

**BURNISHED LAW JOURNAL**

Piyush Kumar Jalan

Amity Law School, Kolkata

B.com; LL. B(H), 3<sup>rd</sup> Year

&

Surabhi Rathi

Amity Law School, Kolkata.

LL. B(3 Years), 1<sup>st</sup> Year.

**CRUELTY AGAINST HUSBANDS****ABSTRACT**

Matrimonial events are affairs on intricate human and psychological relationships. It is based on moral norms of reciprocal respect, belief, empathy, productivity, sentiments coupled together with reasonable disagreements with the spouse. Hindu marriage is a social sacrament where husband-wife are considered to be one in law. Mere small disputes are common between spouses but not all may add to cruelty. Matrimonial cruelty, though being a broad term yet consists of lot of vagueness. What may constitute to be cruelty in one act may not be cruelty in another. To constitute legal cruelty, cruelty must be of such an atrocious nature, that it is impossible to co-habit with the spouse. It is only after attaining that level of cruelty it becomes a ground for divorce and judicial separation. Cruelty, in layman language means seeing own happiness in other's unhappiness. Such a person is categorized as cruel. Such behaviors are tagged as cruel. Cruelty is basically classified as physical cruelty and mental cruelty. Indian Laws on cruelty presumes husbands as the executioners of domestic violence and acknowledges only women as its victims. Indian women have been incessantly taking advantage of the loopholes as a weapon for misusing this law.

**OVERVIEW**

In our article we are going to discuss the following aspects: -

- Cruelty towards husband in India: A brief Introduction
- Historical background
- Cruelty in the eyes of Court: Legal Provisions

- Definition of Cruelty
- What are the grounds of cruelty against husband?
- Legislative protection given to husbands
- Judicial Approach



## INTRODUCTION

Marriage is a valid way to obey social standards through procreation of children to complete life. Every matrimonial behavior which may cause irritation to the other partner may not amount to cruelty. It must be something more grievous than “ordinary wear and tear of married life”. For achieving the objectives of equality and socio-economic balances, immense alterations were brought in the position of women in society. This resulted in shifting the equilibrium in favor of women. As it is rightly said that every aspect has its own pros and cons, so even this equivalence emerged with its own ones as “cruelty towards husband”

Cruelty is callous act which causes either mental distress or physical injury or both in some cases. Any behavior of brutal nature which interrupts the mental or physical peace of a person may amount to cruelty. The extent of “what amounts to cruelty” is erroneous. Hence the meaning of the word cruelty being subjective in nature, changes in each circumstance. To constitute “matrimonial cruelty” the quantum of suffering and torture must be of such a magnitude that it becomes out of the question for the victim to stay with the spouse. It is only after attaining that degree of anguish, to which the husband is susceptible to, that a claim for divorce is ultimately fixed by him subsequent to the amendment Act of 1976, cruelty out of the wedlock played a vital role in forming “matrimonial cruelty” as one of the essential grounds for divorce.

## HISTORICAL BACKGROUND

The laws governing Indian societies have always been inclined more towards women. According to Article 14 of the Indian Constitution “equality before law and equal protection of law” is given to all. Nevertheless, it would still be appropriate to say that the gradient of law favors women affirmatively. In the run of development, possibilities of liberty to education and self-dependence have been given the utmost priority. This has continuously been paving the way for

altering the position and status of women in the society. Moreover, provisions like Maintenance of Women under section 125 of Criminal Procedure Code, 498A of Indian Penal Code, Protection of Women from Domestic Violence Act, 2005; Dowry Prohibition Act, 1961 were also included for furtherance of such upgradation. These illustrations of protection laws for women is not exhaustive. Likewise, it curtailed all the hurdles blocking the long uphill road of women empowerment.

However, in the course of time, embezzlement of women protection laws by the way of trifling and erroneous complaints along with malafide intentions or goals led the pathways in changing the mindsets of Indian Judiciary. They started identifying this gap and have laid down certain judgments which focused at reducing this jeopardy.

In male dominated society, cruelty of wife towards husband might sound weird. Many of us are not in a position of appreciating such topic. But in the changing perspective of the culture in our society, numerous circumstances under which husbands are being harassed and victimized by their wives.

