

Consent, Deception, And Criminal Liability: Rethinking Sexual Relationships On The Pretext Of Marriage In India

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Few areas of Indian criminal law generate as much controversy as prosecutions arising from sexual relationships entered into on the “pretext of marriage.” At the core of these cases lies a difficult question: when does a broken promise become a crime? More specifically, when does a promise of marriage, later unfulfilled, turn into rape under Indian law? The debate focuses on the meaning of consent, the nature of deception, and the limits of criminal liability in intimate relationships.

Under Indian criminal jurisprudence, consent must be voluntary and not obtained under fear of injury or a misconception of fact. Sections 25 and 28 of the Bharatiya Nyaya Sanhita, 2023, recognise that consent given under such fear or misconception is not valid in law. Section 63 criminalises sexual intercourse in the absence of valid consent, while Section 69 explicitly addresses situations where sexual intercourse is obtained by means of deceit, including a false promise of marriage. Judicial

interpretation has clarified that where a promise of marriage is shown to be false from its inception, made without any intention of being fulfilled at the time it was given, and where such a promise directly induces the woman's consent to sexual intercourse, the consent so obtained may be vitiated by deception, attracting criminal liability.

From this perspective, treating deliberate fraudulent inducement as criminal is consistent with the constitutional commitment to dignity and bodily integrity.

However, the issue arises not in theory, but in application. In practice, Indian courts have repeatedly distinguished between a "false promise" and a "breach of promise." In cases such as *Uday v. State of Karnataka* (2003), the Supreme 1 Associate Professor, Jindal Global Law School, O. P. Jindal Global University, India. 2 Associate Professor, Jindal Global Law School, O. P. Jindal Global University, India.

Court observed that a consensual relationship between adults, where a promise to marry subsequently fails due to circumstances, does not automatically amount to rape. More recently, in *Pramod Suryabhan Pawar v. State of Maharashtra* (2019), the Court clarified that consent is vitiated only when the promise was false from the very beginning and made with no intention to marry.

Jaspal Singh Kaural v. State of NCT of Delhi, 2025 INSC 457, the Supreme Court held that a long-term consensual relationship and a broken promise to marry do not automatically constitute rape.

In many cases, the relationships are for months or even years. There may be mutual affection, shared experiences, and ongoing intimacy. When such relationships end, criminal complaints sometimes follow. The legal system must then determine whether the initial promise was a planned lie or a genuine commitment that ultimately failed. The line between deception and disappointment becomes thin.

In a society where premarital sex remains stigmatised, the promise of marriage often becomes a social protection. When relationships collapse, allegations of deception may be influenced not only by betrayal but by social pressure, family dishonour, or the desire to regain lost reputation. Thus, the core challenge is evidentiary and conceptual as the law must protect women from exploitative deceit without subjugating them or denying their agency.

A central ambiguity in the present jurisprudence concerns whether a promise to marry constitutes a "fact" capable of vitiating consent. Traditionally, criminal law distinguishes between misrepresentation of existing facts and statements relating to future conduct. A false statement of present intention is treated as deception only when it can be shown that the intention never existed at the time of representation. The jurisprudence under *Bharatiya Nyaya Sanhita, 2023*, inherits this conceptual structure from Section 90 of the IPC.

However, courts have not sufficiently theorised why a promise of marriage, essentially a statement about future commitment, should automatically be elevated into a legally operative "misconception of fact." A more coherent doctrinal approach would recognise that only where the accused knowingly misrepresented his present intention to marry, thereby inducing consent, can the requirement of

deception be satisfied. Without this clarification, the doctrine risks conflating moral breach with criminal fraud.

