

## Matrimonial Issues-A Critical Study

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### Abstract

The family is the important group in the society. It is a link between change and continuity. Family as a universal institution plays an important function of social maintenance and providing base for political, economic and religious systems to operate. Family roles may be witnessed as a link between the behaviour of the members of the family and their status in the society at large.

Family and marriage are complementary to each other and are not separable from each other. Marriage is a universal institution of social nature that fulfills several unique functions. It provides nurturance of family members and contribute to emotional and intellectual stimulation of the parties. Marriage is considered as sacramental and therefore a religious institution; it is celebrated with great event and with great fervor.

There is a phenomenal change in the structure and function of the family. The importance of family has reduced due to functioning of external agencies. More emphasis is given to 'achieved status' than the ascribed status. The welfare functions have been taken over by professional organisations. The living arrangements have significantly diluted the family. There is a great division of joint family system, establishing of nuclear families in the society at large. This has a serious impact on the matrimonial issues of the present day scenario and there is an urgent need to recover the image of sanctity and institution of marriage in the society.

**Keywords:** Marriage, matrimonial issues, cruelty, court of law, ADR

### Introduction

The most serious problem being faced by individuals in the society relating to the matrimonial issues is that there is a grey area in the remedies provided for matrimonial disputes and the provisions of law. It just provides the solution to the Restitution of Conjugal Rights, Judicial Separation and Divorce. The law doesn't focus on other remedial measures in the due process of law nor in the alternate remedial sources, where the issues can be sorted out amicably providing relief to both the parties and allowing them to unite in the matrimonial bond with the primitive atmosphere in the relation.

The phrase Matrimonial offence took a new meaning in the long history of human civilisation. The patriarchal society never thinks of domestic violence in the same manner as it is understood in legal parlance today. In the earliest phase of human civilisation in Vedic India, the relations of men and women were guided by unwritten orders and contemporary moral codes. The relations between husband and wife witnessed in Vedic Hindu society were known to be harmonious rather than acrimonious. The harder codes being prescribed for women in the male dominated society was observed in the period of Smritikars and Dharmashastras <sup>[1]</sup>. Despite of the recognition of women's position in religious and spiritual matters, they were subjected to physical and mental cruelties and slightest deviation from moral codes in their behaviour invited rigorous penance and battering with split-bamboos.

In the earliest phase, in Christianity, women were freely participated in rituals with no distinction as to special status to any individuals. In the later period, Christianity was influenced by socio-political and cultural system of Roman

Empire. Aristotle's notion is that, women defective male-lacking vital force was accepted by Christian society <sup>[2]</sup>. The Christian saints abused women as 'Gate of the Devil and the 'Road to inequality', 'A Scorpion ever ready to sting', 'The instrument which the devil uses to gain possession of our soul', etc; thus downgrading the women's status started in the mediaeval Europe <sup>[3]</sup>.

The condition of women and status of wives was not happy in pre-Islamic countries, wives could not complain against any injustice done to them. Subjugating their wives was enjoyed by Husbands. Innocent girl babies were killed by their fathers and mothers are in helpless condition and could not do anything. Prophet Mohammed has made a radical change the status of women. Women were given the rights for education. During the Vedic period, women enjoyed the equality and freedom in attaining academic excellence, participation in religious and cultural rights and in social economic matters <sup>[4]</sup>. In the Vedic period, marriage was a sacrament. It was considered an indissoluble bond between a husband and wife. During this period, wife was held with great respect, she was treated as a companion, a friend of her husband and not a Dasi <sup>[5]</sup>. A declining state in the status and respect of women was seen in the post-Vedic period. Husband became the master of his wife. The widow was asked to devote herself to ascetic life. Polygamy became prevalent. The customs and institution in Hindus before independence deemed to be one of the reasons for cruelty to women <sup>[6]</sup>.

### Conceptualization of Cruelty

The concept of cruelty from time immemorial has been prevalent in the society. Therefore with the change in the thoughts and ideas, the concept became dynamic one. In the

case of moonshee Buzloor Rehlemn v Shumroonia Begum, the concept pertaining to cruelty was accepted as a reason for judicial separation for the first time. The Privy Council recognised the significance of cruelty in matrimonial life, it became a precedent required to be followed by judiciary<sup>[7]</sup>.

The position of the word cruelty before the enactment of HMA, 1955 was laid down by Smritikars, commentators and also in customs and usages. Cruelty was understood as creating fear in the mind of the person alleging that, it will cause harm or injury and difficult to live with the spouse<sup>[8]</sup>.

The emphasis was mainly on the physical aspects of causing injury to other spouse. The notion changed with the passage of time. The concept changes depending upon the social and economic changes and change in human attitude in moral values, because of this dynamism, it is difficult to give a significant definition of cruelty.

Cruelty is categorised in two types; firstly the physical or mental cruelty, where it relates to the human conduct and behaviour and thus always varies from person to person, for this reason there is no definite classification of cruelty. Secondly, cruelty differs from person to person. What acts or conducts amounts to cruelty to explain it, there is no hard and fast principle to define it. This poses a practical difficulty in defining the term cruelty.

The act of cruelty cannot be measured in any manner because it is endless, vary according to different social norms and cultural levels. It depends upon the background and disposition of parties to marriage.

### **Definition and Meaning of Cruelty in Matrimonial Context**

As pointed out in the preceding part, it is difficult to give an accurate definition. However, it would be worthwhile to analyse the meaning of cruelty and discuss a few definitions of it.

#### **a) Literal Meaning of Cruelty**

Cruelty mean the conduct or behaviour of a person towards the other causing injury or causes fear of incurring of such danger.

According to Webster dictionary<sup>[9]</sup>, cruelty means the conduct of the party in a diverse action which endangers life or health of others, and also that acts which causes mental suffering of fear.

In general notion, the term cruelty is defined that, the physical as well as mental torture of one spouse for the acts or conducts of another spouse.

According to Venkataramaiya, the term cruelty includes act of action or omission, that injures the affected person and cause mental agony, the sufferer alone can state<sup>[10]</sup>.

Here the term cruelty relates to action of one partner towards other which can be disclosed by the sufferer.

According to L B Curzon's dictionary<sup>[11]</sup>, cruelty is defined as the behaviour which when considered in the hearing the divorce petition indicates that respondent behave in such a manner that petitioner finds difficulty to stay with the spouse.

According to Oxford dictionary<sup>[12]</sup>, cruelty means the behaviour of a person that causes pain or suffering to another, deliberately.

The definition explains about the general human conduct that gives intentional suffering to other; here intention is connected with cruelty.

According to Halsbury's Law of England<sup>[13]</sup>, the legal concept of cruelty described as the conduct of such character that have caused harm or reasonable fear of such danger.

In common, cruelty is the behaviour affecting the other person physically or mentally.

