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Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@ilededu.in / Chairman@ilededu.in



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A CRITICAL ANALYSIS OF LAWS PERTAINING TO RAPE AND FALSE MARRIAGE PROMISES

AUTHOR – AVANTIKA SRIVASTAVA, STUDENT AT INTEGRAL UNIVERSITY, LUCKNOW

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Abstract

The phenomenon of rape that takes place in the setting of deceptive marriage promises is thoroughly and critically investigated in this article. Rape occurs when someone is forced to engage in sexual behaviour under the false pretence of being in a committed relationship. Women are frequently, but not always, the victims of this type of coercion. These situations put standard notions of consent to the test and present significant legal, moral, and social issues. A vital component of any sexual connection is consent. It means that people freely and voluntarily consent to having sex without being forced or subjected to compulsion. Consent should be given fervently, fully informed, and repeatedly. Unfortunately, there are times when consent is not honoured, which can result in rape or sexual assault. The legal frameworks surrounding rape and consent are examined in the article, and their suitability for handling the intricacies of situations involving false promises of marriage is assessed.

Keywords – Rape, Deceptive Marriage Promises, Social Issues, Consent, Legal Frameworks.

I. Introduction

All obstacles like physical, psychological, and spiritual cannot separate a marriage because it is a pure relationship. Marriage is the start of a brand-new, comparatively long-lasting relationship that requires the commitment of both parties. It is a sacred relationship founded on trust, and attempting to use it as a means of deception is illegal and falls under the purview of Section 90 of the IPC⁵³. Despite the fact that, regarding the legality of rape committed under false pretence of marriage, there is still a lot of uncertainty, the Indian judicial system has recognized marriages that were formed despite false promises being made. Though there may be different interpretations based on a variety of elements and circumstances, to marry from the beginning is a crime of rape. Around the world, societal values, gender dynamics, and legal systems all play a significant role in the

difficulties surrounding rape and bogus marriage vows. Because it violates a person's autonomy, physical integrity, and fundamental human rights, rape, a horrific crime involving nonconsensual sexual contact, is generally condemned. False marriage promises, on the other hand, describe circumstances in which a person purposefully deceives another by making a fictitious commitment to marriage. The harm done to the victims and the power dynamics may appear to be two separate issues, yet they are interconnected. Since many years ago, incidents of rape by marriage fraud have been brought before the Indian judiciary. A fairly recent case, Anurag Soni v. State of Chhattisgarh⁵⁴, prompted the necessity for deeper investigation. This article makes an effort to meet that need. Conveniently, the media claimed that the Supreme Court ruled that having sex under false pretence of marriage constitutes rape. The offence is far more complicated, as revealed by an analysis,

⁵³ The Indian Penal code, 1860, § 90, No. 40, Acts of Parliament, 1860 (India).

⁵⁴ Anurag Soni v. The State Of Chhattisgarh, (2019) 13 SCC 1.

and this generalization only emphasises a minor aspect of the relevant legal context. This article seeks to throw light on various aspects of rape by false promise of marriage.

II. Consent And Non-Consent For Sexual Intercourse

When consent is withheld or revoked during non-consensual sexual contact, it is seen as rape or sexual assault. An individual's bodily autonomy, dignity, and personal boundaries are all violated during non-consensual sexual contact. It is a crime, and the victim may suffer serious physical, psychological, and emotional repercussions. A misconception can be caused by misrepresentation, concealment, or providing false information, all of which are prohibited by Section 90 of the Indian Penal Code.

In *Re: N. Jaladu*⁵⁵, the defendant persuaded the girl's guardian by saying that he was taking the minor to a festival and when the celebration was over, he took the minor to the temple and married her against her will. The issue is of whether the guardian's approval was given in factually incorrect fashion emerged. Claiming that a factual misunderstanding led to the authorization being granted, the court noted that, the phrase "under a misconception of facts" is wide enough to cover all situations in which consent is obtained by misrepresentation; the misrepresentation may be considered to have caused the misperception of facts that resulted in the consent being provided.

Consent is a crucial aspect of any sexual encounter. It is the voluntary agreement between all individuals involved to engage in sexual activity. Without clear and enthusiastic consent, any sexual activity can be considered non-consensual and potentially harmful. It is important to understand and respect the boundaries and autonomy of all parties involved. Consent should be fully informed, meaning that all participants have a clear

understanding of the nature of the sexual activity and any potential risks involved. It should also be given freely and willingly, without any form of coercion, manipulation, or pressure. Consent must be ongoing throughout the sexual encounter and can be withdrawn at any time. It is essential to note that silence, lack of resistance, or a previous sexual history does not imply consent. Consent is an active and continuous process that requires active communication and mutual agreement. According to Black's Law Dictionary, consent is agreement, approval, or permission as to some act or purpose, especially given voluntarily by a competent person.

