Pyaar, Promise, *Dhoka*: Feminist Questions to Law – Commentary on *Uday v. State of Karnataka* (2003) 4 SCC 46

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Abstract: This commentary is on one 'promise to marry' judgment and its feminist re-writing. Promise to marry cases involve a woman agreeing to sexual intercourse with a partner relying on his promise to marry her subsequently. In inter-caste relationships, the offer of promise to marriage as a basis for engaging in sexual intercourse raises complex issues. The impunity of the caste system means that if the promise is not followed through, the woman may not just feel betrayed, but also 'dishonoured', socially ostracized, and left with the option of approaching the court alleging rape on grounds of an absence of meaningful consent. The original judgment did not take into consideration this caste hierarchy and rejected the allegation of rape, suggesting that an 'intelligent, consenting' woman needed to be aware of the 'impossibility' of such marriages. The judgment thereby upheld endogamous caste practices. The feminist rewriting is critical of this perspective and also highlights the absence of any form of compensation to a woman who has been violated of her dignity and social status. Feminist questions on this issue require nuance, taking into consideration the caste-religion-gender intersectionality and at the same time not measuring all acts of betrayal through the vantage point of rape. This commentary proposes certain feminist questions to the law beyond the text and interpretation of existing legal provisions.

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A. Introduction

This case *Uday v. State of Karnataka,*[1] popularly categorised as a 'promise to marry' case, revolves around the concepts of marriage, consent, deception and non-consensual sex, rape. The criminal law landscape in 2003 was such that there was no statutory definition of consent in the Indian Penal Code, although non-consent had to be proven in rape trials in court. Understandably, one of the most contested terrains in any rape trial has been evidencing non consent by the prosecutrix. It may be relevant to remember that this case comes after the Law Commission Report of 2000, where a recommendation was made by Sakshi, IFSHA and AIDWA that consent should be defined to mean "unequivocal

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1 Uday v. State of Karnataka, (2003) 4 SCC 46.

voluntary agreement".[2] Rejecting the plea to define, since consent had been interpreted and pronounced by many courts, the Law Commission of India concluded "consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former".[3] Multiple changes were made to different provisions in the Indian Penal Code 2013, especially after massive protests that followed the Delhi gang rape and subsequent recommendations made by the Verma Committee[4]. One change that is particularly significant is the definition of consent that gets included as Explanation 2 in Section 375 of the Indian Penal Code. As per the 2013 amendment, "consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act".

This commentary will discuss the judgment of *Uday v. State of Karnataka* and also the dissenting opinion in the judgment and the social implications by: (a) engaging with the style of writing the judgment, which builds/constructs the arguments towards the decision and the ways in which the dissenting position counters that style and stereotypes (b) discussing the complexity of the cases on promise to marry which eventually gets to court as rape cases.

B. The intelligent, consenting woman

This character/narrative of the prosecutrix as constructed through the judgment becomes the basis for not using the provisions of rape for the case under discussion. She has been stated to be a grown-up girl of 19 years, studying in a college, residing with her parents and siblings. Her age, higher education and willingness to fall in love build her up as a decisive woman. The judgment asserts that she is aware that her lover/respondent belongs to a different caste and therefore alert to the impossibility of marriage between the two of them. Very clearly, the position taken by the honourable judges was to rule out the possibility of marriage between consenting heterosexual couples in love with each other, despite the Special Marriage Act of 1954. The Special Marriage Act is a legislation, outside of the specific religious community-based legislations (known as personal laws) which allows for inter-caste and inter-community marriages, based on the consent of the two

2 Sakshi and Interventions for Support, Healing and Awareness (IFSH) are NGOs working for women related issues. All India Democratic Women's Association (AIDWA) is also a women's organisation, affiliated to the Communist Party of India (Marxist).

3 *Law Commission of India*, One hundred and seventy second Report on Review of Rape Laws 2000, D.O.No.6(3)(36)/2000_LC(LS), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082487.pdf (last accessed on 28 February 2023).

