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False Promise To Marry And Charges Of Rape – An Integral Assessment

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❖ Abstract

‘Promise to marry cases’ are those cases in which the girl has consented for having sex with the perpetrator on the basis of promise that she will be married to the same person in future. And when the defendant denies to marry, the girl or the woman accuses him of rape under section 375(4)¹ of the Indian Penal Code. In all such cases, one of the main question is of the ‘consent’ of the woman. It is often seen that the consent given is referred as ‘consent given under misconception of facts’. Section 90² of the Indian Penal Code is invoked when such consent is present. Sex on the basis of promise to marry is seen as consensual sex. The denial to marry by the man is only seen as breach of promise to marry and not as rape in certain cases. The courts look into the motive and intent of the man while making the promise, whether he made the promise only for deceiving the woman and gaining consent for sex without any actual intention to marry, or there was intention to marry at the time of making the promise and later on it was breached. This paper highlights the law related to consent and its interpretation done by the courts in different cases and different times. Although it is true that the menace of false rape cases is also soaring but still the question of consent is vital. There is nothing specifically established whether such cases should be considered as rape or breach of promise. But it need to be discussed and analysed keeping in mind the culture and cultural importance provided to marriage as an institution in India. The courts need to evolve a mechanism to understand such intimate relationships and to prevent misuse of the provisions.

(**Key words** : Consent, Misconception of facts, Promise, Breach, Rape, Marriage, Consensual.)

¹375. Rape.—A man is said to commit “rape” if he—

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

² 90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;

❖ Introduction :

In our traditionally bound society, marriage is a sacred institution and girls are forced into an unconditional surrender of herself to their husband. Although our laws do not accept unconsensual sex as being rape within marriage. The promise to marry has been operated as a trap to mislead girls, who see marriage as a way of ending their suffering. In such situations, it is enough for her to get carried away by the presence of a lover showering praises and affection on her. The dream is devastating when the boy refuses to own or marry her. Eventually, she alleges rape when she has nobody to talk to with no other foreseeable option. If the girl was offered marriage before sex to secure her consent or she was denied marriage after sex, doesn't make any difference in such cases. The latter claimant is regarded by accusation of rape as a rejected lover seeking revenge. She was manipulated but the law can't protect her, since consent is a defence under current law. The boy can not be charged for rape; the trials are lengthy and unaffordable for most of the victims; and the boy will have little to give in terms of damages, compensation or subsequent maintenance, even if it is concluded. It is the girl, who has to face social rejection and mental suffering alone.³

“If you want to be in sexual relationship with someone, then it's all right. But the moment something goes wrong ... one is frustrated and begins to blackmail.”⁴

Such regressive views fail to differentiate between consent and lack of consent and easily conflate rape with false charges of sexual abuse. In a nation where most sexual violence against women goes unreported, there are few and far between false allegations of rape. Even in all the cases of rape registered in the country, there is a grey area that could be foddering people's distorted views.

Several women bring charges of rape every year after the men they consented to having sex with backtracked on their promise to marry them. Since the 1980s, such cases have been the topic of considerable discussion. Can consensual sex be retrospectively considered rape if it breaches the promise of marriage? Or is this about a man doing false promises to mislead a woman? If so, will it be rape, or cheating?

Some of the lawyers and activists believe that cases like these come categorically under rape, not cheating. "The idea of such passive submission need to be acknowledged and also the consent wrongly obtained – even if not physically or forcibly obtained." If any man promises to marry to obtain consent, he knows the power of the 'promise to marry,' and he surely also

³ Vageshwari Deswal, “Whether sex based on promise of marriage amounts to rape?” The Times of India, Aug. 23, 2019.

⁴ Aarefa Johari, “Can sex after a false promise of marriage be called rape ?” Scroll.in, Apr.18, 2014.

know how breaking that promise could affect the woman. In the Indian context, this could lead to severe social stigma and various economic disadvantages, specially in cases where the women or the lady becomes pregnant.

However, on the other side, there are scholars who will not describe such breach of promise as rape. They believe that bringing such cases under the ambit of rape is misuse of rape laws. They believe that a breach of promise should be treated as cheating or should be prosecuted under the Indian Contracts Act, 1872, rather than applying the rape laws.

