

# **MEN AS VICTIM OF DOMESTIC VIOLENCE**

**DISSERTATION**

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**UNDER SUPERVISION OF:**

**Mrs. SARITA SINGH**

**Assistant Professor**

**School of Legal Studies, BBDU**

**SUBMITTED BY:**

**ATEEV GAURAV**

**ROLL No.: 1190997016**

**School of Legal Studies, BBDU**

**SCHOOL OF LEGAL STUDIES**

**BABU BANARSI DAS UNIVERSITY**

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**ATEEV GAURAV**  
**ROLL No.: 1190997016**  
LL.M. (2019-20)

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This is to certify that **Mr. Ateev Gaurav**, student of LL.M. II Semester **Roll No. 1190997016**, **Babu Banarasi Das University, Lucknow** has worked on topic titled **MEN AS VICTIM OF DOMESTIC VIOLENCE** under my supervision. To the best of my knowledge the dissertation embodies original work of the candidate himself and findings and dissertation put forth in dissertation are his own, formulated after perusal of primary and secondary resources cited in this dissertation.

Date:

Under the supervision of

Mrs. Sarita Singh

Assistant Professor

School of Legal Studies

Babu Banarasi Das University

## **ACKNOWLEDGEMENT**

As I learned during the past years, writing a dissertation is not only stimulating but also a very challenging undertaking and I have occasionally asked myself whether I would actually be able to complete this project. Now, when the goal finally has been reached, I would like to take this opportunity to express my gratitude to all people who helped me make this possible First and foremost I would like to thank God and thereafter I would like to thank my supervisor **Mrs. Sarita Singh, Assistant Professor, School of Legal Studies** who motivated me to start this project and her comments and recommendations has been invaluable for me to finish this dissertation successfully.

I would also like to thank my parents, sister and brothers without their support it was not possible for me to fulfil dissertation writing and I also express my appreciation for all comments and suggestions from my friends.

**ATEEV GAURAV**  
**ROLL No.: 1190997016**  
**LL.M. (2019-20)**

## **LIST OF ABBREVIATIONS**

AIR	:	All India Reporter
AIWC	:	All India Women's Conference
Anr.	:	Another
AP	:	Aggrieved Person
Art.	:	Article
ASJ	:	Additional Sessions Judge
AWWA	:	Affus Woman Welfare Association
C.C No	:	Civil Case Number
C.P.C	:	Civil Procedure Code
CCS	:	Central Civil Services
CEDAW	:	Convention on Elimination of all forms of Discrimination against Women
CERD	:	Committee on the Elimination of Racial Discrimination
CNN	:	Cable News Network
Co. Ltd.	:	Company Limited
Cr.P.C	:	Criminal Procedure Code
CSA	:	Campus Sexual Study
DCP	:	Deputy Commissioner of Police
DMC	:	Divorce and Matrimonial Cases
Edn.	:	Edition
FIR	:	First Information Report
HC	:	High Court

ICCPR	:	International Covenant on Civil and Political Rights
ICESCR	:	International Covenant on Economic
ICWA	:	Indian Child Welfare Association
CRY	:	Child Relief and You
I.L.R	:	Indian Law Reporter
IDA	:	Indian Divorce Act
IPC	:	Indian Penal Code, 1860
IPV	:	Intimate Partner Violence
IO	:	Investigating Officers
LSA	:	Legal Services Authority
NALSA	:	National Legal Services Authority
NCR	:	National Crime Record
NCT	:	National Capital Territory of Delhi
NCWI	:	The National Council of Women in India
NCW	:	National Commission of Women
NGO	:	Non Government Organizations
NPC	:	National Planning Commission
OHCHR	:	High Commissioner for Human Rights
Ors.	:	Others
PIL	:	Public Interest Litigation
PTSD	:	Depression and Posttraumatic Stress Disorder
RTI	:	Right to Information
SC	:	Supreme Court

SCC	:	Supreme Court Cases
SEWA	:	Self Employed Women's Association
SH	:	Shared Household
SLP	:	Special Leave Petition
SLL	:	Special Legislative Laws
UCC	:	Uniform Civil Code
UOI	:	Union of India
USA	:	United States of America
VAW	:	Violence against Women
WEDT	:	Woman's Emancipation and Development Trust
W I A	:	The Women's Indian Association
W.H.O	:	World Health Organization
W/o	:	wife of
WWAI	:	Women Welfare Association of India

## LIST OF CASES

- A.Sukumar vs. K.S.Chitra
- Dr.Anita Rani vs Dr.Suresh Kumar
- Sarada vs V. Satyamurthi On 4 December, 2000
- A.P. Ranga Rao vs Vijayalakshmi
- Nagappan vs Virgin Rani
- Smt. Kajal Roy vs Prasanta Kr. Roy
- Smt. Shashi Bala vs. Shri Rajiv Arora
- Lata Verma Versus Jayant Verma
- Smt. Nirmala Manohar Jagesha vs Manohar Shivram Jagesha
- Mamta Bhardwaj vs. Madhusudan Bhardwaj
- Chandhok (Lajwanti) vs Chandhok (O.N.)
- Gajendra vs Smt. Madhu Mati
- Smt. Alka vs Dr. R.K. Gautam
- Smt. Parimi Mehar Seshu vs Parimi Nageswara Sastry
- Smt. Pramila Bhatia vs Vijay Kumar Bhatia
- Anil Yashwant Karande vs Smt. Mangal Anil Karande
- Pranab Kumar Chakraborty vs Kumkum Chakraborty



- Srinivas Rao vs D.A. Deepa
- K.Srinivas vs K. Sunita
- Ramesh Laxman Sonawane vs Mrs Meenaxi Ramesh Sonawane
- Smt. Ruchita Srivastava vs Vivek Swaroop
- Naveen Kohli vs Neelu Kohli – Cruelty Defined
- Shri Mangesh Balkrushna Bhoir vs Sau. Leena Mangesh Bhoir
- Rita Bandopadhyay vs Abhik Bandopadhyay
- Nirmala vs K.Muruguselvam
- Ramesh Kumar Sharma vs Smt. Akash Sharma
- Ghosh vs Jaya Ghosh
- Sri Debabrata Chakraborty vs Smt. Rina Chakraborty
- Suman Kapur vs Sudhir Kapur

# TABLE OF CONTENT

**Declaration**

**Certificate**

**Acknowledgement**

**List of Cases**

**CHAPTER -1 INTRODUCTION 1-8**

1.1 INTRODUCTION

1.2 MEN'S RIGHT IN INDIA

1.3 RESEARCH METHODOLOGY

1.4 HYPOTHESIS

1.5 SIGNIFICANCE OF THE STUDY

1.6 UNIVERSE OF THE STUDY

**CHAPTER-2 DIFFERENT FORMS OF DOMESTIC VIOLENCE  
IN INDIA AND THEIR CAUSES 9-26**

2.1 INTRODUCTION

2.2 OTHER FORMS OF DOMESTIC VIOLENCE IN INDIA

2.3 CONSEQUENCES OF DOMESTIC VIOLENCE

2.4 UNDERREPORTING OF DOMESTIC VIOLENCE AGAINST MEN

**CHAPTER 3 DOMESTIC VIOLENCE AGAINST MEN:**

**GLOBAL PERSPECTIVE**

**27-53**

3.1 INTRODUCTION

3.2 PREVALENCE

3.3 GENDER SYMMETRY

3.4 BATTERED HUSBAND SYNDROME

3.5 CAUSES OF FEMALE-PREPETRATED IPV

3.6 CRITICISM

3.7 RESPONSES

**CHAPTER 4 LEGISLATIVE PROVISION FOR THE PROTECTION**

**OF DOMESTIC VIOLENCE AGAINST MEN**

**54-65**

4.1 IMPORTANT RELATED LAWS

4.2 CRUELTY AGAINST HUSBAND

4.3 INTERNATIONAL CONCEPTS

**CHAPTER 5 JUDICIAL RESPONSE TOWARDS DOMESTIC**

**VIOLENCE/CRUELTY AGAINST MEN**

**66-111**

5.1 JUDICIAL RESPONSE TO DOMESTIC VIOLENCE AGAINST MEN

5.2 GENDER DISCRIMINATION UNDER LAW

5.3 JUDICIAL RESPONSE ON GROUNDS OF CRUELTY AGAINST MEN

**CHAPTER 6 CONCLUSION & RECOMMENDATIONS**

**112-115**

**BIBLIOGRAPHY**

**116-119**

# **CHAPTER -1**

## **INTRODUCTION**

## **1.1 INTRODUCTION**

When most people hear the term "domestic violence," they often assume that a man is the aggressor. While this may be true in many of the reported cases, domestic violence against men is more common than you may think and can pose a serious threat to its victims. Fortunately, men are generally protected just as women are under most domestic violence laws.

### **1.1.1 DOMESTIC VIOLENCE DEFINED**

The term "domestic violence" covers a broad range of violent acts committed by one member of a family or household against another. It often refers to the mistreatment of a child or spouse and can include not only physical harm, but also threats and verbal, psychological, and sexual abuse. The key distinction between domestic violence and more general assault crimes is the relationship of the abuser to the victim.

Men do report and allege spousal violence in private, but they hardly report it in public. Violence against men by women is not a new phenomenon, and the author predicts that it will increase with changing power dynamics, economic independence, and control over economy and resources. This change in power dynamics will also affect relationships between men and women, where men are afraid of losing power and women are excited by their empowered position. In this context, situating “power” within men and women, husband-wife, and family is important in favor of the larger society. Because of a power imbalance, women have suffered for centuries. Does this gradual change in power will lead to harmonized society in favor of the larger society, state or take a reverse direction such as violence against men by women.

Women’s position, power, and status are changing. They are empowered and aware of their rights. These factors along with education, changing values and norms, and gender role empower women in realizing that they are not inferior to men and even at places stronger and more

powerful than men. They are better positioned to understand this perceived difference in power. Much has been researched and reported on violence against women but not on violence against men.

## **1.2 MEN'S RIGHT IN INDIA**

India is a common law country with diverse traditions, several religious cultures and a history dating back to ages. The constitution of India has been envisaged with the principle of equality as an essential factor for societal development. India's sustained democratic freedoms are unique among the world's younger nations; however, in spite of economic and social advancements, there is seemingly unyielding poverty, religious and caste related incidents of violence, separatism and other social evils still prevalent in the country.

Men's rights activists scored a significant victory in India recently when the Supreme Court essentially identified them as the victims in domestic violence cases. The judges weren't making the law gender neutral, however. They stated that Indian women were filing inaccurate claims of domestic violence.

"Most of such complaints are filed in the heat of the moment over trivial issues," read the ruling. It went on to state that women were not visualizing the "implications and consequences" of registering a criminal complaint against their abusive husbands. "Uncalled for arrest may ruin the chances of settlement."

Women's groups are furious at what they see as a regressive judgment that prioritizes extended families and preserving marriages over the rights of the woman. Sixteen groups have sent a memorandum to the chief justice of India, demanding that the ruling should be reversed.

"We are deeply concerned and dismayed that the entire judgment proceeds on the basis that women are liars and file false cases," read the statement, quoting data by the National Family

Health Survey, which found that 1 in 3 women faces mental, physical and verbal domestic violence. “The judgment is part of a backward trend that ... completely overlooks the fact that women are daily recipients of harassment for dowry and of domestic violence.”

Multiple studies have shown that social stigma and insensitive attitudes of police lead women to avoid filing domestic assault charges. According to a decade of data on 1,675 abused women, which was collected by Dilaasa, a crisis intervention center, only 47 percent of women went to the police. A third of those who did not approach the police had faced violence for three to five years, two-thirds had faced violence during pregnancy, and a third had attempted suicide. A quarter also experienced rape and sexual assault with objects.

Human beings are violent and aggressive. Women are not an exception to it. Research in the field of domestic violence has shown that men and women act violently in relationships at about the same rate. Furthermore, men and women are equally likely to instigate violence against one another. The truth is surprisingly egalitarian: About half of all domestic violence occurs with both partners abusing each other.

According to the National Crime Records Bureau, India’s only source for numbers on sexual crimes, 100 instances of rape are reported every day. Just over one-fourth of them lead to a conviction. Skirting some of the reasons why rape cases in India are withdrawn—coercion by family members, victim blaming, and severely backlogged courts—MRAs use this discrepancy to cry foul.<sup>1</sup>

The bibliographic study by Fiebert (2007) has examined 209 studies (161 empirical studies, 48 reviews/analysis of approximate sample size of 201,500) that show that women are physically aggressive, in fact, more violent than men in their relationships with their spouses or male

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<sup>1</sup> <https://legaldesire.com/mens-rights-in-india/>



partners. Definitely, power-relations, gender roles, norms, values, and socio cultural environment affect and influence expression of these behaviors. For centuries, it has been depicted in various mythologies, literature, and forms of expressions that women are inferior and men are superior. So men are powerful, aggressive, and oppressors, and women are on the receiving end as oppressed and silent sufferers of all forms of violence. It is widely assumed and believed that women are always the victims and men are always the perpetrators. The idea that men could be victims of domestic abuse and violence is so unthinkable that many men do not even attempt to report the violence. Acceptance of violence by women on men is generally considered as a threat to men folk, their superiority and masculinity. Therefore, sometimes men do report and allege spousal violence in private, but they hardly report it in public.

Violence against men by women is not a new phenomenon, and the author predicts that it will increase with changing power dynamics, economic independence, and control over economy and resources. This change in power dynamics will also affect relationships between men and women, where men are afraid of losing power and women are excited by their empowered position. In this context, situating “power” within men and women, husband-wife, and family is important in favor of the larger society.

### **1.3 RESEARCH METHODOLOGY:**

A descriptive approach to research is called as the foundation for research. The researcher referred more descriptive information's from books, articles, journals to gain more knowledge for the study in Men as victim of Domestic violence.

Analytical approach concentrates on the process of the final result rather giving importance to the result. The researcher analyses various issues on Domestic violence and gives the major cause for domestic violence.

The main purpose of the study is to analysis **MEN AS A VICTIM OF DOMESTIC VIOLENCE**.

Other objectives of the study are:-

- To investigate the socio-economic and cultural causes that lead to domestic violence.
- To study the legal-institutional and constitutional set up in restraining domestic violence.
- To understand and analyze the nature and background of the families, where in, this problem is prevalent.
- To know the existence of counseling centers, help lines, NGO's, Local Self-Government and Academic Curriculum activities, their functioning and services rendered.
- To comprehend the factors those constrain the victim in no reporting of the domestic violence.
- To suggest ways and means to curb this evil, that is, the need of social ostracism to curtail the malady of domestic violence.

## **1.4 HYPOTHESIS:**

Flowing from the broad objective stated above, the following hypotheses are developed for qualitatively testing them in the field.

- Ignorance, illiteracy and economic instability of family on the domestic front are the major causes of domestic violence.
- The extent of domestic violence is more among urban families as compared to rural families.
- The extent of domestic violence is more among the poorer sections of the society as compared to the affluent sections.
- The absence of awareness about the existing legal provisions and ineffectiveness of existing legal provisions results in the crime go unnoticed.
- The existing counseling facilities related to domestic violence are inadequate both in terms of quality and institutional support.
- Socio-economic, cultural, legal and familial barriers are instrumental in non-reporting of domestic violence by the victims.

### **1.5 SIGNIFICANCE OF THE STUDY:**

This research is an academic exercise. However, it will be useful to Academics, Lawyers, Social Activists, Policy Makers, Institutions administering Justice, Students and Other Stake holders in the family and society. The subject selected has got contemporary relevance especially under the light of social transformation and economic liberalization, which demands a lot of thoughts to be put into familial relationship, personal rights, and dignity of life.

### **1.6 UNIVERSE OF THE STUDY:**

I have obtained primary sources by interviewing with women who faced domestic violence in the form of questionnaire and by conducting a field survey in Lucknow city for the factors influencing domestic violence.

I have obtained secondary sources from books, articles, journals.

**CHAPTER-2**

**DIFFERENT FORMS OF**

**DOMESTIC VIOLENCE IN INDIA**

**AND THEIR CAUSES**

## 2.1 INTRODUCTION

For centuries, it has been depicted in various mythologies, literature, and forms of expressions that women are inferior and men are superior. Therefore, men are supposed to be powerful, aggressive, and women on the receiving end as oppressed and silent sufferers of all forms of violence. These notions are mostly guided by gender roles and norms where women cannot be violent, aggressive or oppressive because of their social positions. But, it is a known fact that that the power relations, gender roles, norms, and values are not static, and they change over time. It has always been widely assumed that women are always the victims and men the perpetrators. There are many reasons behind this assumptions. The idea that men could be victims of domestic abuse and violence is so unthinkable that many men do not even attempt to report the violence. Acceptance of violence by women on men is generally considered as a threat to men folk, their superiority and masculinity.

Although there is no systematic study or record on domestic violence against men in India, it is generally estimated that in 100 cases of domestic violence, approximately 40 cases involve violence against men. There is little evidence available about the actual number of violent acts against men and underlying dynamics of violence. There are various reasons for under-reporting, but foremost among them are our social system and values attached to men, which stop them from sharing and reporting domestic violence and abuse. Even when men report domestic abuse and violence, most people do not believe them. When men try to narrate their problems, torture, struggle, and harassment within marriage and family, no one listens to them; instead, they are mocked. Many men are ashamed of talking about and sharing that they are beaten by their wives.

One needs to understand that dynamics of domestic violence and abuse among men and women are different, with different reasons, purposes, and motives . There are various studies on dynamics of violence against women, but there are limited studies on the issue of domestic violence and abuse against men.

The study by Save Family Foundation (Sarkar et al., 2007), which interviewed 1,650 husbands between the ages of 15 and 49 years, selected through random sampling using a schedule adapted from the WHO multicountry study on husband's health and domestic violence, reports that economical violence (32.8%) is common, followed by emotional violence (22.2%), physical violence (25.2%), and sexual violence (17.7%). The study shows that the probability of violence increased significantly with the duration of marriage, particularly if it was more than 7 years old. It also shows that husbands who experienced some form of violence during their first year of marriage continued to experience the same for the rest of their lives. It is not something that just goes away. The study shows that domestic violence is a public health issue with far-reaching health consequences, such as mental illness and stress disorders, that need to be addressed.

Men tolerate and stay in abusive and violent relationship for many reasons. Some of the reasons “why men tolerate domestic violence and abuse” are the belief and hope that things would get better, fear of losing social respect and position, protection, and love toward their children and family. Many abused men feel that they have to make their marriages work. They are afraid that if things fall apart, they will be blamed. Many abused men also believe that it is their fault and feel that they deserve the treatment they receive. Another reason is increasing economic and other dependency on women.

Violence against men is not considered serious because of its different manifestation. In most cases of violence against men, women use more mental, verbal, and emotional violence and

abuse and are involved less in physical violence. The impact of violence against men is less apparent and is less likely to come to the attention of others. A significant number of men are over sensitive to emotional and psychological abuse. In some cases, humiliating a man emotionally in front of others can be more devastating than physical abuse. Mental and emotional abuse can be an area where women are often more brutal than men. However, what hurts a man mentally and emotionally can in some cases be very different from what hurts a woman.

For some men, being called a coward, impotent, or a failure can have a very different psychological impact than it would have on a woman. Unkind and cruel words hurt in different ways and linger in different ways. In most cases, men are more deeply affected by emotional abuse than physical abuse.

The Indian men's rights movement was started in 1988 in Delhi by Supreme Court advocate Ram Prakash Chugh to handle psychological abuse perpetrated by wives and false claims of dowry harassment by wives. The movement began as an organisation called "Society for Prevention of Cruelty to Husbands".

One primary grievance was the "dowry law"—formally, Section 498A of the Indian Penal Code—which was created in 1983 to protect women from harassment, abuse, and violence in cases where a bride's family did not provide a sufficient dowry. Under the law, police could automatically arrest husbands and family members accused of committing dowry-related crimes. MRAs saw this as giving women too much power and lobbied to change the law. In 2014, the Indian Supreme Court took their side and removed the automatic arrest provision, purportedly to protect men against "disgruntled wives."



