

Cruelty As A Ground For Divorce Trends Through Ages: A Study

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ABSTRACT: Through ages, women in India have had to face atrocities at all stages of life in various forms. In a matrimonial relationship they have had to suffer mental and physical trauma and yet they were expected to stay loyal and obedient to their husbands. With the adoption of a rights-based Constitution, this lowly position of women has been sought to be changed. Many legislations have been enacted to protect the women and their rights from being infringed and thereby giving them freedom and power to oppose the atrocities being committed on them. Cruelty in a matrimonial relationship was recognized as a ground for divorce in as late as 1976 through an amendment in the Hindu Marriage Act, 1955. Cruelty against husbands by the wives surfaced up not very long ago and is an equally important issue of concern. This paper attempts to study cruelty as a ground of divorce in India in the present context especially pertaining to the Hindu personal laws.

Keywords: Hindu customs; cruelty; divorce; mental cruelty; cruelty against husbands.

I. INTRODUCTION

This India is a diverse country which has been the birthplace of various religions such as Hinduism, Buddhism, Jainism and Sikhism. Through ages the country has witnessed different forms of religious practices and customs and its impact on the lives of the people. Till a very recent time, Hindu families and the customs performed by them were drenched in age-old customs and traditions. For a Hindu, marriage is obligatory and sacramental and not a mere contractual relation as it is for the Muslims. It is considered as a bond of seven births, ordained by gods. According to the Vedas, “the aims of a Hindu marriage are dharma (practice of religion), praja (progeny), and rati (sexual pleasure). All Hindus have to pass through four Ashrams (stages) in his life-cycle - Brahmacharya (celibacy), Grihastha (householder), Vanaprashtha (proceeding to the forest for the pursuit of higher learning), and Sanyasa (renunciation of the world). All religious texts of the Hindus unanimously agree that Grihastha (householder) is the most important of all the ashra”.¹

Customs form an important source of law and nevertheless many of the personal laws of the country are derived from ancient customs. A hesitant effort to codify the personal laws of the Hindus was made in as early as 1920; however, the proper codification took place in 1955 and 1956 when four major legislations were passed by the Parliament. The legislations were The Hindu Marriage Act, 1955; The Hindu Adoption and Maintenance Act,

¹Pothen, S. “Divorce in Hindu Society”, 20 Journal of Comparative Family Studies, 377, 381, (1989).

1956; The Hindu Succession Act, 1956 and The Hindu Minority and Guardianship Act, 1956. Legally speaking, Hindus by religion, Jains, Buddhists and Sikhs are regarded as Hindus² and are therefore governed by the aforementioned acts. Similarly the Muslims are governed by The Muslim Personal Law (Shariat) Application Act, 1937 which are unlike the Hindu law, un-codified.

II. DIVORCE UNDER THE HINDU LAW

It is said that a house is a cursed place where women is not respected and that a family which accord respect and reverence of women is a place of happiness and prosperity.³

There are many misnomers regarding the position of women in the ancient times. Women were not always considered to be inferior to men. According to the Rig-veda, women were equal to men in respect of “access to and capacity for the highest knowledge, even the knowledge of the Absolute.”⁴ In a matrimonial alliance, the wife was given the same respect and position as the husband in matters of religious rights and she was also free to participate in religious ceremonies along with her husband. Thus the Rigveda accorded the highest social status to the qualified women those days.⁵

It was Manu who gave women a vulnerable position in the society. According to the Manu Smriti a wife was supposed to be servile to an adulterous and bad husband. She could not marry after the death of her husband but the latter could re-marry in case of death of the former. According to the Manu Smriti text “the husband had also the right to beat the wife if she committed crimes.”⁶ Following this, in the post-Vedic period the woman lost her individuality and was completely dependent upon her husband for her happiness and existence. Any act of the husband such as unfaithfulness, cruelty, drunkenness and such was to be ignored and she was expected to be obedient and faithful. The subjugation of women led to their lack of education. Marriage at an early age and thereafter the responsibility of handling the household chores made her less independent and led her away from public activities. Moreover the adoption of several social evils such as Sati, dowry, child marriage and prohibition of widow remarriage made it even for miserable for the women to live according to their own terms. A result of all these led to a degradation of the position of women in the society.

According to the Hindu society, marriage is a sacrament. Due to the fact that marriage is more sacramental than contractual, the concept of divorce was not known in the Hindu society earlier times. “It was considered to be

² § 2, Hindu Marriage Act, 1955.

