

*Original Article***Consensual Sexual Intercourse on False Pretext of Marriage If Rape:
A Socio - Legal Study****Surbhi Gupta¹, Rahul Gautam²****Author Affiliation**^{1,2}B.A. LLB (5th Year), Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana, Haryana 133207, India.**Corresponding Author****Surbhi Gupta**, B.A. LLB (5th Year), Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana, Haryana 133207, India.**E-mail:** survig84@gmail.com**Abstract**

At the very onset, violence against women such as sexual assault and abuse without consent is the major problem in India. Laws that protect women against such abuses and assaults have been amended over the years, particularly after some high-profile cases. However, there are growing numerous cases where the consensual physical relations, for any reason, have breakdowns and women cries "RAPE" on the ground of false promise for marriage. In today's modern time, the major problem related to rape comes forward in our society i.e. "physical relation in the context of false promise for marriage". This false promise by men to marry women not amount to consent for physical relation. It's a clear case of cheating and misconception. So crying 'Rape' is the only possible option because she could be left high and dry, may even pregnant, by the man who scoots away and marries someone else. That's why the Supreme Court ruled that the consent for sex obtained under the false promise of marriage is amount to RAPE. These offenses are against society. Rape is the most morally and physically reprehensible crime in a society, it is an assault on the body, mind, and privacy of the victim. Victims of Sexual Offences experience a wide range of physical and psychological problems.

Keywords: Rape; False Promise; Consent; Sexual Intercourse; Marriage; Indian Penal Code, 1860; Indian Evidence Act, 1872; Cheating and Misconception.

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Introduction

*"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."*³

Rape is universally considered to be amongst the most morally and physically reprehensible crimes in society, an assault on the body, mind, privacy and the entire fabric of the victim. Rape, which is very heinous crime. It is the fourth most crime against women in India. The Rape and Sexual Assault are the most injurious crime that

perpetrators can inflict on other individuals. These crimes are very devastating, crime results into consequences such as unwanted pregnancy, sexually transmitted infections, post-traumatic stress disorder, depression, flashbacks, sleep disorders, eating disorders, post-incident substance abuse, self-harm, and even suicide. It is reported that at every 20 minutes a woman is raped in India.

There are a large number of cases were unreported in many countries including India. But in recent years, willingness to report the Rape cases has gone increased because of several cases of rape

get widespread media attention and public protest. This led to government to reform its Penal Code for crime of Rape and Sexual Assault. According to the National Crime Records Bureau (NCRB) 2013 annual report, 24,923 Rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim (98% of the cases).⁴ According to NCRB 2015 statistics, *Madhya Pradesh* has reported 4,391 the highest raw number of rape reports among Indian states and *Delhi*, the national capital has reported 2,199 such cases-highest among the Union Territories.⁵

Rape can also be committed by obtaining consent by undue influence, fraud or cheating. One of the fundamental issues in the offence of rape is consent. Its presence or absence makes sexual intercourse lawful or unlawful. Consent may be implicit or implied, coerced or misguided, obtained willingly or through deceit. In India, consensual sex on context of false promise of marriage is amount to Rape. So the consent for sexual intercourse was obtained by person on giving false promise for marriage is not excused one from charges of Rape. When the men promises to women to marry her, but never had any intention to marry and on such an assurance women gives consent for Sexual Intercourse so such a consent to be obtained on ground of misconception of fact according to *Section 90* of IPC and it is not an excused for offender, such offender is committed heinous Crime i.e. "RAPE" as defined U/s 375 of IPC and can be convicted for offence U/s 376 of IPC.

Rape, which is very serious matter that can leave a person suffering, often in silence, with painful physical and psychological effects. The person may feel guilty, anger, sad, frightened, ashamed, hurt, and others which may also have problems while eating and sleeping. The first step in dealing with these difficult feelings knows what Rape is and that it is never the fault of the victim. It does not matter how she dressed and at a certain place, alone, drunk, or flirting. Rape is never the fault of the victim.

Statutory Mandates

Section 375, Indian Penal Code embodies and defines the conditions under which a man can be convicted of rape and read with *Section 90; Indian Penal Code* along with judicial decisions provides the basic framework of rape law in India.

*Section 375*⁶

A man is said to be 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 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.

Explanation 1. – For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically

resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. – A medical procedure or intervention shall not constitute rape.

Exception 2. – Sexual Intercourse or Sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.’

Section 90⁷

Consent known to be given under fear or 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; or Consent of insane person- if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child - unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Meaning of Consent⁸

Section 375 sets out different grounds under which an act of Sexual Intercourse with a woman will amount to rape. So, one of the grounds here is “*absence of consent*” of a woman. Section 90 provides a negative definition of the word ‘Consent’. The sections says that “A consent is not such a consent which 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.”

So, Consent given firstly under fear of injury and secondly under misconception of fact is not ‘Consent’ at all. Consent means that both one in a sexual intercourse must agree to it, and either person may decide at any course of time that they have no longer consent and want to stop the activity for which earlier consent was made. Consenting to one behavior does not obligate one to consent to any other behaviors. Consenting on one occasion does not obligate other to consent on any other occasion.