4 A three member committee with Justice Verma as Chair, Justice Gopal Subramanium and Justice Leila Seth as members was constituted by the government of India on the aftermath of the December 16, 2012 Delhi gang rape to recommend changes in criminal law with stricter punishments and quicker trials.

people intending to form a marital union. This assumption of (im)possibility, that the judges made, becomes the rationale in the judgment, since the judgment scripts the obviousness of opposition from both families if marriage was proposed. It adds that the prosecutrix quite certainly was conscious of this impending opposition and that was the reason for keeping the love between her and the appellant secret from her parents. She also asked one Vanamala, to become a witness, as the prosecutrix had earlier confided in her and had asked Vanamala to not reveal the fact of her being madly in love, to anyone. The dissenting judgment makes a valuable argument in connection to this by suggesting a fiduciary relationship between the appellant and the prosecutrix. This is because the appellant resided in the same neighbourhood, visited the prosecutrix's house almost every day, and also talked to her, along with other members of the family. Thus it could be said that a friendship had developed between them and eventually the appellant proposed to marry her. The appellant was already a friend, someone whom the prosecutrix trusted at the time he promised to marry, owing to the nature of the relationship. While the main judgment was taking the facts and looking at the impossibility of marriage which was already known to the prosecutrix, the dissenting opinion uses the same facts to suggest friendship and trust and finally deception by the appellant. More importantly, the dissenting opinion indicates Ambedkar's views on inter-caste marriage as one of the ways of annihilation of the caste system in India. Clearly, as this view indicates, the judgment does not take cognisance of either Ambedkar's speech of 1936 during the Constituent Assembly discussions on the Hindu Code Bill in the early 1950s or the Special Marriage Act enacted in 1954.[5] There seems to be a complete invisibilisation and erasure of histories of anti-caste movements, its scholarship or even what is legally permissible in India as the judges harp on the impossibility of this marital union.

While on the one hand this was the manner in which the discourse on love and marriage was presented in the judgment, where the main purpose was to suggest that she was an intelligent woman willingly entering into a relationship with a man; on the other hand there was also the image of a consenting woman—agreeing to sexual relations. The judgment drafts the personality of a woman who often met her lover, permitted him liberties of such kind, which were likely only with someone in *deep* love. She had stealthily gone out with the appellant to a lonely place at twelve midnight and had consented to sexual intercourse. Eventually, this consensual sexual relation had occurred 15-20 times as per the judgment and without any ambiguity the judgment has pronounced that this sexual relationship occured not *only* because there was a promise to marry but *also* because the woman desired it. It is this promise to marry which becomes the contentious (legal) site between the appellant and the respondent in the case. The intelligent consenting adult woman, knowing the impossibility of marriage, will not enter into a sexual act, understanding the moral implications of that action, only because of a promise to marriage that the

5 *B. R. Ambedkar,* The Annihilation of Caste, 1936, https://ccnmtl.columbia.edu/projects/mmt/ambedkar/web/readings/_aoc_print_2004.pdf (last accessed on 1 March 2023).

respondent has made to her. There is a characterisation of consenting adults who take part in sexual intercourse, since according to the judgment "promise loses significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship".

C. The pressurized, promising man

The character of the appellant is clearly in contrast to/juxtaposed from the litigant. The respondent is discussed in the judgment only in relation to the actions of the litigant and not independently. The judgment affirms with certainty that there was no evidence that the appellant never intended to marry her. But the judge constructs a distinction between intention to marry and courage to marry. Since the latter involved the courage to disclose the contentious matter of marriage to his family members, while in the fear of strong opposition from them. It has been acknowledged in the judgment that the 21 year old young man had more than once promised marriage to the prosecutrix. The appellant was a friend of the brother of the prosecutrix who resided in the neighbourhood and frequently visited her house. There was a friendship that had developed between the two of them and the appellant proposed marriage to her. Interestingly, this is a line of argument that is not carried forward in the judgment, that there was no sexual relationship before this proposal to marry and that the promise was prefaced with caution from the prosecutrix. Although the judgment mentions that the prosecutrix belonged to Goundar community, it does not state that they are classified as Other Backward Classes(OBC) community in Tamil Nadu, while it states that the appellant is a Daivanya Brahmin. The appellant had promised a registered marriage after the completion of construction of his house.

