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EXISTING CRIMINAL LAW AND CRUELTY AGAINST MALE



“Blessed are the homes where the women are happy with their men and the men are happy with their women and they will surely prosper day by day”

Simmi Pal

Research Scholar, GD Goenka, Gurugram, Haryana,
simmi.pal28@gmail.com

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Abstract

Number of male victims specifically pertaining to false and frivolous implication in the sexual offences of Penal Statutes on the part of women have been drastically and dramatically increased on the tune of revolution of technology in 20th century, although the history of civilizations with regard to women were nasty, brutish, cruel and harsh but unfortunately retribution emerges as a reaction against such pernicious incidents resulted as otherwise consequences is non-negotiable in the era of reformation and welfare state and hence the policies of legislature towards nurturing and nourishing the exaggeration of extremely favored legislations of women resulted chaos even in modern liberal society.

Author firstly attempts to examine the conceptual framework in the light of background of rights of male against incessant victimization; secondly the scope of availing such basic rights in the Indian Legal System in the light of the judicial precedents and author critically examine the existing literature in the light of the nexus between exaggeration in number of male victim and technologically advanced women in Delhi NCR. Thereafter paper includes the analytical approach as toward the impact of emergence of cyber offences in the line of offence against women and it's reality in the present society and eventually challenges which may come forward in due course. Considering the uniformity of the issue, this paper includes the aspects of both International and National Legal Framework to throw the light on the fast changing dimension of law enforcing agency in the line of adoption of technology for the security of both men and women. Finally Paper conclude with the examination of the suggestive measures for the promotion of the gender neutral legislations for the betterment of the society at writ in the interest of justice irrespective of gender, place of birth, color, religion, caste and nationality in the line of promotion and protection of human rights and fundamental freedoms in its true sense.

Key Word: Right of male, women and cruelty.

¹Director, Atharva Institute of Management Studies, drhenry23@gmail.com

²Associate Professor, Datta Meghe College of Engineering, Airoli aruna.henry@dmce.ac.in

³Director, Bharati Vidyapeeth Institute of Management Studies and Research,
anjali.kalse1@bharatvidyapeeth.edu

⁴IES's Management College and Research Centre sunil.saxena@ies.edu

⁵Prncipal, St.John Technical and Educational Campus, Palghar dr.das1963@gmail.com

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INTRODUCTION

India is the world largest democratic country where its citizens afford complacent equal rights and enjoying utmost liberty in every facet of their life thereto except in certain situations. Once we look retrospectively, specifically the inception of mythological construction, male were considered as dominant personality in respect of family and property but gradually, paradigm had been sifted systematically during the passage of time in specifically in the era of modernity, although we travelled through a long journey and eventually entered into the era of industrialization, globalization and privatization wherein plethora of legislations have been enacted on the part of legislature in the favor of women under the umbrella of Article 15(3) of the Indian Constitution which extended guarantee and ensuring rights for women and children under such protective discrimination clause. The other side of the coin connotes different depiction in the realm of exaggeration of enactment of such rights in the favor of women created sui generis chaotic situation for male counterpart in the family as well as in the society. There is gross misuse of laws by women differently impinge on the outcome against male and hence became pernicious for them.

The Protective Discrimination Clause enshrined under Article 15(3) of the Indian Constitution is the *Grund Norm* of the entire legislations which provides special protection to the women in the territory of India. So far as the law of cruelty is concerned, it usually recognized only women as a victim there was no specific reasons specified anywhere except the past incessant sorrow of women shaped and emerged as a matter of retribution therefore by analyzing the philosophical aspect specially the contribution of

*Jacques Derrida*¹ who propounded the theory of deconstruction came into existence².

The term 'cruelty' refers injurious, obnoxious and harmful act or omission of other partner of marital wedlock by any reason of such treatment, irrespective of genders. It contains physical and mental cruelty hence the same terminology has been elaborated by the Supreme Courts and High Courts as changing features of the same. Causing pain, sorrow, grief or distress, escalating torture, inhuman treatment and vexing kind of apathetic situation are otherwise consequences out of the marriage wedlock. Therefore compassion, kindness, love and affection are necessary for continuance of marital tie for a long rather a persona having constant physical and mental pain; consequently they would not be in position to carry the marital obligation for any cause. Thus mind and body must be filled with requisites of love, peace and strong faith upon each other.

