

## RAPE ON PRETEXT OF MARRIAGE

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### I. Abstract

*Rape is an act of having sexual intercourse with a woman without her consent. It is a heinous crime that violates the basic human rights and dignity of individuals. While society is aware of the seriousness of this offence, rape under the guise of marriage has become a separate and upsetting kind of sexual violence in recent years. The topic of rape passed off as a marital act is examined in this abstract, along with its occurrence, causes, and effects.*

*Rape on pretext of marriage refers to a situation where a woman is forced or coerced to get into physical relationship under the expectations of marriage. The tactics and manipulations by a person may lead to a psychological pressure and ultimately that emotional trauma on the woman subsequently make her give consent for such an act. The cause for such rape can be multifaceted and can have different dimensions. As a natural fact, women are born emotional and are prone to get invested and vulnerable in relationships. Therefore, they have a sense of insecurity that their repudiation for such an act may devastate the trust of their partner on them. Moreover, gender inequality and perpetuation of patriarchal structure in the society devalues the women's autonomy and consent.*

*The victims may suffer several physical injuries, unwanted pregnancies, sexually transmitted diseases and psychological trauma. Furthermore, victim blaming and social stigmatization intensify the distress. But, in such occurrences it is critical apprehend that in what circumstances the act has been committed. To make a person liable for the offence of rape on pretext of marriage, it is significant to grasp whether the promise of marriage was false from the beginning or it was a breach of promise which is made in good faith.*

### II. Introduction

Section 375 of the Indian Penal Code, 1860 defines the offence of rape. All forms of non-consensual sexual acts are included and penalized within the ambit of this section. This can be inferred from the definition that consent plays an important role while dealing with rape cases under criminal law. This is the justification for punishing a man for rape when he has sex with a woman after getting her permission on the false pretense of getting married to her. If the goal of proposing marriage is to trick the woman into starting a relationship based on sex, then it must be considered against her will. The legal definitions of "false promise" and "valid

consent" are not entirely clear in this regard, and there is a lot of grey area. As a result, this article reviews many case laws that created precedents on this subject in order to better comprehend the present jurisprudence on rape on the pretense of marriage.

### III. Progression in Legal Framework

The legal landscape surrounding sexual intercourse based on a deceitful promise of marriage exhibits a distinctive characteristic that sets it apart from other forms of sexual offenses. While the Indian Penal Code (IPC) does not explicitly address the specific act of engaging in sexual relations on the pretext of a false promise of marriage, a nuanced

understanding emerges from the application of legal provisions.

In this context, the concept of a false promise of marriage leading to sexual intercourse is interpreted as a "misconception of fact" within the purview of Section 90 of the IPC. This distinctive interpretation signifies that consent obtained under such circumstances is deemed invalid and lacking legal weight. Consequently, individuals perpetrating such acts are liable to be charged under Section 375 of the IPC, which addresses the offense of rape.

By recognizing the deceptive nature of promises made in the context of marriage, the legal system acknowledges the gravity of sexual violations committed under the guise of false commitments. This unique legal perspective ensures that the law treats such cases as instances of non-consensual sexual acts, safeguarding the rights and dignity of victims.

It is noteworthy that the absence of a specific provision explicitly addressing sexual intercourse based on false marriage promises underscores the importance of judicial interpretation and case law. Through a dynamic and evolving approach, the courts have effectively filled this gap, emphasizing the significance of consent and the need to hold individuals accountable for exploiting trust and perpetrating sexual violence on the pretext of marriage.

In summary, the legal response to sexual intercourse on the pretext of a false promise of marriage in the Indian legal framework is characterized by an inherent recognition of the deceptive nature of such acts. By applying the principles of misconceptions of fact and invoking relevant provisions under the IPC, the law effectively addresses these unique cases, safeguarding the rights of victims and upholding the principles of justice.

The Supreme Court's decision in Pradeep Kumar v. State of Bihar emphasizes the necessity to safeguard people from deceptive practices in regards to sexual consent by defining the legal

meaning and application of the phrase "misconception of fact" within the IPC. The court's strategy upholds the importance of informed consent, especially when using the threat of marriage as a leverage point to participate in sexual activity. This landmark judgment illustrates the dynamic nature of legal interpretation, where courts play a vital role in shaping and refining legal principles to address emerging social issues. Through their rulings, the judiciary ensures that the law remains responsive and relevant to evolving societal challenges, providing a robust framework to combat sexual violence and protect the rights and dignity of individuals.

#### IV. Relevant Pronouncements

In a recent rulings, the Supreme Court of India reaffirmed the legal position by stating that when a promise of marriage is false and the accused's intention, at the time of making the promise, is not to fulfill it but rather to deceive the victim into granting consent for sexual intercourse, it constitutes a "misconception of fact" as defined under Section 90 of the law. As a result, the woman's consent is considered vitiated, invalidating the legality of the act. This ruling underscore the court's recognition of the deceptive nature of false marriage promises, emphasizing the importance of genuine consent and protecting individuals from manipulative practices in matters of sexual relations.