Indian rape law fundamentally concerns the absence of consent at the time of the sexual act. Expanding its scope to include deception about future relational commitments risks doctrinal overreach. If every material inducement affecting a person's decision to engage in intimacy were treated as vitiating consent, the boundaries of sexual assault law would expand beyond manageable limits. The Supreme Court, in *Pramod Suryabhan Pawar v. State of Maharashtra*, attempted to contain this expansion by requiring proof that the promise was false from the outset. Yet the conceptual question remains insufficiently examined: does a failed future intention negate sexual autonomy, or does it merely undermine relational trust? Clarifying this distinction is essential to prevent rape law from becoming a mechanism for regulating private emotional disputes. Courts should demand clear evidence of fraudulent intent, such as simultaneous engagement to another person, explicit statements denying any intention to marry, or conduct manifesting calculated manipulation. Furthermore, legal reform could clarify the boundaries of "misconception of fact" under Sections 25 and 28 BNS. The judiciary is responsible for developing standards on a case-by-case basis.

Beyond the courtroom, there is a need for social transformation. Ultimately, the issue is not merely about criminal liability; it is about autonomy, accountability, and the evolving meaning of consent. While the Supreme Court has articulated a relatively straightforward doctrinal test, lower court application reveals inconsistency. In *Uday v. State of Karnataka* and subsequent rulings, the Court emphasised that consensual relationships between adults should not be retrospectively criminalised merely because a marriage did not materialise.

However, factual determinations regarding "intention at inception" remain highly subjective. The absence of structured evidentiary standards has resulted in uneven adjudication across High Courts. A more transparent judicial framework, perhaps listing indicative factors such as simultaneous engagement, concealment of material facts, or explicit denial of intention contemporaneous with inducement, would reduce arbitrariness and enhance doctrinal stability. Post-privacy jurisprudence, particularly after *Justice K.S. Puttaswamy v. Union of India*, demands that sexual relationships between consenting adults be understood through the lens of autonomy rather than morality. Criminal law must therefore avoid reinstating marriage as the normative benchmark for legitimate intimacy. If courts implicitly assume that a woman would not have consented absent a promise of marriage, they risk undermining her sexual agency. At the same time, constitutional dignity requires protection against deliberate manipulation that weaponises social stigma. The law must therefore distinguish between autonomy exercised within a relationship and autonomy subverted by calculated deception. This constitutional calibration remains underdeveloped in existing jurisprudence. The law must neither condone exploitation nor police heartbreak. It must distinguish between fraud and failed love, between manipulation and mutual consensus. The legitimacy of criminal law depends on its moral clarity. If every broken promise becomes a prosecutable offence, the law intrudes too deeply into

private life. If deliberate sexual exploitation goes unpunished, the law abandons its protective function.

The path forward lies in principled restraint grounded in evidence of intent, respect for autonomy, and a careful understanding of the distinction between deception and disillusionment. An under-acknowledged risk in promise-to-marry cases is the subtle re-

moralisation of sexuality through criminal adjudication. Historically, rape law was intertwined with notions of chastity and honour. Contemporary doctrine seeks to detach sexual assault from these archaic values. Yet when criminal liability turns on whether premarital intimacy was “justified” by marriage prospects, the law may inadvertently revive marriage-centric morality. Judicial reasoning must therefore remain strictly anchored in fraudulent inducement rather than relational expectation. The legitimacy of rape law depends on maintaining this principled boundary.

India’s socio-cultural context complicates a purely autonomy-based analysis of consent. In a society where marriage carries significant economic and reputational consequences, a promise to marry may function not merely as a romantic assurance but as a socio-structural guarantee. Feminist legal theory reflects this tension, where a protection-oriented view understands false promises as mechanisms of gendered exploitation within patriarchal structures.

At the same time, an agency-centred approach cautions against construing women as incapable of autonomous sexual choice. Judicial reasoning often moves between these positions without explicitly reconciling them. A more transparent engagement with feminist theory would allow courts to acknowledge structural vulnerability while preserving adult women’s agency.

Comparatively, many common law jurisdictions treat deception as vitiating consent only when it concerns identity, the nature of the act, or a significant physical risk. They generally do not criminalise breach of relational promises.

While India’s socio-cultural context may justify a more expansive understanding, comparative restraint underscores the need for precision. Over-expansion risks diluting the moral and legal force of rape law. In navigating this conundrum, Indian law stands at a crossroads between tradition and modernity. How it resolves this tension will shape not only the jurisprudence of consent but also the broader social understanding of intimacy, responsibility, and freedom.

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