³ See- K. Sundri, *Quest for Gender Justice*, 115 (Sebasti L. Raj, S.J., 1991).

⁴ S. Vats and Shakuntala Mudgal, *Women and Society in Ancient India*, 1 (1999).

⁵ Kaur, Sukhpal. “WOMEN'S RIGHTS: A HISTORICAL PERSPECTIVE.” 70 *The Indian Journal of Political Science*, 121, 126 (2009).

⁶ *Supra*, note 4.

indissoluble.”⁷ Various ancient thinkers like Atri, believed that “under no circumstances should a woman be divorced or abandoned.”⁸ However there are also sufficient evidence on the fact that although divorce was not prominent in the Hindu society, it did exist amongst them. According to the Manu Smriti, a man could abandon his wife if she did not conceive within eight years or if the child died within ten years or if the wife gave birth only to girl child within a period of eleven years of marriage. Not only this, the text says that a man should leave his wife if she is sharp tongued or if she pursues intoxicants or if she has a paramour and indulges in immoral conduct. “A wife who persistently does what is unpleasant and unfavorable to her husband, who suffers from diseases like leprosy, who ill- treats the household servants, and who squanders away her husband's hard-earned wealth, should be divorced without delay.”⁹

Cruelty as a ground of divorce was not prevalent before the codification of laws in 1955-1956. It was in the Renaissance period of 19th and 20th century that finally, movements were initiated to bring about a positive change in position of women. The reform movements and organizations started by Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar created pressure which led to a “change in the attitude towards marriage and divorce”.¹⁰ One such example was the passage of the Civil Marriage Act, 1872 which led to enforcement of monogamy. Before Independence, provinces such as Baroda and Kolkata brought about laws which permitted dissolution of marriage but it was the piece of social legislation passed in 1955 which legally recognized cruelty as a valid ground of judicial separation.

However, the Hindu Code faced numerous criticisms on the ground that it attempted to shatter the principles on which the Hindu society was based. According to many orthodox traditionalists the introduction of the clause of divorce would damage the fabric of Hindu society by giving a major blow to the institution of marriage. It was said by one Lakshmi Kanta Moitra that the introduction of the provision which allowed cruelty as a ground of divorce was the “rudest possible shock which was repugnant to Hindu notions of marriage which the Shastras had rendered 'sacred and absolutely inviolable'.”¹¹ But keeping in mind the social fact of modern life, it was not possible to adhere to the preconceived notion of inviolability and permanent union between man and woman. It was very natural for the framers of the Act, despite all orthodox opposition, to provide for divorce¹². Following English law, the Act provides for nullity of marriage, divorce and judicial separation”.¹³

⁷Basant K. Sharma, *Hindu Law*, 52 (2007).

⁸R. Naga Raja Sarma. *Ethics of Divorce in Ancient India*, 41 International Journal of Ethics, 329, 331 (1931).

⁹*Id.* at 335.

¹⁰ Bipan Chandra, *India's Struggle for Independence*, 82-86 (1989).

¹¹ Som, Reba, *Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?*, 28 Modern Asian Studies, 165, 175 (1994).

¹² Diwan, Paras, “*The Hindu Marriage Act, 1955*”, 6 The International and Comparative Law Quarterly, 263, 275 (1957).

¹³ *Id.*

III. CRUELTY AS A GROUND OF DIVORCE UNDER HINDU LAW

Of all matrimonial offences cruelty is the most difficult to define. The legislatures and judges have deliberately avoided formulating any definition of cruelty because there are no set and defined parameters of what constitutes cruelty. In the case of *Sukumar v. Tripathi*¹⁴ the court observed that “no attempt at drawing a complete list as to what constitutes cruelty can ever succeed”. Moreover an act which has held to be cruel in one case might not be so in another as it completely depends upon the facts and circumstances of each individual case. Lord Denning in the case of *Sheldon v. Sheldon*¹⁵ said,

“The categories of cruelty are not closed. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.”

However, in the famous English case of *Russel v. Russel*¹⁶ which contains the earliest formulation of cruelty, an attempt was made to define it.

“Cruelty was held to be a conduct of such character as to have caused danger to life or health, bodily or mentally, gives rise to reasonable apprehension of such danger. The definition includes both physical and mental cruelty within its scope but it also emphasizes on the typical nineteenth century belief that no act can amount to cruelty unless it creates an apprehension or actually causes injury to the petitioner”.