According to the National Crime Records Bureau, India's only source for numbers on sexual crimes, 100 instances of rape are reported every day. Just over one-fourth of them lead to a conviction. Skirting some of the reasons why rape cases in India are withdrawn—coercion by family members, victim blaming, and severely backlogged courts—MRAs use this discrepancy to cry foul.

### **Types of Abuse**

Most of the time, domestic violence against men only gets any attention when a celebrity is the victim of some kind of noteworthy physical harm, such as when Tiger Woods' wife attacked him with a golf club or when Phil Hartman's wife shot him as he slept. Even then, the violent acts are often perceived as isolated incidents and much of the public and private speculation presumes the man "did something to deserve it." In reality, this kind of violence is often foreshadowed by actions that may not seem like domestic violence on the surface, but do, in fact, represent a series of abuses against the men such as:

- Using insults, name-calling, and other berating language
- Interfering with him seeing his family and friends
- Threatening to expose embarrassing personal information to others
- Showing oppressive possessiveness or jealousy
- Restricting his spending or controlling his finances
- Shoving, slapping, or otherwise striking him
- Threatening harm to themselves or others as a way to "punish" him

In both the Tiger Woods and Phil Hartman cases, the violent acts were caused, at least in part, by real or imagined accusations of infidelity, a common trigger for domestic violence. Alcohol and drug abuse also play a significant role in many of these cases.

### **2.1.1 DOMESTIC VIOLENCE AGAINST WOMEN**

This form of domestic violence is most common of all. One of the reasons for it being so prevalent is the orthodox and idiotic mindset of the society that women are physically and emotionally weaker than the males. Though women today have proved themselves in almost every field of life affirming that they are no less than men, the reports of violence against them are much larger in number than against men. The possible reasons are many and are diversified over the length and breadth of the country. According to United Nation Population Fund Report, around two-third of married Indian women are victims of domestic violence and as many as 70 per cent of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India, more than 55 percent of the women suffer from domestic violence, especially in the states of Bihar, U.P., M.P. and other northern states.

The most common causes for women stalking and battering include dissatisfaction with the dowry and exploiting women for more of it, arguing with the partner, refusing to have sex with him, neglecting children, going out of home without telling the partner, not cooking properly or on time, indulging in extra marital affairs, not looking after in-laws etc. In some cases infertility in females also leads to their assault by the family members. The greed for dowry, desire for a male child and alcoholism of the spouse are major factors of domestic violence against women in rural areas. There have been gruesome reports of young bride being burnt alive or subjected to continuous harassment for not bringing home the amount of demanded dowry. Women in India also admit to hitting or beating because of their suspicion about the husband's sexual involvement with other women. The Tandoor Murder Case of Naina Sahni in New Delhi in the year 1995 is one such dreadful incident of a woman being killed and then burnt in a Tandoor by

his husband. This incidence was an outcome of suspicion of extra marital affairs of Naina Sahni which led to marital discord and domestic violence against her.

In urban areas there are many more factors which lead to differences in the beginning and later take the shape of domestic violence. These include – more income of a working woman than her partner, her absence in the house till late night, abusing and neglecting in-laws, being more forward socially etc. Working women are quite often subjected to assaults and coercion sex by employees of the organization. At times, it could be voluntary for a better pay and designation in the office.

Violence against young widows has also been on a rise in India. Most often they are cursed for their husband's death and are deprived of proper food and clothing. They are not allowed or encouraged for remarriage in most of the homes, especially in rural areas. There have been cases of molestation and rape attempts of women by other family members in nuclear families or someone in the neighbourhood. At times, women are even sexually coerced by their partner themselves against their will. They are brutally beaten and tortured for not conceiving a male child. Incidents like, ripping off a woman's womb for killing the female foetus when she disagrees for abortion have also come to light especially in rural areas. Female foeticide and female infanticide continue to be a rising concern.

Also as expressed by Rebecca J. Burns in the following lines, "When I am asked why a woman doesn't leave abuser I say: Women stay because the fear of leaving is greater than the fear of staying. They will leave when the fear of staying is greater than the fear of leaving." A common Indian house wife has a tendency to bear the harassment she is subjected to by her husband and the family. One reason could be to prevent the children from undergoing the hardships if she

separates from the spouse. Also the traditional and orthodox mindset makes them bear the sufferings without any protest.

Other forms of physical abuse against women include slapping, punching, grabbing, burdening them with drudgery, public humiliation and the neglect of their health problems. Some of the other forms of psychological torment against them could be curtailment of their rights to self-expression and curbing the freedom to associate with the natal family and friends.

### **2.1.2 DOMESTIC VIOLENCE AGAINST MEN**

There is no question that domestic violence directed against women is a serious and bigger problem, but domestic violence against men is also increasing gradually in India. The supremacy of men in the society makes one believe that they are not vulnerable to domestic violence. Battering of men by their spouse and family members has become a concerned issue and is another form of domestic violence under purview of judiciary. In India, compared to violence against women, violence against men is less frequent but it has already taken a deadly shape in many of the western countries by now.

Males have reported incidences of assault against them like pushing, shoving, slapping, grabbing, hitting which are intended to harm them and also take their lives on many occasions. Recently, hundreds of husbands gathered in Chandigarh and Shimla to voice their opinion for men's rights and protection against domestic violence subjected to them by their wives and other family members. It reflects the need for a special law for curbing domestic violence against men in present times.

If we contemplate over the reasons behind this form of domestic violence we would find some of the possible causes such as not abiding by the instructions of the wives', inadequate earning of men, infidelity towards wives, not helping the partner in household activities, not taking a proper

care of children, abusing the spouse's family, infertility of men, spying the activities of partner, doubting the partner all the time and not trusting her, revolt by the wife when asked to look after in-laws etc. On many occasions, the spat between men and women becomes public thereby influencing the society around especially in the villages. In urban areas such forms of violence may go unreported because of greater privacy. Also the families find their reputation at stake in urban areas.

### **2.1.3 DOMESTIC VIOLENCE AGAINST CHILDREN/TEENS**

Children and teenagers in our society are not spared from the evil of domestic violence. In fact, this form of violence is second in terms of number of reported cases after the 'violence against women'. There is a lot of variation in the form of its occurrence in urban and rural areas and in upper/middle class and lower class families in India. In urban regions, it is more private and concealed within the four walls of homes. The possible reasons could be disobeying parental advises and orders, poor performance in academics or not being at par with other children in neighbourhood, debating with parents and other family members etc. In addition to this, factors like not being socially intelligent or as active as the parents expect them to be, abusing the parents or speaking ill about other family members, not returning home on time are some other factors.

In rural areas the reasons could be harassment for child labour, physical abuse or harm for not following family traditions, forcing them to stay at home and not allowing them to go to school etc. Domestic violence against girls is in fact, more severe at homes. As the common mob mentality of India prefers to have at least one male child after marriage, the girls in most of the occasions are cursed and assaulted for having taken birth in the home. This kind abuse is prevalent both in cities and villages but is more common in latter case. Then there are cases of

paedophilia causing sexual harassment of children in homes by family member themselves. In fact, the number of rape cases of pre-matured girls has been rising since last few years. A survey of teens and college students found that rape accounted for 67 percent of sexual assaults in girls. Apart from sexual abuse and rape, pushing, slapping, punching, stalking and emotional abuse are other forms of domestic violence against children.

Adding to the above mentioned causes, there are also instances of abuse against children who are physically and/or mentally challenged. Instead of providing them proper health care and treating them politely, these children are beaten and harassed for not cooperating and attending to what family members ask them to do. They are even emotionally abused by cursing them having been in such retarded or handicapped state. In fact in poor families, there have been reports of selling body organs of the retarded children for getting money in return. It reflects the height of cruelty and violence against innocent children.

#### **2.1.4 DOMESTIC VIOLENCE AGAINST OLDS**

This form of domestic violence refers to the violence which old people at home are subjected to by their children and other family members. This category of domestic violence largely goes under-reported in India. It is because of the dependency of olds on their children and having a fear of not being looked after or even ousted if the violence is revealed in public. The main causes of violence against aged people are – children being hesitant in bearing the expenses of the old parents, emotionally victimising the olds and beating them to death to get rid of them. On various occasions, they are beaten for doing something against the desire of family members. One of the very common reasons includes torture for property grabbing.

A perturbing trend is the vulnerability of ageing women to domestic violence in various forms. Given existing structures of gender discrimination, old women are prone to a greater risk than

men of becoming victims of material exploitation, financial deprivation, property grabbing, abandonment, verbal humiliation, emotional and psychological torment. When they fall seriously ill, it is more likely that it is the elderly women in the family who will be denied proper health care. There is also a widespread understanding that the neglect, deprivation and marginalisation of older women are the normal consequences of ageing. In fact the plight of young widows in homes as discussed above now becomes more serious as a result of the ageing of those women. They are cut off from the society they are living in, ignored, abused, cursed, and considered as bad omens. The atrocities of sons, daughter-in-laws, daughters and husbands could be another cause of domestic violence specifically against older women. They are restrained from cooking, housekeeping, or participating in activities outside the home.

While it is difficult to accurately measure the extent of the problem on a national scale, given the fact that most families deny that such abuse but we do know that the number of old people in our midst is growing. A current estimate puts the 60-plus population at around 90 million in India and is projected to have a population of 142 million older people by 2020. Given this demographic reality an important concern is the kind of action the country can take at the individual and societal level to alleviate abuse and neglect of elderly class.

## **2.2 OTHER FORMS OF DOMESTIC VIOLENCE IN INDIA**

There are some more possible forms of domestic violence prevalent in India other than the ones listed above. On a serious note, family wars or clan wars are deadly forms of domestic violence across the country. The reason of such type of violence include dispute over property, physically or emotionally abusing any member of other family or clan, any religious cause or conflict arising during a religious ceremony, jealousy because of progress and financial status of other family, inter-caste marriage etc. This form of violence is common in many states like Haryana, Punjab, Andhra Pradesh etc.

One of the other forms of domestic violence is ill-treatment of servants and maids in households. In many of the affluent homes, servants are deprived of their salary and basic necessities. They are harassed and beaten and to work without even taking adequate rest. Similarly maids are molested by males in the family. Atrocities against small children working as servants are common and increasing.

To some extent media is also responsible for contributing to all the above forms of violence. The exaggerated news coverage of reports of domestic violence, the daily soaps screening the torture of a daughter-in-law at the hands of family members, the films portraying an element of violence against people of all age groups etc. are some of the menaces which media is causing. It is influencing the mindset of the viewers strongly. The problem arises when instead of taking a lesson from those news clippings, films, and television shows, people start enacting the same in their homes. Comparatively, the visual media is far more influencing than the print and electronic media in these cases. Illiteracy and mob mentality of majority of Indians misguides them in all these cases.



## **2.3 CONSEQUENCES OF DOMESTIC VIOLENCE**

There are varied consequences of domestic violence depending on the victim, the age group, the intensity of the violence and frequency of the torment they are subjected to. Living under a constant fear, threat and humiliation are some of the feelings developed in the minds of the victims as a consequence of an atrocious violence. The consequences of the domestic violence in detail can be broadly categorised under – the Effect on the victim himself/herself and the family , Effect on the society and the Effect on nation’s growth and productivity. The ‘Effect on the victim’ has been further subcategorized for women, men, children and olds.

### **2.3.1 CONSEQUENCES OF VIOLENCE AGAINST WOMEN**

Battered women have tendency to remain quiet, agonised and emotionally disturbed after the occurrence of the torment. A psychological set back and trauma because of domestic violence affects women’s productivity in all forms of life. The suicide case of such victimised women is also a deadly consequence and the number of such cases is increasing.

A working Indian woman may drop out from work place because of the ill-treatment at home or office, she may lose her inefficiency in work. Her health may deteriorate if she is not well physically and mentally. Some women leave their home immediately after first few atrocious attacks and try to become self-dependent. Their survival becomes difficult and painful when they have to work hard for earning two meals a day. Many such women come under rescue of women welfare organizations like Women Welfare Association of India (WWAI), Affus Woman Welfare Association (AWWA) and Woman’s Emancipation and Development Trust (WEDT). Some of them who leave their homes are forcefully involved in women trafficking and pornography. This results in acquiring a higher risk of becoming a drug addict and suffering from HIV/AIDS. Some of course do it by their choice.

One of the severe effects of domestic violence against women is its effect on her children. It is nature's phenomenon that a child generally has a greater attachment towards the mother for she is the one who gives birth. As long as the violence subjected to the mother is hidden from the child, he/she may behave normally at home. The day when mother's grief and suffering is revealed, a child may become upset about the happening deeply. Children may not even comprehend the severity of the problem. They may turn silent, reserved and express solace to the mother. When the violence against women is openly done in front of them since their childhood, it may have a deeper and gruesome impact in their mindset. They get used to such happenings at home, and have a tendency to reciprocate the same in their lives. It's common in especially in rural homes in India which are victimised by the evil of domestic violence.

In cases of Intimate Partner Violence (IPV), violence against women leads them to maintain a distance from their partner. Their sexual life is affected adversely. Many of them file for divorce and seek separation which again affects the life of children. Some continue to be exploited in lack of proper awareness of human rights and laws of the constitution.

### **2.3.2 CONSEQUENCES OF VIOLENCE AGAINST MEN**

The consequences against violence against men in India, is largely emotional and psychological in nature. The physical harassment resulting from domestic violence, also affects their lives and productivity but it is still more inclined towards the emotional problems which men face in India. It is largely because many such cases go unreported, as compared to cases of physical assault of women. An emotionally harassed and depressed man may lose interest in the occupation he is associated with. If he is the only bread-earning person in the family, the family may find it difficult to survive. There has been a spate of farmers' suicide in recent years in Karnataka. Several farmers have committed suicide not only because of indebtedness but also because of

discord in family and depression resulting out of it. According to statistics of Save India Family Foundation (an NGO), around 1.2 lac harassed husbands have committed suicide in the country in the last four years.

**Consequences of Violence Against Children/Teens** The consequences in case of children are far more drastic and its effect is long lived. Children are sensitive to issues related to violence of any kind as they are not mature enough to comprehend them. In their growing years they try to imitate things which they see happening around them. In the process of following their parent's advice or instructions they become firm in their opinion and approach towards life. Now if the approach of parents itself is negative, children are bound to get influenced by it. They may adopt the negative traits of the ill they see around them or develop a hostile approach in life because of the ill-treatment they are subjected to. If a child is beaten badly for under performing in school, he may do the same to his children, thinking it might be the only possible way of making a person to work hard.

Whenever a child is dropped out of school because of poor financial condition or when he is engaged in some form of child labour, there is a sudden leap which the child tries to take from his childhood to the manhood. In this process he misses out the values and morals a person should inculcate in him as a good human being. He fails to develop a vision to see things from an unbiased point of view. All these factors make a child insensitive towards the society and the societal needs. Every instance of child abuse causes a callous indifference to suffering.

However in the process of comprehending the wrong being done to them, many children are traumatised and psychologically disturbed. They find it unsustainable and may lose out their mental soundness. Children who are victimised by physical violence may become handicapped as well. In some cases children prefer to run away from home and try to become self dependent.

Some commit suicide. Some indulge in malpractices because of improper education and bad company they become a part of after leaving the home. Some even reciprocate the violence they are subjected to by harming the family members.

Girls also develop a feeling of insecurity in their homes when they are sexually exploited. They lose their self-confidence and desire for living. A girl child from violent home can withdraw from society and become completely depressed. Children from violent homes become disobedient and violent — and start using aggression to solve their problems. Adolescents may succumb to drugs and alcohol when treated harshly. Some helpless and abandoned children are picked up gangs who sell their organs for making huge amount of money. In most of the cities, the group of beggars at traffic lights or railway platforms are the abandoned children who are physically deformed forcefully for begging. The children who escape being a part of this vicious circle are looked after by children welfare organizations like, Indian Child Welfare Association (ICWA), Child Relief and You (CRY) and ChildLine etc.

### **2.3.3 CONSEQUENCES OF VIOLENCE AGAINST OLDS**

The elderly abuse is one of the most unfortunate happening for the elderly class in their lives. They would rather like to be more at ease and calm in this phase of their life than being prone to such kind of shameful treatment by the family or society. Ironically elderly class itself also indulges in harming each other. Many of the elderly men continue to beat and harass their wives throughout their lives.

Some of the olds are ousted from home by their children, some are beaten until death and some are exploited socially. A sense of insecurity dodges them all the time. They are isolated and cut off from society in some cases where son and daughter-in-law do not let them interact and move around freely in the society. The old people are not looked after properly and their health

problems are neglected. Due to the abuse and mental trauma they suffer, some of them leave home and stay in old age homes like HelpAge India, Senior Citizen Home Complex Welfare Society (SCHCWS) and many others.

### **2.3.4 EFFECT OF DOMESTIC VIOLENCE ON THE SOCIETY**

All the different forms of violence discussed in this essay adversely affect the society. Violence against women may keep them locked in homes succumbing to the torture they face. If they come out in open and reveal the wrong done to them for help and rescue, it influences the society both positively and negatively. At one hand where it acts as an inspiration and ray of hope for other suffering women, on the other hand it also spoils the atmosphere of the society. When something of this kind happens in the society, few families may witness the evil of domestic violence knocking their door steps. Some families try to imitate what others indulge in irrespective of it being good or bad for the family.

### **2.3.5 EFFECT ON THE PRODUCTIVITY**

As mentioned earlier, domestic violence affects the productivity level of the victim negatively. Men and women lose interest in household activities. If they are employed they fail to work with full capabilities in workplace. Children are found to concentrate less on studies. They drop out of school and do not get the education which otherwise they might have got if they were not tormented and thus the country loses a productive asset. Therefore, the nation's productivity altogether gets affected because of domestic violence in homes. When old people are tortured and physically abused, they separate themselves from family members and their daily activities are restricted to themselves. The guardianship they can provide out of their experience, the moral values which they can instil in the grandchildren are all not done as they are unwanted in their own homes. People need to spend their part of income for medication when they are met with

worse forms of domestic violence which again leads to loss in productive use of a family's income. The cumulative effect of the domestic violence at all levels and across all regions is the country's hindered development and slow economic growth.

## **2.4 UNDERREPORTING OF DOMESTIC VIOLENCE AGAINST MEN**

Getting exact numbers on domestic violence overall is difficult since so many cases go unreported, but it's even tougher to figure out just how many men are suffering abuse. A big part of the reason is traditional gender roles in society and the stigma of the perceived weakness of any man who admits to falling victim to a woman. Despite some research suggesting that men and women commit domestic violence against each other in equal numbers, the reported victims are overwhelmingly female.

Part of the reason for the disparity in reported victims might also be because men who call police to report domestic violence against them fear that they will end up being the ones getting arrested. Domestic violence against men victims can be particularly reluctant when children are involved, since leaving them with the woman leaves the kids at risk for harm, but attempting to take the children out of the situation risks giving the impression that the man is abducting them. So long as the common misconception persists that men are always the abuser and women are always the victim, it's unlikely that male victims will feel comfortable reporting their abuse.

**CHAPTER 3**

**DOMESTIC VIOLENCE**

**AGAINST MEN: GLOBAL**

**PERSPECTIVE**

### 3.1 INTRODUCTION

Domestic violence against men deals with domestic violence experienced by men or boys in a domestic setting, such as in marriage or cohabitation. As with domestic violence against women, violence against men may constitute a crime, but laws vary between jurisdictions.

Men who report domestic violence can face social stigma regarding their perceived lack of machismo and other denigrations of their masculinity.<sup>2</sup> Additionally, intimate partner violence (IPV) against men is generally less recognized by society than IPV against women, which can act as a further block to men reporting their situation.<sup>3</sup>

The relative prevalence of IPV against men to that of women is highly disputed between different studies, with some countries having no data at all. Some researchers believe the actual number of male victims may be greater than law enforcement statistics suggest due to the number of men who do not report their abuse. However, for both men and women, domestic violence is among the most underreported crimes worldwide.<sup>4</sup>

IPV against men is a controversial area of research, with terms such as gender symmetry, battered husband syndrome and bidirectional IPV provoking a great deal of debate. The lines of the debate tend to fall between two basic polemics. The first of these argues that scholars who focus on female-perpetrated IPV are part of an anti-feminist backlash, and are attempting to undermine the problem of male-perpetrated abuse by championing the cause of the man, over the

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<sup>2</sup> Lupri, Eugene; Grandin, Elaine (2004). "Intimate partner abuse against men" (PDF). National Clearinghouse on Family Violence. Archived from the original (PDF) on January 4, 2009. Retrieved June 21, 2014.

