



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Forced Consensual Sex based on False Promise to Marriage: An Analysis of laws relating to Rape and False Promise to Marriage

Riddhi Agarwal^a

^aRajiv Gandhi National University of Law, Patiala, India

Received 30 January 2023; *Accepted* 18 February 2023; *Published* 22 February 2023

Rape is a direct attack on the sexual autonomy of a woman. Rape can have debilitating effects on the quality of life of women and is also an intrusion into their absolute right to live with dignity and comfort. Rape also invades women's privacy and right to a good life. The element of non-consent on the part of the woman is the central point of rape. There have been numerous amendments and the advent of new laws to protect the autonomy of women better but there is always some grey area that remains ambiguous and thus leads to chaos and confusion. One such grey area can be sexual intercourse on the pretext of false promises of marriage made before or during sexual intercourse. The kind of consent that has been explained in the Indian Penal Code is negative in nature and is also to an extent exhaustive, the consent given on the promise of marriage does not amount to consent for sexual intercourse and hence can be said that it is based on cheating and misconception. The courts have a mixed opinion on rape based on a false promise to marry and there are no concrete grounds on which it could be ascertained but varies from condition to condition and facts to facts.

Keywords: *consensual sex, false promise, marriage, rape laws, forced consensual sex.*

INTRODUCTION

Marriage is a pure bond that transcends all physical, emotional, and spiritual barriers. Marriage is a beginning of a new and relatively permanent bond that needs commitment from both the

individuals involved in it. It is a sacred bond based on trust and using it as a form of deception is a punishable offence and is covered under the ambit of section 90 of IPC.¹ Although there is still a lot of confusion regarding the status of rape done based on a false promise to marry. The Indian judiciary has recognized marriage through false promise, where there was no intention to marry from the beginning, as a crime of rape, though there could be varying interpretations based on multifarious factors and situations.

Rape is considered one of the most heinous crimes an individual could commit against a woman. As per the definition of rape given in the Indian penal code, a woman can only be raped because it is being explained in terms of the penetration of female reproductive parts. Rape is one the most devastating experience a woman can have, it can cause mental trauma that could emotional, mental, and working capacities. The willingness or non-willingness on the part of women can make sexual intercourse lawful or unlawful. Rape is being defined in a manner that non-consent on the part of women becomes necessary.² But the grey area in this is, if the woman was lured into sexual intercourse on a false promise to marriage then the law does not take this situation into its ambit and hence is left to the interpretation of the court and the facts. If it is found that the accused had no intention to marry the prosecutrix from the very beginning then it would fall under the ambit of section 90 of IPC and will be suitably punishable but the law does not cover the situation in which the prosecution is not able to prove that accused had no intention to marry from the inception and thus does not cover it under its ambit.

This controversy has been reignited by the recent judgment of the Orrisa high court where it was held based on the facts and circumstances of the case that sexual intercourse on account of a false promise to marriage is not a ground for rape. This article would cover the various circumstances in which sexual intercourse based on a false promise of marriage amounts to rape or not. Also, this article would critically analyze the various judgments as given by the Supreme Court and High Court and would also express the lacuna of the law.

¹ Indian Penal Code 1860, s 90

² Akhilendra Kumar Pandey, 'Promise to Marry and Rape: A Plea for Constructing Non-Consent' (2013) 5(1) Dehradun Law Review <<http://www.dehradunlawreview.com/wp-content/uploads/2020/07/1-Promise-to-marry-and-rape-A-plea-for-constructing-non-consent.pdf>> accessed 28 January 2023

CONSENT and NON-CONSENT FOR SEXUAL INTERCOURSE

Sexual intercourse without consent or against the wish and will of the woman constitutes criminal liability and can be classified as rape. As the perception of society regarding pre-marital rape is changing, sex is not considered taboo anymore as it was considered earlier. Society in the contemporary era approves of live-in relationships and also have approved of more liberated forms of relationships like casual relationship wherein both individuals prefer doing casual sex, which is also seen commonly today. As a consequence, a line has been drawn to demarcate between consensual sex and forced sex. Courts have referred to dictionaries in many instances to define consent in a better manner. Consent is, in fact, an ‘act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side. According to Jowett, “consent supposes three things a physical power, a mental power, and a free and serious use of them. Hence, it is that if consent is obtained by intimidation, force, mediating imposition, circumvention, surprise, or undue influence, it is to be treated delusion, and not as a deliberate and free act of the mind.” 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.³

