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Remedies for Breach of Betrothal: The Quest for Survival?

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Abstract

While the English Law Reform (Miscellaneous Provision) Act 1970 abolished actions for damages for breaches of marriage promises, it is not applicable in Malaysia as the existing general rule of betrothal is derived from the Malaysian Contract Act 1950 (Act 136) and the obligation to follow the English Law Reform (Miscellaneous Provision) Act 1970 has been cut off from Malaysian law by virtue of the cut of date under the Civil Law Act 1956. Using the comparative method, where decided cases were made in the US, India and Nigeria, it can be concluded that embarrassment, anxiety, or emotional distress being the common traditional reasons for the remedy of breach of betrothal continued to be supported by other supporting reasons justifying the continuity of remedial breach of betrothal. This includes transfer of property made by the aggrieved party in consideration of the marriage pledge or when the default party benefitted from the betrothal or pregnancy induced by betrothal.

Keywords: Betrothal, Breach, Damages, Enforceable Contract, Decided Cases

Introduction

It is not necessary to have a written agreement or joint promise that is expressly worded in order to execute betrothal; rather, just showing that the commitment was deliberated upon is enough. This can be seen in the case of *Harvey v. Johnston* [1848] 6 CB 295, in which the court determined that the defendant could be sued based on a promise to marry the plaintiff made in exchange for the plaintiff travelling to Ireland at the defendant's request to get married. From their actions, it is implied that the lovers had made up their minds to get married. In the case of *Dorris Rodrigues v. Bala Krishnan* [1982] 2 MLJ 77, Ajaib Singh J declared that damages for breach of betrothal are still valid in Malaysia. While the English Law Reform (Miscellaneous Provision) Act 1970 abolished actions for damages for breaches of marriage promises, it is not applicable in Malaysia as the existing general rule of betrothal is derived from the Malaysian Contract Act 1950 (Act 136) and the obligation to follow the English Law Reform (Miscellaneous Provision) Act 1970 has been cut off from Malaysian law by virtue of the cut of date under the Civil Law Act 1956 (Act 67).

The objective of this article is to discuss the legal position of betrothal in Malaysia in the absence of any explicit provisions addressing the subject of betrothal, as the Law Reform (Marriage and Divorce) Act of 1976 (Act 164) does not outline any remedies for a promise to

marriage breach. It is therefore crucial that the discussion in this article assess the legality of the betrothal contract and the remedies available to the aggrieved party in the event of a betrothal breach.

Literature Review

Discussions on promise to marry and its legal remedy is a subject debated by Western writers as early as 1920s, where debates on the common law and civil law on breach of betrothal was deliberated (Hadley, 1927). Recent discussion on betrothal was made in 2021 (Ndolu et al., 2021). Although there is lack of comprehensive written materials, there are decided case law which has deliberated on the issue of breach of betrothal since Malaysia's pre-Independence. In the absence of comprehensive discussion of betrothal in Malaysia, this discussion is to fill the gap.

Methodology

The discussion is made by reference to the Malaysian statutes, i.e. Act 164, Act 67 and Act 136 as well as decided cases on this subject matter. Comparative study with the position in selected countries, i.e. UK i.e. the UK Law Reform (Miscellaneous Provision) Act 1970, US Heart Balm laws, Indian Contract Act 1872 and Nigerian Contracts Act are made. Reference to decided cases on breach of betrothal in these selected countries are made for better understanding of the application of the law on breach of betrothal.

Results

Decided Cases on Breach of Betrothal in Malaysia

The defendant had agreed to marry the plaintiff in the pre-Independence case of *Mighell v. Sultan of Johor* [1894] 1 QB 149, but he broke his own word and abandoned the plaintiff. Despite the fact that the case was heard by an appellate court, the plaintiff was not given any damages since he had been granted immunity from civil litigation. Ironically, the idea of a contract was ignored in this case simply because of his position as a monarch, and at that time, the subject of the appropriate forum and the application of Muslim law is far from being contested.