In *Saleha Khatoon v. State of Bihar and Ors*⁵⁶, The Hon'ble Mr. Justice L.P.N. Shahdeo, Patna High Court held that consent obtained on the basis of fraud or consent which is based upon deception Cannot be termed as consent under section 90 of IPC and such consent comes within the ambit of the ingredients of definition of rape.

III. Consent Known To Be Given Under Fear Or Misconception

A consent is not such a consent as it intended by any section of IPC, 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, or Consent of insane person, i.e, if the consent is given by a person who is of unsound mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent or consent of child. In the case of *Kaini Rajan v. State of Kerala*⁵⁷, the Supreme Court held that Section 375 of IPC contains provisions of rape where the first clause provides that woman is in possession of her senses and capable of giving consent but the action takes place against her will, and the second clause states that the act is done without her consent. The court further

⁵⁵ *Re: N. Jaladu And Anr. v. Unknown*, AIR 1914 Mad 49.

⁵⁶ *Saleha Khatoon v. State Of Bihar And Ors.*, (1988) 36 BLJR 678.

⁵⁷ *Kaini Rajan v. State Of Kerala*, (2013) 9 SCC 113.



observed that the expression without her consent is considered to be an act of reason coupled with deliberation.

IV. Relevance Of Intention Of Accused

The fact that the marriage vow was fraudulent is one of the requirements for the crime of rape under false pretences. It must be conclusively shown that the accused did not from the beginning intend to fulfil the promise of marriage rather he made the promise in order to entice the victim to engage in sexual activity with him. It was clear from the court documents in *Yedla Srinivasa Rao v. State of A.P.*⁵⁸ and *Anurag Soni v. State of Chhattisgarh*, that the accused never intended to wed the victims. It was relevant that they had ulterior goals and used the victims to sate their lust. However, if the accused truly planned to be married but was unable to do so because of circumstances beyond his control, he cannot be charged with a crime. The offender must not have had any prior intention of marrying the victim in order for the crime of rape under the pretence of a fraudulent marriage to be considered a crime. In *Pramod Suryabhan Pawar v. State of Maharashtra*⁵⁹, it was established that the consent provided by the women would be voidable if the promise to marry was false and the maker intended to deceive the woman and persuade her to engage in sexual activity and never had any intention to adhere to the promise.

V. Judicial Stand On Rape Based On False Promise To Marry

In cases where rape occurs as a result of a false promise to marry, the judicial stand can vary depending on the legal system and the specific circumstances of the case. However, in many jurisdictions, the issue of consent plays a significant role in determining whether an act constitutes rape. The false promise of marriage and promise breach have been distinguished with clarity by the supreme court and high

courts. The same is obvious from a few of the noteworthy decisions that are further explained. To start, the Supreme Court invalidated *Sonu v. State of Uttar Pradesh*, there is no claim that the victim's pledge to marry was fake from the start, according to the FIR filed under section 376 of the IPC. The case of *Pramod Suryabhan v. State of Maharashtra*, was referenced in the judgement by the Honourable Dr. D.Y. Chandrachud.

In the case of *Naushad*⁶⁰, 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 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 *Deepak Gulati v. State of Haryana*⁶¹, the Supreme Court stated that "an accused can be convicted for rape only if the court finds that the accused's intention was mala fide, and that he had clandestine motives." It follows that there must be sufficient proof to demonstrate that the accused had no intention of honouring his vow to marry the victim at the relevant moment, or even at the beginning of their relationship. If the court is not satisfied that the accused never actually planned to be married from the start, Section 90 IPC cannot be invoked to completely forgive the girl's actions and impose criminal punishment on the other.

VI. Analysis

Criminalizing fake promise to marry is often based on the notion that such action can cause emotional distress, financial harm, or damage to a person's reputation. Laws related to this issue are generally aimed at protecting

⁵⁸ *Yedla Srinivasa Rao v. State of Andhra Pradesh*, (2006) 11 SCC 615.

⁵⁹ *Pramod Suryabhan Pawar v. State Of Maharashtra*, (2019) 9 SCC 308.

⁶⁰ *State Of Uttar Pradesh v. Naushad*, (2013) 16 SCC 651.