Misrepresentation, concealment, and deceptive information can all contribute to a misunderstanding, which is punishable under Section 90 of the Indian Penal Code. *In Re: N. Jaladu*⁴, the accused acquired the assent of the girl's guardian by claiming that he was taking the girl to participate in a festival and that once the festival was finished, the accused brought the girl to the temple and married the girl without her will. The question arose as to whether the guardian made a factual error in providing consent. claiming that the permission was provided owing to a misunderstanding of facts, the court observed that:

The expression “under a misconception of facts” is broad enough to include all the cases where consent is obtained by misrepresentation; the misrepresentation may be regarded as leading to a misconception of facts concerning which consent is given. Section 3 of the Evidence act⁵

³ *Black’s Law Dictionary* (9th edn, 2009) 346

⁴ *In Re: N Jaladu* (2003) 4 SCC 46

⁵ Indian Evidence Act 1872, s 3

Illustration (d) illustrates that a person who has a certain intention is treated as a fact. So, the fact which was made to entertain a misconception was the fact that the second accused intended the girl to get married...thus consent of the person from whose possession the girl is taken is obtained by fraud, and the taking is deemed to be against the will of such person...the effect of section 90, IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.

The question of consent given on the pretext of a marriage promise was looked at for the first time in *Uday v State of Karnataka*.⁶ In this case, the victim and the accused were in love with each other, they had consensual sexual intercourse. While the court was acquitting the court stumbled upon the question of whether consent given on the fact of the misconception of fact was to be decided on a case-to-case basis. After examining many judgments and after due deliberation, the court thought that:

It is viewed that the consent for sexual intercourse given by the prosecutrix to a person she is deeply in love with on the pretext that he would marry her in near future, cannot be said to be covered under the ambit of the misconception of facts. A false promise is not a fact within the meaning of the code...and also concluded that 'consent' has to be examined on a case-to-case basis. Lastly, it was also held by the court that two conditions must be fulfilled for the application of section 90 IPC. Firstly, consent should be given under mistake because of the misconception of facts. Secondly, it should also be proved that the person who obtained such consent is conscious of this fact.

In *Deelip Singh v State of Bihar*⁷, we can see the use of negative terminology in section 90 of IPC. In this case, the accused and the victim were neighbours, and one day the accused forcefully raped her. Later on, the accused consoled her by promising her to marry and they continued having sexual intercourse. She revealed her pregnancy to the accused but he paid no heed to it. In the end, the victim filed a complaint against the accused long after she was raped. Upon the given circumstances, the trial court convicted the accused and the High court reduced the

⁶ *Uday v State of Karnataka* (2003) 4 SCC 46

⁷ *Deelip Singh v State of Bihar* AIR (2005) SC 203

punishment but maintained the conviction. Supreme court acquitted the accused and observed that:

The factors put forward in the first part of sec 90 are from viewpoint of the victim but the second part expresses the viewpoint of the accused. It put forwards that the accused should also be well informed and should have the knowledge or reasons under which the consent was given by the victim. In other words, courts have to observe if the consent was given under misconception and at the same time should be satisfied that the offender was conscious of the facts and have reason to think that but for fear of misconception, the consent would not have been given. Hence the test laid down in *Uday v State of Karnataka* was implemented in *Deelip Singh v State of Bihar*.

In *Yedla Srinivasa Rao v State of A.P.*⁸, in this case unlike *Uday v State of Karnataka* and *Deelip Singh v state of Bihar*, the victim was forced to have sexual intercourse with the accused. He promised to marry the victim after knowing about the victim's pregnancy to allay her. In this case, the conviction was being held valid as the first condition of the test which is to ensure the consent of the victim, which is not present in this case. As it was established that the victim was forced to have sexual intercourse, the court ought not to enquire into the existence of any promise or assurance to marry. It is "Non Sequitur". The court after thorough deliberation held out that: In the present case, instead of the facts presented before the court, we are satisfied that the consent given by the victim was not voluntary and was given by her under the misconception of facts that the accused would marry her but such cannot be seen as a valid and free consent.