After Independence, the issue of a broken engagement is still brought up in court. The plaintiff sued the defendant in the case of *Dorris Rodrigues v. Bala Krishnan* [1982] 2 MLJ 77 because the defendant breached the betrothal by getting married to a different woman. The High Court thought that \$5000 in damages should be given to Dorris as compensation for her injuries. The court in this instance then emphasises that, although the Law Reform (Miscellaneous Provisions) Act 1970, which reigned in England, which abolished the promise to marry as a cause of action in court, the breach of the promise to marry can still be found as a cause of action in court. Due to the fact that Malaysia has past the deadlines, it is not mandatory for Malaysian courts to use English common law and English equity principles. According to Ajaib Singh J, Malaysia is where allegations for breaking a marriage vow can be made.

In the case of *Lau Pin Sien v. Kong Chung Sng* (2015) MLJU 35, one of the parties entered into a promise with a woman who was already married but did not live with her husband. Every time the defendant assured the plaintiff that he would marry her after the passing of her spouse, a vow to wed automatically followed. In addition to her vows to marry him, the

plaintiff had already moved in with him. She also paid for their engagement party, their international travel, and their wedding photos. However, the defendant's refusal to wed the plaintiff after her spouse passed away was viewed as going against what he had promised to do under the marriage contract. Based on the information provided, the court determines that the plaintiff had relied on the defendant's promise to marry her, and as a result, the court will automatically assume that the plaintiff has received high consideration under the terms of the promise to marry between the defendant. The second conclusion made by the court is that the defendant had profited from his own wrong by relying on illegality, which is against public policy, to keep his vow to marry, exploiting the Plaintiff's status as a married woman. The plaintiff was awarded damages based on her loss on all of her expenses as a result of the defendant's breach of the commitment to marry after the court had taken into account all of the circumstances.

In *Sin v. Hong* (2017) MLJU 2063, the plaintiff and defendant connected through a dating service in 2011. They then entered into a sale and purchase contract to buy a double story detached house in Shah Alam, Selangor for RM1.4 million because they knew each other very well. The plaintiff sold his half interest in the property and gave the defendant his part. By signing the required paperwork, this transaction was completed in a law office. The Plaintiff received no monetary compensation for the aforementioned move. Due to the plaintiff's activities, the defendant was led to believe that the plaintiff had marriage aspirations. But eventually, the plaintiff told the defendant that he has a new girlfriend. The plaintiff was believed to have broken the vow to marry the defendant, which devastated the defendant. After then, the plaintiff asked the defendant to make arrangements for the transfer of his part of the property to her. The transfer was given to the defendant as a present by the plaintiff as recompense for the defendant's broken engagement. The plaintiff transferred his part of the property to her, and the court determined that this was an appropriate kind of compensation.

Removal of Remedies for Breach of betrothal in UK

Since the early era, betrothal is seen as a social and emotional subject matter which relied on the state of mind of promisor and promisee. The law of contract under the common law is based on the theory of consideration. The state of mind of the promisor, is important in connection with the *consideration* for his promise, the common law holding that nothing can function as consideration and "pay for" a promise unless it is exactly what the promisor asked for and is intended by the promisor to be the "binder" or payment for which he is exchanging his promise. Some scholars argue that a promise to marry is not demanding or thinking about anything to act as the exchange and binder for his emotional state of mind. The promisor makes extravagant avowals of deathless love and faith, whether or not the other returns the affection. The promise of the other party is not the consideration because no consideration is asked for under the historical legal meaning of that word. This argument is inclined towards the formation of the idea that breach of betrothal should not be cause of action in court as it may seem that betrothal can be viewed different from the ordinary contract.

