

Consent physical relationship if breakups will attracts Rape & cheating? A critical study

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ABSTRACTS

In recent days the youth falling in love and having sexual contacts before marriage and thereafter the love brake –up. That the ultimate accused is male partner and female partner becoming victim. That in any case there must be criminal intention, mensrea, fraudulent intention of any person who does any act thereby cause harm injury to others. But in section 417 I.P.C there is no need of such kind of criminal intention. That if the person who breakup-up the love. And the women who becoming victim and men becoming accused and facing prosecution. That this kind of practice is not good for our society. That if there is a ban on participation of sex before marriage then the person should face prosecution. But so many innocents are punished by the our Judicial system under section 417 IPC.

Introduction: section 416 is meant for cheating. Cheating by personation. A person is said to cheat by personation "if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is. Explanation The offence is committed whether the individual personated is a real or imaginary person. Punishment for cheating. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both under section 417. section 375 in The Indian Penal Code [375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following 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 sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. (Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.] STATE AMENDMENT (Manipur) —(a) in clause sixthly, for the word "sixteen" substitute the word "fourteen"; and (b) in the Exception, for the word "fifteen" substitute the word "thirteen". [Vide Act 30 of 1950, sec. 3 (w.e.f. 16-4-1950) (made earlier than Act 43 of 1983)]. COMMENTS Absence of injury on male organ of accused Where a prosecutrix is a minor girl suffering from pain due to ruptured hymen and bleeding vagina depicts same, minor contradictions in her statements they are not of much value, also absence of any injury on male organ of accused is no valid ground for innocence of accused, conviction under section 375 I.P.C. proper; Mohd. Zuber Noor Mohammed Changwadia v. State of Gujarat, 1999 Cr LJ 3419 (Guj). Penetration Mere absence of spermatozoa cannot cast a doubt on the correctness of the prosecution case; Prithi Chand v. State of Himachal Pradesh, (1989) Cr LJ 841: AIR 1989 SC 702.

But it is recently this sections misusing on innocents. That the person who loves a girl and they by living in sexual relation and thereafter if the love breaks. The woman giving complaint against her partner for prosecution under section 376, 417 IPC. That section 417 is attracts only when a person cheats a person by promising a lady and thereby got consent for sexual relationship will

attracts cheating. But in so many cases without any promise and without any agreement for marriage the male and female having sexual relationship. It is not falls under cheating. But the Police in our state, if any woman comes and gives a complaint that without any promise she participate sex with any person and thereafter she demands marry him, if he did not agree she is lodging complaints against her partners. Section 376 will attract only if person commits rape on a women against her will. But here the women giving consent for sex. Then how it will attract to rape.

A study on various cases under section 376 and 417 IPC:- A person once eavesdropped on three women at a coffee shop in Bangalore. One of them had just read the news that a woman who had been in a relationship with a man much older than her, had filed a case of rape against him in a court in Mumbai, stating that he had promised to marry her. He says there were five minutes of silence after this. Then, almost simultaneously, one of the women said, “Paapa, she must have had so many expectations,” while her friend blurted out, “What the hell, how can that be rape!”

This conversation is perhaps the two most common ways in which we view breach of promise (to marry) cases. They are often reported as ‘false rape cases’. Earlier this year, the Bombay High Court [commented](#) that the number of such cases had increased, and there has even previously been a [petition](#) seeking to ‘prosecute false rape accusers’. But why do women choose to file cases of rape when there has been a breach of promise to marry? And is it right to call them false rape cases?

Last year, the Bombay High Court had faced a petition seeking guidelines to ensure that people are not booked under what has been termed as ‘false charges of rape’ after a relationship ends. Now, on 28th December 2016, there was a new one — this time from a man and woman who used to be a couple.