A very important paragraph in the dissenting judgment is "Desire cannot be considered to be synonymous with consent. The prosecutrix may have been desirous of engaging sexually with the appellant, but that does not imply that she consented to sexual intercourse with the appellant. Romantic relationships cannot be presumed to create an automatic presumption of consent". It is relevant to remember a very recent judgment in another 'promise to marry' case *Anurag Soni v. State of Chattisgarh,*[6] where similar coordinates were present—made to believe, misconception, knowledge about marrying another girl, educated woman etc. The judgment read:

> *"[t]he prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that that appellant's marriage is fixed with another lady – Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for physical relationship, however, on the*

6 Anurag Soni v. State of Chattisgarh, (2019) 13 SCC 1.

> *appellant's promise that he would marry her and relying upon such promise, she consented for physical relationship with the appellant." It was held by the court "that the consent given by the prosecutrix was based on a misconception of fact and, therefore, the same cannot be said to be consent."*

There are distinctions that are being made in this judgment between sexual relation and the intention behind it which is based on a promise/trust about marriage. A very different line of argument is given in another judgment of nearly similar situations and characters. This is in *Deepak Gulati v. State of Haryana*.[7] This case involved a 19 year old girl who was meeting the appellant in front of her school for a while and both were trying to be intimate during the times they met. There was subsequently a trip to a lake near Karnal, where there was forcible sex, based on the assumption that the appellant was taking the girl to Kurukshetra to get married. Subsequently, they stayed in the appellant's relative's house, where she was forced upon with sexual intercourse on all the three days. She escaped that place, stayed in Kurukshetra university hostel for a couple of days, and left the hostel when the warden became suspicious., She reached a temple and met the appellant again where they decided to go to Ambala and marry. When they reached the bus station the father of the prosecutrix was there with the police.

This judgment proclaims that "There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was, at an early stage, a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives." Making this distinction it further states, "[t]he prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant." Like in the case on which the commentary is being written, even in *Deepak Gulati* there is a particular way in which voluntariness of the girl/woman is understood, and that action of accompanying or going with the flow, (based on a promise or trust) is erased from the argument of reaching the conclusion of the judgment.

There seems to be a pregnancy connection in many of these cases and *Uday v. State of Karnataka* was no different. Things took a different turn after the prosecutrix *discovered* that she was pregnant. In the sixth month of her pregnancy, she was compelled to disclose

7 Deepak Gulati v. State of Haryana, (2013) 7 SCC 675.

the details to her mother. At the 8th month, they had planned to go away somewhere, but the appellant failed to appear. He felt pressured by the woman and her brother, on account of the prosecutrix *becoming pregnant* and he distanced himself from her. When confronted by her brother, the appellant suggested keeping her at some other place and that he would bear her maintenance expenses and after the delivery he again promised to marry her. But this suggestion angered the family of the prosecutrix, because the promise of marriage was not executed and the date of delivery was approaching. Subsequently, a rape complaint was lodged against the appellant. In the dissenting re-written feminist judgment there is a reference specifically to the pregnancy aspect. Judge Nikita Sonavane states, "In cases of rape especially those resulting in pregnancy, the provision for providing compensation is crucial and the *Delhi Domestic Working Women's Forum v. Union of India*[8] case is a good one to cite in this context." In the said case, the court mandated the National Commission of Women to prepare a scheme for the rehabilitation of the rape victims and also set up a board for compensating the victims. The apex court directed the Government of India to take the necessary steps to implement the scheme at the earliest. As per the judgment, compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape. This is an important recommendation in the feminist rewriting of the judgment, the modalities of which need to be worked out for effective implementation.