Technically, the Indian Penal Code does not contain a provision expressly defining breach of a promise of marriage as rape. Section 90, when describing "consent" in general, states that if consent is given "under misconception of fact" and if that is known to the perpetrator, it can not be considered as consent. Nationwide, the courts also use this section of the Indian Penal Code to interpret cases where the breach of promise to marry is involved. The courts also often tend to invoke Section 375(4).

❖ CONSENT?

There are conflicting opinions challenging the legitimacy of the Indian criminal justice system's "Consensual sexual intercourse on a commitment to marry" being called rape. This is also challenged by allegedly stating that this is an crime coined by judges since there is no clause in the penal code concerning the same.

Legally speaking, the Indian Penal Code section 90 describes "consent" assumed to be given under fear or misconception.

“A consent, here, is not a such consent as it is intended by any section of the Indian Penal Code, if the consent is

- given by a person under fear of injury, or
- under a misconception of fact, and
- if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;”

Although, courts are likely to invoke Section 375(4) of the IPC, according to which a man is guilty of commissioning rape against a woman if he is conscious that he is not her husband but she gave her consent because she assumed that he was another man to whom she is or

believed to be legally married.

Yet, in our legal system, courts are bound to believe the victims in the matter of consent. The courts had to assume that if she deposes then perhaps the victim has not given her consent. Strict rape laws in India bind the courts pursuant to Section 114A⁵ of the Indian Evidence Act to conclude that the survivor has not given her consent if she deposes that she has not given her consent and Section 90 of the IPC constitutes the consent obtained to be invalid under misconception of fact.⁶

For obvious reasons, the norms in love affairs failure, claim that if the victim submits to the accused's lust under the assumption that he will marry her, then the sexual intercourse is unconsensual.

❖ **ABUSE OF PROVISION :**

These were unfounded lawsuits filed for revenge, and they had run dry time for the courts. It is a direct result of these false cases that genuine assault cases, which Section 375 of the Indian Penal Code was authorized to address, were left pending for a considerable length of time.

The question is whether a false promise to marry falls within the scope of Section 375 IPC, or is it a case of misplaced sympathy where the cure is worse than the illness? And whether the ambit of Section 375 can or cannot contain a false promise to marry?

Consent is at the core of rape offence. There are three types of rape in law depending on the essence of the consent, or the lack thereof :

1. Rape by force - where consent was explicitly denied; or where consent was given under duress or coercion; or when the victim was unable to consent because of the physical or emotional condition in which she was.
2. Statutory rape - where the victim was not in position to give consent due to age.
3. Rape by fraud - where consent was received by the use of deceit.

⁵ [114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.]

⁶ Anubhav Pandey, "Is it rape if your boyfriend has sex with you after promising to marry you but doesn't fulfill such promise?" blog.ipladers.in, Apr. 5, 2017.

Rape by a false promise to marry is an extension to the third category i.e. Rape by Fraud. This new offense was read into IPC Section 375 using Section 90 IPC 's interpretation of the term "consent." According to that interpretation, if given under a misconception of fact, consent is vitiated.

Based on such interpretation, the courts interpreted the word 'consent' in the term 'secondly' under section 375 i.e. 'without its consent;' and held that any consent given under a misconception of fact is vitiated and hence the act becomes an act without consent, thereby rendering it violate and making it rape.

This extension and reasoning is an utter mistake. The reasons behind why it can't be said that any false commitment to marry applies for rape u / s 375 IPC offence are described below.

- **Section 375, IPC – Absolute and Exhaustive**

Nothing should be read into it, as a penal provision. It has to be purely understood and its terms can not be twisted to bring a new definition to the offence.

Section 375 contains six specifications. Each description is different from each other and is distinct. The key factor differentiating each description is the existence and nature or lack of the consent. Descriptions 'first' and 'second' deal with situations where consent is absent altogether. In 'first,' given an implicit denial of consent, the act is committed.