<sup>3</sup> Das Dasgupta, Shamita (November 2002). "A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships". *Violence Against Women*. 8 (11): 1364–1389. doi:10.1177/107780102237408. (subscription required)

<sup>4</sup> Concannon, Diana (July 11, 2013). *Kidnapping: An Investigator's Guide*. Newnes. p. 30. ISBN 978-0123740311. Archived from the original on January 10, 2017.



much more serious cause of the abused woman.<sup>5</sup> The second polemic argues that IPV against men is a significant problem and underreported, and that it puts women in even greater risk of victimization by abusive men, which domestic violence researchers and radical feminists have ignored in order to protect the fundamental gains of the battered women's movement, specifically, the view that intimate partner abuse is an extension of patriarchal dominance.<sup>6</sup> One of the tools used to generate statistics concerning IPV perpetration, the conflict tactics scale, is especially contentious.

## **3.2 PREVALENCE**

### **3.2.1 ESTIMATION DIFFICULTIES**

Determining the rate of intimate partner violence (IPV) against males can be difficult, as men may be reluctant to report their abuse or seek help.<sup>7</sup> Male victims of IPV may face socio-cultural issues pertaining to hegemonic masculinity such as judgement by male peers, fear of coming out as LGBTQ, or having their masculinity questioned. IPV against men is generally less recognized by society than IPV against women. For a man to admit he is the victim of female perpetrated IPV necessitates the abandonment of the veneer of machismo which society expects from men,

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<sup>5</sup> Yllö, Kersti (1988). "Political and Methodological Debates in Wife Abuse Research". In Yllö, Kersti; Bogard, Michele (eds.). *Feminist Perspectives on Wife Abuse*. Thousand Oaks, CA.: Sage. pp. 40–47. ISBN 9780803930537.

<sup>6</sup> Straus, Murray A. (June 2010). "Thirty Years of Denying the Evidence on Gender Symmetry in Partner Violence: Implications for Prevention and Treatment" (PDF). *Partner Abuse*. 1 (3): 332–362. CiteSeerX 10.1.1.372.5578. doi:10.1891/1946-6560.1.3.332. Retrieved June 28, 2014.

<sup>7</sup> Sullivan, Vince (July 10, 2013). "Help domestic abuse victims for 35 years". *The Delco Times*. Retrieved June 30, 2014.

and to admit being submissive to a female partner. For some men, this is an admission they are unwilling, or unable, to make.<sup>8</sup>

On the other hand, many abusive men readily adopt a victim identity. For example, O. J. Simpson often referred to himself as a “battered husband”.<sup>9</sup> In cases like this, reporting IPV victimization may lead to exposing themselves as batterers. Some male victims fear people assuming that the woman is the real victim, and must have been acting in self-defense or retaliating for abuse.

Researchers have demonstrated a degree of socio-cultural acceptance of aggression by women against men as opposed to a general condemnation of aggression by men against women. Male-on-female IPV has been shown to cause significantly more fear and more severe injuries than female-on-male violence. This can lead to men not considering themselves victims, and/or not realizing the IPV they are experiencing is a crime.<sup>10</sup>

Some research has shown that women who assault their male partners are more likely to avoid arrest than men who assault their female partners,<sup>11</sup> due to the fact that female perpetrators of IPV tend to be viewed by law enforcement agencies and the courts as victims. As such, some

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<sup>8</sup> Fontena Vera, Carol; Gatricia Duhart, Andrés. "La Violencia Doméstica hacia el Varón: factores que inciden en el hombre agredido para no denunciar a su pareja" (in Spanish). Retrieved November 12, 2012.

<sup>9</sup> Jacobson, Neil S.; Gottman, John Mordechai (1998). *When Men Batter Women: New Insights Into Ending Abusive Relationships*. Simon and Schuster. ISBN 9780684814476.

<sup>10</sup> Straus, Murray A.; Kantor, Glenda Kaufman; Moore, David W. (1997). "Change in Cultural Norms Approving Marital Violence from 1968-1994" (PDF). In Kantor, Glenda Kaufman; Jasinski, Jana L. (eds.). *Out of the Darkness: Contemporary Perspectives on Family Violence*. Thousand Oaks, CA.: Sage. pp. 3–16. ISBN 9780761907756. Retrieved June 28, 2014.

<sup>11</sup> Felson, Richard B.; Pare, Paul-Philippe (September 2007). "Does the Criminal Justice System Treat Domestic Violence and Sexual Assault Offenders Leniently?" (PDF). *Justice Quarterly*. 24 (3): 440, 447. doi:10.1080/07418820701485601. Retrieved June 28, 2014.

men fear that if they do report to the police, they will be assumed to be the abuser, and placed under arrest.

However, analyses of research indicates that frequently the legal system fails to view women who use IPV against controlling male partners as victims due to gendered high expectations on women to be the "perfect victim" and the culturally pervasive stereotype of the passive, "cowering" battered woman.<sup>12</sup>

Statistics indicate that under-reporting is an inherent problem with IPV irrespective of gender. For example, in England and Wales, the 1995 "Home Office Research Study 191", carried out as a supplementary study to the British Crime Survey, reported 6.6 million incidents of IPV in the previous twelve months, compared with the 987,000 incidents found by the Crime Survey. The difference in the two reports was that Study 191 was a questionnaire of a random representative sample of people, while the Crime Survey attained its figures from crime records, i.e. actual reported cases of IPV. Supplementary studies carried out in 2001 and from 2004 onwards have consistently recorded significantly higher rates of IPV (committed against both men and women) than the standard crime surveys. The 2010–2011 report found that whilst 27% of women who experienced IPV reported it to the police, only 10% of men did so, and whilst 44% of women reported to some professional organization, only 19% of men did so. In a 2005 report carried out by the National Crime Council in the Republic of Ireland, it was estimated that 5% of men who had experienced IPV had reported it to the authorities, compared to 29% of women.

### **3.2.2 ESTIMATES OF MALE VICTIMIZATION**

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<sup>12</sup> Goodmark, Leigh (2008). "When Is a Battered Woman Not a Battered Woman? When She Fights Back". *Yale Journal of Law and Feminism*. 20 (1): 75–129. ISSN 1043-9366.

In England and Wales, the 1995 “Home Office Research Study 191” surveyed 10,844 people (5,886 women and 4,958 men) between the ages of 16 and 59, finding that for the twelve-month period preceding the survey, 4.2% of men had experienced IPV. Over a lifetime, this figure increased to 14.9% of men. Of the 6.6 million incidents of IPV in 1995, 3.25 million involved male victims, with 1 million incidents resulting in injury. Since 2004, more detailed annual records have been maintained as a supplementary survey attached to the annual Home Office Crime in England and Wales reports. These reports have consistently recorded significantly higher rates of both male and female victims of IPV than the standard crime surveys. In the case of male victims, the figures range from a high of 4.5% in 2007/2008 to a low of 3.1% in 2009/2010.<sup>13</sup> In the Republic of Ireland, a 2005 report carried out by the National Crime Council found that 15% of women and 6% of men had suffered severe IPV in their lifetime, equating to roughly 213,000 women and 88,000 men. In Northern Ireland, police records for 2012 listed 2,525 male victims of domestic violence, an increase of 259 cases from 2011.<sup>14</sup>

In the United States, the National Violence Against Women Survey carried out by the Department of Justice in 2000, surveyed 16,000 people (8,000 men and 8,000 women), and found that 7.4% of men reported physical assault by a current or former spouse, cohabiting partner, boyfriend/girlfriend, or date in their lifetime. Additionally, 0.9% of men reported experiencing domestic violence in the past year, equating to 834,732 men.<sup>15</sup> In 2000, the

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<sup>13</sup> Hall, Philip (2011). "Intimate violence: 2009/10 BCS" (PDF). In Smith, Kevin (ed.). Homicides, Firearm Offences and Intimate Violence, 2009/2010: Supplementary Volume 2 to Crime in England and Wales, 2009/2010. London: Home Office. p. 82. Retrieved July 1, 2014.

<sup>14</sup> McNeilly, Claire (October 29, 2013). "Domestic violence against men at its highest level in Northern Ireland since police began recording statistics". The Belfast Telegraph. Retrieved June 30, 2014.

<sup>15</sup> Tjaden, Patricia; Thoennes, Nancy (2000). Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women (PDF). Washington DC: National Institute of Justice. p. 26. Retrieved June 30, 2014.

Canadian General Social Survey found 7% of men had experienced IPV from 1994 to 1999, amounting to 549,000 men.<sup>16</sup> Another Canadian General Social Survey, in 2005, found 6% of men had experienced IPV between 2000 and 2005, amounting to 546,000 men.<sup>17</sup> Data concerning campus rape, such as from a National Institute of Mental Health and Ms. Magazine study, has found a 1 in 7 sexual assault rate for men in U.S. colleges.<sup>18</sup> In 2013, the American Centers for Disease Control and Prevention (CDC) found that from a sample of 16,000 U.S. adults, 26% of homosexual men, 37.3% of bisexual men, and 29% of heterosexual men had been a victim of IPV, compared to 43.8% of lesbians, 61.1% of bisexual women and 35% of heterosexual women. CDC Director Tom Frieden stated, "This report suggests that lesbians, gay men and bisexuals in this country suffer a heavy toll of sexual violence and stalking committed by an intimate partner."<sup>19</sup>

In New Zealand, the twenty-one year Dunedin Multidisciplinary Health and Development Study, published in 1999, reported that of their sample of 1,037 people, 27% of women and 34% of men reported being physically abused by a partner, with 37% of women and 22% of men reporting they had perpetrated IPV. Also in New Zealand, a 2009 report by the Journal of Applied Social Psychology evaluated samples of university students (35 female, 27 male), general population (34 female, 27 male), and incarcerated participants (15 female, 24 male), and found that 16.7% of the male respondents reported physical abuse (12.9% for students and 15.4% for convicts),

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<sup>16</sup> Bunge, Valerie Pottie; Locke, Daisy, eds. (2000). Family Violence in Canada: A Statistical Profile 2000 (PDF). Ottawa: Statistics Canada. p. 11. Retrieved June 28, 2014.

<sup>17</sup> Mihorean, Karen (2005). "Trends in self-reported spousal violence" (PDF). In AuCoin, Kathy (ed.). Family Violence in Canada: A Statistical Profile 2005. Ottawa: Statistics Canada. p. 14. Retrieved June 28, 2014.

<sup>18</sup> "Rape on College Campus". Union College. Retrieved June 28, 2014.

<sup>19</sup> Heavey, Susan (January 25, 2013). "Data shows domestic violence, rape an issue for gays". Reuters. Reuters. Retrieved June 30, 2014.

while 29.5% reported bidirectional (i.e. both partners commit IPV) violence (14.5% for students and 51.3% for convicts).

The 2006 International Dating Violence Study, which investigated IPV amongst 13,601 students across thirty-two-nations found that "about one-quarter of both male and female students had physically attacked a partner during that year". It reported that 24.4% of males had experienced minor IPV and 7.6% had experienced "severe assault".

In 2012, two Swedish studies were released that showed men experienced IPV at rates similar to women—8% per year in one study and 11% per year in the other.

**In India,** Domestic Violence has been recognized across the world as a form of violence that affects a person's life in every way – physically, mentally, emotionally and psychologically – and is a violation of basic human rights. Various countries have identified it as a serious threat to a person's overall wellbeing thus providing relief in various forms. India has also identified domestic violence as a crime and provides relief and protection from it – albeit to only Women!

Indian men facing domestic violence at the hands of wife or female partner is a harsh reality. However, no one including our government has taken any stand on addressing it. Domestic Violence is a serious social issue, but men who face domestic violence in India have nowhere to go since the law doesn't treat them as victims.

In most countries in the world, the laws against domestic violence provide protection to both men and women. Men can also seek restraining orders from courts, which restrain the abusive partner or wife from perpetrating abuse and even contacting the victim. Whereas in India, family violence against men is almost legal as there is no provision in any law to protect a man, who faces violence from wife or other female family members. There are several cases where a husband has been battered, abused, tortured by wife in connivance with her own family. Many a

times the violence is so brutal that the husband suffers extreme injuries, in some cases he is killed as well.

This situation is mainly due to patriarchal thinking in the society, that men are stronger than women and they can defend themselves with physical force. Its high time India keeps pace with the rest of the world and makes the laws against domestic violence gender neutral.

Save Indian Family Foundation, an organization working on men's rights, has now approached MPs to submit a private member bill in the parliament to start the steps towards enacting a law for protection of men from domestic violence. It is long overdue. We are currently Marital Rape and the argument is that it is recognized as a crime in several countries. If that be, domestic violence is also recognised in most countries as spousal violence and not man on woman violence. To keep pace with these developments, there has to be a policy to prevent family violence against men, believes SIFF.

Most abused men do not run away from their abusers and apply for divorce, because they are either afraid of losing access to their children or they are afraid of getting implicated in false cases of dowry harassment. They also dread huge financial losses and long drawn litigations in the process, given the insensitive and lackadaisical attitude of the Indian Judiciary, especially towards men.

In 2004, the National Family Health Survey (NFHS) has found that about 1.8% or an estimated 60 lakh women have perpetrated physical violence against husbands without any provocation. However, men are more likely to be threatened and attacked by male relatives of the wife than the wife herself. The strange aspect however is, men are not asked if they are victims of domestic violence in these surveys.

When physical violence and threats against men by wife's relatives are taken into account, an estimated 3 crore men are facing domestic violence in India.

As there is a lot of social stigma towards men abused by women, most of the male victims do not come out in open and do not share their ordeal with family, friends or colleagues. Male victims of domestic violence are ridiculed and considered as unmanly. Such thinking is chauvinistic and it is harmful.

Violence on men can range from anything like - physical violence including slapping, pushing, hitting by wife, her parents or relatives; emotional violence with wife threatening suicide to intimidate and control the husband; verbal abuse if husband remains in contact with his parents or comes home late from work; throwing objects like utensils, cell phones and crockery at the husband; sexual abuse if husband denies sex to mental abuse by constant threats of implicating the husband and his family under false case of dowry and domestic violence.

Today, many women have serious anger management issues. They also seem to bring the stress of the workplace to the home. This is one of the main reasons of domestic violence against men. The other reasons include intolerance and anger at non-fulfillment of expectations. Sometimes, inability of husband to meet monetary demands of wife also leads to abuse and violence

Times are changing and there are many men whose wives are more educated than their husbands and earn more. However, the burden of running the house still rests on the man owing to 16th century patriarchal beliefs and this paves the path for abuse of men. Such a law could allow such husbands to seek maintenance from an abusive wife and lead a dignified life free from abuse.

Male victims of family violence go through low self-esteem and their performance at workplace suffers. Thousands of such men are approaching psychiatrists, who are not of much help, when a law to provide protection to men and restrain the women does not exist.



Most parents of women blame the son-in-law for the breakdown of the marriage, without accepting that their daughter is abusive or she has serious anger management issues. They somehow think their daughter can never be wrong and expect the son-in-law to tolerate her. They get violent at son-in-law to teach him a lesson or seek revenge. Police rarely accept any complaints filed by husband about the violence he is suffering, claiming that this is a family issue. They also refuse to provide any protection to the man.

The patriarchal thinking that “Mardko Dard nahihota” (Men do not feel pain) eulogizes and patronizes emotional castration of boys from a very young age which teaches them to tolerate abuse and feel glorified about making sacrifices. Owing to this social conditioning, a vast majority of victimized men wear a plastic smile and hide their scars and suffer in solitude.

The survey conducted by National Family Health Survey which throws light on unprovoked violence against men by women is evidence in the face. Notwithstanding the fact that double the numbers of men commit suicide compared to women, it should not be a surprise to ask for a law to protect men as such a law for women already exists. In fact, it would be preposterous in this age of gender equality, not to have such a law. Such a law to protect men from domestic violence would act as succour to millions of those men who feel victimised and left out.

It would also provide them with a legal platform to come forward and share their pain and get some semblance of a relief.

### **3.3 GENDER SYMMETRY**

The theory that women perpetrate IPV at roughly similar rates as men has been termed “gender symmetry”. The earliest empirical evidence of gender symmetry was presented in the 1975 U.S. National Family Violence Survey carried out by Murray A. Straus and Richard J. Gelles on a nationally representative sample of 2,146 “intact families”. The survey found 11.6% of men and

12% of women had experienced some kind of IPV in the last twelve months, while 4.6% of men and 3.8% of women had experienced "severe" IPV.<sup>20</sup> These unexpected results led Suzanne K. Steinmetz to coin the controversial term "battered husband syndrome" in 1977.<sup>21</sup> Ever since the publication of Straus and Gelles' findings, other researchers in domestic violence have disputed whether gender symmetry really exists, and how to differentiate between victim and batterer. Since 1975, numerous other empirical studies have found evidence of gender symmetry in IPV. For example, in the United States, the National Comorbidity Study of 1990-1992 found 18.4% of men and 17.4% of women had experienced minor IPV, and 5.5% of men and 6.5% of women had experienced severe IPV. In England and Wales, the 1995 "Home Office Research Study 191" found that in the twelve months prior to the survey, 4.2% of both men and woman between the ages of 16 and 59 had been assaulted by an intimate. The Canadian General Social Survey of 2000 found that from 1994 to 1999, 4% of men and 4% of women had experienced IPV in a relationship in which they were still involved, 22% of men and 28% of women had experienced IPV in a relationship which had now ended, and 7% of men and 8% of women had experienced IPV across all relationships, past and present. The 2005 Canadian General Social Survey, looking at the years 1999–2004 found similar data; 4% of men and 3% of women had experienced IPV in a relationship in which they were still involved, 16% of men and 21% of

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<sup>20</sup> Gelles, Richard J.; Straus, Murray A. (1988). *Intimate Violence: The Causes and Consequences of Abuse in the American Family* (PDF). New York: Simon & Schuster. p. 104. ISBN 978-0-671-68296-5. Retrieved July 5, 2014.

<sup>21</sup> Steinmetz, Suzanne K. (1977). "The Battered Husband Syndrome" (PDF). *Victimology*. Visage Press. 2 (3–4): 499–509. OCLC 936769926.

women had experienced IPV in a relationship which had now ended, and 6% of men and 7% of women had experienced IPV across all relationships, past and present.<sup>22</sup>

An especially controversial aspect of the gender symmetry debate is the notion of bidirectional or reciprocal IPV (i.e. when both parties commit violent acts against one another). Findings regarding bidirectional violence are particularly controversial because, if accepted, they can serve to undermine one of the most commonly cited reasons for female perpetrated IPV; self-defense against a controlling male partner. Despite this, many studies have found evidence of high levels of bidirectionality in cases where women have reported IPV. For example, social activist Erin Pizzey, who established the first women's shelter in the U.K. in 1971, found that 62 of the first 100 women admitted to the centre were "violence-prone," and just as violent as the men they were leaving. The 1975 National Family Violence Survey found that 27.7% of IPV cases were perpetrated by men alone, 22.7% by women alone and 49.5% were bidirectional. In order to counteract claims that the reporting data was skewed, female-only surveys were conducted, asking females to self-report, resulting in almost identical data.<sup>23</sup> The 1985 National Family Violence Survey found 25.9% of IPV cases perpetrated by men alone, 25.5% by women alone, and 48.6% were bidirectional. A study conducted in 2007 by Daniel J. Whitaker, Tadesse Haileyesus, Monica Swahn, and Linda S. Saltzman, of 11,370 heterosexual U.S. adults aged 18 to 28 found that 24% of all relationships had some violence. Of those relationships, 49.7% of

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<sup>22</sup> Mihorean, Karen (2005). "Trends in self-reported spousal violence" (PDF). In AuCoin, Kathy (ed.). *Family Violence in Canada: A Statistical Profile 2005*. Ottawa: Statistics Canada. p. 14. Retrieved June 28, 2014.