#### **b) Philosophical Conception of Cruelty by Smritikars**

There was no specified law relating to matrimonial cruelty before the enactment of HMA, 1955 prior to the said Act, the law was laid down by commentators and smritikars. They laid down the rules and principles according to the observations made by them. The following are some of the principles:-

##### **i) According to Manu Smriti (200 BC)**

It defines that even if the husband lacks good qualities, wife must worship him as God. Any wife who disregards or rejects her husband shall be ex-communicated for three months by denying clothes and jewels. A woman was not allowed to perform any ceremony or undertake any feast without her husband to attain salvation. She should serve her husband to attain better life. In Vedic period, widow remarriage were witnessed, but in Smriti period, they were prohibited, Saptapadi to happen in woman's life only once. She shall not remarry. She was considered as right person for Niyoga<sup>[14]</sup>. The Smriti discriminates between man and husband and wife and women in regard to moral standards. Women are heavily burdened with duties as compared to men.

##### **ii) According to Yagnavalkya**

Yagnavalkya<sup>[15]</sup> explained, what good family is, and adds to it, bride must be intelligent, young, favourite among people and virality must be carefully tested. He also explained about the best qualities of bride and silent about the groom. It gives an explanation about the status or position of bride in her marital home, the expectations upon her are always very high. In this way it was pointed out clearly that women were ill-treated and subjected to torture by her husband.

##### **iii) View Point of Historians**

The concept of wife battering, an important form of Matrimonial Cruelty was encouraged by some historians. Husband was made to discipline his wife without prosecution for battery and assault<sup>[16]</sup>.

Ganley in 1981, made suggestions in this regard stating that, men who batter their wives, learned cultural and social values and their role in families to support their violence and aggression<sup>[17]</sup>.

Agnes in 1988 suggested that, women who do not respect and accept the traditional values of submissiveness and subordination is required to be tamed and in this part she can be subjected to violence<sup>[18]</sup>.

In this way, historians extended their support to project the traditional image of women as a weaker one and any method could be practised for matrimonial cruelty on her.

### **Definition and Meaning of Cruelty in Legal Perspective**

It is hard to give the appropriate definition on the term cruelty, as there are difficulties and problems involved in practical aspects. The Indian legal system borrowed the term from English legal system, before discussing the concept under Indian law; firstly understand the meaning and definition of cruelty under English law.

#### **a) Definition and its Meaning Under English Legal System**

The judiciary under English legal system has made a significant contribution in defining the term cruelty.

House of Lords in the year 1897 narrated the term cruelty in *Russell v Russell* [19] as follows:

“Cruelty, the conduct of a person is of such a character that causes danger to health or life, mentally or physically, causes the fear of such danger”. It says that the act or conduct which causes fear in the mind of the spouse.

Similarly in *William v William* [20], it was stated that the turbulent passion or motive comes in jealousy, consistent affection, etc; could be a motive behind cruelty, if cruelty is proved such malevolent intention, malignity motive are not taken at all in the case of cruelty. Even though insanity did not considered as a pardonable factor, because of insanity, if the spouse perpetrates cruelty, it is enough to provide the relief to other spouse. In this case, the factors contributing cruelty was discussed by stating that motive is not necessary in cruelty and unsoundness of mind was a proper reason for availing suitable relief from the Court of Law.

Here the court explained that the difficulty and impossibility faced in defining the term cruelty due to change in the act and behaviour in human beings that may or may not form cruelty. It was narrated that the term cruelty depends on the tolerance power of other person. And act may be cruel to one and the same act may not be cruel to other. The gravity of receiving the pain forms the explanation of the term cruelty.

According to Tolstoy, cruelty could be defined as unjustifiable and willful conduct that causes danger to life, health or limb, either physically or mentally, or give rise to fear of such danger [21].

According to Rayden, cruelty could be defined as a conduct of a person with such a character that causes danger to life, health or limb or giving rise to fear of such danger. The act of the person over a period of time constitutes cruelty. It is difficult to satisfy the court for fear of danger to health where actual injury is not proved.

Blackstone says [22], if the wife is not obedient, husband should correct her by beating.

### **b) Definition Under Indian Legal System**

In Indian legal system in English legal system is reflected in defining the term cruelty. The Royal Commission, in 1956 opined that, it is hard to define the term cruelty; it is for the judiciary to assign the meaning of the term cruelty through judicial pronouncements according to social conditions.

In *Padma v Parma Ram* [23], the Himachal High Court observed that, the act of the term cruelty is the behavioural manifestation caused by various factors. The court further said, physical cruelty often leads to mental cruelty, mental cruelty lacks the conjugal kindness that inflicts pain that affects the person whom it got inflicted.

From the above observations we can draw to the conclusion that the list is long and exhaustive and it is difficult to provide a proper definition of cruelty.

It is considered that, un-intentional acts also amounts to cruelty, if it shows its impact on the health of other person.

The term cruelty has two distinct elements:

- i) Ill-treatment
- ii) Resultant danger as the fear there of [24].

Thus it can be stated that even in the absence of physical violence, cruelty can be explained from other factors taken into consideration from the relation between the parties [25].

Considering the acts or conduct of human beings, it is hard to have a proper definition of cruelty; the court decides it by examining the conduct of the parties.

Cruelty has legal significance and its legal consequences in matrimonial relations as well as in criminal law. It is desirable to discuss its legal perspectives.

### **Statutory Conception of Cruelty**

Cruelty in general parlance relates to human conduct and behaviour of such a nature that creates a fear of physical and mental injury to a person. It has different connotations in statutory sense and examined difficulty in legal perspectives. There are few statutory definitions as provided in some legislation [26].

It is complex to provide the constructive definition of cruelty as the human behaviour and conduct is complex, for this reason legislature avoided to define the concept of cruelty, whenever a person approaches the Court of Law to seek remedy for the alleged cruelty, it is expected, the party seeking justice needs to provide all particulars of the conduct and acts of other person, with this a case of cruelty cannot be made out. The court should satisfy with the charge of cruelty to be proved.

Thus, cruelty is the conduct of other party that creates the feeling upon the aggrieved person. It can consist of physical or mental torture [27]. It is the conduct in the relations of spouses out of matrimonial duties and obligations that affects the other person adversely.

It is thus, for this reason, court generally adopt a hypersensitive and technical approach to highly sensitive institution of marriage. It will not deal with the matters of ideal husband or ideal wife. It deals with a husband and wife before it, because the ideal couple has nothing to do from matrimonial court.

So, it is mainly the question of degree and fact. In all the cases involving cruelty, usual cause of action will be, there should be an enquiry to ascertain the nature, then its impact on the mind of other person to be determined and it has to be ascertained that whether it creates fear that may be harmful. Finally the inference can be drawn by considering the nature of conduct, its affect, on complaining person.