##### A. State of Uttar Pradesh V. Naushad

According to the court's ruling, it is incumbent upon the defendant to prove that the consent was obtained with genuine intentions and does not fall within the purview of Section 90. The burden lies on the defendant to establish that the consent was given without any misconception of fact.

##### B. Anurag Soni v. State of Chhattisgarh

The Supreme Court made a noteworthy observation that engaging in sexual intercourse based on a false promise of marriage is

considered an offense under Section 417 of the Indian Penal Code (IPC), which deals with the offense of cheating. Consequently, the consent given under such circumstances does not absolve the accused from being charged with the offense of rape under Section 375 of the IPC. This observation highlights that even if consent is given, it does not serve as a legal defense against charges of rape when the act is committed under false pretenses of marriage. Under Section 376 of the IPC, rape is categorized and penalized as a grave offense. The enactment of the Criminal Law (Amendment) Act in 2013 brought about a significant change by increasing the minimum imprisonment term for rape from seven to ten years for an ordinary citizen. In this 2019 case of Anurag Soni v. State of Chhattisgarh, the accused deceitfully proposed marriage to the victim while harboring intentions to marry another individual. Exploiting the false pretext of marriage, the accused engaged in sexual activity with the victim. As the victim's consent was obtained under false pretenses, it was deemed invalid. Consequently, the accused was held liable for rape in accordance with Section 376 of the IPC.

### C. Mandar Deepak Pawar V. State of Maharashtra

In the case of Mandar Deepak Pawar vs State of Maharashtra, the Supreme Court made a significant ruling differentiating between a false promise of marriage and a breach of promise made in good faith but not fulfilled.

The court observed that in the case at hand, the individuals involved willingly engaged in a physical relationship without the intention of getting married for a significant duration. Subsequently, due to various reasons, the relationship ended, which can occur both before or after marriage. It is worth noting that three years passed before the complainant, respondent No.2, decided to file a First Information Report (FIR). Therefore, the court held that the sexual relationship between the parties cannot be treated as rape as there was

no false promise of marriage involved. Instead, it was a case where the promise of marriage, although made, was not fulfilled, which does not fall within the ambit of criminal offense.

The Supreme Court drew heavily from the precedent set in the case of Pramod Suryabhan Pawar vs. State of Maharashtra & Anr. (2019) 9 SCC 608. In that case, where the complainant was aware of existing obstacles to marrying the accused but still chose to engage in sexual relations, the court quashed the First Information Report (FIR). The court made a clear distinction between a false promise of marriage, given with the understanding that it would be broken, and a breach of promise made in good faith but ultimately unfulfilled. This distinction was made in relation to the provisions of Section 375 Explanation 2 and Section 90 of the Indian Penal Code (IPC), 1860. The court emphasized that the "consent" of a woman under Section 375 of the Indian Penal Code (IPC) must involve an active and reasoned decision regarding the proposed act. To establish whether the "consent" was influenced by a "misconception of fact" arising from a promise to marry, two conditions must be met. Firstly, the promise of marriage must be false, made in bad faith, and with no intention of being fulfilled at the time it was given. Secondly, the false promise must have immediate relevance or a direct connection to the woman's decision to engage in the sexual act.

### V. Conclusion

In summary, rape under Indian criminal law is a matter that requires careful consideration of the specific facts and circumstances of each case. Due to the absence of specific guidelines, the court exercises its discretion in determining whether sexual intercourse on the grounds of a false promise to marry amounts to rape. The absence of a definitive rule for ascertaining whether the victim's consent was obtained under false pretenses was noted in the Uday v. State of Karnataka case. As a result, the court must carefully assess the available evidence

and consider the relevant context in order to arrive at a decision.

However, it is worth mentioning that despite a decrease in the percentage of rape cases committed under the guise of a false marriage, the overall number of such cases has seen an increase. This indicates that the existing substantive rape laws are insufficient in effectively addressing situations of rape through deception. To adequately address such cases where malicious consent is obtained, it becomes imperative to enhance and update the legal framework.

It is crucial to acknowledge that failure to criminalize the accused who coerced the victim into engaging in sexual activity under the false pretense of marriage may result in the oppression of innocent individuals, particularly young women. These individuals may face significant hardships and exploitation if the law does not provide adequate protection and redress for such deceptive acts.

Therefore, there is a pressing need to upgrade the existing laws to encompass a broader range of deceptive methods employed to obtain sexual consent under false pretenses. This expansion would ensure that individuals who exploit trust and use false promises of marriage to manipulate and coerce others into sexual acts are held accountable. The law must adapt to cover various forms of deception, ensuring that victims' rights are safeguarded and justice is served.

In conclusion, while the courts have the discretion to determine the implications of a breach of promise following sexual relations, the absence of clear guidelines necessitates a careful examination of each case's unique circumstances. It is evident from the rising numbers of rape cases involving false promises of marriage that the existing rape laws need to be updated to effectively address instances of rape by deception. By doing so, the legal system can provide adequate protection to vulnerable

individuals while balancing the need to prevent potential misuse of the law.

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