Similar to marriage vows, it has been argued since 1919 that sex and infidelity cases should be settled out of court because they do not convey the intention to make them legally binding. In the case of *Balfour v. Balfour* [1919] 2 KB 571, Lord Justice Atkin stated that although there may be other parties who would be considered consideration for the agreement, they are not

contracts. This is so because the parties did not intend for any legal repercussions to follow. As a result, these agreements fall completely outside the purview of contracts. One of the justifications given by the Commission tasked with advising Parliament prior to the UK removing the power to seek damages for breach of betrothal in 1970 by the Law Reform (Miscellaneous Provisions) Act 1970 was to stop gold mining. Additionally, certain US states discovered that breaches of betrothal were utilised unfairly for payoffs, extortion, and contempt. Additionally, it hurt the wrongful party's family members, as demonstrated in the case of *Doe v. Roe* [California Court of Appeal, 267 Cal. Rptr. 564].

Development of Breach of Betrothal under the US, Indian and Nigerian Law

The US Heart Balm laws are breach of promise rules that govern promises to marry. If the person lives in a state where heart balm statutes are not enforced, they will not be able to sue for breach of promise to marry. According to the Heart Balm laws, a promise to marry someone worked in the same way as any other legally enforceable contract. This means that if someone does not follow through on their agreement to marry someone else, they may be sued for breach of contract. The benefits to be gained from the marriage, any losses incurred as a result of the broken promise to marry, and any injuries suffered as a result of the broken promise are normally the centre of lawsuits over a broken promise to marry. Humiliation, anxiety, and depression were all commonly compensated injuries. Approximately half of the states in the United States nowadays allow a lawsuit for breach of a promise to marry.

In cases involving a breach of a promise to marry, there is no set amount for the various sorts of damages that can be claimed. Despite the fact that a promise to marry is fundamentally a contract, several jurisdictions allow damage awards that are generally only accessible in tort cases. Damages for financial losses, compensatory damages, and punitive damages are some of the types of damages that may be awarded.

In the US, a plaintiff may be able to obtain damages to cover any financial losses incurred as a result of the breach of the promise to marry. This can include both future and past losses, such as those incurred in the planning of a wedding, the loss of a property or residence, or the loss of a quantifiable prospective advantage that would have arisen from the marriage. Next, for the compensatory damages, it is damages awarded to compensate the non-breaching party for losses sustained. This could include harm to the plaintiff's health, emotional state, or reputation in a breach of promise to marry case. While under punitive damages can be awarded towards the claimant whenever raised breach in the promise relating to fraud, violence, and malicious intention. In addition, it can be considered as an obstacle to other people from involving in brutal behaviour like reckless, offensive and hazardous because the punishment will be served against such acts.

One of the cases that can be highlighted in regards to how the court in the USA deals with the cases on the breach of promise to marry is the case of *Stanard v. Bolin* [1977] 88 Wn.2d 614, 565 P.2d 94. In this case, the plaintiff and defendant were introduced by their mutual friends and their courtship began shortly thereafter. During their relationship, the defendant told the plaintiff that he was worth more than \$2 million dollars, travelled with the defendant and was intending to retire in two years. Another promise stated by the defendant where the plaintiff does not need to work anymore, he would take care of her two teenage sons and last

assured the plaintiff's mother that she would never be in need. After hearing all the promises expressed by the defendant, in September 1975, the plaintiff agreed on a proposal to marry proposed by the defendant and from that she was served an engagement ring and an appropriate residence for her. On the basis of this commitment, the plaintiff provided notice to her employers, listed her home for sale, and sold the majority of her belongings at a public auction. After making all of the necessary arrangements and making all of the required preparations for the wedding the defendant announced a shock news by stating that he wanted to cancel the wedding. Whenever the plaintiff hears that news, she gets shocked and causes her to become unwell, losing sleep, and gaining weight. Not just that, she also had to take her house off the market and repurchase her items at a higher price than she had originally sold it for. Lastly, the plaintiff was humiliated and mocked by her friends and neighbours on a social level.

In this case, the court decided that the breach of betrothal action to be kept as a quasi-contract, quasi-tort action for the recovery of foreseeable specific and general damages caused by the defendant's breach of promise to marry. The defendant owed the plaintiff damages for mental distress, harm to health, and loss of reputation, according to the court. In addition, the court determined that a rejected fiancé would no longer be compensated for lost financial and social opportunities as has been anticipated to obtain if she marries the plaintiff.

