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PROMISE AND PERPETRATIONS: THE ROLE OF CASTE IN SHAPING THE EXPLOITATION OF DALIT WOMEN THROUGH FALSE MARITAL PROMISES¹

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Abstract

False promise to marry and caste-based sexual violence reveal the deep-rooted injustices accorded to women in India, particularly those women who belong to marginalized community. Women who belong to Dalit and Adivasi community, the harsh reality is that the exploitation is not just personal but also systemic, owing to the intersectionality of caste and gender. Sexual Violence is a prominent tool often used by dominant castes to abuse and reinforce their power. Deceptive promise to marry is a manipulative tool which exploits women emotionally and physically. It strips them of dignity and their bodily autonomy. It has long been used as a tool to control women and their sexual autonomy.

This paper aims to highlight the societal and legal biases involved when it comes to marginalized women and their sexual violence. It also highlights the need to re-read consent in the backdrop of societal morality. It aims to bring into notice the surrounding circumstances that need to be examined while deciding consent in the cases of inter-caste relationship and false promise to marry.

Introduction

*We go to work for we are poor; But the same silken beds mock us
While we are ravished in broad daylight; Ill-starred our horoscopes are.
Even our tottering husbands; Lying on the cots in a corner
Hiss and shout for revenge, if we cannot stand their touch.*

Dalit poet Teressamma has provided us with an incite into the world of Dalit women and their sexual plight through this poem.²

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² Divyani Rattanpal, Indian Feminism Excludes Dalit Women, But the Tide is Turning, THE QUINT (Aug. 8, 2015), <https://www.thequint.com/news/india/dalit-women-are-talking-about-their-identity>.

The caste system forms the heart of the Indian society, it very well can be said to be shaping the lives of millions of people living in India. The caste system is deeply entrenched touching every aspect of daily life and opportunities for advancement. There exist four main castes namely – Brahmins, Kshatriyas, Vaishyas and Shudras. While Dalits also known as untouchables, are left out of this structure. The peculiar condition driving the decision of caste identification is birth, determining the access to wealth, dignity and power in the society.

The caste system governs the two important aspects of human life and choices – occupation and marriage. The consequences of breaking these rules ranges from being ostracized from one's community to honour killing. The core idea deciding the nature of work is purity which renders certain group as “polluted”. To overcome this hierarchical discrimination, the marginalised community has long been resorting to social movements, legal safeguards and constitutional rights. Yet, centuries later, justice remains a fictional concept. Upper-caste privilege has often allowed the perpetrators to escape the accountability of the caste-based discrimination. The situation is further excruciating for Dalit women who face a double sword of caste and gender discrimination. Cases like those of Bhanwari Devi, Khairlanjee, Lalasa Devi, and Delta Meghwal lay bare the horrors they endure—stories of violence, injustice, and a society reluctant to confront its own prejudices.

Rape is one such vicious tool which is used not just against Dalit women but to degrade the entire Dalit community at large. Dalit women are often disbelieved and the pain they face is enormously trivialised due to profound caste biases. Change is not just law; but it calls for a dynamic shift in how caste, gender and power is perceived by the society. It is only then that we can break out of this recurrent cycle of violence and neglect.

Many scholars have time and again discussed the convenient practice of untouchability. On one hand it subjugate and stigmatizes Dalits for being “polluted” and “impure” but on the other it does nothing to stop Savarna men from perpetrating sexual violence towards the same Dalit women. As Dalit women stated, “The upper castes would not touch us. They would never eat with us. But they were always ready to fornicate. For ‘doing it’ our women were not untouchable.”³

³Saurabh Dube Untouchable Pasts: Religion, Identity, and Power Among A Central Indian Community 1780-1950 (2001).

Time and again, it has been seen that upper caste men have used false promise of marriage as a tool to suppress Dalit women. Once this promise breaks, women have no choice but to bear the brunt of societal stigma of premarital relationship with no refuge in justice. Earlier, Indian courts recognised false promise to marry under Section 375 of the Indian Penal Code, 1860. The condition being the presence of intent to deceive since the inception of the act. There was no separate classification of false promise to marry, and it was implied in the regular definition of Rape. However, with the advent of new Act of Bharatiya Nyaya Sanhita, 2023 a separate classification has been provided to such cases under Section 69. It is essential to note that even with such classification the enforcement of these laws is muddled with biases without any discourse to justice specially in the cases where caste plays an important role.

A scenario where a Dalit woman tries to hold accountable an upper-caste man for a broken promise of marriage is met with severe backlash, including physical or sexual violence. It is pertinent to note that this violence attempts to “put her in her place” within the caste hierarchy. When it comes to Dalit women, the discrimination is always two-fold, caste and gender. This paper aims to examine the relentless sexual violence against Dalit women on the pretext of pretend betrothal.