Therefore we analyzed the conceptual framework of cruelty which gender bias underpinning by the historical interpretation by feministic approach has already been declared outdated without any iota of doubt on the part of judiciary.

LITERATURE REVIEW

Agrihari, Gunjan. "Cruelty Against Husband "Mostly Cases Decided in the Favour of Husband" Pal Publishing House 2nd Edition 2018.

It has clear and well-structured presentation of the historical evolution of marital obligations and responsibilities, and this book also covers the changing dimension of cruelty in the present day. Everything beautifully elucidated in the

¹ Derrida, Jacques "*Of Grammatology*", John Hopkins University Press, Baltimore, First American Edition 1976.

² Critical Legal Studies Movement 1970

systematic ways pertains to cruelty against male through the chronological order of judicial pronouncements in the favour of husband and it also throws the light on every dimension of cruelty against male. It further inculcated the remedies for the same.

Research Gap- Theoretically everything is covered in this book but we need the working solution specifically in situation with regard to biasness of the courts particularly Family court is biased and inclined towards female victims and law should be amended accordingly as per tuned by philosophical aspect of deconstruction has not been covered.

Deshpande, Sanjay. *“Sociocultural and Legal Aspects of Violence against Men” Sage Journals (Journal of Psychosexual Health) Vol.1 Issue No. 3–4 p, 246–249, 2019.*

Domestic violence is often mentioned in the context of women. It's normal to assume that the perpetrator is a man. Domestic violence, on the other hand, is no longer limited to women as a result of recent societal changes that have impacted family structures. Men are often abused verbally, physically, emotionally, psychologically, and sexually. Since they do not disclose these violent acts, men are the silent victims. These men are denied justice for their deplorable situation in the family and society because our society's laws support women as victims of crime.

Research Gap-The aim of this article is to look into the nature of the issue, as well as its causes and implications. Article does not discuss the International Legal Framework and hardly admitted the change of existing structure of legal system.

Kumar, Anant. *“Domestic Violence against Men in India: A Perspective” Vol. 22 Issue No-03 p-290-296, 2012.*

In the absence of any systemic data, it is critical to recognize and analyze the issue

of cruelty against men by women and associated causes, particularly as more men come forward and report cruelty by women. The author predicts that, as gender roles and power dynamics change, this will become more prevalent in the future, with far-reaching ramifications and repercussions for society as a whole and male-female relationship. The aim of this paper is to better understand the dynamics and factors that are, or will be, important in the escalation of violence against men by women. The paper is focused on the author's therapy sessions, as well as discussions with men who have been victims of abuse.

Research Gap-Author suggested radical changes in existing laws whereas society needs the laws which should be gender neutral and no one would be dominant position to suppress others in the future.

Derrida, Jacques *“Of Grammatology”*, John Hopkins University Press, Baltimore, First American Edition 1976.

This book considered as milestone toward turning point of jurisprudence, through this book we came to know about the deconstruction theory and it's basically a criticism of existing order of the society so that we can link how the feminism will be exaggerated in the Modern and Postmodern period and thereby what will be impact on the society specially male victim by women and the law relating to women shall also be deconstructed.

Research Gap-Author emphasized on philosophical aspects in detail rather he refrains from discussing the problems of male in de facto on the part of dominancy laws relating to women in specified manner with suitable reasons.

Foucault, Michel. *“The History of Sexuality”*, Editions Gallimard, Vol.1, Penguin Publication, 1978.

The book contained four volumes and the first volume dedicated to changing sexual orientation and commodification of the body of female conspicuously and

vehemently criticized. The tool of feminism is not sufficient to protect the interest of sorority the ideal state of mind never been changed but once we started dissection of well settled ideology the inevitable revolution take place sui generis. Thus trapping the male on the name of sexuality has long history which has been discussed thoroughly in this book.