In a nutshell, human relationship are so diversified, it would be impossible and difficult to lay down the classes of act that would constitute cruelty. In the normal routine life. One person do various acts that shows indifference or disregard to the feelings of other person, for this reason, it is difficult to define the term cruelty and that cannot be restricted to few words.

### **Important Aspect of Matrimonial Cruelty**

So, in the cases of cruelty, the court shall consider the following factors that are relevant, that are discussed as follows

#### **a) Intention, not Important Element of Cruelty**

When any acts done or adopted without any intention constitutes cruelty.

In *P L Sayal v Sarla* [28], parties were married in the year 1948, had two children out of wedlock, they could lead a happy life. She administered love potion to her husband given by fakir, and that resulted in serious illness of her husband, showing the symptoms of slow fever, giddiness and finally got nervous breakdown, vomiting and other complications like headache, backache, losing weight and finally suffered from nervous breakdown. The husband got admitted in hospital where he undergone the treatment. In this period, she served him like a faithful wife, she felt repented of her conduct. After discharge from the hospital, he filed a judicial

separation petition on the ground of cruelty. Court granted the decree of judicial separation.

In this case, Shamsheer Bahadur, J. observed that taking into consideration husband has fear to live with his wife, that same might be repeated again. Although there was no malafide or cruel intention of wife but the act of such a nature that is created a fear in the mind of husband of danger to live with her and the court held that, it was an act of cruelty. Therefore, intention is not required. Any conduct or act done that creates a fear in the mind of the person without any ill intention, amounts to cruelty.

#### **b) Cruelty Aimed at Petitioner or Any other Person**

For the formation of the concept of cruelty, an important question that often concerned is, whether the cruelty is aimed at petitioner only or to any other person.

The English law states that if the act aimed at petitioner, even though there is an absence of injury or to inflict injury, it amounts to cruelty, according to English law, an act or conduct should be directly linked to the petitioner. Which makes reasonable apprehension to live with respondent.

In *Cooper v Cooper* [29], the court held that, when the act of a spouse does not make the direct action towards the other spouse, but the misconduct like gambling, drunkenness, sexual offences against other party or crime, they do not aimed directly at the petitioner but, if they remain continuous, it is sufficient to term as cruelty because they affect the other spouse mentally. In this case one step ahead is followed that, an act or behaviour does not directly indicate to one of the partner but indirectly hurts him or her mentally and it remains continuous, then it is termed as cruelty against which the respondent is held liable [30].

So, the act or conduct of respondent whether it affects them directly or indirectly, whether it causes physical cruelty or mental cruelty amounts to cruelty.

#### **c) The Act or Conduct Complained of as Cruelty be that of the Respondent**

After the considerations of acts or conducts, the other thing is whether it is mandatory that the act done be that of the respondent or of other family members also? In Hindu society, where the concept of joint family still prevails, the acts or conducts of other family members shall be termed as cruelty. The law is clear on this point; it is not compulsory that the act or conduct is done by respondent but also includes them done by other family members also. This is found in Dharmashastras which states that husband the protector of his wife, howsoever weak he may be, he must protect his wedded wife [31].

The Judiciary also supported the said version of Dharmashastra in *Gopal v Mithilesh* [32]. The respondent cannot take the plea of defence that the said conduct or act was not committed by him but his family members have committed the said act.

#### **d) Ordinary Wear and Tear of Matrimonial Life**

In spite of wide meaning to cruelty, it is not mandatory that every act or conduct of respondent that makes the other person's life unhappy or miserable does not amounts to cruelty. For instance, the spouse is whimsical, or moody, or stingy, or selfish does not amounts to cruel conduct in the eyes of law. They are termed as routine activity of matrimonial life.

In *Narayan Prasad Choubey v Smt. Prabha Devi* [33] irritating idiosyncrasies are part of human life where every spouse

taking the partner for worse, for better, therefore so many things happen which cannot be termed as cruelty.

In *Santosh Kumari v Praveen Kumar* [34], court held that, the period of 4 to 5 days of married life could not be sufficient to claim divorce on the ground of cruelty. This initial period is the period of adjustment and little rubbing cannot be ruled as cruelty. Such short durated cruelty could hardly give a ground to wife to seek divorce.

#### **Classification of Cruelty**

It is very hard to classify the term cruelty due to its dynamic character. The same is stated by Lord Denning in *Sheldon v Sheldon* [35]. He stated, the categories of cruelty are not closed. Each case could be different.

New dimension of cruelty will arise in every next case that depends upon the nature of human beings.

Earlier it was confined to physical torture and injury to the petitioner but with the advancement of time and change in circumstances, judiciary played important role in widening the concept of cruelty by adding one more classification, that is mental cruelty, so broadly, the term cruelty is classified in two categories one physical cruelty and other is mental cruelty.

#### **a) Physical Cruelty**

The concept of cruelty is the human behaviour or human conduct towards one's spouse that affects latter adversely. It could be either physical or mental, physical cruelty means the act of physical violence practised by one spouse upon other causing harm or injury to health, limb or body or even causing fear of the same. The act of physical violence amounting to cruelty differs from case to case that depends upon the susceptibility and sensibility concerned. The cases involving physical cruelty can be easily comprehended and the assessing of cruelty will be easy. The main question is what could be the degree and type of harm or injury that is sufficient to constitute cruelty. The said two things that is the degree of cruelty and the type of physical violence depends upon various factors like social background of the parties, family environment, education and their status in the society. So there is no straight jacket formula to analyse the degree of physical torture and the force applied therein.

In *Gurucharan Singh v Smt. Waryam Kaur* [36], the court held that isolated acts of violence amounting to cruelty depends upon the facts of the case and treat it as assault against women. Court must recognise the new rules of social behaviour If the victim resent and take exception of them.

In the similar way, if husband constantly abuses and insults wife, occasionally resorts to physical violence, it also amounts to cruelty [37]. Not only isolated acts but even some sort of physical violence are enough to determine cruelty [38].

In physical cruelty, reasonable apprehension of danger to life need not be proved. It was held in *Smt. Kaushalya Devi v Masat Ram* [39], that the husband used to beat wife and did not allow her to speak with neighbour, even with male or female and threatened her that one would be put to death, in this case cruelty been established.

So physical cruelty can be easily established in any case, the court generally considered the degree of force, it varies from individual to individual.

#### **b) Mental Cruelty**

In *Praveen Mehta v Inderjeet Mehta* [40], court observed, it is the state of mind, that can be drawn from the circumstances of the situation taken cumulatively.

**i) Various cases of mental cruelty**

The judiciary highlighted mental cruelty in the following cases:

**1. Unusual Callous, Deliberately Harsh and Neglectful Conduct**

The ill-treatment, non-co-operative attitude and intentionally harsh and rude behaviour fall under the purview of mental cruelty.