Antecedent to the Hindu Marriage (Amendment) Act, 1976 “cruelty” was only a ground for judicial separation under section 10 of Hindu Marriage Act, 1955. It was through this amendment act that “cruelty” was added as one of the reasons for divorce. The phrase which has been included is “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 other party”.



BURNISHED LAW JOURNAL

## LEGAL PROVISIONS

Cruelty being one of the major grounds for seeking a decree of divorce is defined under section 13 (1) (ia) as : “any marriage solemnized, whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty”.

In the light of this section, the legal provision stated explains that anyone whose life or health is being endangered by the infliction of ill treatment whether in physical or mental or in any other form of aggravations may outreach the court on the basis and call for divorce.

The expression “cruelty” has also been described under section 498 A of Indian Penal Code, 1860 as:-

- a) “any willful conduct which is of such a nature as is like to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman”; or
- b) “harassment of the women where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

Since section 498A reads as “husband or relative of husband of a woman subjecting her to cruelty” is therefore the definition of cruelty as set out in this section has been enumerated from article set forth the reverse scenario i.e., cruelty to husband by wife or relative of wife, henceforth term ‘cruelty’ as elaborated under section 49A of Indian Penal Code, 1860 may be read similarly but from the perspective of husband or relative of husband.



## DEFINITIONS OF CRUELTY

An act, the infliction of which causes disgrace to other person is termed as “cruelty”. A person who finds pleasure in seeing others trapped in problems and worries is addressed to be a cruel person. The intentions of a cruel person is always malicious in nature. Their motive is making one’s life as miserable as hell. What a person is essentially concerned of his/her is reputation in society. All the activities intending to lower such dignity of a person is labelled as cruelty. Gestures which are immoral, inhuman, evil, draconian in nature are deemed as cruelty. Cruelty is generally bifurcated as physical cruelty and mental cruelty. In layman terms, physical cruelty constitutes as physical violence whereas mental cruelty mainly consists usage of abusive and derogative words as well as treatment.

In Law, cruelty is administering the bodily and or psychological suffering particularly when it is regarded as one of the vital factors in admitting divorce. Cruelty is nuptials, term into a cause of annulment of marriage. When it eventually turns out impractical for the spouses to dwell jointly under one roof. It is at that juncture when one of the partner’s unnecessary whipping turns to barbarous that the sufferer being helpless is bound to walk on the path of severance. There is no strong hold sentence that defines “matrimonial cruelty”. It entirely depends upon the religion they belong to, family and economic background they come from, customs and traditions they are attached to, education imparted to them their physical and mental conditions and the kind of lifestyles both the spouses are habitual to. The essence of expression “matrimonial cruelty” is too instinctive. The wide-ranging scope of the word results into both growing and uncertain dimension as case to case basis. In other words, it can be said that cruelty in matrimonial conduct comes in profound variations. It can be minute or severe, aggressive or passive, in the way of words, actions or barely by quietness.

Physical injuries can be explained as injuries so monstrous in nature that it lands causing endangerment of life, health or limb of a person. Physical cruelty in marriages need not be essentially inflicted by the wife on her husband only. It may be done by wife clubbed together with her relatives upon her husband and his relatives. There are numerous reasons behind physical cruelty primarily and the most common ones being for blackmailing for money and property of the husband to dishonor him and his family in front of the society at large or may even be purposeless i.e., just for fun.

Elaborating on what makes up for mental cruelty in ‘matrimonial cruelty’ is hard to judge upon due to absence of any straight jacket evidences in this arena. It can only be quantified by the degree of mental terrorism that strikes the victim. If the sufferer succeeds to prove that the immensity of abuse, he was subjected to, was so grave that he had no option but to knock the doors of the Court, is when the judgment is announced in his favor.

Thus, in fact it need not be elementally either physical cruelty or mental cruelty that would aim towards the end of a relationship. What is required to be taken into consideration here is the regular and needless mistreatment by one party over the other. This unessential and unending maltreatment is what comes under the ambit for initiating stern steps by one partner against the other resulting the disjuncture of marriages. This is only what needs to be proved in the Court of law for a final decree of divorce.



