteristic of rape, there must be some element of force as well as a total lack of consent. The first element of rape is forceful sexual intercourse with the victim's consent. Furthermore, consent gained by a mistake of fact, misrepresentation, or deceit may be categorized as rape in the second degree, which has a less severe penalty than rape in the first. So, in these situations, proving whether the defendant meant to marry the women from the start or whether it was merely a false promise to have sexual relationship is tough thing.

The Supreme Court has declared that if a person's objective is to do evil and he has ulterior motivations, he will be guilty under section 376 and if motive is not taken into consideration then more people with evil intent will

exploit girls from the lowest and poorest section of society by luring them with false promises of marriage and forcing them to have physical relations while convincing them that they will marry in the future, thinking that law is on their side as they have obtained the consent.

If the accused are not found guilty of rape, the nation will become a haven for rapists since it will be very simple for them to commit rape under the guise of "statutory rape" and they will always have an alibi to avoid punishment.

False Promises of marriage and maintaining physical relationship should always be an offense in our society as marriage is seen as an emotional bond in our society. The Court should not let anyone with evil intent to get away with it without being punished but they should also ensure this is not being misused by anyone to settle scores.

6. SUGGESTIONS

1. Education: Prejudiced judgments regarding the connection between educated and illiterate women should be avoided as even educated women may often be ignorant of the purpose of men who marry under the guise of marriage to get favors for sexual relations with/from her.
2. Appropriate Legal Provision: Appropriate laws and sanctions for this significant and burning issue should be developed. This has become a major issue that not only undermines women's dignity but also destroys them academically, mentally, and physically.
3. Improper application: To prevent this rape issue from being misapplied, a punishment for women should be incorporated.
4. Awareness Schemes: Government, Educational Institutions, Parents must participate to make them aware and alert in this regard.
5. Effective Legal Machinery Administrative and Judicial System must be made more efficient, active and fast to resolve the issue and to provide remedy to the victim.

BIBLIOGRAPHY

1. Deepak Gulati v. State Of Haryana, (2013) 7 SCC 675 (Supreme Court of India May

- 20, 2013).
2. Jayanti Rani Panda v. State Of West Bengal, 1984 Cri L J 1535 (Calcutta High Court June 16, 1983).
 3. Jha, R. S. (2014). Women & the Curse of Domestic Violence: A Study. *International Journal of Economics & Managerial Thoughts*, 4 (2), 35-43.
 4. Maheshwar Tigga v. State of Jharkhand, 2020 SCC OnLin SC 779 (Supreme Court of India September 28, 2020).
 5. Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 308 (Supreme Court of India August 21, 2019).
 6. Radhakrishna Meena v. State of Rajasthan, 4952 (High Court of Judicature for Rajasthan at Jaipur February 23, 2022).
 7. Rahul Subhash Patil v. State of Maharashtra, 07233 (Bombay High Court January 27, 2017).
 8. Rajeev Kisan Patil v. State of Maharashtra, 374 (Bombay High Court February 11, 2003).
 9. Ramachandran @ Chandran v. State of Kerala, CRL.A NO. 568 OF 2020 (Kerala High Court March 30, 2022).
 10. Ranchhoddas, R., Thakore, D., Thomas, K., & Rashid, M. (2014). Ratanlal & Dhirajlal's The Indian penal code. Lexisnexis.
 11. Sachin @ Devendra Gajanand Sangray v. State of Gujarat, 15688 (Gujarat High Court November 24, 2015).
 12. Saleha Khatoon v. State of Bihar, (1988) 36 BLJR 678 (Patna High Court April 28, 1988).
 13. Singh, D. (2020). Principles of the law of evidence : a study of the Indian Evidence Act, 1872 (24 ed.). Central Law Publications.
 14. Sonu @ Subhash Kumar v. State of Uttar Pradesh, 2021 SCC Online SC 181 (Supreme Court of India March 01, 2021).
 15. Chakravarti, A., Jha, R. S., & Ashutosh, K. (2021). Right to Education of a Pregnant Woman. *Elementary Education Online* , 20 (1), 1718-1725.
 16. Gupta, P., & Uniyal, V. (2019). Gender Justice and Human Rights. *JETIR* , 6 (3), 250-256.
 17. Jha, R. S., Singh, Y., & Bhati, S. (2014). Socio-Cultural Pollution. *The Horizon: A Journal of Social Sciences* , 5 (1), 151-156.
 18. Rawat, P., & Bhatt, A. (2016). The Shades of Legal Mechanism of Human Rights and Prisoners with a Special Reference to National Human Rights Commission, India. *Dehradun Law Review* , 8 (1), 67-79.
 19. Uniyal, V., & Bahuguna, R. (2020). Social Awakening: Women Empowerment through Panchayat Raj in India. *AEAEUM* , 8 (4), 1085-1095.
 20. Khan, M. S., Chauhan, M., Jha, R. S., Rawat, P. & Narayan, J. (2022) Role of Police in Criminal Justice System, *International Journal of Early Childhood Special Education (INT-JECSE)* DOI: 10.9756/INT-JECSE/V14I2.823 ISSN: 1308-5581 Vol 14, (2)
 21. State of Uttar Pradesh v. Naushad, (2013) 16 SCC 651 (Supreme Court of India November 19, 2013).
 22. Tulsidas Kanolkar v. State of Goa, (2003) 8 SCC 590 (Supreme Court of India October 27, 2003).