Research Gap- Commodification of women and conspiracy by trapping the innocent male shifting the modern and postmodern paradigm and feminism had been discussed thoroughly whereas role of legislator in shifting paradigm is absent in this literature which is utmost need to discuss in details.

Goonesekere, Savitri and De Silva-De, Alwis Rangita. "Women's and children's rights in a human rights based approach to development" United Nations Children's Fund (UNICEF), New York, 2005.

In this Article everything is highlighted pertaining to human rights of women like CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) and Universal Declaration of Human Rights in details but realization of such rights are still under controversies.

CONCEPTUAL FRAMEWORK OF CRUELTY UNDER SECTION 498-A IPC

Chapter XX-A deals with the provision related to cruelty under section 498-A Indian Penal Code 1860, emerged as a result of increasing trends of the offence related to cruelty were reported in the column of several newspaper frequently therefore legislature inserted section 498-A IPC in the year 1983, by looking the gravity of instances of physical assault, burning of bride and various degree of torture in the house of husband. Almost all religion the significance of marital ties had been recognized a matter of pride, hence

the concept of marriage wriggled towards the love and respect of partners and ultimately considered to be the sacramental association with reciprocal promises which eventually essential for happy married life but when local shibboleths came into pinnacle the purpose of solemnization of marriage turn toward wrong direction and hence women was treated as the chattel of men and they used such a custom as a license to ill- treat the women, consequently law relating to women had been enacted in order to curb the menaces of such social evil on the name old shibboleths.³

Government of India invited recommendations for regulation of such type of social evil from the root wherein 91st Report of Law Commission introduced and submitted to the government in the month of august in the year 1983 which throw the light on some changes in the Indian Penal Code, 1860, Evidence Act, 1872 and Code of Criminal Procedure, 1973 to cover legal regulation on such evil for regulating the behavior of men pertaining to cruelty either physical or mental and to stop the dowry death⁴.

Section 498-A IPC was inserted by 2nd Amendment of Criminal Law Act No. 46 of 1983 at the moment when President's assent was obtained on 25 December 1983. Thus it was conspicuously appeared as either husband or the relatives of husband committed cruelty shall be held responsible and punishment will be inflicted accordingly. The object of enactment of such law was very crystal clear to prevent the ill-treatment, physical or mental agony, torture behind matrimonial house, instigation to commit suicide by her husband other members of the family and so on, therefore the purpose of chapter XXA is to regulates the behavior of male dominant which was

³ State of Maharashtra v. Vasant Shankar Mhasane & anor. 1993 Cr. L.J. 1134 (Bom)

⁴ Dr. Ramesh, Cruelty as Comovable Offence: A Critique, 2006, Cr. L.J.205 (Journal).

nourished by old customary paradigm and hence prevent such escalating torture in the matrimonial home.⁵

MEANING AND DEFINITION OF CRUELTY

The term 'cruelty' refers as the living with husband would be injurious, obnoxious and harmful by any reason for such treatment which is perceived as a reasonable apprehension by women in the matrimonial house of the husband. Thus the relevant point of discussion is that either husband or wife; they have their own culture and having temperament for their daily life and to some extent to the health thereto.⁶

Basically the reaction of the human being may differs according to the personality and the nature of the human being wherein some of them respond on the minor and petty issues by exaggerating as the matter of high intensity and acted violently, hence the gravity of reaction would be 'sine qua non' to determine the test of cruelty of the person and ultimately temperament and interaction of person in daily life would be 'acid test' for the determination of the definition of 'cruelty'.

According to Webster's Dictionary⁷ the definition of 'Cruelty' has been elaborated as:

"Disposed to give pain to others in body or mind; destitute of pity, compassion or kindness; applied to person; exhibiting or proceeding from cruelty, causing pain, grief or distress; inhuman, tormenting, vexing."⁸

⁵ Kans Raj v. State of Punjab, 2000, Cr. L. J., : Savitri Devi v. Ramesh Chand, 2003, Cr. L.J. 2759 (Delhi)

⁶ State of Karnataka v. Baleppa, 1999 Cr. L.J. 3064 (Kant)

⁷ New Webster's Dictionary (College Edition-1998)

⁸ Sunagala L Hegde Smt. V. Laxminarayan Anant Hegde & anor 2003 Cr. L.J. 1418 (Kant.)