In the case of *Jayanti Rani Panda v State of West Bengal*⁹, a similar question of whether sexual intercourse on the pretext of consent gained on the false promise of marriage is valid or not. And also it was checked in this case if such consent is considered void under section 90, IPC, or not. In this case, the accused was charged with rape under 376 of the IPC¹⁰ for having sexual

⁸ *Yedla Srinivasa Rao v State of AP* (2006) 11 SCC 615

⁹ *Jayanti Rani panda v State of West Bengal* (1983) SCC OnLine Cal 98

¹⁰ Indian Penal Code 1860, s 376

intercourse with the victim whose consent was taken through the rigged promise of marriage. The accused was acquitted by the lower court as it was held that section 90 does not apply here since a false promise is not a fact and so does not within the ambit of section 90's definition of "misconception of fact". Subsequently, Calcutta high court concluded that it cannot be explicitly stated that the accused had no intention of marrying the victim and after reconsideration of all the facts laid before the court, the court held that the present case was not a fraudulent promise but a case of "breach of engagement" and hence cannot be covered under section 90 of IPC.

As can be seen from the above cases mentioned, the courts have been dealing with a such question for a long time now and the answer to this question varies from case to case based on its circumstances. Many times, it could be seen in some cases that the case has been decided unjustly in favour of the accused, and many times, it could be seen that a man has been falsely accused but that does not mean that can never dominate claims of so many victims of such a crime who had experienced the wrath and pain of the same.¹¹ The courts have reached several conclusions in deciding such cases and are taking cautious steps to deliver fair justice.

JUDICIAL STAND ON RAPE BASED ON FALSE PROMISE TO MARRY

The supreme court and high courts have made clear distinctions between the false promise to marriage and breach of promise. The same is evident from some of the notable judgments described further. To begin with, the supreme court in the case of *Sonu v State of U.P.*¹² quashed the FIR under section 376 of IPC stating that there is no allegation that the promise to marry that was given to the victim was false from the very beginning. The decision was authored by Hon'ble Dr. D.Y Chandrachud, in which the case of *Pramod Suryabhan v State of Maharashtra* was cited by him. The following was laid by the supreme court in *Pramod suryabahn Pawar v State of Maharashtra*¹³:

¹¹ Sachin Kumar Pawar, 'Legal Study Of Sexual Intercourse On The False Pretext Of Marriage' (2022) Journal of Positive Behaviour Interventions
<[https://www.researchgate.net/publication/361690719_LEGAL_STUDY_OF_SEXUAL_INTERCOURSE_ON_T
HE_FALSE_PRETEXT_OF_MARRIAGE](https://www.researchgate.net/publication/361690719_LEGAL_STUDY_OF_SEXUAL_INTERCOURSE_ON_THE_FALSE_PRETEXT_OF_MARRIAGE)> accessed 25 January 2023

¹² *Sonu v State of UP* (2021) SCC OnLine SC 181

¹³ *Pramod Suryabahn Pawar v State of Maharashtra* (2019) 9 SCC 608

16. There is a "misconception of reality" that vitiates the woman's "consent" if the promise to marry is false and the maker's aim at the time of making the promise was not to abide by it but to deceive the woman to encourage her to participate in sexual relations. A broken promise, on the other hand, cannot be called a false promise. To form a false promise, the creator of the promise must have had no intention of keeping his word when he made it.

18. the consent given by the women instead of section 375 of IPC¹⁴ must be active, and well-reasoned towards the action proposed. To establish that the consent stands void under the pretext of "misconception of facts" due to a false promise to marry, then it should fulfill two conditions. The promise should be a result of the deception, given under bad faith, with no intention from the beginning to fulfill the same. The promise should be of such nature that it had a direct bearing on the decision or consent of the woman, to engage in the sexual act. The prosecutrix in *Sonu v State of U.P.* admittedly claimed in her Section 164 CrPC declaration that the physical contacts were consensual and the result of a "love affair" between the two, but only because the defendant pledged to marry her. As a result, both the accused and his family refused to have their marriage formally recognized.