The Indian court held that it is well known law that a breach of betrothal is actionable, and damages and compensation can be granted for such a breach. This can be observed in the case of *Prema Korgaokar v. Mustak Ahmed*, AIR 1987 Guj 106, (1987) 1 GLR 462. A claim for damages or compensation may be maintained if the plaintiff can establish that there was a clear actionable violation.

It is fair for the victimised party to recover all of those costs under Sections 73 and 74 of the Indian Contract Act 1872 if one party has incurred expenses based on a promise to marry made by the other party but afterwards broke the betrothal for unreasonable grounds. The compensation for loss or harm brought on by another party's breach of contract is highlighted in Section 73. The party who suffers loss or harm as a result of a breach of a contract of promise to marry is entitled to compensation. There are, however, exceptions to this rule, and any distant or indirect loss or harm sustained as a result of the violation will not be compensated by this payment. According to the court's ruling in *Laxminarayan and Anor. v. Sumitra Bai* (AIR 1995 MP 86, 1995 (0) MPLJ 148) the damages must be sufficient in order for compensation to be granted. When a girl is seduced and subjected to sexually explicit talk under the pretence of a marriage proposal, resulting in pregnancy, an example of significant compensation is given. The quantum of damages will vary, depending on the specific accusations.

Then, Section 74 stated that the Court will not permit more damages if the parties repair the damage in accordance with this section, but that it may still do so in certain circumstances if it is reasonable to award a smaller sum. The victim receives fair compensation as a result, but is not punished. The accused participated in sexual conduct when the prosecutrix believed he would marry her, according to the court, which found that the accused's behaviour proves he never intended to wed her.

In the case of *State v. Narender @ Nikhil* (Additional Sessions Judge) (Special Fast Track Court)-01, West, Tis Hazari Courts, Delhi, 16 May 2014), which was decided a year later, the prosecutrix had sexual relations with the defendant because she thought he would honour his vow to marry her. He was only attempting to take advantage of the prosecutrix and had no such intention. The evidence shows that the accused kept the prosecutrix under the false pretence that he would marry her and then engaged in sexual relations with her. Despite the fact that the accused made the promise to marry the prosecutrix only to entice her into a physical connection and had no intention of marrying her in the first place, the prosecutrix continued to engage in sexual activity with the accused, believing his promise to be true. The court determined that it is fair to give the offender a substantive punishment. The court further emphasised that while rape is abhorrent in terms of itself, it takes on an inhumane and barbaric quality when the perpetrator has physically harmed the prosecutrix and violated her soul before refusing to wed her despite having made a pledge to do so.

In a recent *Mandar Deepak Pawar vs. State of Maharashtra*, 2022 LiveLaw (SC) 649 case, the Indian Supreme Court ruled that even if premarital intercourse was consensual, it was still rape if the defendant agreed to wed the plaintiff. This is the case because it is alleged that the plaintiff was duped into thinking the parties would eventually get married and that the sex was performed without her full consent. In order to prevent this, parties should be compensated.

Here, by making reference to the aforementioned situations, it is clear that misleading another party in order to obtain something—in these two circumstances, having a sexual relationship—falls under the definition of misperception. The victim of a misconception act is not seen as a valuable end in and of themselves, but rather as a means to the perpetrator's end. Additionally, it makes it more difficult for the person who is being tricked to reach an informed decision on the matter at hand (Suprpto, Nadi, 2020). In the *State v. Narender @ Nikhil* case, for instance, it can be said that the prosecutrix was subjected to unwelcome physical contact by a perverted male adult since she would not have engaged in a physical connection with him if she had known he would not marry her. Her agreement was obtained by lying and misrepresenting the facts. Therefore, it makes sense to bring this matter to court if it results from a broken engagement pledge. This is to make sure that the victim who was coerced into engaging in sexual activity they otherwise would not have is fairly paid.