Meaning thereby causing pain, sorrow, grief or distress, escalating torture, inhuman treatment and vexing kind of apathetic situation are otherwise consequences out of the marriage wedlock. Therefore compassion, kindness, love and affection are necessary for continuance of marital tie for a long rather a persona having constant physical and mental pain; consequently they would not be in position to carry the marital obligation for any cause. Thus mind and body must be filled with requisites of love, peace and strong faith upon each other.

Although parameter of 'cruelty' may be differs from person to person and according to time, place and situation upto some extent.

Which kind of conduct may be cruel for one and amusement for another, similarly what may be cruel in one situation for the individual and the same circumstances may not be cruel for another in same set of circumstances⁹, thus what we are trying to define, have no constant and stagnant definition rather it has dynamic concept, and it only can be determined by looking the state of mind of the person in order to Conceptualization of 'cruelty' thus the complete and whole series and transactions of the conduct on the side husband and wife must be taken into consideration for examining the true picture in order to ascertaining the dimension of cruelty in totality. Furthermore health of the victim pertaining to mental and physical injury and its gravity and magnitude and seriousness of the offence wherein up to what extent victim suffered injuries, everything will be the subject matter of examination of cruelty.¹⁰

'Cruelty' is a willful, voluntarily and unjustifiable conduct which cause endangered and considered obnoxious to

⁹ American Jurisprudence, 2nd Edn, vol. 24, page 206.

¹⁰ Savitri Devi v. Ramesh Chand & Ors. 2003 Cr. L.J. (2759), Delhi.

the life, limb, either bodily or mentally health of the individual as it appears reasonable apprehension of the danger to the victim.¹¹ The definition of ideal couple or ideal husband and wife, would not create any circumstances to approach the matrimonial courts for their disputes and differences at any point of time, although there may be some fault on the part of wife and the ideal attitudes may help them to curb, overlook or gloss the mutual failures and faults.¹² Similarly the husband may also be affected by the cruelty on the part of his wife at various occasions and thereby the same has also been reported in the Journal of the Supreme Court Cases. There are various living instances wherein persistence of cruelty on male can also be elaborated following below as:¹³

1. The Pronouncing the statements that “ I shall burn the book which was penned by your father and the same ashes will be applied on your forehead”
2. The Pronouncing the statements that you do not have possessed manhood which was required to procreate the children.
3. The Pronouncing the statements that you are either brobdingnagian or monster in your body.
4. Conduct like tearing or wrenched the Mangal-Sutra repeatedly.
5. Conduct like locking the door of the house when husband return from office.
6. Conduct like applying or rubbing the chili powder on the tongue of the children.
7. Conduct like beating children mercilessly by applying fist and legs while in 104 high fever.
8. Conduct like switching on the light unnecessarily at night in order to

disturb the peacefully sleeping of the husband.

9. Conduct like sitting by bed side in order to get husband realize that she does not require any sympathy and so on.
10. Extending threat to set fire the house
11. Extending threat to put her life into an end and hence by saying the word I shall commit suicide
12. Extending threat to make her husband jobless
13. Using filthy abusive language to her husband and his family members.
14. Extending threat to publish defamatory statement by imputing his reputation in the column of local newspaper.¹⁴

MISUSE OF SECTION 498A IPC

So far as the law of cruelty is concerned, it usually recognized only women as a victim there was no specific consideration available for male therefore once we analyze the entire perspective by analyzing the philosophical aspect specially the contribution of *Jacques Derrida*¹⁵ who propounded the theory of deconstruction came into existence¹⁶.

The term ‘cruelty’ has been used in the reference to human actions or behavior without being described. It is how you act when it comes to matrimonial responsibilities and obligations. There is a pattern of behavior that has a negative impact on the other. Cruelty can be emotional or physical, and it can be deliberate or accidental. There may be occasions where the behavior complained of is too bad to be deemed unethical or illegal on its own. The living style of the parties are used to, their economic and social circumstances, their culture, and the

¹¹ Tolstory, D. “The Law and Practice of Divorce and Matrimonial Causes” Sixth Edn, P-61.