In a recent judgment it has been held by the Supreme Court that since “cruelty is being used in relation to human conduct or human behavior, it is all the more difficult to define it. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other.”¹⁷

Before the amendment of the Hindu Marriage Act in 1976, cruelty was a ground for judicial separation only. The change in law in the year of 1976 made it a ground for divorce as well “keeping in view the changing mores of the society”¹⁸. The amendment also made it clear that in order to constitute cruelty there is no need for an apprehension of danger or injury to life to him/her while living together. The words “as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the

¹⁴ *Sukumar v. Tripathi*, A.I.R. 1992 Pat 32.

¹⁵ *Sheldon v. Sheldon*, (1966) 2 All E.R. 257.

¹⁶ *Russel v. Russel*, 1997 A.C. 303.

¹⁷ *See-Shobha Rani v. Madhukar Reddi* (1988) 1 S.C.C. 105.

¹⁸ *V. Bhagat v. D. Bhagat*, (1994) 1 S.C.C. 337.

other party,” were omitted from Section 10(1) (b) of the Act. Under Hindu Marriage Act,¹⁹ it is laid down that, a marriage can be “dissolved by a decree of divorce on the ground that... after the solemnization of marriage, treated the petitioner with cruelty.” Therefore, after marriage it is open for both husband and wife to get a decree for divorce if either of them treats the other cruelly. The general idea, however, is that it is usually the husbands who treat their wives with cruelty. But it is not so. Under the Indian Divorce Act, 1869 cruelty as a ground for divorce was available to a wife only, but, under the Special Marriage Act, 1954 it is available to the husband as well as to the wife who may present a petition on the ground that the respondent has, since the solemnization of marriage, treated the petitioner with cruelty.²⁰ It is also important to note that the term ‘respondent’ even includes a “child who beat his father on the behest of the mother.”²¹ Where the husband fails to protect his wife from his nagging parents, he has been held to be guilty of cruelty.²²

Intention of the alleged party is one of the common things which the courts see while determining whether a particular act is cruel or not. The words “has treated” in the Act denotes a conscious action on the part of respondents where an act of cruelty is established. Despite this, intention is not an essential ingredient of cruelty. In the case of *Bhagwat v. Bhagwat*²³, the Bombay High Court based on the facts of the case held that though the intention of the husband was not to be cruel to his wife, his act amounted to cruelty. Though he suffered from schizophrenia it was not a good defence to the plea of cruelty taken by the wife.

Recently the Supreme Court while hearing a case on cruelty as a ground of divorce held that the acts of the respondents have to be grave in order to constitute cruelty. At the same time it would be seen whether it would be bearable for a reasonable human being to live under such circumstances. Since marriage is a delicate and pious bond the determination of cruelty has to be done based on the psychological changes in the behaviour of the spouse. Mere petty quarrels and quibbles are not sufficient to constitute cruelty. The Supreme Court also said that tolerance and adjustment are necessary to keep a marriage going and therefore trifling differences between the spouses or quarrels cannot be exaggerated to the extent of filing for divorce.

The United Nations General Assembly defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."²⁴ Matrimonial cruelty can take place either physically, mentally, emotionally or sexually. Since India has been a

¹⁹ § 13(1) (i a), Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, (India).

²⁰ § 27(d), Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

²¹ *Savitri v. Mulchand*, A.I.R. 1987 Del. 52.

²² *Shyam Sunder v. Santa Devi*, A.I.R. 1962 Or 60.

²³ *Bhagwat v. Bhagwat*, A.I.R 1977 Bom. 80.

²⁴ United Nations General Assembly Declaration on the Elimination of Violence against Women (1993).

patriarchal society, women have been treated inferior to the men since ages. They have been treated as their property and are expected to serve them throughout their lives.

Physical cruelty is not a rare phenomenon in the country. The National Family Health Survey (NFHS-4) conducted by the Union ministry has revealed that one-third of ever-married women (33%) have ever experienced spousal physical, sexual, or emotional violence by their current husband.²⁵ Among ever-married women age 15-49 that have experienced physical violence and sexual violence since age 15, 83 percent report their current husbands as perpetrators of the violence. The women under study report that the most common form of sexual violence committed by their husbands was the use of physical force to have sexual intercourse especially when they did not want to (6%). Marital rape is also a form of cruelty inflicted upon women. Rape within the institution of marriage is not an offence in India even when it comprises of physical, sexual and mental cruelty. It is an intrusion upon the basic right to dignity of the women. The Justice Verma Committee Report also points out that, according to 2010 study around 18.8 per cent of women are raped by their partners not once but on many occasions.²⁶ Not only in India, is violence against women present, but even in the United States the reports indicate that around 10-14% of women experience rape within the institution of marriage.