Courts are bound to believe Victims regarding ‘Consent’

The Indian Judiciary has to believe that the victim did not give her consent if she deposes so. When a man has been committed Sexual Intercourse with woman and if it is proved that it was without the consent of the woman and also before the court she states in her evidence that she did not consent, the court shall presume that she did not consent to Sexual Intercourse. ‘Presumption’ has been introduced in the Evidence Act by the legislature, looking to atrocities committed against women.

According to Indian Evidence Act, 1872.

Section 114A⁹

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 subsection (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.

The norms in the failure of Love Affairs, if the man gave her assurance that he would marry the woman and continued to satisfy his lust till she became pregnant so it’s became clear that the man did not wish to marry her. Woman submits to the lust of man under misconception of fact that he would marry her. Hence, the Sexual Relation made under this is not considered as consensual Sex and that’s amounts to Rape.

Consensual Sex or Rape?

Consensual sex is sex where both people involved and agreed to it, both prior to the sexual activity and throughout it. Rape happens when someone involved in the sexual activity does not agreed to it, and is doing it against their will because they feel forced or coerced into it.

In today’s world, where relationships and live-ins are common in every place especially in Metropolitan Cities and also accepted by the society and sex is no longer rigid, controlled or repressed act. In this changing World, Sexual moralities were the act of Consensual Rape between two adults is seen as liberating act rather than a sin. So for that

there are any place where a line between Consensual Sex and Rape has been drawn especially where the chances of abused is too high. There are also a large number of cases of women who claim they have been 'raped' because their partners promised to marry them. That's why the Supreme Court ruled that consent for sex obtained under the false promise of marriage is amounts to rape.

Indian Courts have been confronted several times with the question "Whether Sexual intercourse with any girl on a false promise of marriage is considered as consent or not? If it is not Rape than is it 'cheating' or not?"

Saleha Khatoon v. State of Bihar and Ors.¹⁰

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.

Jayanti Rani Panda v. State of West Bengal¹¹

A Division Bench of the Calcutta High Court by Hon'ble Mr. Justice B. C. Chakrabarti and Hon'ble Mr. Justice J. N. Chaudhari, noticed the provisions of Section 90 of the Indian Penal Code and held and concluded that:

"The failure to keep the promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case the consent could be said to result from a misconception of fact. But here the fact alleged is a promise to marry we do not know when. If a full grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. S. 90 IPC cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her."¹²

Hence, it is clearly seen that there must be adequate evidence that at the relevant time i.e. at

the initial stage itself, the accused had no intention, whatever, of keeping his promise to marry the victim. There may certain circumstances, when a person having the best of intentions but unable to marry the victim owing to various unavoidable circumstances. So, the failure to stick by promise made with respect to a future uncertain date, due to any reasons which are not very clear from the evidence available, not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance.

Section 90 IPC cannot be called into aid in such a situation, to forgive the act of a girl in entirety and fasten criminal liability, unless the court is assured of the fact that from the very beginning, the accused had never intended to marry her."

So, there is case which makes distinction between Consensual Rape and Rape:-

Deepak Gulati v. State of Haryana¹³

➤ ***Facts***

In this Case, prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of getting married to her. Therefore, the prosecutrix left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a contact number given to her by him, to ask him "why he had not met her at the place which had been pre-decided by them." She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at any stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused and lived with his relatives. Here also, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally and once again come into contact with the accused at Birla Mandir, Kurukshetra. Thereafter, she even proceeds with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus stand, the accused was arrested by the police.

➤ ***Held***

The Court held that the physical relationship

between the parties had made with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time; also she had been living with the accused for several days and had travelled with him from one place to another.

The Court further held that it is not possible to apprehend the circumstances in which a charge of rape can be leveled against the accused.

Is Sexual Intercourse on Promise of Marriage – Rape?

Justice RV Eastward said

“Having sexual relations with a woman against her will or without her consent also amounts to rape under the IPC. If the consent was obtained on a false assurance or promise of marriage, the consent cannot be considered to be full and free and it would be a case of rape”¹⁴

Time after time, the court pronounced various judgments on breach of promise of marriage amounts to rape. The Indian Judiciary has observed a subtle attitude at such incidents.

Judicial Pronouncement

The Apex court describing the crime as an assault on the “body and privacy of the victims” and said that:-

“There is a distinction between the mere breach of a promise and not fulfilling a false promise”

*State of Uttar Pradesh v. Naushad*¹⁵

➤ Facts

The accused Naushad were in relationship with prosecutrix from last two years on having her believe that he would marry her. The accused Naushad promising to marry the prosecutrix and had regular sexual intercourse with her on this pretext. Naushad was enticed and cheated her. She was raped and got pregnant.

➤ Held

On 19th November, 2013, The S.C. held that the accused was guilty for breach of trust by not ultimately marrying with her and imposed a punishment of life imprisonment for the offence of Rape on ground of sexual intercourse on pretext of false promise of marriage. The Court also concluded that the consent U/s 90 of IPC was

obtained by accused under misconception of fact that the accused could marry her.