Here is the story of this petition. In 2015, a 20-year-old woman, who was in a relationship with a 34-year-old man, filed a case against him, intending to book him under cheating (Section 417 of the Indian Penal Code [IPC]). She had just found out that he was already married and that his promises to marry her were false. The police, however, also booked him for rape under Section 376 of the IPC (punishment for rape). A petition was filed in the Bombay High Court seeking to quash this FIR.

Now, remarkably, the two jointly filed a [petition](#) in the Bombay High Court, seeking guidelines against this happening again elsewhere. Yesterday, on 9th February, the Bombay High Court heard the case. The petitioners’ lawyer, Swapna Kode, tells us that after the hearing, the court directed them to file the petition as a PIL since it was a matter of public interest.

In 2013, the Supreme Court (SC) had heard a similar case in Deepak Gulati vs State of Haryana. The Punjab and Haryana High Court had previously convicted him in a rape case filed by a 19-year-old woman and her family. According to the judgment, the man had “induced” her to go with him to Kurukshetra to get married, and had “sexual intercourse with her against her wishes behind bushes,” promising to marry her. When they reached Kurukshetra, they stayed with the man’s relatives for a few days, and the man “committed rape upon her” before he threw her out of his house on the fourth day.

Here, the SC declared that for such cases to be considered rape, the court has to be convinced that the man had “clandestine motives” from the start. They insisted that there was a distinction between breach of promise (for any reason), and not fulfilling a promise that had been false in the first place. The SC acquitted the man of all charges.

In such cases of breach of promise to marry, there is no separate law, as you might think from fleeting readings of the news. Instead, three sections of the IPC are usually deployed. Strangely, the police, who often make it difficult for women to report sexual violence (more on this in TLF’s Ready to Report [series](#)), tend to happily file FIRs in these cases. The FIRs are usually filed under Section 375 (rape), Section 376 (punishment for rape), and Section 417 (cheating). Each of these sections are supposed to be considered along with Section 90, which defines consent and states that that if consent is given under a “misconception of fact”, then it cannot be called consent.

The 2013 SC judgment brings fresh complications to the issue of consent. It demands proof of something as vague and difficult to establish as the accused’s intention, and places consent in this tricky ground — the few cases that make it to High Courts have got different kinds of sentences. Lawyers say that most cases end in acquittal or settlements in lower courts, because original intent is so hard to prove. However, in August 2015 the Delhi High Court sentenced a man to 10 years in such a case, while the Bombay High Court in March 2016 granted a man bail stating that “when

the woman is educated and mature, she can say no.”

According to Rebecca John, senior advocate at the Delhi High Court, there has been a rise in the number of such cases being registered in Delhi. In her experience, John says, most of these cases are filed by people who, during the course of their relationship with a man over many years, have had consensual sex. She argues that we need to look at each of these cases more carefully, because, “Doesn’t anybody, man or a woman, have the right to change their mind about marriage?”

Mrinal Satish, Associate Professor of Law, and Executive Director of Centre for Constitutional Law, Policy and Governance at the National Law University, Delhi, argues that when women file these cases themselves, it is often because they feel cheated in finding that they have consented to sex only to find that the man doesn’t want to marry them.

But are there other reasons — other than feeling cheated — involved? We asked Jayna Kothari, co-founder of Centre for Law and Policy Research, who practices as a Counsel in the Karnataka High Court and Supreme Court. In a case that Kothari handled, a woman she was representing had been living with a man for three or four years. They had rented a house in both their names, stating that they were married, and the man had taken out a car loan, naming the woman as his wife and guarantor. When she asked for them to get married, he would constantly put it off, until a day when they went to a temple and had a simple marriage of tying thalis. Finally, the man left, saying that he was in love with someone else, and denying that they had ever been married.

Most of these cases are usually filed by women coming from lower middle-class to middle-class families. Kothari says there is more than a feeling of being cheated — “These are relationships built over years and there are, among emotional complications, even things like financial issues involved,” she says. In many other instances, women filing cases said they had been promised marriage but when they got pregnant, had been left by the men.