<sup>23</sup> Straus, Murray A. (May 1980). "Victims and Aggressors in Marital Violence" (PDF). *American Behavioral Scientist*. 23 (5): 681–704. doi:10.1177/000276428002300505. Retrieved July 4, 2014.

them had reciprocal violence. In relationships without reciprocal violence, women committed 70% of all violence. However, men were more likely to inflict injury than women.<sup>24</sup>

In 1997, Philip W. Cook conducted a study of 55,000 members of the United States Armed Forces, finding bidirectionality in 60-64% of IPV cases, as reported by both men and women. The 2001 National Longitudinal Study of Adolescent Health found that 49.7% of IPV cases were reciprocal and 50.3% were non-reciprocal. When data provided by men only was analyzed, 46.9% of cases were reported as reciprocal and 53.1% as non-reciprocal. When data provided by women only was analyzed, 51.3% of cases were reported as reciprocal and 49.7% as non-reciprocal. The overall data showed 70.7% of non-reciprocal IPV cases were perpetrated by women only (74.9% when reported by men; 67.7% when reported by women) and 29.3% were perpetrated by men only (25.1% when reported by men; 32.3% when reported by women). The 2006 thirty-two nation International Dating Violence Study "revealed an overwhelming body of evidence that bidirectional violence is the predominant pattern of perpetration; and this indicates that the etiology of IPV is mostly parallel for men and women". The survey found for "any physical violence", a rate of 31.2%, of which 68.6% was bidirectional, 9.9% was perpetrated by men only, and 21.4% by women only. For severe assault, a rate of 10.8% was found, of which 54.8% was bidirectional, 15.7% perpetrated by men only, and 29.4% by women only.

In 2000, John Archer conducted a meta-analysis of eighty-two IPV studies. He found that "women were slightly more likely than men to use one or more acts of physical aggression and to use such acts more frequently. Men were more likely to inflict an injury, and overall, 62% of those injured by a partner were women." By contrast, the U.S. Department of Justice finds that

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<sup>24</sup> Whitaker, Daniel (May 2007). "Differences in Frequency of Violence and Reported Injury Between Relationships With Reciprocal and Nonreciprocal Intimate Partner Violence". *Am J Public Health*. 97 (5): 941–947.

women make up 84% of spouse abuse victims and 86% of victims of abuse by a boyfriend or girlfriend.<sup>25</sup>

As both Fiebert and Archer point out, although the numerical tally of physical acts in these studies has found similar rates of IPV amongst men and women, and high rates of bidirectionality, there is general agreement amongst researchers that male violence is a more serious phenomenon, primarily, but not exclusively, because male violence tends to inflict more psychological and physical damage than female violence. Male violence produces injury at roughly six times the rate of female violence. Women are also more likely to be killed by their male partners than the reverse (according to the US Department of Justice, 84% of spousal murder victims are female), and women in general are more likely to be killed by their spouses than all other types of assailants combined.<sup>26</sup> In relation to this, Murray A. Straus has written “although women may assault their partners at approximately the same rate as men, because of the greater physical, financial, and emotional injury suffered by women, they are the predominant victims. Consequently, the first priority in services for victims and in prevention and control must continue to be directed toward assaults by husbands.”

From 2010 to 2012, scholars of domestic violence from the U.S., Canada and the U.K. assembled The Partner Abuse State of Knowledge, a research database covering 1700 peer-reviewed studies, the largest of its kind. Among its findings:<sup>27</sup>

- More women (23%) than men (19.3%) have been assaulted at least once in their lifetime.

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<sup>25</sup> "Family Violence Statistics: Including Statistics on Strangers and Acquaintances" (PDF). Bureau of Justice Statistics, U.S. Department of Justice. Archived(PDF) from the original on August 11, 2015.

<sup>26</sup> Browne, Angela; Williams, Kirk R. (1989). "Exploring the effect of resource availability and the likelihood of female-perpetrated homicides". *Law and Society Review*. 23 (1): 75–94. doi:10.2307/3053881. JSTOR 3053881

<sup>27</sup> Partner Abuse State of Knowledge Project Findings At-a-Glance, Sponsored by the Journal Partner Abuse, John Hamel, LCSW, Editor-in-Chief, [www.springerpub.com/pa](http://www.springerpub.com/pa), November 2012

- Rates of female-perpetrated violence are higher than male-perpetrated (28.3% vs. 21.6%).
- Male and female IPV are perpetrated from similar motives.
- Studies comparing men and women in the power/control motive have mixed results overall.

A 2013 review examined studies from five continents and the correlation between a country's level of gender inequality and rates of domestic violence. The authors found that when partner abuse is defined broadly to include emotional abuse, any kind of hitting, and who hits first, partner abuse is relatively even. They also stated if one examines who is physically harmed and how seriously, expresses more fear, and experiences subsequent psychological problems, domestic violence is significantly gendered toward women as victims.<sup>28</sup>

### **3.3.1 CONFLICT TACTICS SCALE**

In a 2002 review of the research presenting evidence of gender symmetry, Michael Kimmel noted that more than 90% of "systematic, persistent, and injurious" violence is perpetrated by men. He was especially critical of the fact that the majority of the empirical studies reviewed by Fiebert and Archer used the conflict tactics scale (CTS) as the sole measure of domestic violence, and that many of the studies used samples composed entirely of single people under the age of thirty, as opposed to older married couples.<sup>29</sup> Although the CTS is the most widely used domestic violence measurement instrument in the world,<sup>30</sup> it is also one of the most criticized

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<sup>28</sup> Esquivel-Santovena, Esteban Eugenio; Lambert, Teri; Hamel, John (January 2013). "Partner abuse worldwide" (PDF). *Partner Abuse*. 4 (1): 1–8. doi:10.1891/1946-6560.4.1.e14.

<sup>29</sup> Kimmel, Michael S. (November 2002). "'Gender symmetry' in domestic violence: a substantive and methodological research review". *Violence Against Women*. 8 (11): 1332–1363.

<sup>30</sup> Straus, Murray A.; Douglas, Emily M. (October 2004). "A short form of the revised conflict tactics scales, and typologies for severity and mutuality". *Violence & Victims*. 19 (5): 507–520.

instruments, due to its exclusion of context variables, inability to measure systemic abuse and motivational factors in understanding acts of violence. For example, the National Institute of Justice cautions that the CTS may not be appropriate for IPV research at all “because it does not measure control, coercion, or the motives for conflict tactics”.

Kimmel argues that the CTS is particularly vulnerable to reporting bias because it depends on asking people to accurately remember and honestly report incidents which have occurred up to a year previously. Even Straus admitted that the data indicates men tend to underestimate their use of violence, and women tend to overestimate their use of violence. “He attempts to control for this by examining only reports from women. Yet this does not correct the bias, because women also tend to underestimate men’s use of violence. Furthermore, men and women alike tend to overestimate women’s use of violence. Violence by men is expected, so it is not reported; violence by women is not expected, so it is notable and reported.” Thus men will overestimate their victimization and underestimate their perpetration, while women will underestimate their victimization and overestimate their perpetration. Barbara J. Morse and Malcolm J. George have presented data suggesting that male underestimation of their partner's violence is more common in CTS based studies than overestimation. Linda Kelly has noted that even when dividing the data provided by CTS based studies into that given by men and that given by women (such as in the 2001 National Longitudinal Study of Adolescent Health), the rate of female perpetrated IPV remains at roughly the same level. The Dunedin Longitudinal Study interviewed both partners in an attempt to test for intentional bias by the participants but found a high degree of correlation between the two partners. Indeed,

Contrary to expectations, agreement between partners did not vary with the perpetrator's gender or with the type of abusive behavior<sup>31</sup>

R. Emerson Dobash and Russell P. Dobash have also criticized the CTS, arguing that it is improper to equate male IPV with female IPV. They question the methodology behind the CTS, the data which stems from it and the theoretical framework used by investigators who champion it, arguing that male aggression is much more severe than female aggression and the two should not be measured by the same tool on the same scale. Such an approach would make it impossible to compare male and female aggression because there would be no common measurement.

Another critic, Kersti Yllö, who holds Straus and those who use the CTS accountable for damaging the gains of the battered women's movement, by releasing their findings into the "marketplace of ideas". She argues that, as sociologists committed to ending domestic violence, they should have foreseen the controversy such statistics would cause and the damage it could potentially do to battered women. Similarly, Nancy Worcester refers to studies which find evidence of gender symmetry and high levels of bidirectionality as part of the "anti-feminist backlash", arguing that studies which use the CTS demonstrate the "limitations and dangers of a gender-neutral approach to anti-violence work".

Straus argues that it is more harmful to women to attempt to tackle the problem of domestic abuse without proper strategy based on facts: "The research shows that this so-called harmless violence by women because a meta-analysis by Stith and colleagues (2004) found that a woman's perpetration of violence was the strongest predictor of her being a victim of partner violence."

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<sup>31</sup> Moffitt, Terrie; Caspi, Avshalom (July 1999). "Findings About Partner Violence From the Dunedin Multidisciplinary Health and Development Study". *Research in Brief*: 4.



Straus responded to criticism of the CTS by arguing that it is driven by radical-feminists who are uncomfortable with any evidence that women can be as violent as men because it undermines their belief that IPV is an extension of men's desire to subjugate women; “one of the explanations for denying the evidence on gender symmetry is to defend feminism in general. This is because a key step in the effort to achieve an equalitarian society is to bring about recognition of the harm that a patriarchal system causes. The removal of patriarchy as the main cause of IPV weakens a dramatic example of the harmful effects of patriarchy.” Straus also points out that despite being critical of the CTS, numerous feminist researchers use it for their own research, and that it was CTS based studies which first illustrated and brought to the public's attention the extent of the battered women problem in the 1970s.

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### **3.4 BATTERED HUSBAND SYNDROME**

The most controversial aspect of female perpetrated IPV is the theory of "battered husband syndrome". In reaction to the findings of the U.S. National Family Violence Survey in 1975,

Suzanne K. Steinmetz wrote an article in 1977 in which she coined the term as a correlative to “battered wife syndrome”. Steinmetz conducted several empirical investigations prior to writing her article. Using a broad-based non-representative sample of fifty-four couples, Steinmetz found male perpetrated IPV at a rate of 47% and female perpetrated IPV at a rate of 43%. She further found that while 39% of husbands had thrown objects, 31% of wives had done likewise; 31% of husbands had pushed or shoved their partner, compared to 32% of wives; 20% of husbands had hit their wives, 20% of wives had hit their husbands; 10% of husbands had hit their wives with an object, 10% of wives had hit their husbands with an object. In another study, using a sample of fifty-two Canadian college students, Steinmetz found male perpetrated IPV at a rate of 23% and female perpetrated IPV at a rate of 21%. Further investigation found that 21% of both husbands and wives had thrown objects; 17% of husbands had pushed or shoved, compared to 13% of wives; 13% of husbands had hit their wives, 13% of wives had hit their husbands; 10% of husbands had hit their wives with an object, 12% of wives had hit their husbands with an object. In a third study, using a random sample of ninety-four people, Steinmetz found male perpetrated IPV at a rate of 32% and female perpetrated IPV at a rate of 28%. Further investigation found that 31% of husbands had thrown objects compared to 25% of wives; 22% of husbands had pushed or shoved, compared to 18% of wives; 17% of husbands had hit their wives, 12% of wives had hit their husbands; 12% of husbands had hit their wives with an object, 14% of wives had hit their husbands with an object.

These findings led Steinmetz to conclude that IPV was roughly reciprocal between husbands and wives, with a similar level of intentionality between men and women; "women are as likely to select physical conflict to resolve marital conflict as are men ... women have the potential to commit acts of violence and under certain circumstances, they do carry out these acts”.

According to Malcolm J. George, Steinmetz' article “represented a point of departure and antithetical challenge to the otherwise pervasive view of the seemingly universality of female vulnerability in the face of male hegemony exposed by the cases of battered wives”.

Steinmetz' colleague, Richard J. Gelles, publicly addressed confusion caused by the research and father's rights groups "significant distortion" of the data in his public response Domestic Violence: Not An Even Playing Field, “Indeed, men are hit by their wives, they are injured, and some are killed. But, are all men hit by women battered? No. Men who beat their wives, who use emotional abuse and blackmail to control their wives, and are then hit or even harmed, cannot be considered battered men. A battered man is one who is physically injured by a wife or partner and has not physically struck or psychologically provoked her.”<sup>32</sup>

Steinmetz' claims in her article, and her use of the phrase "battered husband syndrome" in particular, aroused a great deal of controversy, with many scholars criticizing research flaws in her work. In particular, she was criticized for not differentiating between verbal and physical aggression or between intentionality and action (wanting to hit was considered the same as actually hitting). For example, David Finkelhor argues that Steinmetz' methodology was unacceptably unscientific. He argues that her work looks at all violence as fundamentally similar; there is no differentiation between male and female violence, or violence against a child and violence against a wife, such as a mother spanking a child and a father breaking a mother's ribs. Finkelhor sees this as especially important insofar as it does not allow a differentiation between ongoing systemic abuse and once-off violence, or between disciplining a child and beating a partner.

### **3.5 CAUSES OF FEMALE-PERPETRATED IPV**

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<sup>32</sup> "Richard Gelles: oh so magnanimous, and dead wrong". fathersmanifesto.net. Retrieved January 28,2018.

Linda Kelly writes that “in conceding that women do engage in acts of domestic violence, female use of violence is justified as self-defense—a lifesaving reaction of women who are being physically attacked by their male partners. The development of the battered woman syndrome as a defense for crimes committed against abusive male partners, including homicide, evidences the wide acceptance of a woman's use of violence as self-defense.” The theory is that when women commit IPV, it is probably justified because they were previously victims and, therefore, the male was the “primary aggressor.” Thus, the woman's violent behavior is caused by her background as a victim. Juan Carlos Ramírez explains that given the socially accepted model of femininity as one of submission, passivity and abnegation, whatever behavior does not follow this stereotype will be perceived in an exaggerated manner as abnormal and violent. Thus, women will be perceived as disproportionately aggressive even if merely defending themselves.<sup>33</sup> Meta-analyses of the research find that the overwhelming majority of women's IPV against male partners is in the context of being victimized. A 2010 systematic review of the literature on women's perpetration of IPV found that anger, self-defense and retaliation were common motivations but that distinguishing between self-defense and retaliation was difficult.<sup>34</sup> Several studies have found evidence that only a small proportion of women identify their IPV as self-defense. For example, in a 1996 study of 1,978 people in England, 21% of women who admitted to committing IPV gave self-defense as a reason. More prevalent reasons were "Get through to" (53%), “Something said” (52%) and "Make do something" (26%). In a five-year study of 978

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<sup>33</sup> Ramírez, Juan Carlos (2005). *Madeiras entreveradas: Violencia, masculinidad y poder*[Interlocked skeins: Violence, masculinity and power] (in Spanish). Guadalajara: Universidad de Guadalajara. ISBN 978-970-722-360-8

<sup>34</sup> Bair-Merritt, Megan H; Crowne, Sarah Shea; Thompson, Darcy A; Sibinga, Erica; Trent, Maria; Campbell, Jacquelyn (2010). "Why Do Women Use Intimate Partner Violence? A Systematic Review of Women's Motivations". *Trauma, Violence & Abuse*. 11(4): 178–189. doi:10.1177/1524838010379003. PMC 2994556. PMID 20823071.

college students from California, concluded in 1997, Martin S. Fiebert and Denise M. Gonzalez found an IPV rate amongst women of 20%. Within this group, perpetrators were asked to select reasons as to why they assaulted their partner, with the option to choose multiple reasons. The breakdown of reasons had "my partner wasn't sensitive to my needs" as the most prevalent (46%). Also found more frequently than self-defense were "I wished to gain my partner's attention" (44%) and "My partner was not listening to me" (43%).

Looking beyond self-defense, studies have found a range of causes for female-perpetrated IPV. Writing of the feminist theory which regards reinforcement of patriarchy as a primary cause of IPV, Murray A. Straus writes "Patriarchy and male dominance in the family are clearly among the causes [of IPV], but there are many others. However, with rare exceptions, current offender treatment programs are based on the assumption that the primary cause is male dominance. Thus, they proceed under an erroneous assumption. Illustrative of this fallacious single-cause approach are the state-mandated offender treatment programs that forbid treating other causes, such as inadequate anger management skills."<sup>35</sup> In 2006, Rose A. Medeiros and Murray A. Straus conducted a study using a sample of 854 students (312 men and 542 women) from two American universities. They identified fourteen specific risk factors common amongst both males and females who had committed IPV; poor anger management, antisocial personality disorders, borderline personality disorders, pattern of dominating relationships, substance abuse, criminal history, posttraumatic stress disorders, depression, communication problems, jealousy, sexual abuse as a child, stress, and a general attitudinal approval of partner violence. Straus states that most female perpetrated IPV is not motivated by self-defense, but by a desire to control their

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<sup>35</sup> Straus, Murray A. (June 2010). "Thirty Years of Denying the Evidence on Gender Symmetry in Partner Violence: Implications for Prevention and Treatment" (PDF). *Partner Abuse*. 1 (3): 351. CiteSeerX 10.1.1.372.5578. doi:10.1891/1946-6560.1.3.332. Retrieved June 28, 2014.

partners. In 2014, a study involving 1,104 male and female students in their late teens and early twenties found that women are more likely than men to be controlling and aggressive towards their partners, more likely to demonstrate a desire to control their partners, and more likely to use physical aggression in ensuring that control. The main author of the study, Elizabeth Bates, wrote “this suggests that intimate partner violence may not be motivated by patriarchal values and needs to be studied within the context of other forms of aggression, which has potential implications for interventions.”

Other explanations for both male and female-perpetrated IPV include psychopathology, anger, revenge, skill deficiency, head injuries, biochemical imbalances, feelings of powerlessness, lack of resources, and frustration. Researchers have also found a correlation between the availability of domestic violence services, increased access to divorce, higher earnings for women, and improved laws and enforcement regarding domestic violence with declines in female perpetrated IPV.<sup>36</sup>

### **3.6 CRITICISM**

Many critics have rejected the research cited by men's rights activists and dispute their claims that such violence is gender symmetrical, arguing that MRAs' focus on women's violence against men stems from a misogynistic political agenda to minimize the issue of men's violence against women and to undermine services to abused women.<sup>37</sup>

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<sup>36</sup> Dugan, Laura; Nagin, Daniel S.; Rosenfeld, Richard (August 1999). "Explaining the Decline in Intimate Partner Homicide: The Effects of Changing Domesticity, Women's Status, and Domestic Violence Resources". *Homicide Studies*. 3 (3): 187–214.

<sup>37</sup> Kimmel, Michael S. (November 2002). "'Gender symmetry' in domestic violence: a substantive and methodological research review". *Violence Against Women*. 8 (11): 1332–1363.

Current literature on IPV has alternative viewpoints in relation to gender symmetry theory. A 2008 review published in journal of Violence and Victims found that although less serious situational violence or altercation was equal for both genders, more serious and violent abuse was perpetrated by men. It was also found that women's physical violence was more likely motivated by self-defense or fear while men's was more likely motivated by control. A 2011 systematic review from the journal of Trauma Violence Abuse also found that the common motives for female on male domestic violence were anger, a need for attention, or as a response to their partner's own violence. Another 2011 review published in the journal of Aggression and Violent Behavior also found that although minor domestic violence was equal, more severe violence was perpetrated by men. It was also found that men were more likely to beat up, choke or strangle their partners, while women were more likely to throw things at their partner, slap, kick, bite, punch, or hit with an object.

Researchers have also found different outcomes in men and women in response to intimate partner violence. A 2012 review from the journal Psychology of Violence found that women suffered disproportionately as a result of IPV especially in terms of injuries, fear, and posttraumatic stress. The review also found that 70% of female victims in one of their studies were “very frightened” in response to intimate partner violence from their partners, but 85% of male victims cited “no fear”. The review also found that IPV mediated the satisfaction of the relationship for women but it did not do so for men.