The second description deals with cases in which the act was committed without any positive assertion or denial of consent, i.e. cases in which the victim was not in a physical or mental condition to give consent. cThus, each of these descriptions deal with actions that have been committed without explicit or implied consent. Neither of these descriptions deals with the purpose of the consent or its vitiation, as the aspect of consent is fully absent.

The purpose of the consent given and its vitiation is important in the next three descriptions i.e. descriptions 'thirdly' to 'sixthly'. Specifically, these descriptions describe situations where the act was committed 'with her consent.' In reason of those definitions, if the conditions described in the explanations apply, the consent given before the act is vitiated or becomes irrelevant. And the two different sets of descriptions are clearly differentiated. Those descriptions do not overlap and a case of no consent is very different from a case of vitiated / invalid consent.⁷

⁷ “Cheating on the pretext to marry” Tripaksha Litigation, May 19, 2020.

Consent given on the pretext of a mistaken promise to marry is a vitiated / invalid consent case. This is not a case of not giving consent at the time of the relevant act. Holding it under the 'secondly' given in the section is also an abuse to the scheme of Section 375. If the legislature had meant a false promise to marry as an offense of rape, a component of it should have been made to the descriptions 'third' to 'sixth.' This express absence, so to speak, clearly shows the Legislature's intent. By misconstruing the description 'secondly' the courts could not have made it one.

Therefore the said act could not have been read into Section 375 IPC's description 'secondly' except by using the general meaning of the word 'consent' given in Section 90.

- **Section 90 is a general concept in the General Exceptions chapter and can not exceed any particular provision under the Code.**

The definition of consent defined under section 90 may extend to other IPC provisions such as Sections 87, 88, 89 of IPC, where the word "consent" has been used but has not been specified or restricted. It can not, however, refer to Section 375, where the extent and purpose of the consent and the conditions in which it is vitiated have been clearly set out.

Descriptions 'third' to 'sixth' specifically and explicitly provide for circumstances in which consent will be considered vitiated. Although following the principle of invalidation of consent given under fear - which is also part of Section 90 - these definitions explicitly omitted the principle of invalidation of consent due to 'misconception of fact' as a basis for refusing the consent given to the relevant act. In fact, the revised Section 375 provides an definition describing 'consent' itself. This description itself now dismisses the need to use the Section 90 definition. A specific and exhaustive special provision should not have been overridden by the general interpretation clause to bring an offense not intended by the Legislature into the scope of the law.

- **Misconception of fact.**

Notwithstanding the applicable reasons set out above, even though Section 90 corresponds to Section 375, "misconception of fact" can not be left undefined with an open end. Doing so would render it unlawful in relation to and as an essential element in an offence such as rape. In jurisdictions where rape by fraud is a crime, it is considered a crime only the deceit which depicts the meaning or intent of the sexual act itself. False marriage assurances are not

relevant as they do not alter the victim's understanding of the actual "nature or purpose of the relevant act." In the case of a false promise of marriage, the victim is well aware of the true nature and purpose of the act concerned. This understanding of the sexual act concerned does not get distorted by a false promise of marriage. This can encourage the victim, but it does not alter her perception of the action. Therefore the perpetrator can not be found to have committed rape under these situations.

A restrained interpretation must be given to the words 'misconception of facts' listed in Section 90 IPC. If not, any and every exaggeration; act of boasting; or falsity, which motivated the consent, would lead to a consent vitiating 'misconception of fact' and therefore bringing the act into the offense of rape. The act of deceiving a person for consent is different from deceiving the person of the actual nature and purpose of the act itself. Only the latter is Rape by fraud although both are deceptive acts.

- **Intent & Motive.**

Any adjudication based on a guarantee of marriage is highly vague and is unable to fulfill the standard beyond reasonable doubt. The presumption of 'the offender's true motives' to adjudicate a 'misconception of fact' case can be readily applicable in commercial transactions. Nevertheless, the applicability of the same test is legally problematic in the scope of Section 375 and commitment to marry where complicated and personal human relationships are involved, and where reliable evidence pertaining to motives is very private and rare.⁸

Therefore, it is completely arbitrary to enforce the strict rigors / presumptions in the evidentiary laws passed by the legislature for the offense of rape — by which it meant primarily rape by force — and the precedent established by the Supreme Court on the sole reliability of the prosecutor's argument. Such reasons are adequate in themselves to challenge the constitutionality of this case-law offence.

