

# Abuse of Matrimonial Laws by Wife and Role of Judiciary in Preventing Cruelty Against Husband: An Analysis

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## ARTICLE INFO

## ABSTRACT

Indian marriages are considered sacred and they are once in a lifetime affair. It is a social folklore which has countless practices and rituals and is supposed to be not only between two homoseres but popularly among two units of humans who are extra ordinarily involved. It is an affair where lots of favours are put forward. Lately, it has been observed that the couples experience incompatibilities and distress. Discontent between the couples is the only reason that divorce rate and separations have increased attributing to Economic, social and cultural factors. This has assisted to an unprecedented social calamity. Centers like family and other law courts plus counseling cells and police administration that are said to be responsible for restoring social justice are extremely milked and over burdened. This has led people to adopt the trending concept of live in relationships. It is a traditionally accepted and established fact that a man is always considered as a macho and is physically stronger than the women whereas on the other side women have an extended hand on mental strength. This caters to the need of protection of men from mental violence if women are protected from physical violence. It has become a notion that when it comes to domestic violence cases and marital disputes, the husband with his entire pedigree and companions are said to harass the bride and are sketched as needy of dowry. This concept has been grasped by the legal and social systems of India. In the orthodox Indian society women have been victimized traditionally this is the reason the social and legal systems are obsessed and extremely concerned to protect the women from violence. This obsession has led to ignorance of misuse of various laws by wife and her relatives falsely accusing and harassing the legal mate and his pedigree by levying untrue and baseless averments and also by soliciting provisions of Anti-Dowry law. The women centric laws are misused only for blackmailing sympathy and extortion. In the era of Article 14 of the Constitution there are laws for the safety of women who falsely or truly claim to be harassed but at the same time there are no safeguards against harassment which is caused by wife to their bridegrooms. When a husband turned accused fights for his innocence the corrupt system, the feminist organizations, the police and the courts reminds him of systematic bias. There are special women-centric laws that provide for the safety of women who claim to be harassed. However, there are no safeguards against harassment caused by wives against the husbands.

**Key Words:** Homoseres, Incompatibilities, Grasped, Unprecedented, Harassed, Dowry

## Introduction

The institution of marriage emerged as an exclusive partnership throughout the era of man's rise to power. The wife is thought to be ardhangini, or half-man. Until a man marries, he is only half whole. Wife is dharampatni as well as grihapatni. The woman is believed to be the very soul of her husband in the Ramayana. Marriage is one of the oldest social institutions, and it serves as the foundation for the entire structure of civilization and prosperity. Although women's protection laws were justified in the past because of women's status, the world has changed, and women's behaviour has evolved as well. Those women who used to be enslaved to housekeepers are now following in the footsteps of males. On the other hand, the law

has not altered in a proportional manner. The culture has developed to the point that female criminality has taken a higher place in society and has surely gained influence but however, the law remains unchanged from before. Misusing the lawful protection on a regular basis can rise to new forms of legal terrorism. As a result, there is a need to amend the law regarding women. It's not reasonable to presume that domestic violence just affects women. Legislators must consider the victimised section of society in the male line while enacting special legislation for women. A number of legislation, such as section 498-A of the Indian Penal Code and the DV Act of 2005, are intended to intimidate men and their families. These restrictions have resulted in unjustified power in the hands of women for blackmail and extortion in marital disputes, causing irreparable injury to spouses and family and, in some cases, leading to murder.

There are no specific laws for men in India or anywhere else in the world. In the statute books, there is the Dowry Prohibition Act, Section 498A of the Indian Penal Code, which prohibits cruelty by husbands and their family, and Section 125 of the Code of Criminal Procedure, which prohibits maintenance for wives and protects women from domestic violence. However, the Domestic Violence Act of 2005 contains no provisions protecting men like S. 125 Cr.P.C. which provides for maintenance to husbands. Rather, misguided women and police personnel abuse the unique laws for women. Victimized husbands and their families' cries go unheard in the courts and in society. According to tradition, the true aim of women-related regulations is misunderstood, and as a result, spouses suffer for no fault of their own. Section 498A of the Indian Penal Code has also become a source of frustration for feminists. The excessive use and exploitation of this provision has likewise failed to fulfil welfare and gender equality goals. The arrest of mother-in-law and sister-in-law for cruelty under this clause has shown that in order to protect one woman, two more women have indeed been put in danger & rendered vulnerable.<sup>i</sup>

