False Promises to Marry

Why in news?

In the recently proposed Bharatiya Nyaya Sanhita (BNS) bill 2023, if a man promises to marry a woman but never intends to, and still has 'consensual' sex with her, it will amount to a criminal offence under Section 69.

Bharatiya Nyaya Sanhita Bill 2023
• The BNS is one of three new draft criminal law Bills brought by the Union Government. • **IPC, 1860**- The Bill, which seeks to replace the Indian Penal Code, 1860, identifies 'sexual intercourse on false promise of marriage' as an offence. • **Review**- A Standing Committee on Home Affairs has 3 months to review, carry out consultations and submit its report on the Bills. • At present, the offence is not carved out separately in the IPC, but courts have previously dealt with similar cases through other provisions within the criminal law framework.

What does Section 69 say?

- **Chapter 5 of the Bill**- It is titled as "Offences against woman and children" and describes sexual intercourse by employing deceitful means.
- **Section 69** - Whoever, by *deceitful means* or *by making promise* to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.
    - **Deceitful means**- It will include false promise of employment or promotion, inducement or marrying after suppressing identity.
    - **False promise to marry**- It will be attracted only when a man makes a promise to marry a woman, with the intention of breaking it, for the purpose of getting her consent and sexually exploiting her.
- **Penalty**- Both offences will extract a penalty of up to 10 years of imprisonment.

How has IPC dealt with cases of 'false promise to marry'?

Data on Cases of False Promise to Marry
• **Delhi police data-**In 2016, a quarter of the total rape cases registered in Delhi pertained to sex under "false promise of marriage". • **NCRB data-** The National Crime Records Bureau in 2016 recorded 10,068 similar cases of rape by "known persons on a promise to marry the victim".

- **Causes**
    - When rape is committed and the promise of marriage is used to silence the victim or
    - Where the promise is made to 'convince' the person into entering a sexual

relationship.

- **IPC-** They were dealt with joint reading of Sections 375 and 90 of the IPC.
- **Section 375-** It defines rape and defines consent as "an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act."
- This section lists 7 types of consent which would amount to rape if violated including the consent taken through fear of death, hurt or intoxication.
- **Section 90**- Consent, given under "fear of injury" or "misconception of fact," cannot be considered as consent.
- **Court rulings**- In 2021, the Supreme Court reiterated that under Section 375, a woman's consent must involve an active and reasoned deliberation towards the proposed act.
- Karnataka Court has said that educated women in a pre-marital relationship cannot claim rape after the relationship is over for she is *'mature'* enough to be aware of the consequences of being in a premarital relationship.

What is the difference between false promise of marriage' vs 'breach of promise'?

- Both are distinguished on the basis of proving if the man intended to marry at the time of engaging in sex. They are dealt under two parameters.
    - **Rape**- If the promise was false, with the intention of being broken later on, this would disregard a woman's consent through a misconception of fact and would be considered rape.
    - **False promise**- The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act, as argued in *Sonu alias Subhash Kumar vs State of U.P. And Another* in 2019.
- **Supreme Court observations-** It observed that
    - **False promise**- It is given on the understanding by its maker that it will be broken.
    - **Breach of promise**- It is made in good faith but subsequently not fulfilled.
- **Activists argument-** 'Circumstances' are shorthand for social norms that uphold the status quo, reinforcing gender roles, patriarchy and caste lines.
- **Consensual sex-** The Supreme Court in 2022 held that consensual sex on genuine promise of marriage does not constitute rape.
- The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust.

What are the issues involved in proving 'intention' to marry?

- **Central issue**- It involves
    - How consent is obtained— through deceitful means, or by misconception
    - Whether the man ever intended to marry the woman.
- **Codification of offence-** Section 69 in the BNS codifies the offence instead of creating a new one.

- In its present form, the Bill doesn't dissolve the confused distinction between 'false promise' and 'breach of promise'.
- **Affect women autonomy**- Section 69 if unscrutinised may promote restrictive ideas about women, marriage and consent which hinder women's autonomy and re-victimise them.
- **Victim blaming lens**- Delhi High Court verdict on pre-marital sex shifts the burden to women to prove their consent is vitiated.
- **Law as weapon**- The women may use the law as a weapon for vengeance and personal vendetta.
- **Promotes endogamy**- The law shifts the conversation away from the real harm and abuse that women face.
- **Caste factor** – Taking the "impossibility of an inter-caste marriage" as a ground to acquit the accused of rape in fact amounts to upholding the archaic practice of marrying within one's own caste.

References

1. The Hindu- False promises to marry in new criminal law bill
2. PIB- Criminal Justice Bills
3. PRS- Bharatiya Nyaya Sanhita Bill

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