D. To marry or to complain rape?

The Sessions court as well as the High court had held that consent was obtained by making a false promise of marriage and therefore consent was obtained through fraud and misrepresentation, and therefore this was rape and punishable under S 376 of IPC. The SC judgment rejects this argument to state through domestic and international judgments the meaning of consent and how in this case the prosecutrix had *really* consented. One such use of meaning of consent from *Rao Harnarain Singh Sheoji Singh v. State*[9] was "consent on the part of a woman as a defence to an allegation of rape, requires voluntary participation, not only after the *exercise of intelligence*, based on the knowledge, of the significance and *moral quality of the act*, but after having *freely exercised a choice* between resistance and assent". "It always is a voluntary and *conscious acceptance* of what is proposed to be done by another and *concurred* in by the former." Consent in *Vijayan Pillai v. State of Kerala*[10] meant *active will* in the mind of a person to *permit the doing* of the act and *knowledge of what is to be done*, or the nature of the act that is being done is essential to consent

8 Delhi Domestic Working Women's Union v. Union of India, (1995) 1 SCC 14.

9 Rao Harnarain Singh Sheoji Singh v. State, AIR 1958 P&H 123

10 Vijayan Pillai v. State of Kerala, 1989 (2) K.L.J 234.

to an act. The manner in which the portrayal of the prosecutrix had been crafted in the judgment, the above mentioned arguments on consent could only conclude that there was consent to the sexual relationship, which prosecutrix had given with full knowledge of the nature and consequences of the act. What is absolutely missing from this line of legal argument is that consent is contextualized within a promise to marry. There seem to be two critiques to the line of argument used: A) the knowledge of marriage and the reality of being married are dissociated. It seems to suggest that a promise to marry cannot drive the woman to have faith and enter into what is 'natural' and 'legitimate' within marriage—sexual relation. She needs to remember and remind herself of the moral consequences on her if the faith is broken, and therefore not indulge and exercise any sexual liberty even though it is within the context of a promise. B) by positing consent in binary to resistance, what it takes away is the hesitation that can be intrinsic to any consent, especially in a situation where the consent comes as a consequence of a belief, trust and faith to marry. The unquestioned significance that marriage occupies in the lives of most women cannot be denied co-existing with the stigma around sex before marriage. In the context of this societal reality, it is necessary to locate consent within that social importance that the institution of marriage occupies.

The second kind of judicial precedents that have been used suggest that *failure to keep a promise* on a future uncertain date *does not* always amount to *misconception* of fact at the inception of the act itself. In a nearly similar case, *Jayanti Rani Panda v. State of West Bengal,*[11] the Calcutta High court suggested that "if a *full grown girl* consents to the act of sexual intercourse on a promise of marriage and *continues to indulge* in such activity until she becomes pregnant it is an *act of promiscuity* on her part and not an act induced by misconception of fact." It is equally interesting to critically see this argument in which a promise to marry is seen as *any* promise, taking off the social and moral implications that kind of promise carries. Failure to keep a promise and the failure to keep a promise to marry at a future date has completely different repercussions on the act that happened before marriage with that uncertain future promise.

There is one judgment quoted from Patna High Court which states that "had the lady known that ultimately she would be deserted, the facts and circumstances stated above and materials placed would go to show that she would have refrained from giving such consent. It was a fraud that was practiced on her or she was deceived by giving false assurance." This line of argument was dismissed interestingly using a valid reasoning that each case has its own peculiar facts and that different tests can only guide the judicial mind to take case specific decisions.

Since in all of these cases, consent seems to be the opposite of rape, it may be relevant to quote whether the judgments have a position on rape, which is not merely a legal definition but a social understanding. In both *Deepak Gulati* and *Anurag Soni* there is a comment on rape that reads absolutely similar: "Rape is the most morally and physically

11 Jayanti Rani Panda v. State of West Bengal, 1984 Cri LJ 1535.

reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks". This paragraph appears in both the judgments verbatim and makes this writer reflect upon the need to understand the veracity of it. It is clearly suggesting that rape is degrading to a woman. One is left to wonder that by describing rape with the adjectives that it does, is it a suggestion that what has happened in the specific case at hand is (not) equivalent to similar degradation of the woman's dignity and hence by that extension the act could or could not be pronounced as rape, the non consensual sex.