¹² Lord Reid in *Collins v. Gollins*(1963) 2 A.E.R. 966, 970.

¹³ Dr. N. G. Dastane v. Mrs. S. dastane AIR 1975 SC 1534

¹⁴ Dr. N. G. Dastane v. Mrs. S. dastane AIR 1975 SC 1534

¹⁵ Derrida, Jacques “*Of Grammatology*”, John Hopkins University Press, Baltimore, First American Edition 1976.

¹⁶ Critical Legal Studies Movement 1970

human values to which they assign importance, may all play a role in the alleged cruelty.

Through the judicial pronouncements of deconstruction of protective discrimination clause aiming to curtail menaces wherein it got sanctioned strengthen with social; economic and political strength and the term “cruelty” has been widely interpreted by the various High Courts and the Apex Court as a constitutional sentinel to construe the term as a gender neutral. In the Case of *Vinita Saxena v. Pankaj Pandit*¹⁷ the Supreme Court held that the term Cruelty changes its nature during the passage of time and place, we cannot interpret the same as a matter of stagnant interpretation rather it is very dynamic term to construe accordingly. Mental cruelty can cause far more serious damage than physical harm, as well as establish the apprehension that is contemplated in the injured Person’s mind furthermore it may be decided on the basis of the entire facts of the case and the spouses’ matrimonial relationships.

A young and well-educated woman also herein should not be subjected to domestic violence, whether emotional, physical, deliberate, or accidental, under modern civilization’s norms and in the light of our society’s cultural heritage and traditions. Various scholars have identified it as “highly unfortunate” that the Indian law on cruelty, which was enacted to protect the rights of a small group of people, is now being violated to a large extent by way of frivolous and false accusations followed by evil motives. In India, the law on cruelty considers only for women as a victims. Indian women have been indiscriminately using this loophole to bypass the rule.

*Smt. Krishna Banerjee v. Bhanu Bikash Bandyopadhyay*¹⁸-Calcutta High Court hold that the wife after marriage

embarrassing the husband in front of relatives or friends and tarnishing his image with negative remarks treated her husband with cruelty and the matter went so far that, it is evident from the entire facts and circumstances that the marriage in question has broken down and the parties can no longer live together as husband and wife.

In the case of *Bibi Parwana Khatoon*¹⁹; Supreme Court stressed about the misuse laws available against relatives of husband are escalating day by day even though relatives resided far away from the family members are also implicated falsely without any reason resulted harassment on the part of the innocent that would not be justifiable at any cost therefore every matrimonial case may investigated and enquired cautiously without any delay and court must work as a sentinel for the innocent relatives in the interest of justice. While dealing with the gravity of the matter important guidelines have been issued by the Supreme Court in the light of Misuse of section -498A IPC.

The Guidelines issued by the Supreme Court in 2017²⁰ relating to misuse of section 498A IPC, herein following below as:

1. Family Welfare Committee must be constituted at every district level consisting of 3 members by headed by chairman of District Legal Service authority.
2. Every Case relating to Section 498A IPC may referred to committee by Police and Magistrate where committee communicates to concerned parties telephonically or any other electronic means.

¹⁷ (2006)3 SCC 778.

¹⁸ AIR 2001 Cal 154

¹⁹ *Bibi Parwana Khatoon v. State of Bihar* (2017)6 SCC 792.