In *Smt. Shimla Devi v Kuldeep Sharma*, wife pursued her husband to live separately from his parents, husband is having four sisters and the responsibility of the family is upon the husband, to insult his parents, wife finds fault in the works of his mother, causes great tension and mental pain. She did not respond to the notice issued by him. The court decided the case of mental cruelty and awarded decree in favour of husband, the same was held by High Court.

**2. False Accusation of Adultery and Unchastely**

If false allegations of adultery and unchastely is levied by the spouse against other, it amounts to mental cruelty. In *V R Bhate v Neela V Bhate* [41], Supreme Court observed, levy of false charges of adultery by the husband amounts to mental cruelty and wife can avail the relief from court of law.

**3. Filing False and Baseless Criminal Case**

To cause harassment to other spouse, if the other person finds a baseless case, it will amount to mental cruelty. The act would automatically give mental tension and agony further contributes to impossibility in living with the party.

**4. State of Intoxication**

The act of drunkenness amounting to mental cruelty depends upon the factor that accompanies abuses, insult, or violence and thereby causing mental torture or pain to the other person, then it constitutes mental cruelty having capacity to disturb the mental peace of other party [42].

**5. False Charge of Impotency**

An act alleging a false charge of impotency would be an aspect of mental cruelty. This lowers the image of man in the society and people treat him in a different manner and thereby the person develops inferiority complex in his mind [43].

**6. Making False Complaints to Employer**

In *Aruna v Ramesh Chand* [44], wife made false and frivolous complaint against her husband to the employer this caused mental torture and pain to the husband, it was more severe than physical beating. It is not reasonable for husband to be expected to live with his wife.

**7. Infectious or Venereal Disease**

If one of the spouse is affected with infectious or venereal disease and is fully aware that establishing sexual relations with the other spouse will communicate the same to other spouse and in furtherance insist to have sexual intercourse, the act leads to mental cruelty and on such account, the affected party has an opportunity to approach the court of law for the dissolving of marriage.

**8. Forcing Wife to Adopt the Profession of Prostitution**

Where the husband compels his wife to lead immoral life, it would amount to physical and mental torture against her. Such practice adopted by husband to earn more money would

make the wife impossible to lead her matrimonial life and the aggrieved party can see the relief from the court of law [45].

**9. Persistent Threat to Commit Suicide**

The court held that an act to make an attempt to commit the act of suicide with a view to coerce the other party to perform something which the other party is not inclined to do for whatever reason amounts to cruelty [46].

**10. Homosexual Practice**

If one of the spouse adopt such practice, it would be difficult for the other spouse to live under the same roof, this amounts to cruelty.

**11. Forcing to Terminate Pregnancy or Causing Abortion without Consent**

When the husband compels his wife to terminate pregnancy without any cause and when wife causes abortion without the permission of her husband would give mental pain and ill-treatment, such action cannot be pardoned in any event.

**12. Allegation of having Unnatural Carnal Relationship**

Allegation of wife of having carnal relationship and such allegations proved by wife, court held, such fact constitute mental cruelty [47].

**13. Charge of Adultery Against Wife**

In *Smt. Sunitha Singh v Raj Bahadur Singh*, wife was in love with other person, other than husband and had written letters to him. Both had opportunity and occasion to meet each other. She was missing after her marriage and found in the home of her another friend. The trial court held that the circumstances referred to mental cruelty and no husband would tolerate the infidelity or defection. The cruelty is mental cruelty causing agony, mental pain and frustration, it is difficult for husband to live with her. The trial court awarded the degree of divorce and same was upheld by High Court.

**14. Refusal for Sexual Intercourse**

If the spouse continuously refuses to have sexual intercourse with the other spouse. The refusal is due to ill-health or any physical incapacity it will not amount to mental cruelty. If it is willful act of denial of sexual relationship, then it amounts to mental cruelty [48].

**15. Undue Familiarity**

If the spouse having familiar relationship with other person other than his or her spouse, amounts to cruelty. Improper relation with a member of opposite sex by a spouse short of adultery amounts to cruelty [49].

**ii) Miscellaneous Cases of Cruelty**

The following are the miscellaneous cases of cruelty

**1. Marital Rape**

It is to be noted that is Section 498-A IPC mostly covers the cases of victims of marital rape which is perpetrated by husband upon his wife [50]. It is a rape irrespective of the fact, by home, under what circumstances it has been committed. However, if the courts get tied up in giving defence to the legislative process, does not strike down poorly constructed enactments, it will be acting as impediment in the national campaign for abolishing of marital exemption.

## 2. Child Cruelty

The child cruelty is a type of cruelty that is practiced on parents by their children. Generally cruelty of children of the marriage would not be placed under the head legal cruelty but it could lay down emphasis that, if any spouse deposes any child to counter cruelty upon other, in that event, it may amount to cruelty. There is a historical case on his point <sup>[51]</sup>.

### Burden of Proof in Cruelty Cases

The term burden of proof is defined under section 101 of Indian Evidence Act <sup>[52]</sup>. This is also applicable to matrimonial laws. Therefore, when a petition is filed on the grounds of cruelty, it is the duty of the petitioner to prove that the respondent has treated him or her with cruelty. The burden of proof lies on the petitioner/complainant in civil cases and on prosecution in criminal cases.

### Standard of Proof in Criminal Cases

The quantum of proof that is required to be proved in terms as standard of proof to the extent or a degree to which the burden of proof must be discharged. It is the measure of the degree of probability of certainty, which the evidence must generate in the mind of the fact-finding authority, (the judge) <sup>[53]</sup>. It is not similar in civil and criminal cases. It was discussed by Supreme Court in *Bipin Chandra Jain Singh v Prabhavati* <sup>[54]</sup> and held, the petitioner is bound to prove the offence like any other matrimonial offence.

In *White v Kathleen Olive White* <sup>[55]</sup>, the question raised was what the standard form of proof in matrimonial proceedings is.

### The Court Referred

The word satisfied on evidence used in section 14 of Indian divorce Act, 1969 states that the court satisfies the evidence. The court interpreted that, it is the duty of the court to give an appropriate relief to the parties only when it is satisfied, the case is proved without any doubt in the mind of court of law.

This case continued upto 1975 and then in *Dastane v Dastane* <sup>[56]</sup>, the Supreme Court insisted not to insist on the proof beyond reasonable doubt as required in criminal trial. Supreme Court stated that, it is not a disputed fact that matrimonial proceedings are civil in nature and it is unsafe to apply the same standard of proof as prescribed for criminal proceedings.

So the standard of proof under matrimonial law is preponderance of probability. This is also a provision under Hindu Marriage Act <sup>[57]</sup>

Thus, the cruelty varies from time to time, not in legal theory but in general application, as accordingly <sup>[58]</sup>.

After discussing the definition, classification and other legal provisions of cruelty, it is significant to note its reasons and factors which gave its birth in society.