Gender asymmetry is also consistent with government findings. According to government statistics from the US Department of Justice, male perpetrators constituted 96% of federal

prosecution on domestic violence.<sup>38</sup> Another report by the US Department of Justice on non-fatal domestic violence from 2003–2012 found that 76 percent of domestic violence was committed against women and 24 percent were committed against men.<sup>39</sup> Dr. Ruth M. Mann of the University of Windsor, an expert on sociology and criminology, stated her opposition to the gender symmetry theory of domestic violence on the grounds that women as well as children are the main victims in the “annual pile up” of victims being murdered by intimate partners and fathers throughout Canada.

### **3.7 RESPONSES**

Police services in several locations have expanded their domestic violence programs and response units in an effort to deal with IPV against men. Shelters specifically for men have been set up in the UK; as of 2010, there are sixty refuge places available to men throughout England and Wales, compared to 7,500 places for women.<sup>40</sup>

The Police Service of Northern Ireland has also campaigned to spread awareness of the problem of male victimization and to promote reporting of incidents. The country's first shelter for male abuse victims, Men's Aid NI, opened in early 2013. Chairman Peter Morris has remarked, "Domestic violence against men can take many forms, including emotional, sexual and physical abuse and threats of abuse. It can happen in heterosexual and same-sex relationships and, as with domestic abuse against females, can go largely unreported.

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<sup>38</sup> Durose, Matthew R. (2005). "Family Violence Statistics Including Statistics on Strangers and Acquaintances" (PDF). bjs.gov. US Department of Justice. Archived (PDF) from the original on March 4, 2016.

<sup>39</sup> Truman, Jennifer L. (2014). "Nonfatal Domestic Violence, 2003–2012" (PDF). bjs.gov. US Department of Justice. Archived (PDF) from the original on January 17, 2016.

<sup>40</sup> Campbell, Denis (September 5, 2010). "More than 40% of domestic violence victims are male, report reveals". The Guardian. Retrieved June 30, 2014.





**CHAPTER 4**

**LEGISLATIVE PROVISION**

**FOR THE PROTECTION**

**OF DOMESTIC VIOLENCE**

**AGAINST MEN**

## 4.1 IMPORTANT RELATED LAWS

There are no special laws to protect men from women, and while there should be in relation to domestic violence, sexual harassment, or even criminal laws. Even having a domestic violence law to protect a man from violent wife, is NOT the same as having a law which can stop false DV cases by women.

That belief also assumed that courts are places where innocents get harassed, so the only way to get justice is to harass the opponents and thereby that harassment will force them to come to bargaining table and close the cases.

The only way to stop false cases is to work towards rigorous prosecution of all false cases and false evidences, including wrong investigation by police.

If law can favour women, then there will be no need to conduct any trial or ask parties to submit their evidences, conduct cross-examinations, indulge in useless legal arguments. It will be much simpler to peruse the complaint/FIR and simply pronounce the husband as guilty and punished for 3 years in jail under IPC 498A etc. Or simply take wife's DV petition at face value and award her the 50K per month and 2 lakh compensation she has asked for. Even those who claim that law favours women haven't produced a single instance where this has actually happened.

Since court can't pronounce anyone's guilt or liability without looking at evidence, then it can be safely said that Indian Evidence Act is the most important law men should be aware of. Everything else, the contradiction filled police complaint, vague allegations, the false jewellery list, the tears in courtroom; might have some sympathy or drama value, but have zero value in terms of evidence.

In court trials, only evidences whether documentary or statements by witnesses are what matter for the final decision, assuming of course that one is making lawyer do the work of cross-

examination, filing documents etc at right times. The biggest problem with people is that they don't have a very vague idea of what is evidence, don't know what is good versus not-so-good or even bad evidence, and moreover due to over-emotional (lack of) thinking, are unable to apply themselves properly to collect and submit evidence to court at right time. Not managing lawyer and leaving things to lawyer assuming he/she's the expert are the other major problem. Without good evidence, lawyer becomes more like a glorified clerk whose job becomes only to submit petitions and statements, and do routine cross-examination which is unable to destroy the opponents' false case convincingly.

Now what is evidence and what is not? E.g. wife's preposterous allegations and false list of 'dowry' in CAW cell are not really any evidences. But many husbands get floored at that first hurdle itself and readily move towards the C-word called Compromise.

Photocopies of documents are not acceptable as evidence. But they can still be used in cross-examination of opponent and based on the situation can elicit useful points in one's favour. So one need not lose heart if one doesn't have original documents for everything.

Audio recordings are admissible as evidence. If the opponent lawyer objects, they can go for voice sample and authentication, but by itself audio recording can't be dismissed away. This is another myth being spread by lawyers that audio recording won't work in court. Maybe the problem is laziness, lack of application, and lack of enthusiasm for fighting husband's case, so he can be steered towards the C-word. To some extent, even public is to be blamed who unquestioningly believes lawyers' words which go against common sense.

Relying on panchayat or neighbours as witnesses who saw what actually happened, is fine in theory. But in courts, documentary evidences stand the best chance, simply because given the

long duration of trials, there is no guarantee your witness may not have moved to another place, or will be as keen to give evidence 2 years from now as he/she may be right now.

Technically speaking there are few laws which are gender neutral . For example IPC 323 , IPC 406 , IPC 307 and many more . But if you ask specifically for men there are no laws .

If you are a man and you want to use above laws against your wife , you will find it next to impossible . First of all no police station will register your complaint , if they register they will not take any action for long time . Everyone has that deep rooted misandry inside which stops them from pointing finger towards women . This misandry never allowed law makers to make any law or even discussion on men . There is a dire need of lot of research and literature on men in India .

Well, there are none. India feminists have taken over law making and judiciary completely. As per the feminists:

**Domestic violence:** Minister of women child development Ms. Maneka Gandhi says “all violence is male generated”. Having such a sexist and discriminatory thought process is self explanatory as to why there are no laws for Men who are facing violence from their partners.

**Rape:** Indian society laughs on a man if he says he has been raped. India ridicules any complaint of male rape. Indian feminists and society think that only Men are perpetrators of a heinous crime like rape and women can rape a man. Owing to such psyche there are no laws for men who are survivors of rape.

Well, there are none. India feminists have taken over law making and judiciary completely. As per the feminists:

But there are certain NGOs which work for the welfare of men. Vaastav is one such NGO. Dombivli-based instrumentation engineer Deshpande states that Vaastav was launched on

November 19, 2013, for the different men's rights groups in Mumbai, the Indian Family Foundation, Borivli; Protect Indian Family Foundation, Mulund; MASHAAL (Mothers And Sisters of Husbands Against Abuse of Law). Though Vaastav has men's rights groups under its wing, it is also an avenue for certain women's forums such as the All India Mother-in-law Protection Forum, where women jailed in false dowry harassment cases and in false domestic violence cases have nowhere to go. In an atmosphere charged with anger over the spate of sexual harassment cases towards women, Deshpande put the focus on false rape cases, which he says, "are being filed with impunity by some women. False sexual harassment cases affects the women of the wrongly accused as well. This is not women empowerment, but only empowerment of unscrupulous elements," says the angry engineer with conviction.

## 4.2 CRUELTY AGAINST HUSBAND

It has been described as really unfortunate by various scholars that the Indian law on cruelty which was enacted with the objective of protecting the interests of a particular group of people is now being misused to a very large extent by way of frivolous and fallacious complaints accompanied with evil motives. The law on cruelty in India recognises only women as its victims. Indian women have been indiscriminately using this loophole as a weapon for misusing this law.

However, with the passage of time, the Indian judicial minds have started discovering this loophole and have produced certain pronouncements that aim at curtailing this menace. In a very recent judgement in the matter of *Vinita Saxena v. Pankaj Pandit*,<sup>41</sup> the Apex Court was of the opinion that the concept of cruelty varies in terms of time, place and individual. It largely depends on the type of lifestyle that the parties to a case are accustomed to, their social and economic conditions and the degree of importance that they attach to cultural and human values. Cruelty as a ground for divorce is often raised by husbands under various personal laws. Courts have often come across instances where the wife and her relatives have tried to take advantages of the wide ambit of dowry and protection from domestic violence laws to take advantage and threaten the husband and his relatives.

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<sup>41</sup> (2006) 3 SCC 778.

#### 4.2.1 WHAT ARE THE GROUNDS FOR CRUELTY

Since the meaning of cruelty is very subjective, therefore there is no straightjacket formula to decide the definition of cruelty. It may depend on and vary from case to case. What may be cruelty in one case may not be in another. Mental cruelty would include causing of mental pain, suffering or the agony of such a kind and magnitude which can result in the severing of the marital bond or due to which it cannot be expected by one party to live with the other. Since all such acts have a severe impact on the physical and mental well being of the husband, therefore they have been kept under the ambit of cruelty. A cursory glance at the Supreme Court judgements illustrates that the judges consider injurious approaches, accusations, complaints or taunts and not the harmful acts as cruelty. What is necessary to be established is that the one party in the marriage had misbehaved without looking into the consequences, and the other party could not endure it. Through various judicial pronouncements the court has **following principles** which constitute the grounds of cruelty against husbands in India:

- Humiliating the husband in presence of family members or friends and lowering his reputation by use of derogatory remarks,<sup>42</sup>
- Undertaking termination of pregnancy without the consent of husband,<sup>43</sup>
- Making of false allegations against the husband,<sup>44</sup>
- Making of unsubstantiated allegations against the husband for having illicit relations with another woman,<sup>45</sup>
- False allegations of adultery,<sup>46</sup>

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<sup>42</sup> Krishna Banerjee v. Bhanu Bikash Banyopadhyay AIR 2001 Cal 154.

<sup>43</sup> Satya v. Siri Ram AIR 1983 P&H 252.

<sup>44</sup> S. Hanumantha Rao v. S. Ramani AIR 1999 SC1318.

<sup>45</sup> Surinder Moha Chopra v. Nirmala Chopra, AIR 2007 (DOC) 183 P&H (DB).

<sup>46</sup> Prem Kumar Pandey v. Savitri Pandey AIR 1999 All 43.



- Tearing of garland on the day of marriage,<sup>47</sup>
- Allegations against husband of having girlfriend, not proved,<sup>48</sup>
- Wife leading an immoral life and having illicit relations with a person other than her husband,<sup>49</sup>
- Denial for physical relationship without sufficient reasons,<sup>50</sup>
- Refusal of contribution in the household work,<sup>51</sup>
- Mental distress caused to husband due to filling of complaint by wife.

Other instances of such kind may include taunting her husband with regard to any of his physical incapacities, opting for second marriage before filing an application for dissolution of her first marriage, extra-marital affairs, deliberate acts that are not welcomed by the husband, insult, threats for committing suicide, disobedience, breaking mangal sutra before the husband and his relatives, any physical harm etc., desertion by wife with deliberate intentions of separation so as to bring a permanent end to cohabitation, threats to leave marital home, threats of commission of suicide, abusing the husband in presence of office staff members, lodging of FIR later proved as false reports, pressurising husband for leaving his parents home and insistence for a separate residence, intentionally cooking food that the husband is not fond of, keeping the husband out of household premises, etc.

With regard to cruelty against husbands in term of mental distress, there is a unique term that has been devised which is popularly known as the psychological terrorism. In lieu with the same following are the instances which would cover **constitute as cruelty against husband by wife:**

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<sup>47</sup> J.Sudhakara Shenoy v. Vrinda Shenoy , AIR 2001 Karn 1

<sup>48</sup> Mrs. Deepalakshmi Saehia Zingade v. Sachi Rameshrao Zingade, AIR 2010 Bom 16

<sup>49</sup> Vimla Ladkani v. Dr Chandra Prakash Ladkani, AIR 1996 MP 86

<sup>50</sup> Anil Bharadwaj v Nimlesh Bharadwaj (AIR 1987 Del 111)

<sup>51</sup> Kalpana v. Surendranath (AIR 1985 All 253)

- Harassing the husband for constant demand of money for settlement of her paternal family members;
- Constant sending of money to her paternal family members of which the husband has no knowledge or without his permission;
- Continuing illicit relations with her pre-marital boyfriend or developing extra marital relations at her workplace or in neighbourhood;
- Showcase of aggressive and uncontrollable behaviour;
- Demonstration of inhuman treatment towards her in-laws or addressing them with filthy words or loud voice coupled with the intention to create scene of public humiliation, intimidating or terrorizing them;
- Habitual dishonesty towards husband and in-laws in matters where the latter have the right to be informed about in order to uphold family's good name;
- Demand for transfer of proprietary rights in her name;
- Attempts for alienating the husband from his parents and relatives persuading him to abandon his old and aged parents;
- Visiting her parent's home frequently without appropriate reasons along with the children born out their wedlock and thus denying the husband access from his offsprings;
- Misrepresentation of facts and information of the crimes committed against her;
- Defaming her in-laws in the neighbourhood by spreading false stories of harassment;
- Dictating her husband and excessive involvement in his personal and professional life;
- Concealment or suppression of material facts in relation to her medical conditions which if revealed may result in negating her marriage;

- Wife's parents being cynically manipulative, misrepresenting and frequently changing their stands and opinions in order to utilize every opportunity to embarrass her husband and relatives;
- Opposition to every suggestion made by the husband for settling a dispute related to restitution of conjugal rights;
- Misrepresentation of her financial condition for extracting more money;
- Denial of normal courtesy and respect to husband by wife's relatives.

#### **4.2.2 LEGISLATIVE PROTECTION GIVEN TO HUSBANDS**

Although the law on cruelty assumes husbands as the perpetrators of domestic violence and wives as its victims but due to growing misuse of this assumption, there are various protections given to the husbands. As a legal recourse, the husbands can file a counter case against their wives under following sections, if they are of the opinion that the case instituted by the later is based on frivolous grounds:

1. Giving false evidence u/s 191,
2. u/s 192 for fabrication of evidence,
3. u/s 196 for using false evidence knowing it to be false,
4. u/s 209 for dishonestly making false claims in court.
5. u/s 211 for false charge of offence made with intent to injure

The courts have been of the opinion that the marital laws should be such that their practical implementation results in a striking balance between interests of both the parties to marriage. Stringent punishments should be imposed to create deterrence effect on those who misuse it. Baseless allegations result in the wrongful confinement of innocent individuals. They have to spend their precious times in the jails with hardened criminals which in turn causes severe

impacts on their personality and thinking. Useless allegations, irrespective of their magnitude and nature should be avoided.

Also, in the Indian regime, there is a widely accepted tradition of exchanging gifts at matrimonial occasions. As per the Hindu Marriage Act, such gifts given are termed as streedhan over which the wives have sole control, but its benefits can be accrued to both the husband and wife. Due to this, it becomes difficult to create a distinction as to whether a demand was made by husband and his relatives for dowry or the property was willfully given to the girl by her parents or relatives. If the marriage turns sour, it provides a scope to the wife for making wrongful allegations that the husband has made an illegal demand for dowry.

It is indisputable that women are subjected to cruelty but at the same time, it must be ensured that the law is not made wide enough which results in its misuse. Husband and his family members should not at once be posed to serious challenges but should be given due opportunity to respond to the allegations. Family members who are reputed and responsible citizens with no criminal record should be given due consideration as misuse of laws create irreparable damage and results in victimisation.

### **4.3 INTERNATIONAL CONCEPTS**

International Men's Day, marked on November 19 does not have the visibility or marketing acumen of Women's Day, "but is growing in significance every year." In 1946, a UN Commission on Women's Rights was set up, which has been dealing with the enforcement of women's rights and interests ever since. A UN Commission on Men's Rights has not yet been established by the United Nations. One could list at great length the many problems that afflict men today, including the male suicide epidemic, the paucity of resources for male victims of domestic violence and the falling behind of young men and boys in education. However there is one fundamental factor related to all these problems that men encounter: there is a lack of mainstream acceptance of systemic men's issues which is compounded by the absence of male advocacy groups with a broad remit to make the case at political level and the level of the media. Also there is no National Men's Council, State funded or otherwise, to offer a counterbalance to the prevailing narrative about men being the perennially privileged class in society with no serious, systemic issues requiring advocacy.

Historically, men have had no issues organising as trade unionists, or in groups dedicated to protesting against inequalities faced by minorities based on their race or sexuality. This is not the case for men's advocacy.

Such advocates are typically met with contempt when attempting to add a discussion of men's issues to the national dialogue on gender equality. Such negative attitudes may well be a factor in why many men are so reluctant to come forward.

# **CHAPTER 5**

## **JUDICIAL RESPONSE TOWARDS DOMESTIC VIOLENCE/CRUELTY AGAINST MEN**

## 5.1 JUDICIAL RESPONSE TO DOMESTIC VIOLENCE AGAINST MEN

Over the years, Section 498A has acquired the reputation of being the “most abused law in the history of Indian jurisprudence”.

With cases of divorce in India steadily rising, campaigners say that disgruntled women, aided by unscrupulous lawyers, routinely misuse the law to harass their husbands and their relatives.

It has also been questioned by the Supreme Court with one judge describing its misuse as “legal terrorism”, warning that it was “intended to be used as a shield and not as an assassin’s weapon”, and the National Commission for Women expressing concerns over its misuse.

- Narendra v K.Meena (Civil appeal no. 3253 of 2008, decided on 2016)

The Supreme Court of India had decided that the coercion or forcing the husband to leave his parents (who are dependent on his income) amounts to cruelty on part of the wife, therefore can be a strong ground for divorce under Hindu Law.

- Hiral P. Harsora and ors. Vs kusum narottamdas harsora and ors (Civil appeal no. 10084 of 2016) (arising out of SLP(civil) no. 9132 of 2015)

Allow DV complaints on females in household by removing requirement of “adult male” from definition of respondent – Supreme Court judgment.

- Raj Talreja v. Kavita Talreja

In the present case, there were false allegations made by the wife against the husband. The court held that this amounts to mental cruelty and can be a ground for divorce.

## **5.2 GENDER DISCRIMINATION UNDER LAW**

Men's rights activists in India have argued that some domestic violence laws in India are discriminatory against men. In particular, Section 498A, the act that criminalizes cruelty against women by husband and his relatives, has been at the center of much controversy. Men's rights activists such as the "Save the family foundation" in India argue that the law is often misused by women. However, a 2012 report on Section 498A from the Government of India found that the empirical study did not establish any disproportionate misuse of Section 498A as compared to other criminal laws. Even though misuse of Section 498A was not established, more recently the Supreme Court came out with directives that every complaint received by the police under Section 498A must be referred to a Family Welfare Committee before the police can arrest the perpetrator.

More glaringly, the law only offers reliefs to women. Men in India cannot avail of a similar legal remedy to protect themselves from domestic violence from either men or women. For men, even a simple relief of having a male or female aggressor stay away from them (a restraining or protection order) is not afforded by the current law.

But in 2016 this discrimination was removed by Supreme Court itself. The bench of Justices Kurian Joseph and Rohinton F Nariman ruled on 6 October 2016 (Thursday) that this provision frustrated the objective of the legislation since “perpetrators and abettors of domestic violence” can be women too. The words " adult male " has been struck down from the domestic violence act.



## **5.3 JUDICIAL RESPONSE ON GROUNDS OF CRUELTY AGAINST MEN**

### **5.3.1 HIGH COURT OF JUDICATURE AT MADRAS**

C.M.A No.887 of 2010 and MP.No.1 of 2010

A.Sukumar Vs. K.S.Chitra<sup>52</sup>

Early morning he wanted VIOLENT SEX. When refused he asked 2lakhs! Wife loses case & NO alimony to her! Madras HC gem

Ablaa naari, the beacon of love, embodiment of culture has the following false allegations in addition to complaints about husband's abuses and ill treatments

"...4) the respondent had behaved brutally in sexual life and he used to wake up the petitioner during the mid-night and had violent sex with her and when the petitioner refused and expressed her tiredness due to over work, the respondent-husband kicked and assaulted his wife and also the respondent blackmailed the petitioner to subject herself for violent sexual life otherwise he will bring call girls home and he will have sex with them in the presence of petitioner-wife.