The existence of a romantic relationship between the complainant and the accused, as evidenced by the facts and circumstances of the *Sonu* ruling and similar cases, is the essential issue that arises. Rarely do law enforcement agencies file an FIR under Section 376 IPC where the accused has either married someone during the claimed inducement period, was already in a committed relationship with another person, or has married someone else during or right after the purported refusal to get hitched. On the same lines, the Supreme Court's full bench said in ***Maheshwar Tigga v State of Jharkhand*** that:

10. They were both captivated by one another, and youthful impulses controlled their thoughts and feelings. Physical contact that followed was not one-off or sporadic, but rather consistent over time. Even moving into the appellant's home was the prosecutrix. We believe that the four-year delay in filing the FIR—which was done under the guise of keeping a promise to the

¹⁴ Indian Penal Code 1860, s 375

prosecutrix – seven days before the appellant was set to wed another woman raises substantial questions about the accuracy and truthfulness of the accusations made by the prosecutrix. Due to the prosecutrix's admission during cross-examination that no event had occurred, the entire genesis of the case is seriously questioned. The court further observed that:

14. Consent that is provided in ignorance of the truth is not considered consent under Section 90 IPC. However, the factual misunderstanding must occur shortly after the event and cannot be disseminated over a period of four years. It hardly needs to be said that the appellant's consent was given voluntarily and after careful consideration. It was given over a protracted period and was accompanied by a deliberate decision to refrain from objecting. The prosecutrix further states in her letters to the appellant that she frequently got into arguments with her family members at home about the relationship and received beatings there (emphasis added).

In *Pradeep Kumar v State of Bihar*¹⁵, a complaint was filed against the accused, saying that he had a sexual connection with the informant based on a mistaken promise that he would marry her. The accused took the informant to a temple and pledged to her in front of the deities that he would marry her, resulting in a marriage agreement. Later, when the accused was preparing to marry another female, he categorically rejected any commitment made to the informant, as well as their sexual relationship. The victim filed a report against the accused under Section 376 of the IPC. The accused applied for discharge but the same was rejected by the trial court. The trial court found a direct link between consent for sexual intercourse and the promise of marriage made to the victim, and the accused had a history of doing the same with other girls as well. Based on the facts of the case, it was clear that the accused obtained tainted consent from the victim, and thus the consent given by her was not of her own free will. In light of the facts, the trial court ruled that there was enough evidence to frame charges against the accused, proving his involvement in the crime. She stated that the accused married her in a temple, hence the question of any violation punishable under Section 376 of the criminal code did not arise.

¹⁵ *Pradeep Kumar v State of Bihar* AIR (2007) SC 3059

These arguments were offered on behalf of the accused in their appeal to the Supreme Court. First, it was claimed that he had physical encounters with her consent.

While the state contended that the case was covered by sections 415 and 493 of the criminal code rather than section 376, the informant maintained that because the victim and the accused had created a physical connection under the pretext of marriage and via deception, the case was covered by section 376. There could not be an element of consent, and section 376 of the criminal code was not correctly applied.

In *Radhakrishna Meena v State of Rajasthan*,¹⁶ the Hon'ble High Court of Rajasthan made the observation that educated and married women should be well aware of the consequences of having a physical relationship with a man when the marriage is still pending. In such cases, the recorded material should be produced to prove that was induced to have a physical relationship. Additionally, in the case of illiterate women, the deceptive marital promise to have a sexual connection should be viewed as consent obtained through fraud.

In the case of *Naushad*¹⁷ (*State of Uttar Pradesh v Naushad*), the defendant had been seeing the prosecutor for the past two years and had thought he would marry her. Based on this pledge, the defendant Naushad repeatedly had physical relations with the victim and vowed to marry her. She was raped, which led to her getting pregnant. In addition to receiving a life sentence for raping the woman and having sex with her while pretending to be engaged in marriage, the defendant was found guilty of violating the woman's confidence by refusing to wed her. The defendant also allegedly got her consent by Section 90 of the IPC while mistakenly thinking he could wed her, the Court claims.