### Concept of Equality and Equal Rights

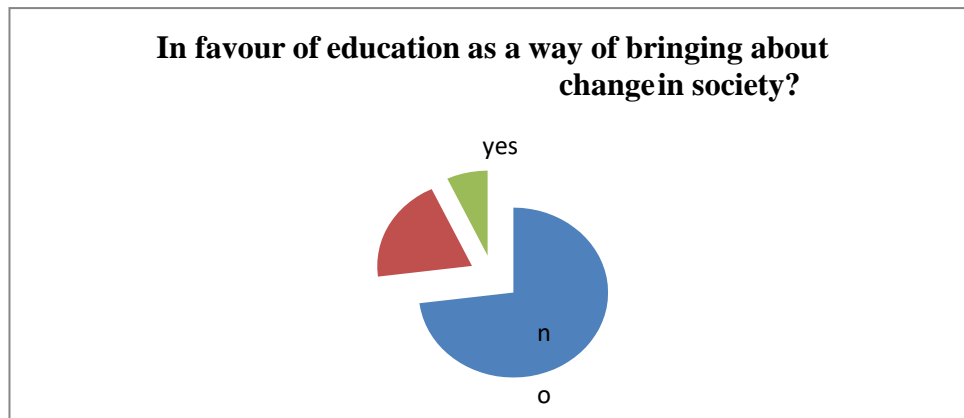
Equality before the law and equal protection under the law are guaranteed by Article 14 of the Indian Constitution. Similarly, Article 7 of the 1948 Universal Declaration of Human Rights states that everyone is equal in the eyes of the law, and everyone is entitled to equal protection under the law without prejudice. Article 3 of the ICESCR, 1966 and the ICCPR, 1966 tells that state parties to these agreements must ensure that men and women have equal access to the rights granted by these covenants. The Constitution's Article 15(3) is an exception to the Art. 14.

When it comes to the constitutional legitimacy of section 498 A of the I.P.C., it's apparent that it violates Article 14 of the Indian Constitution. In a democratic democracy, the concept of equality and equal protection under the law, as provided by Article 14, encompasses social and economic justice. It's a promise to safeguard or ensure equal rights to the enjoyment of rights and privileges without favouritism or discrimination within the Union's territorial jurisdiction. Why does a wife have a law to defend herself from her husband's cruelty, while a husband does not? When a man comes forward with a legitimate complaint, the police can charge the woman with a non- cognizable offence. There are 45 married men for every 100 male suicides, and 25 married women for every 100 female suicides. In the case of married women who commit themselves, the in-laws are automatically arrested and charged with dowry death. When a married man commits suicide, his wife is entitled to a 50 percent portion of the property. What type of equality do we have here? Equality is a fluid idea that shifts with the periods and social settings, and it must be interpreted in that light. Section 498A contains no limitation clause that would prevent women from using it against men.<sup>ii</sup>