10% of the women who reported emotional violence shared that their husbands usually said or did something to humiliate them in front of other people whereas 8% said that their husbands insulted them or made them feel bad about themselves. Apart from them, another 6% complained that their husbands threatened them to hurt someone close to them.²⁷

The report also highlights the fact that women in rural areas were more likely (36%) than women in urban areas (28%) to experience one or more forms of spousal violence. These statistics are evident of the various dimensions of cruelty inflicted on women. Since India is signatory member of The “United Nations Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW) it has viewed that discrimination against women violates the principles of equality of rights and respect for human dignity.

Based on the above data, it is evident that cruelty occurs in various forms. There is no one type of cruelty and therefore it becomes all the more difficult to lay down what it exactly constitutes. Mental cruelty includes inflicting agony and distress on the partner in some way which makes it difficult for the two persons to live together. Physical cruelty includes beating, slapping and other forms of physical harm. Sexual cruelty on the other hand includes forcing the partner to indulge in intercourse or unnatural sex. The courts in India have also

²⁵ Ministry of Health and Family Welfare, Government of India, *National Family Health Survey (NFHS-4) 2015-2016*, available at <http://rchiips.org/NFHS/NFHS-4Reports/India.pdf>, last seen at Aug. 12, 2018, 8:11 P.M.

²⁶ See- Anvesha Kumar & Ipsita Mazumdar, *'Bride' and Prejudice — Marital Rape and the Indian Legal Dilemma*, 2 NSLJ, 24 (2013).

²⁷ *Supra*, note 25.

recognized denial of sex in a marriage as a component of mental cruelty.

IV. EXPANDING CONTOURS OF MENTAL CRUELTY

“Mental cruelty in Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together”²⁸.

Black's Law Dictionary (8th Edn., 2004) defines the term ‘mental cruelty’ as “a ground for divorce, where one spouse's course of conduct (not involving actual violence) creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”²⁹ Mental cruelty cannot be put within a straightjacket definition. What constitutes mental cruelty is not limited neither constant. “This human problem unfortunately exists all over the world”³⁰. Changing lifestyle, education, family patterns, modernization and globalization, and the increase in use of social and electronic media are some of the numerous factors which are responsible for the changing diameters of mental cruelty. What earlier was not an act of cruelty is considered to be mental cruelty in today's times.

In *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan*,³¹ the Supreme Court stated that the “concept of legal cruelty changes according to the changes and advancement of social concept and standards of living”.

Some of the factors which have been recognized by the Supreme Court to constitute mental cruelty are indifference on the part of either spouse, continuous ill treatment, regular taunts, “cessation of marital intercourse and an assertion on the part of husband that the wife is unchaste”³² and such to name a few. Not only are these, continuous threats to dissolve the marriage and harassment have also been recognized as grounds of mental cruelty.

In the case of *Samar Ghosh v. Jaya Ghosh*³³, the Supreme Court gave a list of illustrations which depict mental cruelty. The list however, is not exhaustive.

“Unilateral decision of refusal to have intercourse for a considerable period without any physical incapacity or valid reason may amount to mental cruelty. Unilateral decision of either husband or wife after marriage not to have a child may amount to mental cruelty. Frequent rudeness of language, petulance, and indifference, sustained abusive and humiliating treatment calculated to torture or render miserable the life of the spouse

²⁸ *Supra*, note 18.

²⁹ Blacks Law Dictionary 712 (8th ed. 2004).

³⁰ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

³¹ *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan* (1981) 4 SCC 250.

³² *Id.*

³³ *Supra*, note 30.

could amount to mental cruelty.”³⁴

Apart from this if the husband or the wife undergoes sterilization or abortion (in the latter case) without the knowledge or consent of the spouse may also amount to mental cruelty. In the case referred to here, the husband had filed a case for mental cruelty on the ground that his wife did not cook for him while she made it only for herself. The Supreme Court had recognized this act of the wife as an act of mental cruelty.