What is most disturbing in the *Uday v. State of Karnataka* judgment is that the reference to caste interplaying with marriage does not seem to determine the decision at all. While portraying the characters, two issues were raised—a) the impracticality of the imagination of marriage since they belonged to two different castes and b) the woman belonged to OBC caste and the man to a Brahmin caste. The argument does not proceed in this line at all that in the reality of social impossibility, there is a greater importance on the faith/trust/promise made by the appellant. The promise overpowers the social impossibility (ironic that the judiciary uses this logic, because there is no legal impossibility), and the appellant clearly succumbs to that social pressure and cannot keep his promise and only reinforces the social impossibility of inter-caste marriage. The hope of the prosecutrix to transgress caste boundaries is not looked at with any positive-ness, rather knowing the impossibility of inter-caste union at a future date only corroborates her voluntariness to indulge in sexual liberties, and therefore rejects the validity of the complaint of rape which is non consensual, forcible sexual act. Within the legal framework, ironically, it is only the clause of rape that exists for women to use and seek redressal in situations like desertion after promise to marry.

E. Re-writing

The re-written dissenting feminist judgment, as has been excerpted above, engages with the question of (non) consent since that becomes the fulcrum of any rape trial. It argues for the law to understand the 'consent' given as tainted or one that has been obtained by deception. The false assurance that was made by the appellant is what prompted her to have sexual relationship with him—making it evident that she was of the belief that she would be treated as a married wife during and after this sexual relationship, either before or after marriage. The appellant also ensured that the prosecutrix kept the knowledge of

the sexual relationship a secret from everyone else. The re-writing underscores the feminist perspectives about how rape becomes a test of the complainant's (moral) character and (sexual) integrity and thereby her trustworthiness as a witness. The second rationale used in the rewriting is the always already held assumption of consent in any romantic relationship. However, it also asserts that consent is mistaken as desire in any romantic relationship and there is an overlooking of gendered power hierarchies in any heterosexual relationship. The third argument made in the re-written judgment highlights the complexity of inter-caste sexual relationships and how far questions of sexual autonomy can even be acknowledged in such situations. Based on the above three principles, the feminist re-written judgment affirms rape in the current case for discussion.

F. Righting: Feminist certainty or ambiguity?

In the 1979 Open Letter post the Mathura rape,[12] the four law professors as letter writers had questioned the Supreme Court in the context of making a distinction between passive submission and consent. There is a clear difference in law, and common sense, between 'submission' and 'consent'. Consent involves submission; but the converse is not necessarily true. Nor is absence of resistance necessarily indicative of consent. There are two reasons to refer back to Mathura, firstly like post Mathura, post the Delhi gang rape substantive changes in criminal law took place. Secondly, like Mathura which raised the question of complexity of consent, promise to marry cases also put forth the ambiguity around consent. In the 2013 amendment, consent has been defined as "unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication communicates willingness to participate in the specific sexual act". In my 2018 essay titled 'Interrogating (Non) consent in Sexual Intimacies and infringements: Mapping the socio-legal landscape in India', I raise this question, whether by codifying 'unequivocal agreement' the law is taking a feminist standpoint perspective or making it even more difficult for rape cases to move towards conviction?.[13] My sole contention is (after reading through reported promise to marry turned rape cases between 2013-14 as well as a few Delhi High Court judgments around these cases) that the combination of love, sex and *dhoka* (betrayal)...is what makes consent an extremely complicated matter and combined with the societal perspective on compulsory heterosexual marriage as an

12 The Mathura rape case was about a girl who was raped in police custody and the judgment had commented on past sexual history of the tribal girl Mathura as 'habituated to sexual intercourse' and absence of stiff resistance around the vaginal area. There was an Open Letter by four law professors to the Chief Justice of India post the judgment that had pronounced no rape. The autonomous women's movement in India had raised a nationwide protest and the first set of rape law reforms happened in the 1980s as a result of that. See: An Open Letter to the Chief Justice of India (1979) 4 SCC (Jour) 17.