(6) On 25.4.2003, the respondent-husband forced the petitioner-wife for sex in the early morning and when she was not willing, the respondent assaulted her severely and threw her from matrimonial home by saying that she was not useful for his sexual life and also asked to bring Rs.2 lakhs from her parents otherwise he will not accept her....."

The Honourable HC sees thru each of these false complaints and decrees

"...42. From the above discussion, we are of the view that the petitioner/wife has not proved the alleged incidences of cruelty by her husband by adducing reliable evidence and the Trial

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<sup>52</sup> <http://wp.me/p7s7-1L8>

Court has erroneously held that the alleged incidences of cruelty were proved and granted divorce and therefore the above said order of the Trial Court on the ground of cruelty is liable to be set aside.

43. We are also of the considered view that the petitioner wife is not entitled to any amount as permanent alimony since the petition filed by the petitioner/wife for divorce is not maintainable as already discussed in earlier paragraphs. Therefore the petitioner is not entitled for permanent alimony as prayed for in the petition and we answer the points accordingly.....”

### **5.3.2 HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO No. 262-M of 2006 (O&M)

Dr.Anita Rani Versus Dr.Suresh Kumar<sup>53</sup>

Filing false criminal cases, breaking & throwing mangalsutra, getting husband arrested, neglecting household, ill treating husband etc are cruelty. Divorce granted. P & H HC affirms lower court decree.

\* Wife leaves matri home on many occasions

\* Wife breaks mangalsutra throws it on ground during quarrel

\* Wife has written letters to husband’s employer urging them to take action against husband

\* Wife files false 406, 498a case wherein the husband was arrested but the final outcome resulted in acquittal of husband and other accused by the trial court vide judgment dated 23.2.2013

\* The Husband argues that “...acts of the appellant (wife in this appeal) in insisting upon the department to initiate action against the respondent and also to prosecute him for demand of

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<sup>53</sup> <http://wp.me/p7s7-1IE>

dowry show that the marriage had irretrievably been broken and such acts of the appellant amount to cruelty and were sufficient to dissolve marriage between the parties...”

So the Hon HC summarizes that “.....The primary question that arises for consideration in this appeal is whether the acquittal of the husband and his family members of matrimonial offences under Sections 406, 498-A of the Indian Penal Code would be sufficient to hold that it has caused mental cruelty to the husband so as to entitle him to a decree of divorce under Section 13(1) (ia) of the Act....”

& the Hon HC concludes that “... Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with cruelty....” and “.....Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed. No costs....”

### **5.3.3 MADRAS HIGH COURT**

Sarada vs V. Satyamurthi on 4 December, 2000

Equivalent citations: I (2001) DMC 210, (2001) 1 MLJ 224<sup>54</sup>

When cruelty desertion alleged by wife NOT true, wife not caring, living away, she can NOT take advantage of own wrong Wife DENIED divorce !!

This is the sad case of a 56 year old woman and 58 year old male fighting in courts. The lady is seeking divorce and alleging that her husband has been cruel and has deserted her. The lower court dismisses her case. The matter moves to HC. The HC appreciates the arguments and states We have given the Hon court’s reasoning with some empahsis / addendum in brackets ()

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<sup>54</sup> wp.me/p7s7-1K9

“....18. So, the evidence of R.W. 1 (husband) is that he never ill-treated the petitioner. P.W. 1 (wife) has clearly admitted that the respondent took keen interest as normal father towards his son and he only used to ask the petitioner for some money and he was in the habit of giving his salary cover to the petitioner. So, it is well-evident that the respondent never ill-treated the petitioner and he was very cordial to the petitioner and the petitioner only acted in an indifferent manner towards the respondent. R, W. 1 further says that when he met with an accident and sustained injuries, the petitioner did not attend to him, P.W. 1 has also stated that at one time, she removed the “Thirumangalyam” as she is employed. R.W. 1 has stated that the petitioner removed her “Mangalyam” and he was upset by it. No Hindu women will be so dare enough to remove the “Thirumangalyam” by herself. Her admission that she removed her “Thirumangalyam” goes to establish her indifferent attitude towards the respondent....”

“....21. On going through the evidence of P.W. 1 and R.W. 1, we are clearly of the view that cruelty as alleged by the petitioner is not true and the petitioner is not entitled to divorce on either of the grounds. The Family Court has carefully analysed the entire evidence and has dismissed the petition. We find no infirmity in the order passed by the Family Court...”

#### **5.3.4 A.P. Ranga Rao vs Vijayalakshmi on 26 September, 1988<sup>55</sup>**

Equivalent citations: I (1990) DMC 567

Suicide attempt as husband did NOT set up separate house is cruelty. Husband gets divorce !  
Madras HC

\* Wife attempts suicide on multiple occasions

\* She is taken to the Govt Stanley medical hospital and treated

\* She claims that she tried to commit suicide because husband refused to set up a separate house

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<sup>55</sup> <http://wp.me/p7s7-1K7>

\* Lower courts REJECT husband's plea of cruelty

\* Madras HC appreciates the evidence and conduct of parties and concludes that the wife treated the husband with cruelty

\* Though desertion is NOT proven by the husband in this case, cruelty is proven and so divorce granted

### **5.3.5 THE HIGH COURT OF JUDICATURE AT MADRAS**

C.M.A. Nos.2871 and 2872 of 2004<sup>56</sup>

Nagappan Vs Virgin Rani

Wife making false adultery allegations & filing complaints with husband's employer is cruelty.

Madras HC sees thru wife's game

Wife making false adultery allegations & filing complaints with husband's employer is cruelty.

Wife also deserts husband using one pretext or other. Family court rejects husband's divorce and allows wife's RCR ! HC seeks wife's game and orders divorce in favour of husband on both grounds cruelty and desertion! HC sets aside wife's RCR !!

"...Learned counsel appearing for the appellant submitted that all the allegations made by the respondent were not proved and on the other hand, the appellant's case of cruelty was supported by evidence. In fact, one should only look at the counter affidavit filed by the respondent which itself would prove the acts of cruelty alleged by the appellant. The learned counsel made impassioned submissions regarding the ordeal suffered by litigants seeking reliefs under the Family Courts Act. He submitted that it is not as if litigants in India rush to the Family Courts without any excuse. Conciliation and mediation takes place at every level within the family, amongst the friends, within the community and only when everything fails that the litigants

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<sup>56</sup> wp.me/p7s7-1Kb

approach the Family Court and thereafter, there is very little scope for reconciliation. In this case, the appellant had been harassed by the respondent in the office and she had made wild allegations without any justification. She had made allegations regarding adultery, which was not proved, which itself is an act of cruelty and therefore, the Family Court had erred in accepting the case of the respondent. Learned counsel referred to several decisions in support of his submissions.

The Hon HC says "...In 2003 (4) L.W. 609, the Supreme Court held that aspersions regarding infidelity is the worst form of insult and cruelty and that a wife is likely to feel deeply hurt and reasonably apprehend that it will be dangerous to live with a husband who was taunting her like that.

The Hon HC further states "... 2005 (4) C.T.C. 287 : 2006 (1) L.W. 512 was a case where the parties had spent a good part of their lives in litigation and the Supreme Court defined the ingredients of desertion where the wife had insisted on the husband shifting from the village to the place where she was working; did not visit him on the death of her father-in-law, did not attend the wedding of her brother-in-law; and the Conciliation Officer's report was that the wife was willing to live with the husband only if they live separately. In that case also, the Supreme Court, holding that the marriage was as good as dead and dissolved the marriage on the ground of irretrievable breakdown....."

Finally divorce is decreed in favour of the husband

### 5.3.6 CALCUTTA HIGH COURT

Smt. Kajal Roy vs Prasanta Kr. Roy

Equivalent citations: (2005) 2 CALLT 567 HC<sup>57</sup>

Link :

Husband wins divorce on grounds of cruelty as wife regularly leaves husband files false 498a 406 where husband is arrested. Wife also loses appeal @ Cal. HC !!

Husband gets divorce under grounds of Cruelty as wife regularly left the husband's house against his wish and also filed false 498a case against husband and MIL, wherein husband was arrested. This 498a also finally ends in acquittal. Wife also files an appeal against the divorce decree (which went in favour of the husband), argues at the HC that she was immensely tortured etc, but she loses appeal at Cal. HC !!

\* wife files 498a etc

\* wife left the matrimonial home along with her father on January 23, 1994 and on that very date lodged a complaint under Section 498A Indian Penal Code against her husband. Husband was arrested by police and had to remain in jail custody for 14 days.

\* Wife also lodged another complaint under Section 406 Indian Penal Code against her husband and after trial the accused were acquitted. According to the husband within a very short time thereafter the husband was ill-treated by the wife and her father and brother. He used to be pressurized to desert his old widowed mother and unmarried sister to live as 'Gharjamai'.

\* The HON HC goes on to say "...An inference, however, can be drawn by matrimonial Court that by initiating criminal proceedings under Section 498A Indian Penal Code wife has an intention not to live with the husband. This is because the person lodging such complaint under

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<sup>57</sup> <http://wp.me/p7s7-1Kk>

Section 498A is imputed with the knowledge that, if convicted, the accused, would be incarcerated. ....”

\* And the HON HCc concludes that “.....30. However, on the authority of the judgment in Nivedita Banerjee, (supra), the act of the wife in the matter of initiating criminal proceedings where the husband was arrested and detained in jail custody, that case having ended in acquittal just as in the case on hand, the judgment under appeal can be sustained. Inference can be drawn that the wife has no intention to go back to the husband and her intention was to terminate the matrimonial relationship. ....”

\* so wife loses her appeal against husband’s divorce (i.e. Husband’s divorce is confirmed by HC)

### **5.3.7 IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO No.185/2001

Smt. Shashi Bala Vs. Shri Rajiv Arora<sup>58</sup>

Wife denying sex, acting like deadwood, NON participation @ rituals, deserting husband are all cruelty. Husband wins Divorce

Wife refuses sex, refuses to participate in customary ceremonies, leaves husband often and files false complaints. Tries to deprive him of divorce by appealing to HC. HC sees thru the wife’s game and confirms the divorce in favour of the husband.

Also, the importance of proving your case at the lower court comes out in this case. HC relies on lower court case / testimonies to decide on this case

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<sup>58</sup> <http://wp.me/p7s7-1Kp>



".....Trial Court after analyzing the evidence adduced by both the parties found the version of the appellant untrustworthy and unreliable while that of the respondent, much more credible and trustworthy.....

11. ....In the present case, the testimony of the respondent (husband) that the appellant (wife) was never responsive and was like a dead wood when he had sexual intercourse with her remained un rebutted. ...."

“.....The respondent has also successfully proved on record that the appellant did not participate in the customary rituals of dud mundri and that of chudha ceremony, which caused grave mental cruelty to the respondent. It is a matter of common knowledge that after the marriage, certain customary rituals are performed and the purpose of these rituals is to cement the bond of marriage. ....No doubt the testimony of the respondent has been supported by the evidence of his father and there is no corroborative evidence from the side of the appellant, .....

“.....Undeniably, these customary ceremonies are part of the marriage ceremony and refusal of the same that too in the presence of the family members of the husband would be an act of cruelty on the part of the wife. .... The appellant herein also filed CRIMINAL COMPLAINTS against the respondent and his family members and later withdrew the same. Undoubtedly, it is the right of the victim to approach the police and CAW cell to complain the conduct of the offending spouse, however, frivolous and vexatious complaints like in the present case led to cause mental torture and harassment to the respondent and his family members. Thus, taking into account the conduct of the appellant in totality, this court is of the view that the same amounts to causing mental cruelty to the respondent.....

### **5.3.8 HIGH COURT OF DELHI: NEW DELHI**

MAT App. No. 82 of 2007

Lata Verma Versus Jayant Verma

Link : <http://wp.me/p7s7-1Ku>

Slapping Mother in law, emptying bank, insisting separate resid, deserting hubby all cruelty. Divorce granted even B4 498a decided. Civil & criminal cases continue on own merits. One need not affect the other !

Husband proves that the wife was disrespectful towards his parents, she was abusive and even slapped her Mother in law and insulted her before relatives. Husband and his family tolerated the cruel acts & her behavior continued to deteriorate. She left the husband on numerous occasions, harassed husband for a separate resid. & emptied the bank account !!. All these were decreed as cruelty towards the husband. Wife's argues that the 498a / 406 case is NOT yet decided. But HC confirms divorce even B4 498a is decided. HC observes that Civil and criminal cases continue on own merits. Decisions in one need not affect the other !

Key Excerpts :

“.....33. As regards to the contention of pendency of criminal proceedings, in P. Swaroopa Rani Vs. M. Hari Narayana @ Hari Babu 2008 (3) SCALE 501, the Apex Court has observed as under : “It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”

xxx

79. In this way it is evident that appellant lived at the matrimonial home only for short intervals and most of the times she was living at her parental home, thereby, strengthening the case of the respondent. ....

82. It is clear that the appellant has not remained consistent on her allegations and she has been improving her defence at the belated stage. In the circumstances, no reliance can be placed upon the version of the appellant.

83. On the other hand, the respondent has been able to establish by way of specific pleadings and evidence that appellant came back to the matrimonial home on 23rd July, 1999 after the birth the child. In view of this, it is difficult to accept that the incident of beating and confining the appellant had happened on 23rd July, 1999.

84. It is admitted by the appellant in her cross- examination that she withdrew the amount from the joint account of the parties without informing the respondent. It is also admitted by the appellant in her cross examination that she demanded separate residence before Crime against Women Cell stating that she was fed up with the cruelty.

85. The act of the appellant in withdrawing the amount from the joint account of the parties without informing the respondent also indicates the intention of the appellant to stay separately.

86. Thus, in view of the above discussion and in the light of evidence, it is clear that the appellant has not been able to establish her case and the conduct of the appellant was not proper towards the respondent and his parents thereby causing cruelty to them.

87. Hence, I do not find any infirmity or illegality in the impugned judgment passed by the Trial Court.

### 5.3.9 BOMBAY HIGH COURT

Smt. Nirmala Manohar Jagesha vs Manohar Shivram Jagesha<sup>59</sup>

Equivalent citations: AIR 1991 Bom 259, (1991) 93 BOMLR 373, I (1992) DMC 180, 1991 (1) MhLj 267

Wild, reckless baseless allegations of impotency, lack of manliness in WS are cruelty. Husband wins. BOM HC

In this case the wife lives with the husband only for a short while and the couple part. The husband alleges that the wife was of unsound mind and also treated him with cruelty, was cold and refused to cohabit normally etc, while the wife alleges that the husband is impotent and unmanly. The lower court grants divorce in favour of the husband. Wife goes on appeal to Bom HC.

HC analyses the facts and concludes that the husband has (a) NOT proven cruelty during the short matrimonial life, (b) has NOT proven that the wife is of unsound mind but (c) he is entitled to divorce on the basis of wild, reckless baseless allegations of impotency, lack of manliness made by the wife in her written statements. This case should help husbands who are hit with preposterous allegations in the WS that are left unproven.

The Honourable court summarises :“.....In the light of the above, my answers to the questions framed in the first para of this judgment are as under :—

(i) Cruelty in the matrimonial law means conduct of such type that the petitioner cannot reasonably be expected to live with the respondent.

(ii) It would follow that the old English law concept of danger is no longer applicable in India.

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<sup>59</sup> <http://wp.me/p7s7-1Ky>

(iii) The making of wild, reckless and baseless allegations of impotency and lack of manliness — itself amount to cruelty in the matrimonial law. ....”

### **5.3.10 HIGH COURT OF JUDICATURE AT JABALPUR BENCH GWALIOR**

Mamta Bhardwaj vs. Madhusudan Bhardwaj<sup>60</sup>

F.A.159/2013

MA LLB wife files 498a & alleges husband has illicit relation with husband's OWN sister.

Cruelty decreed . MP HC

MA LLB Qualified wife files 498a etc case and also alleges that her husband had illicit relationship with his own sister. Husband says that the case is false and is fabricated to outst the mother in law & sister in law and to usurp property. Husband examines (cross examines) himself and sister and disproves allegations. Lower court decrees divorce in favour of husband.

Wife appeals to HC, fights cases party in person. HC appreciates the matter on record, discusses what is mental cruelty at length and confirms the lowercourt decree on grounds of cruelty

Excerpts : ".....Specific allegations have also been made by the respondent in support of his case by narrating incident of 19.12.06 by alleging that on that day at about 7.00 PM, the appellant, her brother and sister came to his house and treated the respondent and his family members with cruelty in presence of his friend Shailendra who appeared as PW/3. About that incident, it was alleged that on that day the family members of the appellant and appellant herself wanted the respondent to execute papers for transfer of matrimonial house in her name and on his refusal she abused the respondent and his sister. She even made allegations that the respondent was having illicit relationship with his sister. Incident of 27.12.2006 is also referred to on which day threats were given to the respondent that if the house was not mutated within seven days in the

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<sup>60</sup> wp.me/p7s7-1KA

name of the appellant, a false complaint will be lodged against the respondent and his family members..."

"....33. It may be observed here that in matrimonial life, the possibility of such situation that the sister living in parents' house after her marriage is not an unusual situation. It quite often happen if her relationship with her husband is not very good and she did not feel comfortable then only option for her to live with her parents. Even if such living by the married daughter is for a long period, this cannot be a reason for the sister-in-law to create a situation where relationship between the parties comes to such a situation that they are unable to live together which appears to be a situation created by the appellant and has given reason for filing of this divorce petition. She went to the extent of making allegation against the sister of the husband calling her a person of shady character....."

...36. Besides the specific act of mental cruelty making false allegations against the sister of the respondent, it is also matter on record that the appellant filed various such complaint under Section 498-A of IPC under Domestic Violence Act. In those proceedings, the appellant even opposed the bail application went to the extent of filing revisions against the grant of bail to the respondent and his family members. Such conduct on the part of the appellant further constitute mental cruelty..."

### 5.3.11 DELHI HIGH COURT

Chandhok (Lajwanti) vs Chandhok (O.N.)

Equivalent citations: ILR 1982 Delhi 689, 1981 RLR 619<sup>61</sup>

Driving husband out of the matrimonial home, assaulting & abusing him, refusing to cohabit ALL cruelty, Husband granted divorce, Delhi HC

A 60+ year old man who was driven away from his own house seeks justice. Wife refuses to live with him, abuses him and assaults him. She admits writing letters against the husband to the Prime Minister, her son Shri Sanjay Gandhi; and Shri Charan Singh under her own signatures and also to Shah Commission. The allegations against her are supported by no less than the oral testimony of her sons Surinder Kumar (AW2) and Raj Kumar (AW3) and the letters of the eldest one Ashok who is abroad and pelts stones at his car !! Husband pleads for mercy for divorce !!

The court appreciates the evidence and says: “....that there was evidence plain and sufficient enough to justify a finding that the life of the husband has been subjected to cruelty and has become unendurable even for a man who has carried on with it right into his sixties. There is limit to endurance. Howsoever, one may wish, society cannot scrap marriage. It is compulsion of creation. It was rather sanctified and hallowed so that couples live in peace, in fear of God and help retain calmness in the community. Yet, it had to devise doors of exit as and when it becomes unreasonably unbearable and converges into sheer bondage. I, therefore, find no ground for altering the decision of the court below. There remained nothing in the marriage except the name. The vows were forgotten. Incantations lost in their spell. The learned Judge below was right in formally snapping the ties which had ceased to be binding happy or purposeful.

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<sup>61</sup> <http://wp.me/p7s7-1KI>

(10) I say amen and dismiss this appeal. The cross-objection need not now be examined and is dismissed hereby. Let me, however, add that it is not easy as the court below did, to absolve the wife of willful desertion. She refuses with astounding obstinacy to go and live in the new matrimonial home and demands of the husband to come and live where she wishes to.....”