To provide, the Hon'ble Supreme Court in the case of **Deepak Gulati v. State of Haryana**⁹, stated that ,

“18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit held it Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and

⁸ Mehul M Gupta, “Rape by a false promise to marry : A case-law non-offence” Bar & Bench, Jan. 18, 2020.

⁹ Deepak Gulati v. State of Haryana (2013) 7 SCC 675.

consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at any early stage, a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence.”¹⁰

❖ Judicial Precedents :

➤ **Bhupinder Singh v. Union territory of Chandigarh¹¹ :**

In this case, the accused used to visit the office of the complainant and developed intimacy with her and asked her to marry. They got married in Gurudwara and performed rituals of exchanging garlands too. The complainant started co-habiting with him and later on, got pregnant. But accused got her aborted against her wish. She got pregnant again and one day came to know that the accused is already married to some other woman and have children as well. She asked the accused about previous marriage but the accused left the home on the pretext of attending some training course. Later, she gave birth to a child but the accused never returned back. She filed police complaint and case was registered.

“In this case consent for co-habitation was given her under the belief that the accused was her husband. Accused was held guilty of rape because prosecutrix married accused without knowledge of his first marriage. It was held that the delay in filing complaint cannot wash away the offence in any event because consent given under belief that accused is her husband is no consent. Therefore, the accused was convicted.”¹²

➤ **State of U.P. v. Naushad¹³ :**

The facts of this case are related to ‘promise to marry cases’, where the accused respondent gained the consent for sex on the basis of the promise that he will marry her in the future and thereby making her pregnant. Later on, the parents of the accused denied this marriage. In its words, the courts held that,

¹⁰ Mitali Yadav, “Consensual sex by a grown lady is not an act induced by misconception.” Legallyindia, Jun. 09, 2016.

¹¹ (2008) 3 Cri. L.J. 3546 (S.C.).

¹² Prof. S.N.Misra, Indian Penal Code 771 (General Law Publications, 21st edition, 2018)

¹³ State of U.P. v. Naushad (2013) 16 SCC 651

“12. The trial court has justified in awarding of maximum sentence of life imprisonment to the accused under Section 376¹⁴ of the IPC on the ground that the facts of this case are of a very grave nature. The accused being related to the prosecution used to often visit her house and took undue advantage of this relationship and kept the prosecutrix under the misconception that he would marry her and committed rape on her for more than two years thereby making her pregnant. In such circumstances, the trial court held that it would be justifiable to award the maximum sentence to the accused. We, therefore, hold that the trial court was correct in awarding the maximum sentence of life imprisonment to the accused as he has committed a breach of the trust that the prosecutrix had in him, especially due to the fact that they were related to each other. He thus invaded her person, by indulging in sexual intercourse with her, in order to appease his lust, all the time knowing that he would not marry her. He committed an act of brazen fraud leading her to believe that he would marry her.”

Hence, the court held the accused guilty for rape as the consent was given under a ‘misconception of fact’.¹⁵

➤ **Rajeev Sharma v. State of M.P.**¹⁶ :

In this case, “the marriage of the accused was fixed with the victim. He then used to visit her house when her parents were not present. When he approached her for physical relationship, she refused. He insisted her by saying that, their marriage has been fixed, therefore, she consented. On the pretext of marrying her, the petitioner established physical relationship with her. Later, he backed out.” The court held that

“15. In the present case the "consent" for sexual intercourse was obtained by the petitioner inducing the belief to the prosecutrix that the petitioner/accused would marry her. It seems to be fraud that was practised on her or that she was deceived by giving false assurance. The "consent" so obtained by deceitful means is not a "consent" and the offence comes within the