### Factors Contributing Towards Cruelty against Wife

The state is primarily concerned with regulations of economic institutions, social control to ensure adequate production and distribution of material goods. Similarly, religious institutions are concerned with regulations of human relationship with God. Simultaneously other social agencies and institutions have been established to the varied needs and to perform different social legal, political and economic functions. But the basis of social organisations of all these institutions is the family. In family, the institution that concerns itself with Love, sexual relationship, reproduction and child bearing,

socialisation of child and various roles involved in kinship organisation <sup>[59]</sup>.

Families are living organisms. It means that families have a structure with boundaries to maintain instrumental and experience functions, ensuing their organism growth and survival <sup>[60]</sup>.

This remarkable institution is suffering from great stress, defined as fairly stress. It means pressure or tension in the family system, disturbance in the steady state of family <sup>[61]</sup>.

There are various factors that attribute the stress and are prevalent in the institution of marriage especially in the relationship of husband and wife. The wife could not lead the happy married life because of cruel treatment she receives from her husband and in-laws.

In the present-day scenario not only wife but also husband is subjected to cruelty on behalf of his own wife. In order to find the remedy to this problem, we must first ascertain their root cause/factor that is responsible for such problem. They could be summed up as follows:

#### a) Biological Factors

It is the first and foremost factor that contributes matrimonial cruelty. Although God has created man and woman equal but despite this equality, there are a number of anatomical differences between man and woman and they reflect in sexual and procreative functions. <sup>[62]</sup> For instance, female sexual anatomy is different from that of male in terms of its functions and physiological division.

In this context, the significant clearing of fog has been achieved by the term gender rather than sex in order to deal the purely biological connotation.

Generally feminist scholars prefer to use the word gender. So due to biological difference, the control over women women was recognised by various schools of thoughts as a fundamental mechanism for subordination of women. Due to these unavoidable differences, man considers himself, more superior by nature and more powerful than women. For this reason man holds a dominant position in the family not only as a husband but also a father or as a son. It was one of the grounds of matrimonial cruelty in this part. In the present-day situation less emphasis was given on physical strength and women considered as superior than men.

It means that women treat men as equal rather than a dominant person. When the two factors, modernity and the attitude on the position of the husband were cross tabulated, we find that both are closely related to each other <sup>[63]</sup>. The data of National Crime Records Bureau conveys contradictory statement. <sup>[64]</sup> If we consider that both husband and wife are equal to each other, there is no question of cruelty. But the cruelty is increasing day by day in the society. So cruelty has nothing to do with the modern ideas and thoughts of marital spouses.

Not only the nature has created the difference between man and woman, but all religious practices advocate that women are biologically and spiritually inferior to men, that accords the inferior status of wife in family. Historically, biological characteristics of women like menstruation and child birth, religious clergies excluded women from religious practices systematically <sup>[65]</sup> Aristotle said that, women are more dispirited, more dependent, more impudent and more give to falsehood than men. She is more easily deceived and more vigilant less active, less disposed to modern and receptive of less nutriment than male <sup>[66]</sup>.

This indicates that women is inferior to man and are subjected to ill-treatment, tortured by husband. It relates to biological

weakness of women which contributed a lot to become an instrument of harassment physically and mentally by her life partner.

In western science, women's biology is compared with nature and it is used to explain gender difference and inferiority of women to men <sup>[67]</sup>.

So, biological factor form a primary source of matrimonial cruelty. We cannot say that cruelty was the thing of past, in the present time, it is increasing very fast and created a new challenge to humanity.

#### **b) Socio-Cultural Factor**

The next factor is socio-cultural factor, the birth of a girl child in the society is still not welcome unlike as it was in Vedic society. The evil of female foeticide is the example of this practice. There are numerous legislations to check the social menace but have limited success. This social evil is still on the rise and has later on took a very cruel and horrible shape in the form of bride burning and suicide which is continuing very speedily. The guilty persons are rarely brought to the books of law and majority of cases results in the acquittal of the culprits.

In India, the society is tradition directed from several centuries, the hold of tradition is still strong over a large part of society. Though the traditional conception in relation to status and role of husband and wife are slowly changing in contemporary Indian society, the tradition oriented concepts is still largely prevail <sup>[68]</sup>.

#### **c) Psychological Factor**

This theory explains the position of father, mother, daughter and son within the family. Examining the process by which the male child learns to exhibit the muscularity and female child learns to act as the other or as subjugate of male, from the beginning <sup>[69]</sup>. It means that the gender relationships are basically ground of psychological factors which are reflected clearly in the society. The psychological standards are such as self-worth, self-esteem, self-consciousness or self-confidence upon which the personality of men and women are judged. There is noticeable difference between men and women in these particular criteria. It is because of psychological superiority of men, educated men are placed on better positions in society and in economy all are paid for their work, whereas educated women have to work as mother, wife or daughters and are considered worth nothing to the nation in solid cash.

The psychological dimensions are deeply rooted in human conduct and behaviour and it can be interpreted in the light of human context. When we study human behaviour, we observe that male is independent, aggressive, not emotional and less feeling and are not easily hurt, he can take quick decisions and confident, whereas women are not aggressive, emotional, not independent, cannot take decisions easily, lack of confidence, these psychological factors contribute a lot in establishing a tendency that man is superior over women.

So from the modifications we draw the conclusion that psychologically man and woman are trained in an atmosphere that, man can practice cruelty upon women as a husband and she has no option in this regard. She is forced to obey her husband in all situations. So a woman bears all kind of ill-treatment and makes herself a tool of matrimonial cruelty in the hands of her husband and in-laws.

#### **d) Economic Factor**

The economic contribution of women in the society has

always been substantial. They do various works like sowing, harvesting, processing and many other chores that are directly connected with agriculture. Their contribution with field of industrial front is great, but the same was not recognised and appreciated in the society.

Women after getting married, their first and foremost duty is to perform the marital responsibilities like looking after children, husband and elderly members of family and to provide special care to sick members. During each stage of life of women, they have clear-cut biological, social, cultural and economic roles to play <sup>[70]</sup>. Doing household work is not bad but there must be equal participation of husband and wife else it is termed as matrimonial cruelty. Most of labour of women mainly utilised in house and its surroundings. On one hand she has to do all household work and also needs to provide assistance to her husband on economic front. Economists do not focus on this aspect of monetary value to the labour of women but uses a category called as 'next economically active homemaker' to cover women in this type of occupation <sup>[71]</sup>. In other words, it can be said that women are unpaid family workers. This term itself denotes matrimonial cruelty.

In this voluntary private and partial nature of the family income transfer and lack of alternative economic opportunities for women contributed to the crystallisation of lower social and political status for women in contrast with men with the family in particular and society in general.