The media, with an almost too-easy dismissal, has been reporting these cases as a rise in “false rape cases” being filed against men — something Kothari says doesn’t quite seriously engage with the issue, just as the phrase “breach of promise to marry” doesn’t. As Satish says, the dismissal of such cases as ‘false rape cases’ by the media, and

the courts declaring that it is ‘misuse’ of the law, only results in pushing the false idea that women are taking advantage of the law.

Is this feeling of being cheated something that can be explained in our laws? How does one begin to explain it? Does it begin to go beyond this? As Rebecca John says, “I don’t think, as activists, as feminists, we should shirk from the exercise of looking into this. We need to look into whether they fall into the category of rape, and in what circumstances should it be called rape, and whether individual rights are being violated as a consequence of these cases being registered.”

Instances of long-time companions turning against their boyfriends, and accusing them of rape, are on the rise. Affairs gone sour, break-ups and failed live-in relationships are being taken to police by women, who charge their ex-boyfriends with rape, police say, conceding that such complaints are being lodged more frequently than before. “We do try to strike a compromise between the man and woman, who are mostly young, but we are left with no choice if a woman sticks to her stance,” a senior police officer said.

Recent examples include an IT company boss who was slapped with rape charges by his former employee, one year after she quit the job. There was also the case of a hearing-impaired man who was booked for rape after he broke up with his long-time companion. She complained to the police that he deserted her after they had lived together virtually as man and wife. Once an FIR is registered, the prospect of arrest gets real for the man in such cases. “An arrest can ruin his self-esteem, his business and public profile,” said former special public prosecutor for human rights court V Kannadasan. “Of course police have no choice but to register a case, but arrest is entirely their discretion and it should be exercised most judiciously,” he said, pointing out that a couple’s intimacy for a prolonged period should be taken into account by police while probing such cases. In the recent past, police have registered a case against controversial godman Nithyananda based on allegations made by an ex-devotee. It is for the police to unearth the truth, given the fact she had claimed that the godman raped her 45 times. Another incident involves a private company boss, who was arrested on charges of rape. Interestingly, here too, the two complaints from as many ex-employees came more than a year after the alleged rape took place. In a few of these cases, the alleged perpetrator of the crime and his victim may have shared an emotional or intimate relationship, thus blurring the line between sexual exploitation and a consensual affair. The social context remains the

fact that a large number of young professionals are increasingly living together or close to each other, say police. Sharing a roof or living-in as partners too is common in this age group, they say. But sometimes, such arrangements are brought to an end without mutual consent, leaving the couple bitter. Treasurer of the Madras High Court Advocate Association T K S Sudha, admits that some women do lodge rape complaints with the motive of exacting revenge after a relationship sours. "The Supreme Court has approved live-in relationships to an extent, as it has held that the girl is entitled to claim maintenance from her live-in partner. But, to allege rape after being in such a relationship is taking the liberty too far. It is abuse," CASE HISTORY. Hearing impaired man gets arrested on rape charges after partner accuses him of going back on his promise to marry her A rape case was registered against controversial godman Nithyananda after a devotee claimed that she was raped 45 times Managing director of a private firm was arrested after two rape cases were filed by ex-employees, a year after the incident. Section 375 of the Indian Penal Code lays down six circumstances to qualify for a rape. Of this, three are about consent, two about 'misconception' , and one is about the statutory age limit Poilce invoke Section 417 of IPC along with Section 376 (punishment for rape) while a man is arrested for rape. Section 417 deals with punishment for cheating and it prescribes a maximum imprisonment of one year with or without fine.