The Illusion of Commitment and Rape

In the case of Vishnu v State of Maharashtra,⁴ the conviction of the accused was entirely on the testimony of the rape victim. The reasoning provided by the court was on the deep-seated tradition that no dignified woman can falsely accuse someone of such heinous crime, which would surely risk her reputation and marriage prospect. The underline reasoning behind this notion is her perceived chastity, which implies that only those testimony would be believed in court which seems pure and virtuous. The societal norm accounts for a woman’s worth to be defined largely based on her sexual purity. Quoting the court:

“The statement of the prosecutrix, in our view, is quite natural. . . . In the traditional non-permissive bounds of society in India, no girl or woman of self-respect or dignity would depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardizing her future prospect of getting married with a suitable match. . . . [This] also would invite the wrath of being ostracized and cast out from the society she belongs to and also from her family circle.”

⁴ Vishnu v. State of Maharashtra, 1 Supreme Court Cases 283: 292 (2006).

Discussing the case of Uday v. State of Karnataka,⁵ wherein the shift was on woman's sexual agency. The court dismissed the case on the ground that the consent was obtained not on a false pretext of marriage, rather it was the prosecutrix's own emotions and desires. Her actions were surrounded by overwhelming passion and temptation, accordingly, understating the importance of the promise of marriage. The narrative shifts away from coercion or deception and places accountability on woman's own emotions and personal choices. The shortcoming of this argument lies in the fact that while an acknowledgment is being provided to the complexity of human emotions on one hand and on the other it ultimately works against woman as it brings down her claim of rape to a matter of her own desire.

These two cases showcase the conflicting perspective of how the law approaches the significant issue of false promises of marriage and rape, with each bringing out deep rooted societal perceptions about women. There is a contrast in how these two cases deal with the sexual agency of a woman. In one, the court tied the truthfulness of a woman to her sexual purity while in other the same sexual agency resulted in the dismissal of her claim of rape. This highlights the stark bias in the legal system which discredits a woman's experience based on obsolete morals of chastity or obscured by her emotional responses. There is a want of more nuanced approach to sexual violence, one that holds not just woman's actions accountable but the full picture of caste and power dynamics, manipulation and coercion. There is a need for a legal mechanism which works in support of all victims of sexual violence, regardless of their caste, social standing, chastity and emotional agency.

Role of Trust in False Promises and Rape

The entire premise of the argument constituting false promise to marry as Rape revolves around deception and consent. In the earlier Criminal Law, the lack of consent or consent gained through deceptive means made this false promise to marry an offense. There is a clear shift from this position in the new Criminal law which directly makes false promise to marry as an offense. However, to understand how this constitutes rape we need to delve deeper in the debate surrounding consent.

The basis lies in the distinction between "*fraud in the factum*" and "*fraud in the inducement*", which helps in understanding how deception plays a role in invalidating consent. Fraud in the

⁵ Uday v. State of Karnataka, 4 Supreme Court Cases (2003) 46, 48.

factum is a situation wherein a person is deceived about the very nature of the act itself. For example, if a person is being misled into engaging in sexual activity without fully understanding its implication will be fraud in the factum. Whereas fraud in the inducement involves deception of circumstances involving the act, for instance – consent secured for sexual relations by falsely promising marriage.

Earlier, rape was defined under Section 375 of the Indian Penal Code, 1860, inclusive of the cases wherein consent was obtained under a deceptive promise of betrothal. Marriage is a sacred institution in Indian culture. It deeply values and involves emotional, spiritual and social commitments of not just an individual but the entire family. Sexual intimacy in a marriage is a partnership of mutual respect and real consent. When there is a promise to marry by a man to obtain woman's consent for sex, but the intention to do the same is lacking, her consent becomes invalid. This act of having sexual intercourse is considered rape because the act derives from deception.

Section 90 of the Indian Penal Code, 1860 states that any consent obtained through misunderstanding or misrepresentation of facts is not a valid consent. The situation where a person lies about intentions like pretending to want marriage and using this lie to obtain consent for sexual intercourse, the consent so obtained is coerced. The courts have interpreted such consent as coerced. The courts have repeatedly interpreted such acts as non-consensual and classified them as rape.

Section – 69 of Bhartiya Nyaya Sanhita, 2023 has taken a new and welcome step forward by making false promise to marry an offense of rape explicitly. It states “Whoever, *by deceitful means or by making promise to marry a woman without any intention of fulfilling the same and has sexual intercourse with her*”. The effectiveness of the same has yet to be seen. It makes the offense punishable with imprisonment up to 10 years and fine. It has categorized the offense as Cognizable and non-bailable offense.