⁶¹ *Deepak Gulati v. State Of Haryana*, (2013) 7 SCC 675.

individuals from intentional deception or manipulation in matters of personal relationships. If a permission is provided by someone who has a factual misunderstanding, it is not a consent according to Section 90 of the IPC. It's critical to remember that in this situation, the sexual act between the man and the woman stands in for the promise of marriage.

In *Uday v. State of Karnataka*⁶², which addresses this, "A false promise is not a fact within the meaning of the Code," the Apex Court stated that we tend to concur with this viewpoint, but we must add that there is no hard and fast rule for figuring out whether the prosecutrix's permission to sexual activity was freely provided or whether it was given in error. As can be seen, even while the Court appeared to concur that a false promise is not a reality, the remark was modified by the court, which once more allowed Section 90 of the IPC to take effect and invalidate the consent. The last element of the aforementioned observation, which various court rulings have cited as authority, has the effect of law.

The Apex Court recently distinguished between "a false promise" and "a breach of promise" in the case of *Pramod Suryabhan Pawar v. State of Maharashtra*. "A breach of a promise to marry cannot be said to be a false promise," the Court ruled. The promise-maker must not have intended to keep his word while making it in order for it to be proven to be false. However, it is quite challenging to determine the man's or promiser's motive at the moment of making it. Why did he make a promise? Did he truly mean what he said when he said it? Did he make any promises? Such inquiries rarely have clear-cut solutions and demand persuasive arguments, which are frequently impossible to get. Furthermore, local police officers who are investigating the case struggle to grasp such intellectual depth, which results in victimisation.

Understanding and appreciating that a promise of marriage to a woman is an independent act, rather than a justification for consent to sexual activity, is crucial because sexual activity is never a prerequisite to marriage. A woman is neither forced nor misled into the sexual intercourse by a man who promised her the marriage. At a given point of time in such cases, the woman chooses to be with the man being fully aware of the nature as well as consequences of the act out of her own free will. The omission of the 'consent given under promise to marriage' from the language of Section 375 IPC clearly speaks of the legislative intent behind the provision and thus imbibing Section 90 IPC in the form of 'misconception of fact' seems completely unnecessary in such cases.

In the case of *Sachin Devendra Gajanand Sangray v. State of Gujarat*⁶³, 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."

VII. Conclusion

Rape is a serious crime that involves non-consensual sexual intercourse or penetration. Laws related to rape typically aim to protect individuals from sexual violence and punish perpetrator. The specific definitions and penalties for rape can differ between

⁶² *Uday v. State Of Karnataka*, (2003) 4 SCC 46.

⁶³ *Sachin Devendra Gajanand Sangray v. State Of Gujarat*, (2014) Cr. A. No. 15688.



jurisdictions, but some common factors include the lack of consent, the use of force or coercion, and the involvement of sexual acts. In recent years, there has been a growing recognition of the importance of consent in sexual encounters. Many countries have updated their laws to emphasize the need for clear and affirmative consent. This means that consent must be freely given, enthusiastic, and informed, with both parties capable of giving and understanding consent. As for false marriage promises, it's important to note that laws regarding this matter may differ depending on the legal system and jurisdiction. Generally, false marriage promises refer to situations where one party makes a false or fraudulent promise of marriage to another individual with the intention of inducing them into engaging in a sexual relationship or obtaining some other advantage.

The Supreme Court ruled that if someone has ulterior motives and acts with the intent to harm others, they will be guilty under Section 376 of IPC. If this ruling is upheld, more people with ulterior motives will exploit girls from the lowest and most underprivileged strata of society by luring them with fictitious marriage proposals, compelling them to engage in sexual activity, and persuading them that they will get married in the future. If the accused are not found guilty of the alleged rape, the country will turn into a refuge for rapists since it will be relatively easy for them to commit rape while posing as "statutory rape" and they would always have an excuse to evade punishment. Since our society views marriage as an emotional commitment, making false promises about getting married and sustaining a physical relationship should always be illegal. The Court should not allow anyone acting maliciously to escape punishment, but they should also make sure that this is not being abused by anyone to settle personal scores.

It is important to fully analyse the harmful impacts of rape resulting from the false marriage promise, which affects both the micro

and macro levels. It is crucial to launch a more in-depth legal and sociological discussion regarding the numerous aspects of deceptive sex and how they connect to India's social predicament. Lack of awareness of this critical issue could normalise a range of actions that are insensitive to the dignity of women.

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