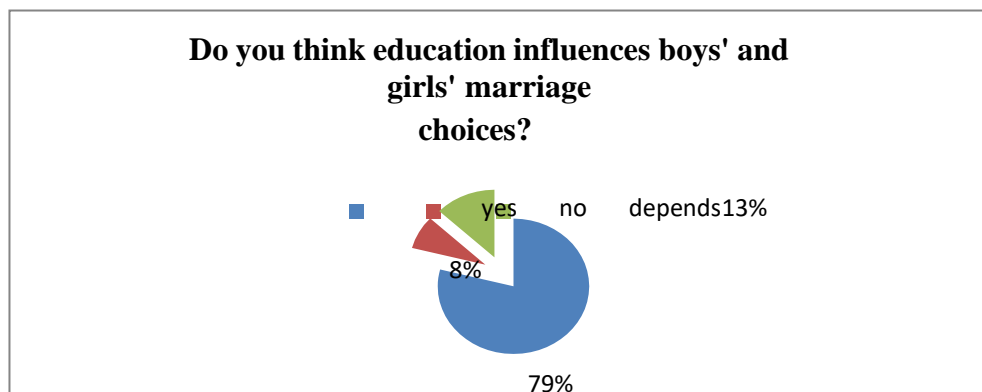
### Concept of Cruelty against Husband

In India, marriage is defined as a relationship between a man and a woman for the purpose of achieving social rank. Marriage is commonly referred to be an institution that was formed by it, according to Westmark. As the number of marriages grows every day, so does the number of marriages that fail in society, whether owing to the fault of the husband or the wife. Despite the fact that wives file charges under the Protection from DV Act and Section 498-A of the IPC to seek maintenance and divorce from their husbands and in-laws, not all complaints are true. Education, job chances, financial freedom, and societal attitudes have indeed played a role in a substantial shift in women's status. Women now have the upper hand, since the scales have turned in their favour. Cruelty is a poor treatment that creates mental suffering and endangers the other person's life and health. Cruelty can be physical or mental, and either the husband or the wife can commit it. Though it used to be that women were tortured and harassed by their spouses and family, this is no longer the case, as cases of husbands being tortured and harassed by their wives are on the rise. According to Sec 13(1) (i-a) of The Hindu Marriage Act, 1955, cruelty is the most common basis for divorce and the party initiating the case must show that living together has become untenable. Cruelty in human behaviour dates back to the dawn of civilization. Humans are vicious by nature. When one has the chance, whether male or female, one perpetuates brutality against others. Humans have always been harsh to animals, even in prehistoric times. The focus of cruelty shifted from animals to other humans as the human race progressed. The one who perpetuates cruelty is always the powerful one, and the one who is the victim of cruelty is always the weaker one. With this thought in mind, people began to commit acts of cruelty in order to gain strength and demonstrate their might.<sup>iii</sup>

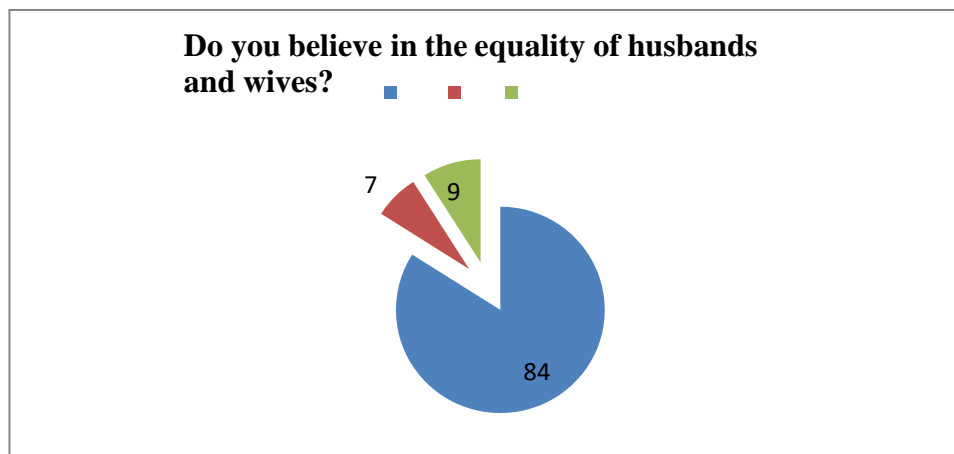
## Empirical Study of Cruelty Against Husband in State of Haryana



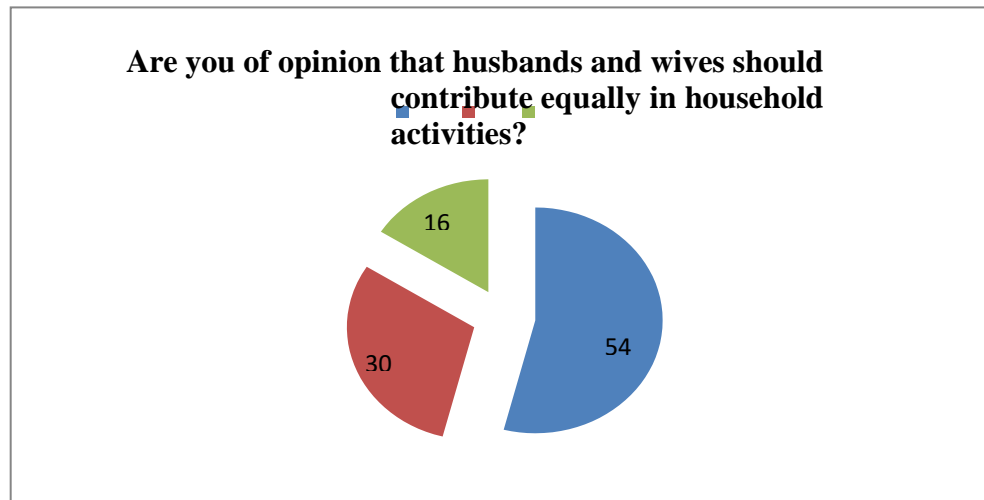
**Source:** Information provided by respondents filling questionnaire during data collection, 2024. The response showed that 20 percent of participants favoured no, 73 percent favoured yes, and 7 percent stated it depends on the situation.