13 *Rukmini Sen*, Interrogating (Non) Consent in Sexual Intimacies and Infringements: Mapping the Socio-Legal Landscape in India, in: Gita Chaddha / Joseph M T (eds.), Re-imagining Sociology in India: Feminist Perspectives, London and New York 2018.

institution, it becomes impossible for women to not use the rape provision, to establish her moral righteousness in a society which continuously constructs surveillance over her chastity. However, the possibility of the rape provision and the need to use it is at the heart of the *impossibility* of addressing breach of (sexual) trust through criminal offence *only.*

An SC bench of justices Dhananjaya Y Chandrachud and MR Shah, in March 2021, elucidated the legal position that a charge of rape is not applicable in every case where a man does not marry his girlfriend after a promise. According to the top court, it will not amount to an offence of rape if the promise to marry was not false when it was given but the man, for some real reasons, could not get married to his girlfriend in future. Lately, courts have been coming around to the notion that there's a difference between making a false promise, and not upholding a promise subsequently. It all comes down to how the legal system understands consent, autonomy, and the norms pertaining to sex and gender as they relate to marriage. On the other hand, refusing to marry someone because of their caste identity after promising to do so — and using that promise to convince them to enter into a sexual relationship — seems fairly unethical on the face of it; criminal even, and in a 2022 judgment, the Bombay High Court agreed to the proposition.[14]

It is in this context that I would like to conclude with a few thoughts around ambiguities that exist in many discussions of heterosexual intimacies:

Firstly, the making of rape as the signifier to all forms of sexual transgressions, makes it impossible to talk about multiple forms of sexual intimacies that men and women engage in various contexts and situations, and continuously negotiate and re-arrange these intimate relations.

Secondly, is it necessary or even desirable to look at all such instances of breach of trust/promise as necessarily potential rape? Can feminism provide any other language to articulate this aggrieve and transgression? Is it that by reinforcing and reusing the rape provision even the feminist discourse is also prioritizing marriage as the institution within which legitimate sexual relation is accepted or imagined both by the legal and the social?

Thirdly, how does a new discourse on the sociology of love and intimacy develop taking into consideration questions of caste, class, community-based power that cuts into any such relational process? While for the judges in *Uday v. State of Karnataka,* there is an impossibility of such love and for the rewritten feminist dissenting judgment, the caste dimension needs to be absolutely crucial to conclude that what transpired was rape, there needs to emerge a more nuanced legal feminist standpoint building upon the latter and yet looking at complex histories of power, identity, love and deception.

Fourthly, as much as it is difficult to accept the reasoning of the intelligent, consenting woman that this judgment makes, it is equally troubling to accept the absolute opposite of it—that is the always, already unknowing, victimised woman. The only way to address this victimisation or the woes of women has been through the proliferation of rights. However, as Wendy Brown says, "although may attenuate the subordination...to which

14 Kashinath Narayan Gharat v. State of Maharashtra, (Criminal Appeal No.119 of 1999).

women are vulnerable...they neither vanquish the regime nor its mechanism of reproduction".[15] Unfortunately the law and the rights discourse provides us space to operate within these compartmentalised narratives, thereby "encoding a definition of women premised on our subordination" but feminist politics surely has more space for ambiguity within it to understand the intersectional complexity of any situation.[16]

I want to end by using Katherine Bartlett's proposition of feminist practical reasoning—where she proposed that this reasoning does not approach issues as dichotomized conflicts, but as dilemmas with multiple perspectives, contradictions, and inconsistencies.[17] These dilemmas, ideally, do not call for the choice of one principle over another, but rather imaginative integrations and reconciliations, which require attention to particular context. Conversations around dilemma/ambiguity seems to be the hour of the day, which does not mean to never use rape in situations of promise to marry not kept; but a more judicious reasoning and maybe a look into the outside of the law, in feminist everyday praxis, is necessary to reclaim the legal tensions in these kinds of cases.

15 *Wendy Brown*, Suffering the Paradoxes of Rights, in: Wendy Brown / Janet Halley, Left Legalism/Left Critique, Durham 2002.

16 Ibid., p. 218.

17 *Kathrine Bartlett*, Feminist Legal Methods, Harvard Law Review 103 (1990), pp. 828-888.