This offense is a grave offense as it exploits the societal values surrounding marriage as they know how deep-rooted values are for an individual and their families. These women are being taken advantage of. The accused uses their trust to escape any accountability. The argument being that the victim initially consented. The harm is not just legal but also involves psychological scars – being deceived and betrayed in such an intimate way. The societal stigma

further complicates the matter. Often the victims are ostracized from their families and communities.

Promise to Reality: Challenges in Inter-caste Marriages

The dynamics between inter-caste relationship and deceptive or false promise to marry is very well elucidated in *Uday v. State of Karnataka*⁶.

The appellant and prosecutrix were family friends. He used to visit her house very frequently. Because of his frequent visits and friendly relations with the family, a friendship developed between them. One day the appellant proposed marriage. Here, the appellant, being a friend, had a fiduciary relationship of trust with the prosecutrix. He was someone she trusted. The prosecutrix was reluctant to enter into a sexual relationship with the appellant. She consented to the same because of the appellant's promise to marry her.

Intimate heterosexual relationships need to be examined with the background of caste-based patriarchy. The hierarchical caste system often shapes the dynamics in such relationships between individuals. In this scenario where the appellant belongs to a higher caste and prosecutrix belongs to a marginalized caste, there is a significant power imbalance between them.

Acts like Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Constitution of India considers the rampant discrimination against marginalized community. Sexual violence against women from marginalized has been one of the dominant tools of oppression. Rape is used for domination – gender, caste, class and religious it assists in marking public space and exerting political pressure which further synthesizes sex and violence.

Catharine Mackinnon's assertion that "sexuality is central to women's definition and forced sex is central to sexuality," so "rape is indigenous, not exceptional, to women's social condition."⁷ A man with the worst of prospect has the power to grant. When such an act of sexual violence is done against a woman of marginalized community, they are being targeted not just for their gender but also for their caste. This act leads to two-fold discrimination against such women.

⁶ *Uday v. State of Karnataka* 2003 4 SCC 46

⁷ Catharine Mackinnon, *Toward a Feminist Theory of the state* (Cambridge: Harvard University Press, 1989), 172.

Brahminical Patriarchy is a form of patriarchy whose premise rests on controlling the sexualities of women. It ensues those women belonging to Dalit, Bahujan and other ethnic groups have less honor and dignity deeming them more accessible than women who belong to more dominant caste.⁸ Therefore any discourse on consent in a caste-based society needs to be addressed through the lens of graded patriarchy which emerges from the intersection of caste and gender.

In this case, the learned judges while judging the credibility of the promise of marriage attribute the responsibility of non-compliance with castiest norms to the prosecutrix but not the appellant, who repeatedly promised marriage despite being bound by the same endogamous constraints. Her consent and participation in the sexual act are deemed as voluntary and deliberate on account of her knowledge of the impossibility of marriage owing to the difference in their caste.

Dr. B.R Ambedkar in his seminal speech on the ‘Annihilation of Caste’⁹ specifically addresses the significance of inter caste relationships:

“I am convinced that the real remedy is inter-marriage. Fusion of blood can alone create the feeling of being kith and kin, and unless this feeling of kinship, of being kindred, becomes paramount, the separatist feeling - the feeling of being aliens - created by Caste will not vanish.”

Mere existence of an inter-caste relationship does not raise the presumption of an existence of valid consent. Mere perusal of facts of a case is not sufficient, a bird’s eye view of fraught social context in which a woman operates to make decisions is also required. Jurisprudence regarding consent needs to be developed in the cases of inter – caste relationship which operates on power dynamics that require a careful study of both gendered and caste context of such relationships. It is not just yes or no which decides the consent in such cases.

Conclusion

Women as a gender have already been constituting a vulnerable status in the society and when we put a factor of caste dynamics into play, the injustices accorded to them grow tenfold. This kind of sexual violence not only violates their dignity but also repeats the cycle of oppression that they have been facing for generations.

⁸ Uma Chakravarti, *Gendering Caste: Through a Feminist Lens*, New Delhi 2002, pp 13.

⁹ B.R. Ambedkar, *Annihilation of Caste: an Undelivered Speech*, New Delhi 1990, p. 5

While there are numerous laws available to grant them protection, justice is still hard to attain owing to deeply entrenched societal bias and gaps in implementation of such laws. The aspect of voluntariness is a crucial aspect of consent. It can never be studied in isolation. The intersectionality of gender and caste in a relationship is crucial in determining the grant of consent in an inter-caste relationship. There should also be an acknowledgement of role of marriage as an institution while determining consent in sexual intercourse in India. There is a need to develop jurisprudential discourse on consent which analyses the heterosexual intimate partner relationship with the background of caste dynamics in Indian societal context.