Section 2 (viii) of the Dissolution of Muslim Marriage Act also acknowledges mental cruelty. The section reads as: “...or makes her life miserable by cruelty of conduct even if the conduct does not amount to physical ill-treatment.” Under Muslim law, “liar or imprecation, which is false accusation of adultery, is a ground of divorce.”³⁵

Another point of debate is the decision of the Apex court and other High Courts which have held that denial of sex amounts to mental cruelty. Although the courts have accepted this proposition, the issue of marital rape has yet not been decided by the courts. Marital rape has yet not been decriminalized but it itself constitutes inflicting mental cruelty on the wife as it connotes lack of respect, dignity and sensitivity towards her and violates of the right to life and liberty under Article 21 as enshrined in the Constitution of India. The woman cannot be treated as someone “who does not have a say over her body and someone who has no right to deny sexual intercourse to her husband.”³⁶ The Delhi High Court rightly held that “marriage is not a contract for legal sexual pleasure”³⁷. If denying sex is equivalent to inflicting mental cruelty on the husband then forcing the wife to do the same is inflicting mental cruelty on her. It is therefore necessary that the courts or the Parliament make this point of law clear and unambiguous by getting away with the exception to Section 375 of IPC and thereby criminalizing marital rape.

V. LEGAL ANALYSIS OF THE CONCEPT OF CRUELTY

“Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound; therefore, to assimilate the entire human behaviour in one definition is almost impossible.”³⁸

The concept of cruelty is wide in ambit. What may be cruelty in one case may not amount to cruelty in another. It differs among different people depending upon their social background and status, family upbringing, level of education, financial position, traditions, customs and beliefs and their sensitivity to such an issue. The law in India, especially the Hindu law has because of this reason not defined what exactly cruelty is. It has been left to

³⁴ *Id.*

³⁵ Dr. Paras Diwan, Family Law 177 (2013).

³⁶ Independent Thought v. Union of India, (2017) 10 SCC 800.

³⁷ Sneha Agrawal, *Marriage not a contract for legal sexual pleasure: Delhi High Court*, INDIA TODAY, (Aug. 12, 2018, 11:31 A.M.), <https://www.indiatoday.in/mail-today/story/-marriage-not-a-contract-for-legal-sexual-pleasure-delhi-court-1177073-2018-02-25>.

³⁸ *Supra*, note 29.

the courts to decide and lay down precedents as to what is cruelty under a given factual situation.

VI. CRUELTY AGAINST WOMEN

Various personal laws in India have laid down cruelty as a ground of divorce. Sec. 2 (vii) of Dissolution of Muslim Marriage Act, 1939, provides as under: “A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on the ground that the husband treats her with cruelty...”

Under Section 32 (dd) of Parsi Marriage and Divorce Act, 1936 the word cruelty has been made a ground of dissolution of marriage as under: “That the defendant has since the solemnization of marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant.”

Section 10 of the Indian Divorce Act, 1869 provides. “Any wife may present a petition to the District court or the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof (her husband) has been guilty of adultery coupled with such cruelty as without adultery would have entitled her to a divorce.”

The expression “cruelty” has been interpreted under Sec. 27 (d) of Special Marriage Act, 1954 as under: “The respondent has, since the solemnization of marriage, treated the petitioner with cruelty”.

Section 13(1) (ia) of Hindu Marriage Act, 1955 provides. “The other party has, after the solemnization of marriage, treated the petitioner with cruelty.” Cruelty as a ground for divorce in this Act was introduced through the amendment of 1976. Before that it was only a valid ground for judicial separation but not a valid ground for divorce.

Apart from these personal laws the Indian Penal Code also makes cruelty against women an offence under Section 498A of the Code. The section reads as: “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”³⁹ The nature of offence is non-bailable, cognizable and non-compoundable. It covers not only physical cruelty but also mental cruelty⁴⁰ in the form of “torture and abnormal behaviour.”⁴¹

In order to protect feminine gender from violence within the family and to make right to life as guaranteed under Art. 21 of the constitution of India more meaningful, the Parliament enacted Protection of Women from

³⁹ § 498A, Indian Penal Code, 1860, No. 45 of 1860.

⁴⁰ G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152.

⁴¹ Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619.

Domestic Violence Act, 2005 (for short PWDVA).⁴² The act provides for a penalty of one year of imprisonment and fine up to Rs. 20,000⁴³ in case the wife is subject to any form of domestic violence.

