

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

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False Promise to Marry as Rape: A Need to Rethink the Foundational Precepts

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ABSTRACT

This article proposes the idea of rape by deception, calling for the creation of a fresh statutory rape defence. It makes the case that those who impersonate an adult should not be held legally responsible for statutory rape since this defence protects adult victims from criminal accountability when a minor deceives them. By addressing the subject of phoney marriage pledges, the essay highlights the need of shielding rape victims and their families from the psychological, social, and physical repercussions of the crime. It makes an argument for the punishment of those who engage in sexual behaviour under the false pretence of marriage by analysing pertinent portions of the Indian Penal Code and court rulings. The research emphasises the relevance of permission gained via deception and draws attention to the expanding range of rape accusations. It also analyses the Allahabad High Court's position on whether sexual activity occurring during a marriage qualifies as rape and calls for the creation of a new statutory rape defence to appropriately handle these situations.

I. INTRODUCTION

The distinction between fraud in the factum and fraud in the inducement is used to categorise which forms of fraud vitiate consent and hence constitute rape. A deception or fraud in the factum is a deception or fraud in the activity itself. The phrase "fraud in the inducement" refers to a deception or fraud connected to "any peripheral object" rather than the deed itself.

Sexual intercourse with women may be defined as rape if permission is acquired by a false promise of marriage. In India, rape was a crime, and those who committed it were punished. As a holy connection between two individuals, marriage is revered. Emotional, spiritual, and bodily intimacy are all part of the package. According to ancient Hindu law, marriage is performed in order to fulfil one's dharma (obligations), ama (assets), and kama (prosperity) (physical desires). Hindus perform a ritual known as "consummation" after their weddings. Sexual intercourse is only possible if both parties have given their full consent. Rape is a crime punished by the Indian Penal Code if permission is obtained under the guise of a marriage proposal. They argue that

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since the rape allegations are aimed to show his guilt, they should be labelled bogus cases. To protect women's rights in patriarchal culture, activists argue that these incidents should be penalised.

II. ARGUMENTS IN SUPPORT OF LEGISLATION

Section 375 of the Indian Penal Code² defines rape broadly. It includes specific rape prohibitions that apply in cases of a bogus marriage commitment. The scope of rape charges in marriage promise scenarios has been expanded by many Indian court judgements. Rape charges will be brought against the accused if they engage in sexual activity without the permission of the prosecutrix. According to a Hindu poll, 25% of instances included promiscuity that was either forged or broken, which led to sexual intercourse. Permission granted on the basis of a misunderstanding of facts and the person to whom the consent is given acting on that statement of fact is what the IPC's Section 90 describes as "consent." A misrepresentation under Section 90 of the Indian Penal Code would thus apply if the accused had sex with the prosecutrix on the basis of a false promise of marriage. Indian courts have decided in favour of the legislation, notwithstanding the addition of Section 90, stating that it is essential to understanding Section 375³. Section 90 allows permission to be revoked if two criteria are satisfied. Victim's misinterpretation of facts and consent must be linked; second, defendants must have reasonable suspicions that consent was tainted by criminal provisions. If this information is valid, the court will find that the victim did not agree to the sexual behaviour of the accused. It is illegal to make a false promise of marriage under Section 90 IPC, and the victim's approval is useless because of a misrepresentation. Proposals for marriage made on false pretences might be grounds for criminal prosecution under Section 375. *Deelip Singh v. State of Bihar* (2004) said that a defendant's agreement with the prosecutor was illegal if it was obtained via a false marriage promise. Because of a lack of or involuntary consent, this matter was decided by the court. It was a case of coerced sexual intercourse, as defined in Section 375 IPC⁴. It's a misperception of truth that vitiates a woman's consent, the Supreme Court of India has confirmed.

Sex with a woman under the guise of marriage constitutes rape, according to the Allahabad High Court⁵.

There has to be laws in place to deal with these situations, the Allahabad High Court said.

² Indian Penal Code 1860

³ Ibid.

⁴ Supra note 2.

⁵ anniversary... et al., Sex with woman on false promise of marriage is rape: Allahabad high court Deccan Herald (2021), <https://www.deccanherald.com/national/sex-with-woman-on-false-promise-of-marriage-is-rape-allahabad-high-court-1016483.html> (last visited Nov 8, 2021).

Justice Pradeep Kumar Srivastava led a single bench that denied bail to a man accused of raping a lady on the pretext of marriage in Kanpur, Uttar Pradesh. Rape is defined by law as "sexual intercourse with a victim on the pretence of a fake promise to marry," the court declared. Existing rape-by-deception criteria, tests, and rationales in over thirty nations already include obtaining intercourse by adult impersonation. Now only the court must approve. It also gets over the primary roadblock: how do we distinguish between rape by fraud and adult impersonation? The prospect of severe criminal penalty for statutory rape gives a stronger foundation for rape-by-fraud responsibility than other generally recognised kinds of rape-by-fraud liability, and removes any line-drawing concerns. The negative implications of statutory rape responsibility give both a logical and practical basis for rape-by-fraud liability. Adult impersonation as rape by deceit may open the door for a new statutory rape strict responsibility defence. If a minor rapes an adult, the elder victim should not be held accountable. As a consequence, a youngster who impersonates an adult should not be prosecuted. A person who commits statutory rape by trickery should not be held legally accountable. Even severe liability statutory rape cannot put an adult in risk of being raped.

III. CONCLUSION

This study uncovers a new kind of rape by deceit, which leads to a new statutory rape defence. This is a novel kind of rape by deception that also presents a new defence to the statutory prosecution for the crime of rape. Adult impersonating Due of this, rape is regarded to be the most physically and morally abhorrent crime, with long-term psychological ramifications on the perpetrators. The victim's family suffers as a consequence of this heinous act in society. The sufferer goes through a lot of mental and bodily suffering. "Rape transforms a woman into a beast because it disturbs her fundamental core." The accused made several fraudulent marriage promises to deceive the victim, resulting in awful social circumstances for women, since many females are exploited by the phoney marriage promises. For this reason, criminals assume that the Indian Penal Code 1860 is on their side, and they would be able to get away with their crimes. A new legal framework for situations in which the accused acquired permission for sexual behaviour under the false promise of marriage is thus required by government. Promissory sexual intercourse is a circumstance where the court should take this into consideration. The court should not allow anyone to exploit young girls by having sexual contact with them under the pretext of marriage. So, the accused should be prosecuted with rape under Section 376 IPC⁶.

⁶ *Supra* note 2.