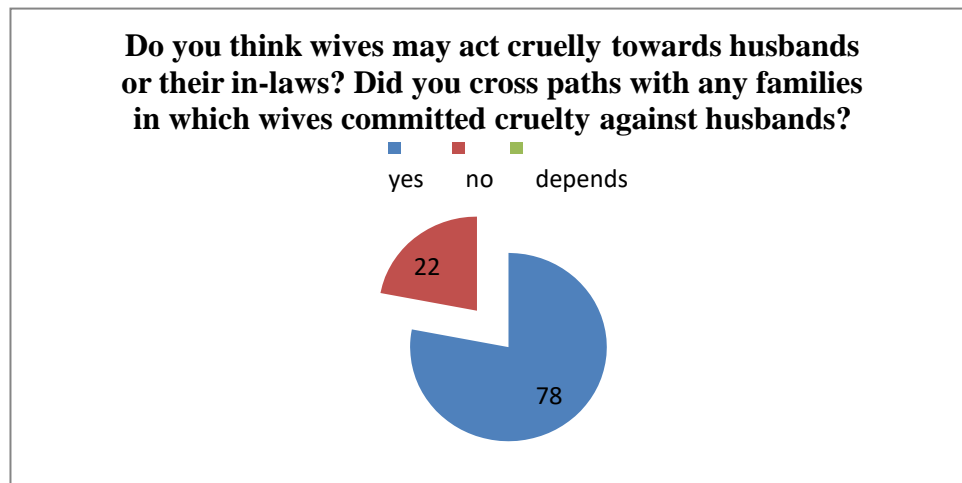
**Source:** Information provided by respondents filling questionnaire during data collection, 2024. The results showed that 8 percent of participants said no, 79 percent said yes, and 13 percent stated it depends on the situation.



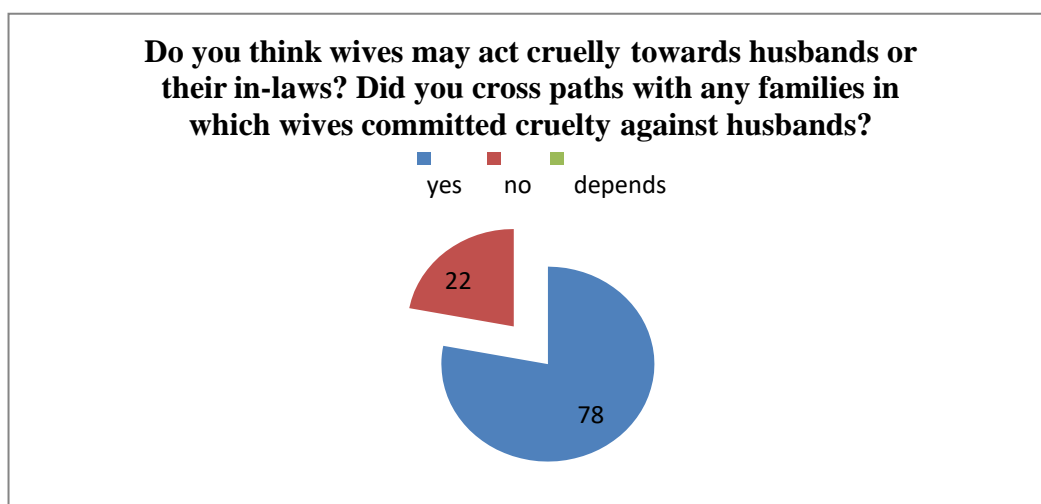
**Source:** Information provided by respondents filling questionnaire during data collection, 2024. The response showed that 84:7:9 was the ratio of saying yes, no, depends.



