



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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NAVIGATING CONSENT AND DECEPTION: A LEGAL AND ETHICAL ANALYSIS OF SEXUAL RELATIONS ON FALSE PROMISES OF MARRIAGE

AUTHORED BY - RAHUL PATHANIA

Marriage is the union of two people granting them recognition in the eyes of the law and society for their long-term commitment, various irrevocable aspects such as Exclusive partnership, financial interdependency, and legal obligations are accepted by following the union. The core concept of marriage exists to procreate and coexist together for a better and healthy life. In Hinduism, the consummation of marriage is essential. Mutual consent must be there for the consummation of marriage. Having sexual intercourse of any kind without consent amounts to Rape. However, obtaining consent with the false promise of marriage constitutes rape and a person may be charged with section 375¹ of the Indian Penal Code only if the accused had the malafied intention². Deception can never be the reason for consent, it is not regarded as consent at all.

KEYWORDS: Rape, Deception, False promise of marriage, Intention, Consent.

¹ Rape- A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:— First.—Against her will. Secondly.— Without her consent. Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. 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. Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly.—With or without her consent, when she is under eighteen years of age. Seventhly.—When she is unable to communicate consent.

² Deepak Gulati v. State of Haryana, AIR 2013 SC 2071.

INTRODUCTION

Marriage is considered a sacred and holy bond, it is an institution in which two people decide to spend their life together to coexist. Sexual intercourse is a common practice in a marriage, in various scenarios, the promise of marriage is used as an instrument to obtain consent from the female to initiate a sexual relationship. The problematic thing in this is that the person giving the consent is under the false pretext of marriage. Consent is a vast term that has been defined under section 90³ of the Indian Penal Code of 1860 (Hereinafter called IPC).

Establishing a sexual relationship outside the arena of marriage is often stigmatized, marriage is the bond that creates the social acceptance and right of the party to have sexual relations within the arena of marriage. Sexual relationship under the fake promise of marriage is the situation that is challenging the general concept of “Consent”.

Consent is infused with the offense of rape in a way that it is the most essential element of this gruesome crime, Rape defined under section 375 of IPC flashes a light on consent as it has the most prominent value out of every other element of the offense of rape. People believing that obtaining consent in any way may not amount to rape uses the false promise of marriage as a way to commit this unspeakable crime. The presence of consent without proper means does not nullify the possibility of prosecution for the offense of rape. The question that arises is how much the value of consent weighs.

The meaning of consent with regards to Rape

Consent has been defined under section 90 of IPC i.e. consent given under fear or misrepresentation. The definition given under IPC is negative and states that consent under the misconception of facts, fear of injury, or deception is not considered to be consent at all. Free consent must be obtained without any deception, if it is not obtained rightfully then it is “No Consent”

³ Section 90- Consent known to be given under fear of misconception: A consent is not such a consent as it 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.

In *Yedla Srinivasa Rao v State of A.P*⁴. The court held that the consent was given under the false promise of marriage which falls under the provision of section 90 of IPC and does not qualify as a valid consent.

Contrarily, In the case of *Uday v State of Karnataka*⁵ The supreme court held that in no scenario the consensual sex be converted into a rape accusation. Promise to marry with bonafide intention and later on a bonafide refusal cannot be considered under the ambit of 375 read with section 90.

MATTER OF OBTAINING CONSENT

Consent the the most essential element in a situation of sexual relationship and consent must be obtained in a bonafide manner. Consensual sex does not amount to rape but the way of obtaining the consent is crucial. The promise of marriage is the surety that the person gives to obtain consent for consensual sexual relations, but if the initial intention of the person obtaining the consent is malafide then the consent obtained will be considered to be obtained by the misconception under section 90 of IPC.

In the other scenario if the promise of marriage was made with a bonafide intention and sexual relation was situated on that promise and due to the unforeseeable circumstance the person is not able to marry, this doesn't constitute the offense of rape as the initial intention was bonafied⁶.