The feminists argue that, in the capitalist quest to accumulate wealth, women are always been exploited. Right from the traditional to modern civil society, there has been economic dominance of men over women both within nation and at international level. History reveals that economic dominance of man over women is not a modern concept but revealing from ancient time and further lead to subjugation of women by men. The journey of human modernisation reveals that, the process of development characterised by industrialisation, urbanisation and marketisation brought dramatic changes, at sometimes conflicting and contradictory in gender roles of men and women.

The tale of exploitation and harassment is unending. It is due to the ill-treatment and lack of education which keeps rural women perpetually poor and downtrodden but when we observe the life of women in urban life. Working as Clerks, Typist, Stenos and Receptionist etc; in the same as that of women in rural areas. They suffer from economic exploitation at work as well as psychological harassment at home. Women generally perform primary responsibility of bearing and rearing children, but it is considered as secondary one in contrast with men as breadwinner. The day starts in the morning with household chores and then to office, at the office they have to compete with male counterpart. After reaching home in the evening, she has to do the duty to perform household chores again. This exorbitant pressure puts mental and physical stress on their body.

With the development in science and technology, there is a tremendous change in the lifestyle of men and women, especially in urban areas. Due to the development in science, education, media, transport, communication. Women's education and participation in the work gained impetus after independence. Women are making thrust in the vocation in the male dominated areas. Question arises that, what are the factors responsible for women workforce. In addition to economic necessity other factors can be-

i) Enhancing the living standards by earning extra income,

- ii) Self-actualisation, personal satisfaction, unfolding of talents and development
- iii) Utilisation of education,
- iv) Utilisation of time in employment <sup>[72]</sup>.

Since five decades, there is an increase of women migration to cities <sup>[73]</sup>. Women work in all occupational categories but are underrepresented in blue-collar and non-farm labour areas, even in white-collar areas, women tend to avail jobs with less status <sup>[74]</sup>. Although women took participation in almost all areas but they were remains unrepresented and making them to receive lowest salaries and wages. Gender discrimination is still prevailing in the present time.

In short, women are greatly affected by modernisation. Where inflation is very high, it becomes difficult to maintain the house solely on the income of husband even to fulfill the basic needs; wife has to work to contribute to basic needs.

Earlier there was a notion that when women become economically independent, then there will be no question of inferiority or superiority, but in modern times, even though the wife is economically independent, she subjected to double cruelty, one in the hands of her husband and other in the society, she is confronted with variety of cruelties.

Hence, economic freedom is not a solution for the evil of matrimonial cruelty.

#### e) Political Factor

In the recent times women are involved in political activities. They had also participated in ancient times and enjoyed administration power. People think that political area is not suitable place for women. They believe that women should be prevented from taking part in politics. They believe that all means are fair in the game of politics and this attitude is not possible for women, the said social structure is also responsible for this attitude. Women need to understand that their participation in politics is necessary to become significant in the society. They must realise the importance and their individuality to get rid of traditional values and beliefs. The participation of women in politics will be a factor for resolving the issues pertaining to women in the society.

The political factor is the general concept that affects the status of women in society. The subordinate position in politics reflected in the form of cruelty in matrimonial life as well.

#### f) Educational Factor

It is the first problem in general discrimination. Gender differences in schooling are quite striking. While the education of mother plays a crucial role in girls education, but it has no association with boys education <sup>[75]</sup>.

A large number of girls discontinue their education owing to various reasons that include social economic cultural and parental attitude towards girls' education. In the time of any crisis in the family, such as illness or death of mother, the first victims are girls and their education is discontinued. Education of boys remain unaffected in such circumstances.

The general tendency is that girl has to go to marital home after marriage and if heavy expenditure been incurred on education, it will be of no use for parents and the benefit will go to her in-laws.

So education is the conflicting factor and needs to be sensitised in the society. If the awareness of the importance of education is provided to the rural masses especially, this will play a significant role in culminating the matrimonial issues

as women become self-sufficient to handle the situation individually and resolve them in an appropriate manner.

#### g) Globalisation and Cruelty

In the present-day scenario, women are being taught about the global fashion, global needs and global values and behaviour through media. They are fascinated with all things that come through media, especially the beauty products that are of high cost. Wives' pursue their husbands to purchase the costly products, which creates financial crisis to the husband. When the demands are not fulfilled they began to harass them either directly or indirectly and ultimately that leads to matrimonial cruelty.

So globalisation plays a phenomenal role in enhancing cruelty in modern context.

#### h) Factors Contributing Towards Cruelty Against Husband

Generally matrimonial cruelty is used in relation to wife keeping in view the traditional approach of society. With the advancement of time, conditions have changed and people started ignoring traditional values and beliefs. This also reflected in the thinking of constitutional framers of the country. With this, the position of women improved and they were given equal opportunities in every field of life and career. Now the women are well educated competing with the counterpart and doing exceptionally good in the society. This gave the pavement and overcome the problems of male dominated society. Although there appear positive results, simultaneously some negative points also come to picture. In the present-day scenario a woman started misusing the laws and makes the life of the husband miserable. Even the latest judicial approach predicts that there is an increase of cruelty being practised by wives against their husbands <sup>[76]</sup>.

The list goes long way that it is not possible to mention here. However cruelty is not confined to matrimonial law or civil but it is also considered in criminal law under matrimonial offences under section 498-A of IPC which is a non-compoundable one. Where the husband or his relatives can be arrested immediately after lodging an FIR and cause mental harassment to them where they have committed no wrong. Malimath Committee <sup>[77]</sup> made 158 recommendations and submitted to Home Ministry. One of the recommendations was cruelty as compoundable offence, till date no such amendment has taken place.

So the concept of cruelty was first initiated against wife but with the passage of time, wife started to adopt such evil practices against husband and contributed equally for the detrimental state of family life.

#### Sum Up

Matrimonial cruelty is a dynamic phenomenon where it is difficult to define it precisely. Legislators have inserted many provisions under different laws. Neither the Legislature nor Judiciary ever tried to define it. Cruelty is of two types-one the physical and the other one is mental. The scope of cruelty is enhancing day by day. Any conduct or act may constitute mental cruelty provides it affects the other party causing him or her of injury and make it impossible for the aggrieved party to live with the other spouse. Number of factors are responsible for this evil practice in the emerging trend both husband and wife are practicing equally in flourishing it with full swing.



### **Marital Discord: A Sociological Perspective**

Marital adjustment is the main objective of the marriage. Whether the marriage is successful or not depends upon the cohesiveness and commitment. The presence of certain factors makes a marriage successful, while its absence makes the marriage divorce prone. Conflict in marriage can be classified into two types, they are constructive and destructive. The sources of marital conflicts are all intra-somatic, intra-psychic, inter-psychic and environmental/situational. In furtherance the marital conflict may be grouped into personal factors, interpersonal factors, family factors, situational factors, societal factors, environmental factors. The conflict in marital relations may be manifested in one or more forms: marital violence, maladjustment, psychiatric illness, desertion, separation, divorce.