**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
The results showed that 30 percent of participants said no, 54 percent said yes, and 16 percent stated it depends on the situation.

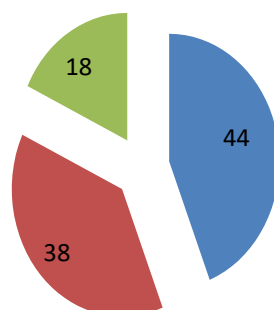


**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
Here, 78 percent of respondents replied yes, while 22 percent said no to this question.



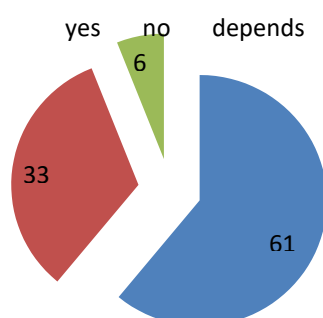
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
Here, 78 percent of respondents replied yes, while 22 percent said no to this question.

**In cases where a wife has committed cruelty against her husband, do you think that the Panchayat might play any role?**



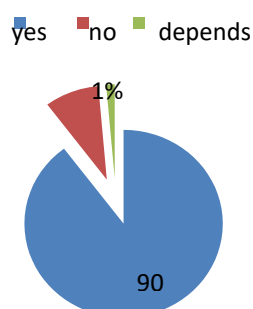
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
44 percent replied yes, 38 percent said no, and 18 percent stated it's a factual question in response to this question.

**Girls flourishing in education and employment leads to her committing cruelty against her husband, do you think?**

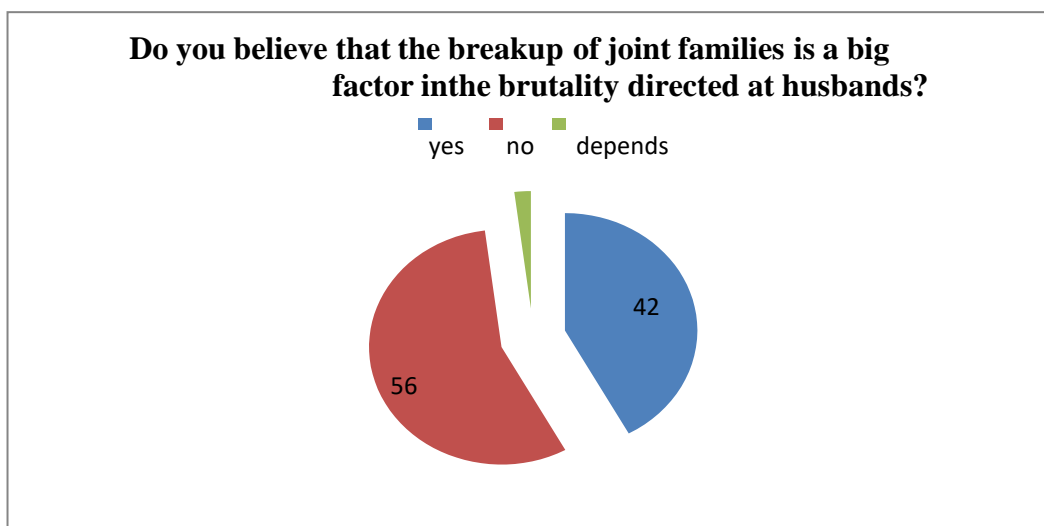


**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
In response to this question, 61% of respondents said yes, 33% said no.