¹⁴ 376. Punishment for rape.—

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

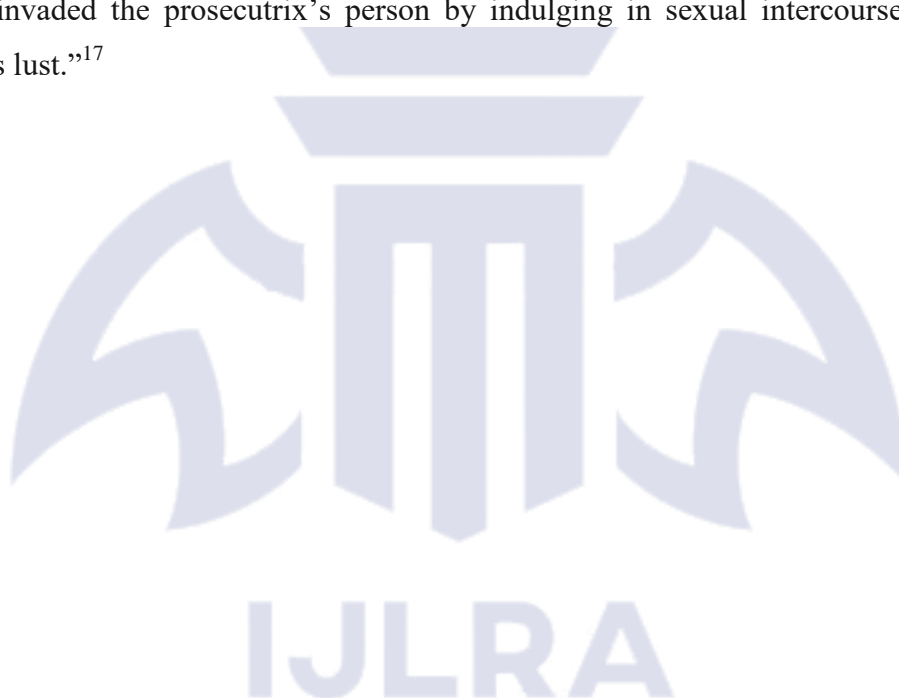
¹⁵ Damini Singh Chauhan, “Whether sexual intercourse based on promise to marry is rape?”, legalserviceindia.com

¹⁶ Rajeev Sharma v. State of M.P. ([2018](https://www.supremecourt.gov.in/search.aspx?q=2018+SCC+OnLine+MP+355)) SCC OnLine MP 355

ambit and ingredients of definition of rape.”

“18. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. From this, it is evident that he never intended to marry her and procured her "consent" only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of "rape" as he had sexual intercourse with her consent, which was "consent" obtained under a misconception of fact as defined under [Section 90](#) IPC.”

“The court observed that the consent in the present case was not “voluntary”, it was under the misconception of fact which certainly amounts to “rape”. The Court also concluded that the petitioner invaded the prosecutrix’s person by indulging in sexual intercourse in order to appease his lust.”¹⁷



¹⁷ Saba, “Consent for sexual intercourse under misconception of fact is not free consent”, Case briefs HC, The SCC Online Blog, May 15, 2018.

❖ Conclusion :

Whether in case, breach of promise to marry after sexual intercourse is not necessarily, in itself, an act of rape under the purview of Indian criminal laws. Because of the lack of a testamentary rules, it essentially relies on the discretion of the court depending on the merits of evidence and circumstances in the specific case when ruling on the subject of rape on the false promise of marriage.

This is evident from the arguments and cases presented in this research paper that in giving this ethical connotation to the heinous crime of rape, beyond the definition of law, we have seriously diminished the scope and efficacy of the law against rape. Even this ethical connotation perpetuates a patriarchal belief that necessarily underestimates a woman's participation in sex matters. These legislations are detrimental for any free society. Through neglecting any act of deceit and omitting it from the bracket of rape, we end up doing a great disservice to the victims of such fake promises. Therefore, simply because the accused married another lady and/or subsequently denied to marry the victim or the victim has consented believing that fake promise, there is no excuse not to convict the accused for the crime punishable under section 376 of the IPC. The perpetrator has to face the repercussions of the crime which he has committed.

The legislation desperately demands a relook before it ruins more lives in the process !

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