### **5.3.12 MADHYA PRADESH HIGH COURT**

Gajendra vs Smt. Madhu Mati

Equivalent citations: AIR 2001 MP 299, II (2001) DMC 123, 2001 (3) MPHT 335<sup>62</sup>

Forcing hubby to be a Ghar Jamaee, deserting him on his refusal 2 ditch his own parents, not attending 2 his ailments are all matrimonial cruelty. Divorce decreed by. MP HC

In this case the couple get married at a very young age. Right from the start of the matrimonial relations the wife and her father pressurize the husband to live as a Ghar Jamaee. He refuses to ditch his parents and live with them. So the wife misbehaves with him and starts living with her parents. She does not attend to him even though he is an Asthma Patient. His attempts to bring her back fail. He files for divorce in lower court, but loses the case in lower court. He appeals to the HC. The Hon HC appreciates the evidence and correspondence between parties and ascertains the wife’s cruelty and desertion. Husband gets divorce.

Excerpts:

\* The Honourable HC concludes that “.....34. It would appear from the evidence as discussed above, that the respondent and her father had been continuously pressing the petitioner/husband to live with them as ‘Ghar Jamaee’. On the petitioner’s refusal to yield their unjust demand as above, the respondent/wife started misbehaving and maltreating the petitioner/husband and his family members. The respondent/wife had forsaken the company of the petitioner/husband

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<sup>62</sup> <http://wp.me/p7s7-1KK>



without any justifiable cause and against his wishes. The petitioner/husband was an asthma patient. However, he was left alone to suffer in his misery and ailment, while he was posted at Bakhtara, as has been stated by him. Though married the petitioner, never enjoyed the marital bliss and comfort of a home. She did not return back despite requests and efforts made by the petitioner. The respondent's father had extended threats to the father of the petitioner that he would be losing his younger son i.e., the petitioner also, as was the case of the elder brother of the petitioner.

\* 35. It is, therefore, clear that the petitioner had to live a lonely life for a very long period of 17 years. The cumulative effect of the above facts and circumstances indicate that the respondent had treated the petitioner with cruelty.

36. It is thus clear that the grounds of desertion and cruelty have been established by the evidence and the facts and circumstances of the case. Thus, grounds for granting a decree of divorce as enumerated in Section 13(1)(i-a) and 13 (1) (i-b) have been made out.....”

### **5.3.13 DELHI HIGH COURT**

Smt. Alka vs Dr. R.K. Gautam<sup>63</sup>

Refusing sex, suicide threats and tantrums on Brother in Law's engagement date, ill treating & indifferent attitude to husband's relatives, all cruelty. Divorce decreed by Delhi HC

\* Husband and wife are doctors

\* Wife says she is un interested in the marriage right from the very beginning

\* Wife abstains from sex even during honey moon, has to be coaxed, cajoled etc to have sex

\* she refuses to live with her husband, refuses to take part in Diwali Puja and continues to live at her parents place

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<sup>63</sup> <http://wp.me/p7s7-1KO>

\* She threatens of suicide on the day of the husband's brother's engagement and creates a big scene of trying to jump from the house balcony ; She refuses to attend to her father in law when father in law is operated upon, and bedridden ;

\* In addition to above she tries to force the husband to move away from his parents and live at her place; All above acts are decreed as cruelty by the lower court and confirmed by Delhi HC  
The Honorable HC Goes thru a cantena of decisions on Cruelty and decides that the wife's behavior towards her husband, in laws and marriage constitute cruelty !!

### **5.3.14 ANDHRA HIGH COURT**

SMT. PARIMI MEHAR SESHU VS PARIMI NAGESWARA SASTRY

EQUIVALENT CITATIONS: AIR 1994 AP 92, 1993 (2) ALT 489, I (1994) DMC 417<sup>64</sup>

Removing mangasutra, ill-treating husband, neglecting household & child, ALL cruelty.

AP HC confirms Divorce

\* The marriage on 26th February, 1982 at Eluru according to Hindu rites and customs.

\* Out of their wedlock, in the year 1982, a male child was born.

\* Wife did not breast feed the male child and did not choose to pay proper care and attention.

Ultimately, the boy died due to lack of proper care

\* she was brought back by her parents by eventually left the husband

\* she also left her matrimonial home and filed for maintenance

\* lower court appreciates the evidence and grants divorce to husband, on grounds of cruelty

\* wife goes on appeal to AP HC

The Honourable HC appreciates the evidence on record and summarises as follows

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<sup>64</sup> <http://wp.me/p7s7-1KS>

\* ...A threat by wife to her husband that she would put an end to her life or that she would be set herself to fire is sufficient to imperil the happiness of the husband.

\* ...The act like removing Mangala-sutram etc., beating the child would amount to cruelty, Admittedly, the respondent is not having her Mangalasutram or Pasuputadu on her neck while giving evidence. She removed, it even though the marriage was subsisting and her husband is alive. Such act is not expected from an educated Hindu Brahmin Woman. Here it may be mentioned that this Court requested one of the junior Advocates of Sri C.V.N. Sastry to examine and find out whether the appellant-wife is wearing Mangalasutram or not. On verification, he informed the Court that the appellant is not having mangalasutram or Pasuputadu....”

\* ...Be that as it may, cruelty need not be physical. It can be mental cruelty making the life of husband miserable always with quarrel. Frequent desertion itself is sufficient cruelty to attract the provisions of the Hindu Marriage Act. Mental cruelty itself is sufficient to cause greater injury and creates a reasonable apprehension that it will be harmful and unsafe to live with her. The Court below has elaborately dealt with the aspect of the matter in paragraph 18 of its judgment and held that there is no reason for the wife to live away from her husband. The reasoning given by the Court below is cogent and convincing and does not call for interference in appeal.....

\* ...The respondent-husband deposed as P.W. 1 and his evidence is corroborated by the evidence of his father who was examined as P. W. 2. There is no reason to discredit their evidence. From their evidence it is clear that the wife was treating her husband with cruelty and she never showed any affection towards him. She made his life miserable and therefore she is responsible for breaking down his family life. The learned Magistrate, who tried the maintenance case also came to the conclusion that the wife is responsible for breaking down the

marriage. Therefore, having regard to all the circumstances of the case, we find that the appellant-wife was responsible for the failure of the marriage, and that the respondent-husband has established that the appellant behaved cruelly towards him.

### **5.3.15 RAJASTHAN HIGH COURT**

Smt. Pramila Bhatia vs Vijay Kumar Bhatia<sup>65</sup>

Equivalent citations: AIR 2000 Raj 363

Beating MIL, taking MIL's house, wife's brother beating husband, false dowry statements, all are matrimonial cruelty! Raj HC

In this classic case the poor woman, the beacon of love, beats her mother in law and drives her away from the matrimonial home to usurp her hard earned house, when husband is on a training !! The husband is also beaten and thrown out with the help of ablaa's brother. Not contented with these she also raises false dowry allegations and resists divorce. The HC sees thru her game and decrees all such acts as cruelty !!

\* Parties get married in 1985

\* Mother in law is working as a staff nurse and has a house built on loan and her hard earned income

\* Right from the start wife tries to take away Mother in law's house.

\* Wife beats Mother in law

\* When husband goes out of city on training, wife and father in law, beat and drive away mother in law & father in law (husband's mother & father)

\* When husband goes to his (own mother's house) , wife asks her brother to beat the husband & wife's brother beats up husband and

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<sup>65</sup> <http://wp.me/p7s7-1L5>

\* Then ablaa nari wife files Sec 125 maintenance case

\* Looks like 498A was NOT famous those days, so she just stops with Sec 125 case and taking over the house !!

\* husband files for divorce and wins in lower court

\* wife appeals to HC and HC decrees that wife beating mother in law, wife's brother beating husband, wife usurping MIL's property and making false dowry claims etc are cruelty. The Hon HC ALSO denies the woman any maintenance!!

### **5.3.16 HIGH COURT OF JUDICATURE AT BOMBAY**

SECOND APPEAL NO. 396 OF 2013 with SECOND APPEAL NO. 397 OF 2013<sup>66</sup>

Anil Yashwant Karande Versus Smt. Mangal Anil Karande

False 498a ending in acquittal is cruelty. No need 2 establish "malafide". Divorce granted !!

Bombay HC

False 498a that ends in acquittal is cruelty. No special finding by trial court needed to establish malafide intentions or intent to defame ! Divorce granted to husband & Wife's RCR set aside.

Spouses cannot be asked to live together after such cruelty. Bombay HC

The key question raised in this case is "... "Whether for the act of filing complaint under Section 498A of Indian Penal Code, to amount to mental cruelty on the acquittal of husband and family, it is essential that judgment of acquittal must find that the complaint filed was false and with an intention to defame ?"

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<sup>66</sup> wp.me/p7s7-221

I.e. is a false 498a where husband & other accused are acquitted by itself grounds for claiming cruelty or is there a need for the trial court to state that it was intentionally filed to defame the husband ?

\* Marriage On or about 16th June, 2002

\* VERY soon she starts her 498a ” ...On 12th August, 2002, an FIR came to be lodged by the respondent under sections 498A, 323, 504 and 506 ... appellant, his father, mother and brother. The appellant and his family members were arrested by the police ..."

\* On 21st December, 2002, the respondent (wife) files .... Restitution of conjugal rights.

\* On 5th September, 2005, the appellant (husband), his family members were acquitted 498a etc

\* "...5. On 10th March, 2006, the appellant herein filed a .... praying for annulment of marriage and for divorce....\* \* Civil judge dismisses husband's petition and allows wife's RCR. Husband goes on appeal to the district judge who confirms the order of the civil judge. So husband goes on appeal to the high court

\* The HC accepts the appeal and frames the important question ....“Whether for the act of filing complaint under Section 498A of Indian Penal Code, to amount to mental cruelty on the acquittal of husband and family, it is essential that judgment of acquittal must find that the complaint filed was false and with an intention to defame ? “

\* the Hon HC notices and appreciates the fact that the trial court had “....It is held that the said deposition in the cross- examination for the first time about the alleged demand of dowry was an after thought. No incident had occurred from 16th June, 2002 to 21st June, 2002. It is held that it appeared to be improbable that on 21st June, 2002 after Pooja was performed, she was suddenly and forcibly asked to leave the matrimonial home....” and the trial court had also noticed and mentioned that “.....25. It is held that the case of the respondent was not believable in view of

the appellant and his family members giving gifts to the relatives of the respondent and in view of the delay on her part in lodging a complaint against the appellant and his family members.....”

\* The Hon HC notices the fact that “...29. The Criminal Court while acquitting the appellant and his family members, after considering the evidence of six witnesses had rendered a positive finding that the complaint filed by the respondent was an after thought. ...”

\* After referring to a catena of HC and SC decisions the Hon HC concludes that “...In my opinion, filing of such complaint itself which create mental trauma on the husband and the complaint which was seriously prosecuted by the wife by leading evidence of several persons and bringing the said complaint to its logical conclusion which ultimately resulted in acquittal of the husband and his family members clearly amounted to the cruelty committed by the wife upon the husband....”

\* So the HON HC sets aside the RCR order in favour of the wife and decrees divorce in favour of the husband on grounds of cruelty !!

### **5.3.17 IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

FAMILY COURT APPEAL NO.71 OF 2006<sup>67</sup>

Mr. M Vs Mrs. M

Divorce WITHOUT alimony 4 False 498a where all acquitted. Not necessary 4 trial court call 498A false. Bom HC

Hon Bom HC grants Divorce WITHOUT alimony following a wife’s 498a where all accused are acquitted. While the lower court denies divorce stating that the 498a ended in acquittal because the prosecution did not prove the case, the Hon HC says it is NOT necessary 4 trial

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<sup>67</sup> <http://wp.me/p7s7-22G>

court to call the 498A false. Cruelty is to be decided based on conduct of parties and allegations made !!

\* The HC observes that the accused were dragged 56 times to the Trial court, and on many instances because the wife was just absent !

\* The wife alleges that she started suffering arthritis because of ill treatment and her father died out of shock. But these allegations are NOT substantiated. The father dies some YEARS after the incidents !!

\* The husband submits : “.....My family members and I had to seek leave from our job and had to remain present in the Court. My parents and me who are suffering from health problems like B.P., Eyesight problem, Piles (Father) also had to remain present and sit for hours together waiting for the Respondent to come or for the Honourable Judge to give the next date. All this has affected me mentally and physically. I have not been able to concentrate on my work owing to the health problems of my parents and the court case. My unmarried sister also had to come to the court, for no faults of hers. My brothers were unnecessary involved in this trauma, which they too had to undergo, without the remotest connection with this case. I state that the entire ordeal which went on for 3 years, has caused immense mental cruelty upon me...”

The Honourable court finally concludes that “...b) The Appellant and his family members were required to attend Criminal Court on 56 different dates from the year 2001 to 2004. Considering the manner in which 25 fca-71.06 which the criminal case proceeded, the Appellant and his family members were subjected to humiliation, trauma and agony as set out in the deposition of the Appellant;

(c) The Respondent made a very serious defamatory allegation against the Appellant, both in the written statement and in her evidence, that due to ill-treatment by the Appellant, she started



suffering from arthritis. The Respondent made no efforts to substantiate the said allegation. Thus, the Respondent made unfounded defamatory allegation against the Appellant;

(d) The Respondent made another serious allegation against the Appellant, both in the written statement and in her evidence, that due to harassment suffered by her from the Appellant, her father suffered shock which led to his death. Not only that the Respondent did not substantiate the said allegation, even the cause of death of her father was not brought on record. Even this allegation is an unfounded defamatory allegation;

We have no hesitation in holding that the aforesaid conduct amounts to mental cruelty to the Appellant and by reason of such mental cruelty, he is not reasonably expected to continue cohabitation with the Respondent...”

and grants the husband divorce. The court ALSO refuses to grant ANY alimony to the wife !!

### **5.3.18 CALCUTTA HIGH COURT**

Pranab Kumar Chakraborty vs Kumkum Chakraborty on 5 July, 2005

Equivalent citations: (2006) 1 CALLT 210 HC, 2005 (4) CHN 146<sup>68</sup>

Filing false 498a, taking away children illegally, interfering with their education is ALL cruelty.

Divorce granted to husband, Cal HC

Wife files 498a. After compromise, parties get back / live together. Still wife does NOT withdraw / quash criminal complaint! So parties ultimately separate. However wife raises a false claim of living with husband many months after 498a (i.e.) AS IF her conduct was condoned by the husband! Husband applies for divorce. Initially it is refused believing wife's false statements that her cruelty was condoned by husband. On review, Cal HC appreciates the facts and orders divorce

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<sup>68</sup> <http://wp.me/p7s7-241>

The Honorable court says that a 498a instituted and kept alive on false allegations in itself amounts to cruelty "...the very fact that the complaint under Section 498A IPC lodged by the wife has still being kept alive and surviving containing certain allegations which have not been proved, in itself is a sufficient ground to hold that there was cruelty at the time of institution of the suit and on account of its continuance till the decree and the decision under review and even today, ..."

The wife at one point tries to escape saying "Fact that I filed a criminal case under Section 498A IPC against my husband. My lawyer drafted the petition and designed it according to his estimation under Section 498A IPC. I shall not examine that lawyer. Of late I have come to know that my case under Section 498A IPC against my husband is now alive." But the Hon HC refuses to accept that contention as she has affirmed her complaints in MANY other places

The court notices that she is blowing hot and cold in many places

The court observes that "There are evidence on record that the wife used to take away the children, for which the husband had to file application under Section 97 of the Criminal Procedure Code (Cr. PC) ..."

The court also takes the interference with the education of children seriously "..... It is an admitted position that the son's education was interrupted so long the son lived with the wife. It is only after persuasion by us she had agreed to allow the child to have good education and the father had admitted him in a good school in terms of our order passed on 3rd of March, 2005. This interference with the child's educations also constitutes a mental cruelty....."

so the court concludes "...the totality of the evidence of the wife clearly shows that she was not telling the truth and telling different things at different times. This eroded the reliability of her evidence. ...."

### 5.3.19 IN THE SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1794 OF 2013 (Arising out of Special Leave Petition (Civil) No. 4782 of 2007)<sup>69</sup>

SRINIVAS RAO Versus D.A. DEEPA

False 498a, falsely alleging that she was forced to sleep with father in law, writing to employer to get husband dismissed etc are cruelty. Divorce granted. Need not stay long, to treat cruelly.

Clear case of 498a misuse

Marriage solemnized in 1999. Fight starts immediately after marriage and wife leaves for parental house JUST 1 day after marriage. She promptly files a false dowry case saying husband and co sought 10 lakhs dowry and also alleges that her mother in law asked her to sleep with father in law. After initial compromise on the false dowry case, police make a closure report, but ablaa naari goes to court and gets the dowry case numbered!! Meanwhile husband files for divorce and wife wants restitution! Yeah, she wants restitution! Husband is granted divorce by family court. Wife goes on appeal to HC (against family court decree). In the meanwhile husband loses 498a at magistrate court and immediately wife writes to husband's office (i.e.) AP High court to remove him from his job! Husband wins appeal on 498a case at Sessions court and wife goes on appeal before AP HC which is not yet finished!

Supreme court appreciates the entire case and decrees (a) marriage broken down as parties have been completely living apart (b) various cases filed by wife are cruelty (c) wife NEED NOT have physically lived with husband to create cruelty and grants divorce to husband ...

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<sup>69</sup> <http://wp.me/p7s7-1Iw>

### 5.3.20 SUPREME COURT OF INDIA

CIVIL APPEAL No. 1213 OF 2006<sup>70</sup>

K.SRINIVAS vs K. SUNITA

Even ONE false criminal complaint by wife constitutes matrimonial cruelty, hence Divorce allowed!!

Wife files a criminal complaint u/s 307 read with 34, 148A, 384, 324 of IPC. Husband and seven members of his family were arrested! It is argued before the SC that this was a solitary criminal complaint and so cannot be cruelty ! However the Hon Sc concludes that Even ONE false criminal complaint by wife constitutes matrimonial cruelty, hence Divorce allowed!!

\* The marriage at Hyderabad on 11th February, 1989.

\* Male child born on 8th May, 1991, after which the Respondent-Wife, as per her pleadings, started suffering from Sheehan's syndrome.

\* On the night of 29th/30th June, 1995, wife left the matrimonial house and ever since then she has been living with her brother, who is a senior IAS officer.

\* On 14th July, 1995, husband filed an original petition praying for divorce on the ground of cruelty as well as of the irretrievable breakdown of their marriage.

\* Wife retorted by filing a criminal complaint against the Appellant as well as seven members of his family for offences under Section 307 read with Sections 34, 148A, 384, 324 of the IPC, and Sections 4 and 6 of the Dowry Prohibition Act, 1961.

\* The Appellant-Husband and seven of his family members were arrested and incarcerated.

\* On 30th June, 2000, the Learned Vth Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad, acquitted the Appellant and his family members, and this Order has attained finality.

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<sup>70</sup> <http://wp.me/p7s7-1Am>

\* The Honorable supreme court concludes that "...We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty..."

### **5.3.21 BOMBAY HIGH COURT**

Bombay High Court

Ramesh Laxman Sonawane vs Mrs Meenaxi Ramesh Sonawane

Ramesh Laxman Sonawane vs Mrs Meenaxi Ramesh Sonawane<sup>71</sup>

Unsubstantiated allegations of the wife tantamount to cruelty ! Bombay HC

Wife makes character assassination on the husband and repeats them in her WS before the lower court

\* "...the wife had leveled allegations about relations of the husband with one lady by name Yamuna Adalkar..."

\* "...even in the cross-examination, the wife has reiterated her stand about the husband having relations with the lady of the different caste. ...wife had levelled allegations against the husband about the illicit relations with Yamuna and that she has not proved those allegations...."

\* "... on account of surrender of the premises at Pimpri Gaon by the wife without knowledge and consent of the husband, the husband was deprived of the said premises for no reason particularly when he wanted to retain the premises...."

and so on

The Hon HC concludes

".....we are inclined to observe that the unsubstantiated allegations levelled by the wife in the written statement as well as in her evidence as also evidence of her father amounted to mental

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<sup>71</sup> wp.me/p7s7-1ml

cruelty as the wife has failed to prove those allegations by examining appropriate witness in support of the said allegations. In our view, the bare word of the wife or her father Haribhau, DW-2 who is treated by us as an interested witness, is not sufficient to accept that the wife has made good the allegations against the husband. The allegations are certainly serious and the husband is bound to undergo mental pain, agony and suffering. For the reasons mentioned aforesaid, we hold that the husband has been able to prove that the wife has treated the husband with cruelty....."