JUDICIAL OPINIONS

There is a vast difference between “Promise”, “False Promise”, and “Breach of Promise”. In the case of sexual relationships on the false pretext of marriage, the intention of the person making the promise should be malafide from the initial stage, and if the intention was bonafide and in the course of the relationship due to some unforeseeable circumstance it changes then that doesn't constitute the offense of rape under IPC.

⁴ Yedla Srinivasa Rao v State of A.P 2006 11 SC 615

⁵ Uday v State of Karnataka 2003 4 SSC 46

⁶ Deepak Gulati v. State of Haryana, AIR 2013 SC 2071.

In *State of Uttar Pradesh v Naushad*⁷,

The Defendant was involved in a sexual relationship with the victim and had sexual intercourse frequently for 2 years, after the pregnancy of the victim the defendant tried to abscond her, and the court convicted her with section 376 of IPC for making the false promise of marriage.

In *SACHIN @ DEVENDRA GAJANAND SANGRAY V STATE OF GUJRAT*⁸,

The accused and the victim both were residing at the same premise and having a sexual relationship for 1 year, due to some internal conflicts they separated and broke up with each other, after some time the accused went to the victim house and invited her to his marriage. The victim pressed charges of rape against the accused under the sexual relation with the false promise of marriage. The High Court concluded that both the parties were residing together and having a physical relationship consensually and the intention was not malafide at the accused's end. The court acquitted the accused.

In *ANURAG SONI V STATE OF CHATTISGARH*⁹

In this case the accused never intended to marry the victim from the very beginning and made the false promise of marriage just to obtain consent to situate the sexual relationship with the victim. The consent obtained was under the misconception as per section 90 of IPC and the supreme court convicted the accused for the offense of rape.

ETHICAL VIEWPOINT

“Ethically flourishing society is a society where wisdom is cherished”. Rape is not just a crime against a person but it is a crime against society as a whole. Rape under the false pretext of marriage is as heinous as rape without consent. The relationship made under the false promise of marriage just to establish a sexual relationship not only constitutes an offense but also is an ethical wrong. In Hinduism, marriage is both contractual and sacramental. The sacramental part makes the bond of two individuals holy, two individuals unite to fulfill their duties towards their religion together i.e. Dharma (Duty), Artha (Possession), and Kama (Physical attributes). The false promise of marriage also violates the fundamentals of this holy union.

⁷ State of Uttar Pradesh v Naushad 2023 16 SSC 651

⁸ Sachin @ Devendra Gajanand Sangray v State of Gujrat Criminal Misc. no. 15688/2014

⁹ Anurag Soni v State of Chattisgarh Criminal Appeal No. 629/2019

Ethical duties are not imposed on a person unlike legal duties and obligations but they have the utmost value as they are the driving force that shapes the society and individuals living in it.

CONCLUSION

Rape is a serious accusation and has a lifelong effect on the accused as well as the victim, it is a crime against society as a whole. Rape is not something that is always committed forcefully, Sexual relations created based on the false promises of marriage also constitute the offense of rape. Consent is the key point in the offense of rape, everything is a matter of consent and how it has been obtained. The promise of marriage is often used as a bargaining chip to situate a sexual relationship and it often ends in disarray. The promise of the holy union of two people is often used by people with ill mindsets to fulfill their shady desires.

Crimes like murder kill the body but the crime of rape kills the soul residing in it, Rape is not just a crime against a person's physical existence but also against the person's mental sanity. Rape leaves a lifelong mark on the victim's mind and the mind of her family members. The court has no fixed outline about the establishment of sexual relationships on the false promise of marriage, it is the discretion of the court which depends on the facts and circumstances of the case.

The cases of rape committed under the false pretext of marriage depends solely on the facts and the consent, it plays a crucial role. Consent obtained without malafied intention does not attract any charges, situating a sexual relationship does not mean the person is bound to marry in any condition. If there is a bonafide reason of not to marry then the person cannot be charged with the offence of rape.

In the cases of malafied intentions where the person has obtained consent but false promise of marriage and has established the sexual relationship must be punished under section 376 of IPC. People like these are not suitable to be left in a society where they can destroy lives. They must be prosecuted and punished as per the section 376 of IPC.

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