We had witness several cases where a women dump men and go to another men , does on that cases a MAN can cry he had been Raped? The answer is no , then why the same is reversed when a women cry for rape? If dumping your partner is crime, why the same is not crime for women? Any small child also can say such law or act is not only unfair , it is a clear injustice to men and to be termed as Blackmailing and extortion by greedy women. When two adult person stay together as per their own wish and after some time the relationship breaks, how the same can be termed as Rape? But LAW makers prefer to keep Blind eye and promote such injustice against men and if they do not stop such biased view and promote the extortion and legal terrorism in the name of Rape, the false and fabricated Rape cases will only increase and then one more law will be made or NCW/WCD will demand increase the punishment in Rape cases .First convert every break up as Rape case , then increase the crime against women statistics and then demand another new law , increase the punishment , which our great law makers, Supreme court of India and media often failed to understand . **Consensual sex is not rape: Supreme Court** , but Police/Lower court and media never ready to

accept the same. And misuse the Rape LAW as a whole sale free license in this country. Recent Judgment of Delhi Session Court, terming that "A man having sex with a women on promise of Marriage and then refuse to be termed as rape" reported in Hindustan times.

Consensual sex is not a rape: Supreme Court:-A man having sex with a girl after obtaining her consent on the promise of a marriage does not necessarily constitute rape even if he retracts on his pledge, the Supreme Court has ruled.

Such retraction by the accused would amount to rape only if the consent was obtained by coercion or threat, a bench of Justices Arijit Pasayat and D K Jain said while upholding an appeal filed by the accused Pradeep Kumar. The apex court maintained that there was no straitjacket formula for determining whether consent given by the girl was voluntary or given under a misconception of fact as it has to be decided on the basis of the circumstances and surrounding factors which led to the alleged consensual sex. "The court must consider the evidence before it and the surrounding circumstances before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary or was given under a misconception of fact," the apex court observed. Pradeep Kumar had filed the appeal against the orders of a sessions court and the Patna High Court which rejected his plea for discharge from a case filed against him by a girl who got him booked under IPC Sections 376 IPC (rape) and 406 (breach of trust) for "retracting" on his promise to marry her.

In his appeal before the apex court, the accused claimed that the victim had consensual sex with him and hence the charge of rape or breach of trust cannot be entertained.

But Delhi season court had failed to consider why she had been in a sexual relationship before marriage, is it her birth right to term any Tom/Dick or harry a rapist, if the guy do not find she is suitable for his rest of the life? When she is so concern about protection of virginity, why they go for sexual relationship before marriage? If at all a Promise of Marriage made, maximum it can be termed as Cheating or Breach of trust, but how it became a Rape? Further we witness a number of cases the girls(so called lovers) are dumping the boys also and do not marry after college, especially in those cases where the girls get better earning man in their life after ward to fulfill their dream of lavish lifestyle through marriage, so do those boys have any right in the law to file Rape case against

their cheater Girls friends? One hand as per Domestic Violence LAW, our LAW makers and all radical women activists already made live-in-relationship women had got all the legal rights (even a one night relationship) , among the college we witness maximum young boys and girls are having per-marriage sex in the name of women and sexual liberation, strong avocation by WCD ministers that in the School itself we should teach sex education among the child to stop the AIDS, continuous provocation that do not marry a unknown man, first know each other form all the aspects, as marriage is a eye opener and love is blind.. etc, on the other hand terming someone a Rapist only on the basis that the guy had refused to marry a girl after consensual sex , how much justified , only our LAW makers can answer. One hand a women will be raped by a gang of people and then will be killed and police/media will continue to search to find the real rapist years to years , on the other hand so called living greedy women will file false Rape cases , if they feel the man do not find suitable her for a real life partner due any reasons. So , in this country as a women you have all the wholesale free license to term any man a "Rapist" , let you rape the him, that does not matter!!!!

Conclusion:- that in our civil society marriage is having prominent values. That the law makers re think about 375 Cr.P.C and 417 Cr.P.C and they should be rule out that, that consent and cons equal sex is not an offence. That the breaking of love and not fulfilling the promise to marriage is not an offence. That the contributory part of the victim should be taken into account while passing judgments by the lower courts. Otherwise innocent people always suffer with false cases. This is not good for the our society. That the real cases false cases will become equal in future.

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