The causes for dissolution of marriage could be by desertion, legal separation, annulment or divorce. The factors affecting the marital conflict have changed and the intensity has changed and some new factors have been added. Various factors that influence the marital discord and divorce situations in India are pressures of modern life, break-up of joint family system, lack of communication, dowry, increasing emphasis of nuclear families, education and economic independence of the families, industrialisation and urbanisation, overemphasis on institution of marriage, etc.

### **Reasons of Marital Discord**

The main causes of marital discord are personality deficiencies/disorders, Material/Monetary gains through marriage, incompatibility, external factors, cruelty, resource stringency, desertion, unfulfilled expectations, deception/fraud, lack of understanding/adjustment, increasing consciousness among women about their rights; social status; and roles, lack of tolerance/commitment to marriage, external interference, personality traits like loneliness; feeling of insecurity, Prejudice/biased attitude of parents/siblings, male chauvinism/male ego, inculcation of false values by parents, pressure from job, negative or absence of spousal communication, suspicion.

The concept institution of marriage and family life are changing. These changes are due to function of social, economic and global influences, some of which are beyond control. The earlier concept of marriage, though unsatisfactory and unhappy, should last until the death of the partner is gradually giving way to another modern concept that marriage should lead to its termination if incompatibility and consequent prolonged unhappiness persists.

### **Consequences of Marital Discord**

The results of marital disharmony and divorce not only have their repercussions on couple and children but also on society at large. The well-being as well as the health of both the spouses may be adversely affected. Children are worst affected sufferers for whom it may be nothing short of, to undergo a period of emotional deprivation and disruption. It gives serious consequences on their future growth and capabilities. The period of separation before divorce is more stressful than post-divorce adjustment phase.

### **Marital Dissolution: A Legal Perspective**

The Hindu Marriage Act provides for reconciliation but no proper machinery has been envisaged to render the service; the provision of RCR is mainly used as base to avail the divorce. The provisions under the Indian Penal Code and

Domestic Violence Act relating to marriage are misused by the spouses to avail the divorce and extort money to live a lavish life.

### **Modes of Resolving Marital Disputes**

The mechanisms/modes to resolve marital disputes may be classified into two groups, namely: official and nonofficial. The official mode may be further classified into judicial and non-judicial. Judicial mechanism consists of Civil Courts, Family Courts Lok Adalat and Legal Aid Cells. Non-judicial mechanism consists of ADR, NGOs and other agencies.

Civil Courts and Family Courts function on the adversary model, where the spouses have to play the role of combatants. They must bring charges against the counterpart. This gives the retarding effect in further worsening the strained relationship. Delay caused in decision, high cost of litigation, incipient attention to reconciliation are considered to be the common features of the traditional civil court system. Lok Adalat are not substitute but supplemental to overcome the problem of arrears in regular courts. The award given is equivalent to the decree of the civil court. It is binding and not appealable. The emphasis of Lok Adalat is on voluntary resolution of disputes through conciliation and use of persuasive methods.

### **Family Courts in India**

The family courts dispose of the cases in lengthy and traditional procedure, evolved its own rules and procedures and have in-camera proceedings. The role of advocates is reduced in the cases. The Act lays down that preference would be given to women in the appointment of judges.

### **Remedial Measures**

Enriching of family life Establishment of effective counseling and conciliation centers to render timely service to the needy Reforms in family laws and other legal administrative reforms to make the divorce process in an easy manner.

Incorporating the module of family life enrichment in the developmental schemes of the government Inclusion of marriage as a subject in course curriculum at the school and college level and provide awareness against matrimonial issues and appreciation for healthy and good values of life in accordance with ancient Indian wisdom (philosophy culture and ethos) Creating awareness among parents to let their marrying wards have more interaction in the course of mate selection, so that they can properly assess each other's personality, likes and dislikes, hobbies, interests and tastes to arrive at a considered judgment about their compatibility.

For achieving the goals of family well-being the efforts and action of the government & non-government and academic organisations need to be co-ordinated. A National Council/Board may be set up as a permanent infrastructure for co-ordination and synchronisation of activities of the government, NGOs, academic institutions and other agencies. The Council/Board may render the services for the working of group for

- i) Training modules for government and non-government functionaries that would incorporate the components of family issues, goals of family well-being, family life enrichment etc.
- ii) Undertake the campaign through media and other methods to outreach the program for family life enrichment, develop the training material and audio-visual programs for family life enrichment.

Academic institutions also play a very important role in creating proper family environment, by examining the curriculum and textbooks at every level of the educational system to identify and examine the stereotype family roles and developing modules that give messages of intra-family equity. They can also conduct various programs for family life enrichment. The curriculum of law education should also include some courses on Indian culture, ethics, values and ethos.

Counseling and conciliation are the important objectives of preservation of marriage and family. Counselling and conciliation plays important role in marital disputes, but the services are needed to be handled only by experienced persons with professional outlook and undue pressure should not be exercised on the couples for reconciliation especially to the spouse who seems to have made up their minds.

Specialised counseling and conciliation requires high standard professionals that need to be maintained. Skilled volunteers and social workers are to be provided with high-quality training. Suitable infrastructure has to be provided for training and to be created either by setting up a new institute or by creating facilities in an existing institute. The litigants who can afford to pay may be asked to contribute for counseling services. The repayment may be voluntary. An emphasis has to be laid down that the counseling is not a panacea. The quality of individual counselor, his motivation and motivation of persons seeking help has a great deal in the counseling session. Counselling services in matrimonial issues must be properly planned and run in consultation with varied range of experts and service users. These services should be adequately resourced and subjected to thorough monitoring and continuous evaluation.

It is imperative to strengthen the counseling services.

1. **Rules, Guidelines and Flexibility:** Parties getting confused and seeking the assistance of advocates and were misguided by the advocates in the process of litigation and were carried away by the instructions of the advocates thereby leading to increasing the gravity in the disputes.
2. **Establishment of Training Institutes:** Counseling is a specialised task needs the skills not only in handling sensitive issues relating to marriage, family and human relations but also requires knowledge of law. Training is an essential pre-requisite for effective functioning of the counselor or conciliator. Through orientation programs at various levels impart requisite legal knowledge to the counselors.
3. **Investigation Machinery:** In criminal prosecution the state takes the responsibility to provide the Justice to the victim of an offence and initiates the process of investigation to ascertain the fact and make an effort to award punishment to the offender. In the similar manner as the responsibility of the state under the welfare state concept, the government shall establish an investigating agency to ascertain the fact regarding the issues that are considered as grave issues and render justice to the victims of the litigation.
4. **Speedy Disposal of Cases:** One among the various principles of natural Justice is that justice delayed is justice denied. Various factors are influenced with the litigation and seeking of results of the litigation by the litigants. Matrimonial issues are highly sensitive in nature and needs a human touch while dealing with the issues, even in court of law there is a need to look into the matter in the liberal manner in procedural aspects and dispose

the matters at the earliest and also to provide alternative and subsidiary remedies to the litigants.