In *Yedla Srinibas v State of Andhra Pradesh*¹⁸, the Supreme Court ruled that the level of voluntary consent depends on the specifics of each case, including the boy's and girl's social status, age, education, and other circumstances. It is risky to depend on the uncorroborated story of the rape victim if there are circumstances that raise questions in the court's mind regarding

¹⁶ *Radhakrishna Meena v State of Rajasthan* Writ Petition No 4952/2022

¹⁷ *State of Uttar Pradesh v Naushad* (2013) 16 SCC 651

¹⁸ *Yedla Srinibas v State of Andhra Pradesh* (2006) 11 SCC 615

the validity of the victim's evidence, even though the version of the victim also commands tremendous respect and acceptance in rape cases. In *Vinod Kumar v State of Kerala*¹⁹, the Supreme Court ruled that a person cannot be found guilty if they did not keep their word and were not there during the false scenario that led to the other party inciting the commission of an act. The accused cannot be held accountable in such circumstances. There are more and more instances where two people have a consensual physical connection of their own free will and choosing, but when that relationship ends for whatever reason, the women turn to the law as a deadly weapon for retribution and personal vengeance. They often misinterpret such consenting acts as rape episodes out of rage or frustration. The very intent of the legal provision is defeated by this misuse.

The Apex Court recently attempted to distinguish a promise that is not kept and a promise that is false from the start in the case of *Anurag Soni v the State of Chhattisgarh*²⁰. It follows naturally that it is not rape if a guy can show that he initially meant to wed the lady but then changed his mind. Only if it is proven that he had questionable motives from the start of the relationship is it considered rape.

Recently, the controversy over rape on the false promise of marriage was re-ignited by Orrisa high court in the case of *Santosh Kumar Nayak v State of Odisha*²¹. In this case, the single bench of Dr. justice Sanjeeb Kumar Panigarhi re-visited the automatic extension of section 90 of IPC in cases related to Rape on the pretext of a false promise to marry. On January 12, 20th, the petitioner eloped with the victim and travelled to Bhubaneswar to marry her. For several days, he had a sexual connection with her. After a few days, he abandoned her and fled. Her father and brother travelled to Bhubaneswar after receiving information from the victim and rescued her. On 03.02.2020, when the victim's father brought this information to the attention of the petitioner's father, the latter assaulted them and threatened them with severe repercussions if it was reported to the police.

¹⁹ *Vinod Kumar v State of Kerala* (2014) 5 SCC 678

²⁰ *Anurag Soni v State of Chhattisgarh* (2019) 13 SCC 1

²¹ *Santosh Kumar Nayak v State of Odisha* (2023) LiveLaw (Ori) 5

In the following case, the counsel of the petitioner pointed out that the victim is a major she went with the petitioner being fully conscious of it. The counsel of the petitioner also highlighted the fact that the medical reports did not show any kind of traces of forceful sexual assault and hence pleaded that the petitioner should not be held accountable under section 376(2)(n) of the IPC. On the other side, the Additional Government Advocate objected and argued that the petitioner repeatedly sexually assaulted the victim and also petitioner clicked private photographs of the victim and thereafter fled away leaving her behind. Thus, additional government advocates contended that the facts of the case established a strong case under the ambit of section 376 of IPC. The Court dismissed the petitioner's claims that he forcefully sexually assaulted the woman, photographed her nude body, and then abandoned her.

"The prima facie aspect of the medical report shows that there was no forceful sexual intercourse yet it is an issue of the trial. Similarly, the medical report detected that the victim wasn't pregnant at the time of the check-up. "The truthfulness or untruth of the claims primarily refers to the domain of evidence and the same cannot be pre-judged at this early stage which necessitates a trial to prove," the Court observed. Furthermore, the Court held that because the girl was a major with a sane mind, it could not be claimed that a person lured her into a sexual relationship with the false promise of marriage. The Bench discussed a slew of Apex Court judgments that govern the realm of law. It cited *Yedla Srinibas v State of Andhra Pradesh*²², *Anurag Soni v State of Chhattisgarh*²³, and *Pramod Suryabhan Pawar v The State of Maharashtra & Ors*²⁴.