### **5.3.22 HIGH COURT OF JUDICATURE AT ALLAHABAD**

Case :- FIRST APPEAL No. – 175 of 2010<sup>72</sup>

Smt. Ruchita Srivastava Vs Vivek Swaroop

498a arrest + publishing allegations + writing to superiors are cruelty. Dvrc granted. All HC excerpts of SIMPLE ACTIONS by ablaa : "...On 27th July, 2007 itself a first information report was lodged by the wife against the husband, his parents, his sister and brother-in-law under Sections 498A, 323, 506 of I.P.C. and Section 3/4 of the Dowry Prohibition Act on which Case Crime No.601 of 2007 was registered. The respondent was arrested by the police and remained in jail for 12 days ..... A news publication was published on 28th July, 2007 in the Hindi Daily Newspapers "Amar Ujala" and "Dainik Jagaran" mentioning about the arrest of the respondent on the allegation of demand of dowry. The appellant also gave an interview to the news channel "Sahara Samay" along with her parents making allegation on respondent and his entire family. The wife also wrote a letter to the Senior Superintendent of Police, Haridwar dated 12th August, 2007 informing lodging of first information report and making allegations of demand of dowry against the respondent and his family members. ....

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72

“... complaint was also sent by the appellant to the Finance Secretary, Government of Uttrakhand informing about the F.I.R. ... appellant informed her father on mobile that the respondent and family members are making plan to kill the appellant after which father of the appellant came with the police and took away the appellant from her in-laws house to their house at Allahpur. The complaint sent to the Finance Secretary was also sent to all administrative officers of Uttrakhand and Uttar Pradesh. ....”

The court appreciates the facts and adds “...here cannot be any denial to the fact that every person can take recourse of law if any offence is committed to him. Right to lodge a first information report or to take such legal action as permissible under the law cannot be denied. However, in facts of the present case we have to examine as to whether action taken by the wife and acts done by her within less than six months of the marriage are the action which gives reasonable apprehension in the mind of husband that it is not safe to live with wife any more. “

“...However, it was admitted to the wife also in her cross examination that she filed various complaints against the husband before the Senior Superintendent of Police, Haridwar, Finance Secretary, Uttrakhand and Director (Treasury). The wife was confronted with the said letters in her cross examination and she admitted sending of those complaints. The wife in her written statement as well as statement has continued with leveling allegations against the husband and her family members.....”

### 5.3.23 SUPREME COURT OF INDIA

Naveen Kohli vs Neelu Kohli<sup>73</sup>

Naveen Kohli Vs Neelu Kohli – Cruelty defined, SCC of India

The Honorable SC lists the acts of the wife and concludes that their marital life has become a living hell !

1.The wife filed FIR No. 100/96 at Police Station, Kohna under Sections 379/323 IPC

2.The wife got a case registered under Sections 323/324 registered in the police station Panki, Kanpur City.

3.At the behest of the wife FIR No.156 of 1996 was also filed in the police station, Panki.

4.The wife filed FIR under Section 420/468 IPC at the Police Station, Kotwali.

5.The wife got a case registered under Section under Sections 420/467/468 and 471 IPC.

6.The wife filed a complaint against the appellant under Sections 498A/323/504/506 IPC at Police Station, Kohna.

7.The wife had even gone to the extent of opposing the bail application of the appellant in criminal case filed at the police station, Kotwali

8.When police filed final report in two criminal cases at police station, Kotwali and police station, Kohna, the wife filed protest petition in these cases.

9.The wife filed complaint no.125 of 1998 in the Women Cell, Delhi in September 1997 against the appellant's lawyer and friend alleging criminal intimidation, which turned out to be false

10.The wife filed a complaint under sections 397/398 before the Company Law Board, New Delhi, calling the husband a liar, cheat, womaniser etc

11.The wife filed a complaint in Case No.1365 Of 1988 against the husband

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<sup>73</sup> <https://t.co/YenUftF724>



12. Again on 8.7.1999, the wife filed a complaint in the Parliament Street Police Station, New Delhi and made all efforts to get the husband arrested.

13. On 31.3.1999, the wife has sent a notice for breaking the Nucleus of the HUF.

14. The wife filed a complaint against the husband under Section 24 of the Hindu Marriage Act.

15. The wife had withdrawn Rs.9,50,000/- from the bank account of the husband in a clandestine manner.

16. On 22.1.01 the wife gave affidavit before the High Court and got non-bailable warrants issued against the husband

17. The wife got an advertisement issued in a national newspaper that the husband was only her employee. She got another news item issued cautioning the business associates to avoid dealing with the appellant.

The Honorable court observes "...Even at this stage, the wife does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the wife has resolved to live in agony only to make life a miserable hell for the husband as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the wife is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again..."

In a strongly worded statement the court concludes "...In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The

marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond....."

### **5.3.24 HIGH COURT OF JUDICATURE AT BOMBAY**

SECOND APPEAL NO. 634 OF 2013<sup>74</sup>

Shri Mangesh Balkrushna Bhoir Versus.... Sau. Leena Mangesh Bhoir

Criminal case BEFORE marriage, criminal case AFTER marriage! Man & parents arrested.

Divorce by Bom HC

Live-in woman uses Dowry case b4 marriage, to rope in man, forcing him to marry her. She then promptly Files a IPC 498a (cruelty to wife case) after marriage again! Husband and parents are arrested !! She goes on appeal against husband's divorce. Bom HC grants divorce to hubby.

In this case a woman in a live in relationship files two criminal cases on a man (one under DP act stating that he demanded dowry and a second under sec 323, 504 and 506 of Indian Penal Code. She threatens the man to marry her, failing which she will prosecute him. The poor guy agrees to marry the woman and she also compromises and closes those cases !!

After becoming his wife, she again files 498A etc and has him and his parents arrested !! The man is acquitted in these 498A cases by the trial court and in two appeals one at sessions and one at the High court itself

The man files for Divorce and is granted divorce by the civil judge, but due to appeals the case finally lands at the Hon Bombay HC. The HC appreciates the fact that the woman has filed false

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<sup>74</sup> wp.me/p7s7-22V

cases and treated the man with cruelty. The Hon HC grants divorce to the man even though the trial court has NOT specifically mentioned that 498A filed by the woman is false

Inter alia, the Hon HC notices that "...33. A perusal of the orders passed in the criminal proceedings clearly indicates that the appellant and his family members were arrested in view of the complaint filed by the respondent under section 498-A read with 34 of IPC and were subsequently released on board. It further indicates that the appellant and his family members were not acquitted based on any benefit of doubt given to them but were acquitted on the ground that the complaints filed by the respondent were totally vague and the allegations therein were not proved. ...'

and in the matter of the civil (divorce) case filed by the husband, the Hon HC states "... A perusal of the order passed by the lower appellate Court however, indicates that the lower appellate Court has taken a very casual approach by totally ignoring the effect of the order of acquittal passed by the Criminal Court...."

Appreciating the entire factual matrix, the Hon orders Divorce on grounds of cruelty !

### **5.3.25 IN THE HIGH COURT AT CALCUTTA**

F.A. No. 312 of 2007<sup>75</sup>

Rita Bandopadhyay -vs- Abhik Bandopadhyay

Wife alleges Husband had illicit relations with own sister, abuse him at office, deserts him, stops him seeing own son. Decreed wife cruel. divorce granted

\* Marriage in on 17.06.1990

\* Couple live together for three months and wife goes back to parental home on 12.09.1990

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<sup>75</sup> wp.me/p7s7-1HL

\* Then she returns back, stays for less than a year and finally leaves husband “....Rita again returned to her father’s house at Chinsurah on 26.05.1993 and at that time she was pregnant. Rita gave birth to a male child on 31.12.1993. Admittedly, Rita thereafter never returned to her matrimonial home. In the month of march, 1994 ....”

\* Husband files Matrimonial suit in 1994 alleging cruelty.

\* Wife alleges Husband had illicit relations with many women, had illicit relations with own sister, goes to his office and abuses him at his office, deserts him, stops him seeing own son in spite of court order.

\* Court appreciates depositions and evidence and decrees that wife treated husband cruelly. Divorce granted accordingly by HC.

\* So, Husband wins at Calcutta HC on 15th June, 2015, i.e. It takes approx 21 years after desertion and its just at High court !

### **5.3.26 IN THE HIGH COURT OF JUDICATURE AT MADRAS**

C.M.A.No.2148 of 2008 and M.P.No.1 of 2008<sup>76</sup>

P.Nirmala Vs. K.Muruguselvam

Wife ALLEGES husband had ILLICIT relations with his OWN MOTHER; starves husband, insults and makes character assassination of father in law; husband granted divorce on grounds of cruelty ! MADRAS HC

This is a case where cruelty is well analyzed, should be of use to husbands fighting cases on the basis of cruelty by wife.

\* wife insults husband often, seeks separate house, leaves husband hungry and stranded

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<sup>76</sup> <http://wp.me/p7s7-1rb>

\* On one occasion to force the husband to get a car she is alleged to have threatened to kill the child by throwing the child from the terrace

\* wife makes a written complaint with such heinous allegations of illicit relationships but tries to turn turtle at HC and deny her own wrongdoing

\* wife is cross examined and truth comes out

\* divorce granted on the grounds of cruelty

\* wife granted permanent alimony probably because she has a daughter and the amount is quite small considering that the husband is supposed to be in an important post with Airport Authority of India

Cruelty&Divorce#27:

### **5.3.27 HIMACHAL PRADESH HIGH COURT**

Ramesh Kumar Sharma vs Smt. Akash Sharma on 1 January, 2008<sup>77</sup>

Equivalent citations: AIR 2008 HP 78, 2008 (1) ShimLC 399

FALSE Allegations of Illicit Relations with “bhabhi” (sister in law), ill treatment at office in front of colleagues etc are cruelty; Husband granted Divorce on grounds of cruelty ; Himachal HC

"....21. The evidence on record leaves no doubt in my mind that the appellant has been subjected to constant mental cruelty by the respondent more especially her allegations of sexual misbehaviour and mis-conduct against the appellant accusing him of having illicit sexual relations with his sister-in-law (Bhabhi), for consideration, who is treating him like a younger brother. The evidence, clearly points out to the fact that the respondent has treated the appellant with cruelty within the meaning of the Act. In terms of the pronouncement of the Hon'ble

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<sup>77</sup> t.co/58Huz9hn6Z

Supreme Court in Samar Ghosh's case, I am satisfied that not only has the marriage broken down irretrievably because of the acts on the part of the respondent, and it is not possible for the appellant to live in an atmosphere which is vitiated and surcharged by allegations of adultery etc. Indian Society is sensitive to the relationships of brother and sister and mother and son which are not only respected but venerated. There has been no cohabitation between the parties since 1982.

### **5.3.28 SUPREME COURT OF INDIA**

Samar Ghosh vs Jaya Ghosh

CASE NO.: Appeal (civil) 151 of 2004<sup>78</sup>

Refusal to Cohabit, unilateral decision of not having children after marriage, humiliating husband, practically throwing him out of his apartment, cooking only for herself, not attending to husband during & after his heart by pass surgery, ill treating and throwing out house servant, and all similar acts are matrimonial cruelty ! Landmark case of Samar Ghosh Vs Jaya Ghosh !!

Honourable Supreme court summarises matrimonial cruelty in a set of paragraphs which have almost become the guiding principles on the matter ever since. These key paragraphs are repeated here

“...No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of ‘mental cruelty’. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive. <http://evinayak.tumblr.com/> ; <https://vinayak.wordpress.com/>

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<sup>78</sup> wp.me/p7s7-1sj

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommodate or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.....”



### 5.3.29 IN THE HIGH COURT AT CALCUTTA

Appellate/Revisional/Civil Jurisdiction

F. A. No. 191 of 2005<sup>79</sup>

Sri Debabrata Chakraborty Versus Smt. Rina Chakraborty

False 406, false allegations of illicit relation, venereal disease all cruelty. Husband win's Dvrc. NO maintenance 2 wife !

False case of 406 that is not pursued, false allegations of illicit relations with other women, false allegations of venereal disease etc which are NOT proven are matrimonial cruelty. Wife files 498a, 406 knowing that the husband is a government servant and has to run for bail. Divorce granted to Husband. Maintenance to son, ONLY if son comes and stays with father at least once a week. CAL HC GEM !!

In this important case, the Hon HC orders "...in a matrimonial suit, even if the plaintiff is unable to prove the allegations of cruelty pleaded in the plaint, a Court is entitled to grant a decree for divorce if it appears that the defendant in the written statement has made unfounded allegations of bad moral character of the plaintiff which are proved to be baseless and for that reason, the plaint is not required to be amended incorporating an assertion that those allegations are baseless....."

"...In her written statement, she alleged adultery against her husband and pressed the same in evidence. Such fact has been denied by the husband. She in her written statement alleged that the husband was suffering from venereal diseases and that she would apply for examination of the husband by a doctor. The husband in her examination-in-chief denied such fact and

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<sup>79</sup> <http://wp.me/p7s7-282>

thereafter, the wife did not utter anything about such allegation in her examination-in-chief and also did not pray for medical examination of the husband....”

“...From the aforesaid facts it is clear that the wife in spite of making serious allegations against the husband involving moral character did not even try to prove such fact by bringing the witnesses who could throw light on the veracity of the allegations. We are quite alive to the position of law that mere inability on the part of the defendant to prove the allegations contained in the written statement does not authorise the matrimonial court to pass a decree for divorce on the ground that those allegations were baseless; but if the defendant, in spite of availability of the competent witnesses to lend support to the allegations, decides not to examine them without just cause, the Court is entitled to presume that those allegations were baseless by drawing adverse presumption for not producing the best evidence available to her....”

### **5.3.30 IN THE SUPREME COURT OF INDIA**

CIVIL APPEAL NO.6582 OF 2008 ARISING OUT OF  
SPECIAL LEAVE PETITION (CIVIL) NO. 10907 OF 2007<sup>80</sup>  
SUMAN KAPUR VS SUDHIR KAPUR

Highly educated scholarship winning wife aborts all three kids refuses to live with hubby & calls her in-laws ghosts! Husband gets divorce & quietly re-marries when appeal pending!! Supreme Court gem!!

This wife, a highly educated woman, has three abortions one after another and wishes to pursue her career. Husband accuses her of abortions without his consent, desertion & matrimonial cruelty. This lady has won scholarship etc., and has been employed both at India & USA. The Hon courts notice from her diary entries and letters that she calls her in laws ghosts and says that

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<sup>80</sup> <http://wp.me/p7s7-29c>

she has NOT believe in Indian social values !! The courts also notice that she has deserted the husband. Appreciating the overall matrix the courts (Hon HC and Hon SC) grant the husband divorce !

“...37. The High Court also took a serious note of an entry in the personal diary of the appellant-wife dated September 14, 1986 wherein she stated; “I said, “we started this journey as two individuals and if you can do so fine otherwise forget and don’t bring the ghost of parents in between the two of us. ....”. 38. From the above letter, it is clear that the appellant-wife had described the parents of the husband as ‘ghost’.

39. In the letter dated June 21, 1988, she stated; “I really wish you would understand my urge in pursuing my freedom away from the hawk eyes of your mother, sister and all other relatives. But, as I am not ready to share the economic gains of this job with you and other family members. I don’t expect either you or them to understand my need and commitment for this job, or any job. I am bound to cause friction with so many people around me- I was at war with just you around me in Bombay.”

40. In another letter, she stated that the respondent-husband should not make a condition for the wife of living together. She stated; “I am not a good person to waste all your potential, emotion on. I do not deserve it. ... .. Please do not make living together a condition for the coming few months. ....”

The court also notices that “...41. She further said that the respondent- husband should not bring her marital status preventing her from pursuing her career in the name of marriage.

**CHAPTER 6**

**CONCLUSION &**

**RECOMMENDATIONS**

## CONCLUSION & RECOMMENDATIONS

Society and its power relations, norms, and values are changing. Men have started sharing their agony, torture, and harassment by women/spouses. It is time to recognize their problem as a social and public health issue and develop appropriate strategies and interventions. They are no longer stronger than women. They need help in crisis and family violence: Particularly violence by spouse is a crisis. Male victims of violence can be saved/helped through appropriate intervention such as recognition of violence against men by women as a public health issue; helpline for the male victims of violence; and education, awareness, and legal safeguards.

Does only a Wife get divorce on the ground of Cruelty? Do Husbands get Divorce from a 'cruel' wife? Delhi High Court recently witnessed such a case, when a wife appealed against the Divorce decree granted by the Family Court on the ground that she treated her husband with cruelty. The Delhi High Court, by dismissing her appeal and upholding the view adopted by the family court, also said that wife taunting and assaulting husband for not being able to satisfy sexual desire are grave and weighty matrimonial offences/misconducts.

The prime contention adopted by the appellant wife, was that vague and non-specific allegations can never form the basis of the petition seeking divorce on the ground of cruelty as specific instances of alleged cruelty with dates, time and particulars are required to be made. Rejecting this argument, the Court said "When two parties are in a marital relationship, neither is expected to maintain a logbook and note down therein each and every instance of matrimonial offence committed by the other. When the allegation is that a party showed uncooperative attitude towards his/her spouse and family members; did not show respect to the other spouse and his family members; misbehaved and abused with the opposite party and his family members – in respect of such allegations, it may not be possible to plead a specific date, time or place of

occurrence. However, when intolerable conduct/matrimonial offence manifests itself into an incident which has larger proportions, the aggrieved party would be able to pin pointedly – with particulars and details, recite and establish such matrimonial offence.”

The incidence of domestic violence against men in recent years has increased. The activists say that many cases go unreported as men feel too ashamed to report abuse, or fear false accusations against them in reprisal. Two groups, the Save Indian Family Foundation (SIFF) and the Indian Social Awareness and Activism Forum (INSAAF), have demanded inclusion of men's issues in the National Family Health Survey (NFHS) conducted by the Ministry of Health and Family Welfare to allow a better picture of the situation to emerge.

Ram Prakash Chugh has stated that many cases of domestic violence against men go unreported due to the male ego.[4] Swarup Sarkar, founder of SIFF, has said that there is no legal provision for married men facing verbal or mental abuse. Indian Social Awareness and Activism Forum (INSAAF), and Confidare Research have drafted a bill which aims to protect men and boys from domestic violence from their spouse, girlfriends and parents. The draft is called Saving Men from Intimate Terror Act (SMITA) and the groups aim to introduce in for debate in the parliament.

The Protection of Women from Domestic Violence Act, 2005 identifies domestic violence as abuse or threat of abuse, whether physical, sexual, verbal, emotional or economic. It provides protection to wives and female live-in partners from domestic violence carried out by husbands, male live-in partners or their relatives. Swarup Sarkar of Save Indian Family has argued that Domestic Violence Act should be made gender neutral. He has also termed the law as legal terrorism.

Indira Jaising has argued that men don't need to be covered under the domestic violence act as they have several other rights to appeal with, but women need special rights to defend their lives in a male-dominated society.

The Jabalpur, Amarkantak and Hoshangabad region of Madhya Pradesh reports a large number of sadhus who have left their marriages to become holy men or yoghis. According to family counseling centres in Jabalpur, the share of harassed husbands was 70 percent among complainants as per data recorded between 2013 and 2014. About 4,500 husbands are missing from family court records in the region. A local stops the police from going after men who have left marriage and become sadhus

Though the amendments introduced in the penal code are with the laudable object of eradicating the evil of Dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives, i.e. fast emerging. A strict law need to be passed by the parliament for saving the institution of marriage and to punish those women who are trying to misguide the court by filing false reports just to make the life of men miserable and 'justice should not only be done but manifestly and undoubtedly be seen to be done'.

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