The adversary procedure that is followed by the court in matrimonial matters does not serve any purpose of reconciliation. The matters concerning family disputes should not be viewed in terms of success or failure of legal action but it should be observed as a social therapeutic problem. Therefore a more active and less formal investigative and inquisitional procedure to be followed in family disputes.

Pre-trial process should be made and designed to provide a significant means to the parties to reconcile their differences and to reach an amicable settlements before the initiation of trial.

When the decree for RCR made by the court, the court must appoint a commission to endeavour for reconciliation. The commission must be supervised by the courts during this one year. The report of the commission must be used as a piece of evidence during further proceedings. The parties to the proceedings should not misuse the decree of RCR. If any party violates the said decree, the guilty party should not be allowed to avail the relief by the court.

If in the proceedings, if the court finds that the third party is instigating any spouse to thwart reconciliation. The court should have jurisdiction to make the person liable for tortious act in the same proceedings, it would be more proper to empower the courts to award compensation in the same proceedings to the spouse who suffered due to the instigation of third-party. This will help to avoid unnecessary interference by third-party especially the family members in matrimonial disputes.

The court should make the keen observation that, if unnecessary and unexplained delay in filing a petition for RCR and the same followed by wife's application for maintenance, the remedy should not be granted by the court. This can cease an engine of oppression and the aggrieved party will not be affected by the due process of law.

The expected solution in the matrimonial dispute is uniting of the spouses and leading the happy married life but to the contrary are different result is witnessed with the award of the court of law. The worst part of the matrimonial dispute is that, children are badly affected with the matrimonial issues and it has a serious affect on their mental state. They undergo the psychological trauma with their parents being clutched in matrimonial dispute. The other reason is due to the prolonged periodical process of trial, at regular intervals, the other sources like friends and relatives instead of making a patch work to the dispute, add fuel to the issue and instigate them to use inappropriate methods to abet the spouses to focus on winning the case rather than finding a solution for leading a married life. The family and friends will add their colour of personal opinion of social status, dignity and respect in society over the disputes rather than giving an advice to withdraw from the conflict and lead the happy married life. In the puzzle of legal battle and influences of the people from the society, the couples were in confused state with traumatic experiences in their personal life. They are not in a position to understand and deal with the situation properly.

The hypothesis is proved as there is no provision in the process of court of law or in the provisions of the law to provide an appropriate solution to the difficulties faced by the parties in the due process of the litigation.

The Act namely the HMA, 1955 provides solution of divorce, Judicial separation and Restitution of Conjugal Rights, but does not provide alternate remedies for amicable solution for

the issues outside the court or even before heading the steps of Court of Law. There is an urgent need to make an Amendment in the Act to provide the solution, other than due process of law in the Court of Law, because matrimonial issues are very much sensitive in nature, where a warm hand of solution from matured and intellectual persons not only provide the solution but also become the blessings to the families and their off-springs at large.

Before drawing to the conclusion, the researcher would like to focus on the saying that prevention is better than cure, in general parlance there will be the generation of issues and an appropriate solution will be provided by the court of justice to the litigants parties with the due process of law, in matrimonial disputes which are sensitive in nature, stepping the stairs of court of law will give a conventional thought to the parties that the result will be the break in the married life and there is no scope of reuniting in future, there by the parties will involve in drawing the ways to win the case rather than finding a solution for reuniting the married life. The approach in the minds of the litigants is to be changed so that there could be a possibility of a spark of hope in the minds of the litigant couples for the uniting of the married life. This can be achieved when there is a mechanism that deals with the issues before it approaches the court of law.

The researcher would like to give suggestion basing upon the above-mentioned facts of the research that, the Central Government in consultation with the State Government need to focus on this issue and take appropriate measures to create a separate wing under the supervision of District Collector, with the panel of intellectuals to handle the issues properly before heading the steps of Court of Law and get the amicable solution in a win-win manner.

## References

1. Das RM. Women in Manu & his Seven Commentaries, Kanchan Publications, Varanasi, 1962, 38-41.
2. Cecilia Arochiasamy FJMM. "Women in Christianity" included in quest for Gender Justice, ed. Sebesti L. Raj, Satyam Nilyam Publications, Madras, 1991, 173.
3. Vijay Sharma, Protection to women in Matrimonial Home, 1.
4. Manusmriti V, 147.
5. Manocha BL. Marriage Conflicts Causes and Cures, 125.
6. Mahajan, Amarjit, Family Violence and Abuse in India, 31.
7. Advani, Poomima, Crimes in Marriages-A Broad Spectrum, 1<sup>st</sup> ed, 1994, 96.
8. Agrohari Gunjan, Cruelty against Women and the Society Response, Cr. L.J, 2004, 161.
9. Diwan, Paras, Diwan Peeyushi, Modern Hindu Law, 144.
10. Goel Vasundhara, Role of Judiciary in Untying the Knot: Judicial Process and Unconstitutionality of the 'Marital Rape' Exemption under IPC, Cr.L.J. (J), 2007, 239.
11. Saxena Poonam Pradhan, the Standard of Proof Required in Divorce Proceedings: An Unresolved Controversy, JILI. 2002; 44(3):413.
12. Kesari UPD. Hindu Law, 79.
13. Kephath William M. The Family, Society and the Individual, 3.
14. Boss Pauline, Family Stress Management: A Contractual Approach, 21.
15. Raj Maithreyi Krishna, Women's Studies in India, 38.
16. Sethi, Raj Mohini, Modernization of Working Women in Developing Society, 92.
17. As per NCRB, (1993) 11,603 cases of cruelty had been reported in 1989; 13,450 cases of cruelty in 1990; 14939 in 1991; 19759 in 1992 and 22,064 in 1993 and as per the record of National Crime Records Bureau 2006, its number has now increased to 63,128 cases in the year, 2006.
18. Kapur, Promila, Marriage and Working Women in India, 307.
19. Dube MP. Bora, Neeta, Social Justice and Women in India, 171.
20. Vijayalakshmi G. Sex Role Perception and Occupational Choice, 14.
21. Pawar, Kiran, Women in Indian History, 263.
22. Menon, Latika, Gender Issues and Social Dynamics, 84.
23. Undrey Linda L. Gender Roles: A Sociological Perspective, 242.
24. Krishnaraj, Maithreyi and others, Gender Population and Development, 156.
25. Quoted in Ramesh, Cruelty as Compoundable Offence: A Critique, CrLJ, 2006, 205.