²⁰ *Rajesh Sharma & Ors. V. State of Uttar Pradesh & Anr.* AIR 2017 SC 821

3. Report of Committee may be given to concerned authority within one month from receipt of such complaint.
4. Committee may give factual report and its opinion pertaining to the status of the case.
5. No arrest has been made before receiving of the report on the part of Committee.
6. Report will be considered on the basis of its merit by judicial magistrate and investigating officer.
7. Legal service authority provides basic training to the members as deems fit from time to time.
8. The cost fund may be utilized by District and session Judge upon they consider it necessary and appropriate.
9. The special training of at least a week or 4 months as case may be appropriate fit on the circumstances may be given to investigation officer who is appointed to deal such matter in the course of investigation and investigating officer must be appointed only from designated Investigating officer from the area.
10. If the family relating cases has already been discorded by the session judge and district judge after the mediation wherein section -498A IPC may also be disposed accordingly.
11. Bail application may be decided on the same day of hearing and recovery of disputed dowry items may not be a ground of denial of bail until matter relating to maintenance and other rights will be affected thus everything be carefully weighed for requirement of arrest.
12. The Person who resided outside in India impounding the passports and issuance of Red Corner Notice should not be a part of routine.
13. The similar cases may be clubbed in lieu of all the connected matters by

senior judicial officers or District Judge for a holistic view in the case of Matrimonial Disputes.

14. Personal appearance of all family members and the members who resided outstation may not be required and trial court may grant exception on the account of video conferencing of the same.

Court has also furnished Notice to National Legal Service Authority, Director General of Police of all the States for the compliance such Guidelines after six months from the date of issuance of directions hence researcher will examine compliance of such Direction and Guidelines of the Hon'ble Supreme Court till now in 2021. Furthermore whether the guideline of Arnesh Kumar has been following by the Magistrate and concerned Police In-charge in the pursuant of misuse of section-498A IPC.

Supreme Court²¹ held that Section-498A IPC is cognizable and non-bailable offence therefore it may not be used as a weapon by disgruntled wives. Therefore husband and their family members will not be harassed by misuse of this section by wives wherein bedridden grandfather and grandmother were also being arrested without any rationality and proper justification in lieu of legislative intent to enactment of section 498A IPC thus Police must follow the guideline before arrest the alleged parties in the matrimonial cases after reasonable satisfaction with respect of this guideline moreover seniors judicial officers or magistrate carefully authorize the arrest in such type cases rather than dealing it mechanically and casually.

Now, if the wife consciously and repeatedly refuses to fulfill the husband's innate and legitimate desire for a child, the

²¹ Arnesh Kumar v. State of Bihar & Anr (2014)8 SCC 273

deprivation drives him to depression and has a mature impact on his mental health. This is particularly true in the case at hand, where the litigants are Hindus. In this type of case, the Court must give due consideration to the general concept underlying Hindu marriage and sonship law, as well as the significance *Hindu's place on the spiritual value* of having a son who can offer a funeral cake and libation of water to his ancestors' manes. It would be a nonsensical response to suggest that the respondent can now adopt a son.²²

Filing false and frivolous complaint against husband is mental cruelty moreover the removal of the *Mangalsutra* by the respondent constituted mental abuse towards the husband, according to learned counsel for the appellant. *Mangalsutra* around the neck of a wife is a sacred thing that symbolizes the continuation of married life, and *Mangalsutra* is only removed after the death of the husband, according to learned counsel for the husband. As a result, the husband-removal wife's of the *Mangalsutra* was an act of mental cruelty of the highest order, as it caused the husband's pain and hurt his feelings.²³

CONCLUSION

Thus equilibrium ought to be maintain without any hidden interest and complexity of retrospective misery, suffering and sorrow by remembering the time of the status during primitive institution wherein patriarchal orthodox mindset was exaggeratedly destructed the sentiments of women like anything that should not be used as an instrument of retribution when society specially moved from status to contract hitherto²⁴, and entered into the era of modernity, where

women enjoy the utmost liberty in modern society in which plethora of legislations enacted to protect the interest of women in the fast changing society. Thus interests of innocent male which are legally recognized must be protected accordingly thereto without any dysfunctional paradigm and stigma over tuned in the favor of female perpetrator that need to deconstruct by enacting the new laws in the interest of equal justice.

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²² Satya vs Siri Ram AIR 1983 P H 25

²³ S.Hanumantha Rao vs S.Ramani AIR 1999 SC 1318.

²⁴ Maine, Henry Sumner. "Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas" Cambridge University Press 2013.

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