In addition to the issue of engaging in sexual activity under the influence, there are also instances when the party who was wronged became pregnant following sexual activity as a result of a betrothal that was later broken.

Chandanlal visited Mehtar's home in the matter of *Laxminarayan and Others v. Sumitra Bai* (AIR 1995 MP 86, 1995 (0) MPLJ 148) and proposed a marriage between his son Laxminarayan and Sumitra Bai, Mehtar's 16-year-old daughter. After making the aforementioned proposal to Mehtar, Laxminarayan started going to Mehtar's house to convince Sumitra Bai to live with him because they were getting married. After a "mangani" ceremony, where the plaintiff and defendant engaged in sexual activity, the couple started living together. Later, the defendant insisted that there had been no marriage at all, refusing to acknowledge that any kind of ceremony had taken place. At that point, the plaintiff was pregnant, a Panchayat was called, and a police report was made. Sumitra Bai filed a lawsuit against Laxminarayan, the

defendant, seeking damages for breaking their engagement. According to the court's ruling in favour of the plaintiff, a woman's dignity in Hindu society is like a glass pan that shatters with the slightest injury. According to the court, the defendant's refusal to acknowledge the 'mangni' ceremony and the marriage that resulted from it damaged the plaintiff's self-respect because she believed she was lawfully wed to the defendant.

Similar to India, Nigeria's betrothal had resulted in significant financial commitments from one of the parties. In the case of *Ezeanah v. Atta* (2004, LPELR - 1198 (SC)), the appellant and the respondent had a connection in 1994 that led to the respondent paying for her tuition fees after she continued her studies in England. It demonstrates that the respondent's affection endured while he was in England after he made the decision to travel from his native Nigeria to join the appellant in London. Additionally, the respondent gave the appellant money in order for her to buy the contested land in Abuja. Although the respondent signed the certificate of occupancy, the appellant was the one who paid for the land when it was purchased. The respondent made the choice not to deliver that certificate of occupancy because of the conflict and tension in their relationship. The appellant then filed a claim for possession of the property with the Abuja High Court, asking for declaratory, mandatory injunctive, and damages reliefs based on her signing and completing the land application form and paying the N7,000 application cost. The respondent countered that since the appellant had broken his engagement to marry her, he was no longer obligated to pay her for the property. The Trial Court's ruling, which favoured the Appellant, was upheld by the Supreme Court. Hence, it was held that a pledge to marry cannot result from the mere exchanging of love and affection. Therefore, in order for premarital gifts to be considered gifts in furtherance of the parties' decision to marry, they must be directly related to that agreement.

Conclusion

From the discussion above, it can be inferred that there are important legal issues that should be taken into account in addition to the traditional reasons of embarrassment, anxiety, or emotional distress when deciding how to proceed with the approach to determine the remedial status of a breach of betrothal. First, when a betrothal is involved, a dispute can develop over the transfer of property made by the aggrieved party in consideration of the marriage pledge. Second, when one of the parties entered into the marriage promise and later broke it, profiting from the other party's situation. A substantial consideration should also be given to the aggrieved party's subsequent pregnancy as a result of sexual activity because the betrothal was broken by the promisor later on.

Discussion about the deadline for fulfilling the betrothal is another important topic to consider. If a deadline has been set for the marriage vow to be fulfilled, it goes without saying that it must be fulfilled by that deadline; if no deadline has been set, it must be fulfilled within a reasonable amount of time. Although it can be argued that a simple postponement may not be legal in a legal proceeding, in some exceptional circumstances if the postponement was made because one of the parties had no intention of continuing the marriage, the court may find that this is a constructive breach.

This article contributes to the literature on the legal position of betrothal in Malaysia in the absence of any explicit provisions addressing the subject of betrothal, as the Act 164 does not outline any remedies for a promise to marriage breach. In the absence of comprehensive

discussion on breach of betrothal in Malaysia, this article provides extended discussion on factors of importance for courts' consideration in the assessment on compensation for breach of betrothal.

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