Section 498A however, offers remedy only to the women who are subject to cruelty by their husbands or the family of their husband. The husbands who are subject to cruelty, especially mental cruelty have no remedy under this section.

VII. CRUELTY AGAINST MEN

The laws relating to cruelty against husbands by the wives are not as clear as it is vice-versa. Due to the prolonged dominance of men over women in our country, it is difficult to accept the proposition that women also inflict cruelty on their husbands. However due to the rise in consciousness among women and soaring waves of feminism along with increase in education and independence among the women, they have started misusing the provisions of law against their husbands in order to meet their needs and demands. The courts in India in various instances have taken note of this fact and have granted divorce to husbands on grounds of mental cruelty inflicted upon them by their wives.

In a case where the wife always demanded money from her husband and on failure to give her, she would threaten him to “falsely implicate him in a case of dowry demand and to kill her children and thereby put the blame on him”⁴⁴, the Supreme Court granted the husband the decree to dissolve the marriage on grounds of mental cruelty committed by the wife.

In another case where a woman filed a complaint under Section 498A, the court on investigation found that the complaint was a false one which the women had made only to “embarrass and incarcerate her husband and his family members.”⁴⁵ The filing of a false complaint was held to be an act of cruelty committed by the wife and therefore the court granted divorce. It is a settled point of law that if either spouse lodges a false complaint, “it would invariably amount to cruelty and would enable the other spouse to file a petition for divorce”⁴⁶.

“Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman... Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the

⁴² Reena Jaiswal, *Right to Live with Dignity - A Basic Human Right (With Special Reference to Gender Based Violence and Discrimination)*, 24 Australian Law Journal 32, 36 (2016-17).

⁴³ § 31(1), Protection of Women from Domestic Violence Act, 2005, No. Acts of Parliament, 2005.

⁴⁴ *Mayadevi v. Jagdish Prasad*, (2007) 3 SCC 136.

⁴⁵ *K. Srinivas v. K. Sunita*, (2014) 16 SCC 34.

⁴⁶ *Id.*

accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”⁴⁷

It is an accepted proposition that there has been a rise in the misuse of Section 498A in order to rope in the husband and his family and relatives including old parents and grand -parents as well. On the basis of false and exaggerated allegations the wives have tried to put the blame on their husbands. This results in mental harm and agony thereby causing mental cruelty. The vague allegations made without any verifiable evidence results in “harassment and even arrest of innocent family members, including women and senior citizens.”⁴⁸The courts have acknowledged this fact in a number of decisions. The result is that once the wife files a false complaint, the police lodge the F.I.R. and thereafter the husband, and his relatives in some cases, is apprehended without being given a chance to say anything. The entire burden of proof is upon the husband to proof his innocence.

VIII. CONCLUSION

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁴⁹

Keeping this in mind it can be said that cruelty by either husband or wife is a breach of the basic right to dignity and liberty. The Constitution of India, which is the grund-norm of the country, ensures the right to life with dignity as it is a part of right to life under Article 21. Inflicting physical and mental pain and suffering on the other amounts to a breach of the same.

Due to the growing modernization and breakdown of family systems, the rate of divorce in India is increasing annually. According to the reports of the National Crime Investigation Bureau, the number of complaints filed under Section 498A of IPC has been increasing proportionally since the beginning of the 21th century. Out of the complaints very few cases end up in conviction while in most of them the husbands are acquitted.

It is true that some of the laws are biased towards women to compensate the ill treatment that they have suffered in the past years and that they are facing currently. To support the proposition we can take the example of Section 32(2) of the Protection of Women from Domestic Violence Act, 2005 which provides that “Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.” However, without carrying out any investigation as to whether the complaint filed is true or false, the husband and his family members can have to face social stigma and mental agony.

On the contrary we cannot forget the lacunae in laws such as that relating to marital rape which are not at all favourable to women. Thus there is a need to clearly lay down the laws relating to cruelty in all its forms and

⁴⁷ Rajesh Sharma v. State of U.P. 2017 SCC OnLine SC 821.

⁴⁸ *Id.*

⁴⁹ Article 5, Universal Declaration of Human Rights, 1948, (UDHR).

kinds. It would therefore be expected of the lawmakers to provide the 'term' a ground to stand upon rather than keeping it hanging. Till the concept of cruelty is not clear, the burden will always be on the judiciary to decide whether an act is cruelty or not depending upon the facts and circumstances of the situation and the parties to the dispute.