## LEGISLATIVE PROTECTION GIVEN TO HUSBANDS

It is really unfortunate in regards that Indian Laws on cruelty were made stringent for men, taking advantage of which women have been turning the tables slowly to cause a reasonable uneasiness in the light of false allegations against innocent men and his relatives. But due to drastic increment in the misuse of laws made for safeguarding women, the law and the judiciary system are deliberately opening gateways for the protection of men from these humiliating faulty allegations. The husbands can file a counter blast assertion made by the latter are formulated on erroneous grounds under the following sections:

- a) For giving false evidence under Section 191, Indian Penal Code, 1860
- b) Fabricating false evidence under Section 192, Indian Penal Code, 1860
- c) Using evidence which the person is aware of the fact that it is false
- d) Dishonestly making false claim in court under section 209, Indian Penal Code, 1860
- e) False charge of offence made with the intent to injure under section 211 of Indian Penal Code, 1860

It may be noted here that every evidence of cruelty may be on paper but it can be proved through leading evidences only. A husband who is under the reflection of such a menace ought to have an airtight proof of cruelty. He must keep a level head and document everything. On occasions of physical cruelty medical evidence, police complaint and MLC could prove to be the best evidence. It must be remembered that the physical cruelty complained of expect independent oral evidence to corroborate. In cases of mental cruelty, there is no direct evidence that can be proved here. The quantum of this torment can only be measured and proved by circumstantial evidences. Tainted evidence submitted by wife, being malafide in nature cannot be admissible in any court of law and thus stands in fructuous in nature.

A few instances of evidences that can be used by men in family courts to defend himself and his relatives are hereinafter:

- Recording the incidents on mobile phones
- Audio clip recordings and urging the family courts to listen to it as evidence
- Audio CD accompanied by verification certificate issued by officials under Section 65B of the Indian Evidence Act, 1872.

It is on the point to mention here that the authenticity of the electronic evidence need not be proved in the initial dates of the proceeding or at the time of submission in court. It can be verified later as well.

The biased nature of these laws are apparent from the reality that a woman and her parental family can file a complaint and get her husband or his relative averted at any point of time without giving a slightest proof for crimes under section 498A of the Indian Penal Code. To supplement this unjust practice in India, the burden of proving innocence also lies on the shoulder of the accused. This in other way means that immediately after the husband or his relative is charged of an offence, by the wife or her relatives, they are taken into the custody of police, contemplating them as accused in the eyes of law, without taking into consideration the sensibility of the case as this section is cognizable, non-bailable and non-compoundable in its identity. Thus, it is to recognize that it is the Constitutional right of the accused to get a proper legal defense.





## GROUNDS OF CRUELTY AGAINST HUSBANDS

When there are differences between husband and wife, the first emotion that hit them is the loss of hope to save the relationship. Hereby it is important to drag the attention of the readers that mere unhappiness with the spouse due to her high temperament or her whimsical nature is not counted as “legal cruelty”. There is a thin line of difference between acts that concludes as “cruelty” and “legal cruelty”. Mere thought of no scope to continue the relationship or showing no interest to share the bed with her husband cannot be tagged as “legal cruelty”. In lieu of the same following are the few grounds basing on which cruelty against husband by wife in India can be proved in a court of law: -

- Usage of filthy language and showcasing unrespectable behavior in front of her husband’s relatives, office colleagues, in-laws, people of the society or at any other public place without any substantial ground.
- Aborting of child without the consent of her husband.
- Reporting false criminal report against husband or his family in police station for unsustainable remarks and charges of immorality.
- Denial to help in daily household chores, unnecessarily always behaving rude with all family members, breaking of marriage garland or Mangal sutra.
- Questioning husband’s character by blaming him for disloyalty, adultery, impotency and having extra marital affairs.
- Taunting her husband for his physical in capabilities, making him feel down, guilty and wrong at every point of life.
- Controlling and dominating over her husband’s every decisions or movement in life.
- Threatening for physical cruelty may be included in this category as this threat may get converted into reality.
- Insulting her in-laws everywhere by spreading cooked up stories of badgering.
- Being disobedient towards her in-laws, talking aggressively and in insulting manner.
- Convincing her husband to leave his parents and demanding for a different accommodation to stay with the husband.
- Misstating herself with the intention to extract money and pressurizing her husband to transfer all property rights in her name.
- Concealment by wife of her habits with regards to being drunk, usage of drugs, illicit relationship, development of lesbianism or unsoundness of mind.
- Knowingly not disclosing of suffering from a deadly or venereal disease by a wife.
- Unreasonable denial of having sexual intercourse with her husband.
- Not taking care and ill-treatment towards her children born out of the wedlock.
- Coercing husband to have hook ups with inappropriate beings.