*Sachin @ Devendra Gajanand Sangray v. State of Gujarat*¹⁶

➤ Facts

The parties to the case, was lived in, live-in – relation, with consent of both in Surat, Gujarat from one year and also both were colleagues. But after one year parted their ways due to some personal dispute arises between both on 1st March, 2012. So, on 10th March, 2012, he visited the girl’s home to invite her for his marriage on 12th March, 2012. After that, girl filed a complaint alleging that accused raped her after making false promise for marriage with her.

➤ Held

The Gujarat high Court in its ruling in March, 2015 held that the accused in not guilty for offence of Rape because there is breach of promise and the both one live in relation with consent. The relationship between Sangray and his live-in partner was consensual hence cannot be defined as “Rape”.

*Rahul Subhash Patil v. State of Maharashtra*¹⁷

➤ Facts

In this case, Rahul and Seema were in Relationship from 1999. They had a physical relation since 2006. In 2009, Seema tried to commit Suicide because Rahul said to Seema that “he could not marry her” and also they had a physical relation even after this incident. Rahul was in Relationship with another girl despite promising to marriage Seema. He said that he could not marry her because both belong to different religion. So, Seema claimed to be pregnant of Rahul’s child.

➤ Held

The Bombay High Court held that Rahul is not guilty for offence of Rape as there is consensual sexual relationship between both Seema and Rahul even after she comes to know the fact that Rahul could not marriage with her.

The Court in his most significant ruling of 2014 said that every breach of promise for marriage is not rape and premarital sexual intercourse is no more shocking, especially in big cities.

The Court also observed that, it is expected from educated girl that she knows her physical needs and consequences of Sexual relationship and have to tested that whether his decision to make physical relation with man is conscious one or not.

Rajeev Kisan Patil v. State of Maharashtra¹⁸

In this case Bombay High Court again said that 'every breach of promise to marry is not amounts to Rape'.

Justice Mridula Bhatkar called "unfortunate but routine case" and said that

Both a girl and a boy actually may want to get married and have true emotions, so, they had a sexual relationship, after a while anyone may decide to withdraw from the relationship on finding of flaws in compatibility.

Hence, only due to sexual relationship, no one can be compelled to marry the other person. A healthy and objective legal approach for such incidents is very crucial. In spite of that a woman may suffer more than the man but legally it can't be termed as rape in any way.

So, in this case Court observed that, the essential thing for Rape cases are that there is forcible sexual intercourse and without consent of women.

Analysis and Conclusion

"A Woman's body is not a Man's plaything"¹⁹

Above all, breach of promise to marriage after establishes sexual relationships do not directly, in itself, constitute the offence of rape within the purview of the Indian Criminal Laws. Due to lack of testamentary guidelines, it eventually depends on the court's discretion relying on the merits of facts and circumstances in the particular case while deciding the question of rape on ground of false promise to marriage.

For proving the first facet of rape there has some element of force and complete absence of consent should be made a requisite. A violent intercourse and without consent of victim is needed to prove first facet of rape. Further, cases where consent is obtained under mistake of fact, misconception, misrepresentation or application of fraud can be categorized in second facet of rape which has lesser punishment than the first degree. So, the most difficult thing to prove under these circumstances

is that whether the accused had any intention of marrying the woman from the beginning or was it just a false promise in return for sexual intercourse.

The stand taken by the Apex Court is that if the intention of the accused is malafide and has hidden motives, then the accused should be convicted for offence of rape. If this is not done then, the immoral and dishonest persons, including those who come to the country for such very purposes, to exploit girls belonging to lower strata and weaker sections of society by lure them with false promise of marriage and constrain such girls to have physical relations with them by making them believe and trust that they are going to marry in future and also that there was nothing wrong in having such sexual relations with a person who will be very soon going to be her husband. Later on, they easily turn back, in believing that law is being on their side because the sexual intercourse was done by consent of girl, woman, etc.

If the accused are not convicted for offence of rape then the country will become a safe haven for rapists because it will be very easy for accused to commit rape as a 'legal rape' and they will always have an excuse as an alibi to help in escaping from punishment.

So, the courts should not give such a license to those man's who keep on looking for opportunities to exploit the sentiments and vulnerability of Indian girls who discern marriage as a pious bonding and not as a union of two bodies. Marriage is more than physical unions, it's also an emotional and spiritual unions. Hence, this could never have been intention of the Legislature which considered rape to be such a heinous crime as to attract imprisonment up to life or Death penalty, to allowing such persons to go scot free after exploiting poor and helpless girls in this manner which considered rape to be such a heinous as to attract imprisonment up to life.

Suggestions

At last, it is here to be suggested that:

1. **Education:** That the decisions will not be made with bias on ground of educated women and uneducated women because sometimes educated women also not get aware about the intention of women on his false pretext of marriage for making favor for physical relation from/with her.
2. **Proper Legal Provision:** That the proper law and punishment will be setup for this leading and burning issue. Now-a Days this problem

become the major issue which destroy not only dignity of women but also destroys her from mentally, psychologically, etc.

3. *Misuse*: That to stop the misuse of this issue of Rape the punishment for women shall also be included so it also becomes free from gender bias.

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