According to Justice Panigrahi, Section 90 of the IPC is automatically extended to evaluate the impact of consent under Section 375 of the IPC in such instances demands a serious reconsideration since it is an erroneous statute to hold sex on bogus marriage promise tantamount to rape. He used *Glanville William's Commentary on Criminal Law* as supporting his legal argument.

²² *Yedla Srinibas v State of Andhra Pradesh* (2006) 11 SCC 615

²³ *Anurag Soni v State of Chhattisgarh* (2019) 6 Scale 211

²⁴ *Suryabhan Pawar v The State of Maharashtra & Ors* (2019) 9 SCC 608

CRITICISM

In addition to a diverse range of actions classified as rape by falsehood, Indian law has evolved to emphasize rape by fraudulent marriage offers. This is due in part to outdated ideas about a woman's sexuality as well as the culture and psychology of Indian society. Pre-marital sex rumours have the power to seriously damage a woman's reputation. Allegations of pre-marital sex that women deny have the power to seriously impair a woman's virtue.²⁵ However, it must be commended that Indian law rightly recognizes the necessity for criminal penalties for misleading sex, with a focus on marriage. However, the final effect is a body of case law that is a muck of erroneous assumptions and disparaging remarks.

The focus on the prosecutrix's age and education is the most obvious problem.²⁶ This assumption leads to the conclusion that an educated woman who has reached adulthood is unlikely to fall victim to deception, including fraudulent marriage promises and subsequent misleading sexual activities. It is necessary to examine the justifications used by courts to determine what weightage age and education have in these situations.

The prosecutrix's willingness to engage in sexual activity excuses the accused's deceit.²⁷ If the female is as willing to enter into a sexual relationship before getting married and does so under the guise of a bogus promise of marriage, the behaviour is deemed less severe. Such instances only allow voluntary participation. On the assumption that misleading sex is desired sex, this conclusion is established. The courts rule that in contrast to severe rape instances when sex is forced upon the victim, women in such circumstances do desire intercourse. There are several unintended consequences when desire and consent are equated.

Unreasonable compliance to Section 90 in determining guilt or innocence is another barrier preventing sound reasoning to support the conclusion. The pursuit of justice shouldn't be hampered by the lack of a clear definition for the phrase "misconception of reality." The various requirements for "misconception of reality" are distinguished by a lack of adequate justification.

²⁵ *Karathi v State* (2013) 12 SCC 710;; *Sujit Kumar Pati v Smt. Atasi Singha Mahapatra* 2008 SCC OnLine Cal 274,

²⁶ *Tilak Raj v State of Himachal Pradesh* (2016) 4 SCC 140

²⁷ *Yedla Srinivasa Rao* (n 8)

A variety of classifications that fit the preferences of the courts have combined to form the current image.

CONCLUSION

Our criminal statute books' substantive rape legislation is inadequate to address the numerous instances of rape by deception, and the judge is left with many decisions that must be made based on the unique details and particulars of each case. Only rape committed while pretending to be a spouse is considered deceitful sex under Section 375, which is an impossible and improbable method of using deception in today's society. It is time for the rape statute to be updated to reflect the various manifestations of rape brought about by malicious non-violent methods. This improvement shouldn't just focus on rape committed under the pretext of marriage, but also take into account other subtle deceptions that our community is likely to experience as western concepts become more integrated.

The courts must change their attitude to rape-by-deception and fill in the holes until the government modifies rape legislation to make it wholesome. The prejudice that encircles the many elements of rape-by-deception makes the rulings made by the courts much more significant. The way the court approaches topics like the sexuality of a woman, her permission, as well as her psyche, will have a significant impact. It is necessary to eliminate the out-of-date moral precepts that have crept into law. It is imperative that the justifications used to define what constitutes valid consent include the idea of sexual autonomy in its purest form. The negative effects of rape caused by the deceptive marriage promise must not be underestimated, and its effects on both the micro and macro levels need to be thoroughly investigated. The need to start a more thorough legal and societal conversation about the various facets of deceitful sex and how they relate to India's social situation is imperative. A lack of awareness of this important problem might normalize a variety of behaviours that are disrespectful to a woman's dignity.