- Making attempts to escape with her male friends or choosing for second marriage until the life of the first marriage.

Thus, in this manner, it can be added that sometimes a relation might appear to be sound and joyous but when observed closely it appears to be full of dissatisfaction, unhappiness, stressful and disturbing. Among all the above-mentioned cases, even a single involvement may result as “legal cruelty” against husband in matrimonial occasions in India.

### **JUDICIAL APPROACH**

In the case of *K. Srinivas Vs. K. Sunita*<sup>1</sup>, the Hon’ble court held that if any of the spouses have filed a false complaint against them or their family, this action would obviously lead to cruelty and would enable the other spouse to file a divorce petition. It was held that when a complaint made by wife against her husband or her family members are rejected under Section 498A of Indian Penal Code, 1860 and the husband is acquitted it would be held that the complaint made by the wife was malafide.

In the case of *Anil Bharadwaj Vs. Nimlesh Bharadwaj*<sup>2</sup>, it was held that if a wife refuses to have a sexual intercourse with the husband leads to cruelty against the husband.



---

<sup>1</sup> (2014) 16 SCC

<sup>2</sup> AIR 2010 Bom 16

## CONCLUSION

“In India, women are innocent until proven guilty and men are guilty until proven innocent.” This is the baseline gender differentiation scale of criteria to see through a crime. When we talk of equality in the eyes of law and equal protection under laws being one of our fundamental rights under Article 14 of the Indian Constitution, then where does this “equality” stands while penalizing crimes done by men and women in India. This is one of the mainstream loopholes in the Indian Penal Code, 1860 that has resulted in one of the major issues which is “cruelty towards husband and his family members by the wife and her relatives”.

This phenomenon can be rightly explained by the pendulum effect formula. Earlier women had no rights. Getting married at a very tender age, with lack of education and treated even more horribly if widowed, men and his family had supreme control rights in their hands by surrounding innocent, young women in the hands of their outrageous conduct. Now, the pendulum being souring on the other side, the scenario has now become upside down. Women protection laws are now becoming a classic example of a women using as a weapon with those laws that were made to protect her. With the pace of time, this pendulum will shift towards the center creating a balance in the interest of both the parties.

The main objective of the judiciary must be to equalize the needs with the concerns. Observing the sensitivity of the punishments as prescribed under section 498A of Indian Penal Code, 1860 and other women protection laws, similarly the importance of protection for males should also be kept in mind. Laws must be formulated in such a manner that they are gender neutral, only then it can be said that we are abiding by our Fundamental Rights of equality in an effective manner. Thinking of it from the other side, it does not mean eradicating all or most of the women protection laws because then the fear of punitive acts presents somewhere in the subconscious minds of males and their family will disappear. The only concern is that the judiciary must act upon efficaciously in fulfilling this gap of criminalizing offences which are gender based. So that none of the citizens have to pay the price just because of gender discrimination. A balance of justice must be laid down so that neither parties has to witness injurious approaches and laws are made both to safeguard the interests of the victims of such heinous crimes and to penalize the wrongdoer.

The judiciary must work upon bringing as stringent laws for the protection of men as it was laid down for the protection of women and to put a full stop to the acts which the women commit taking the undue advantage of this aperture in our judiciary system. When a man can be punished for his acts then why not a woman? It is only if the answer to this question is in negative sense which gives courage to women to harass innocent men and his family.

If the judiciary is inclined more towards protection of women, it is high time now for the judicial system to accept the fact that the laws to protect men are to be incorporated. This is the very need of the hour.