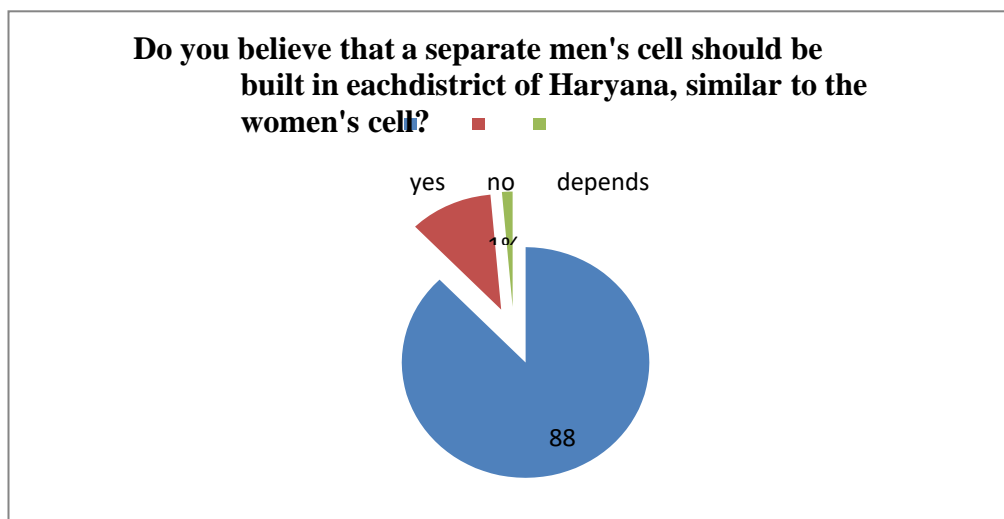
**Do you believe that legislative provisions intended to protect wives are being abused by wives to perpetrate cruelty against their husbands?**



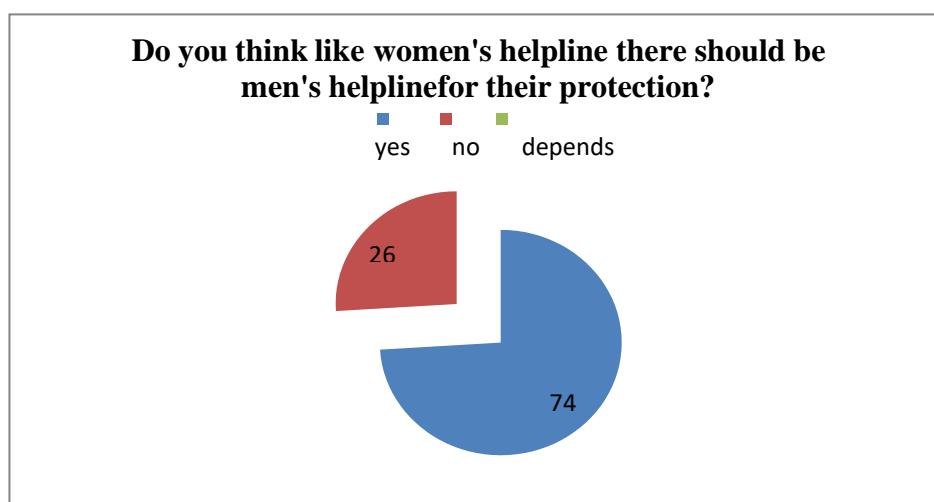
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
The outcome to this question was that 90% people said yes, 9% people responded no and 1% people said it's a question of fact.



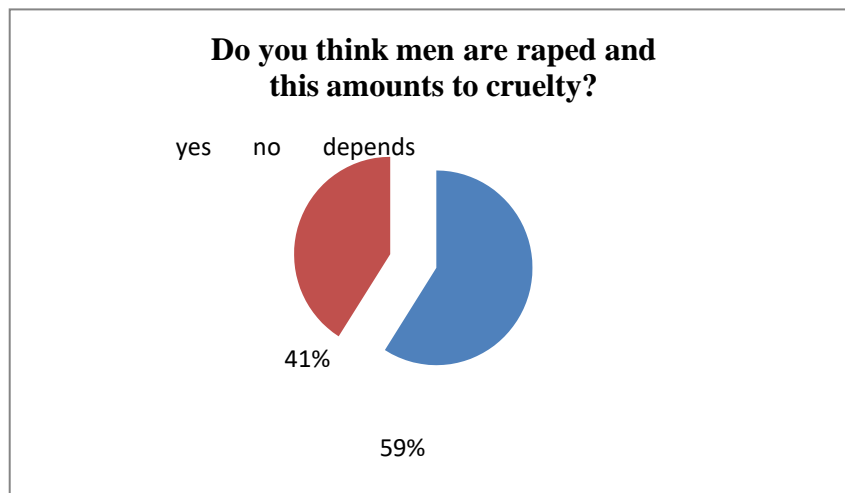
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
42 people replied yes, 56 people said no, and the rest stated it depends.



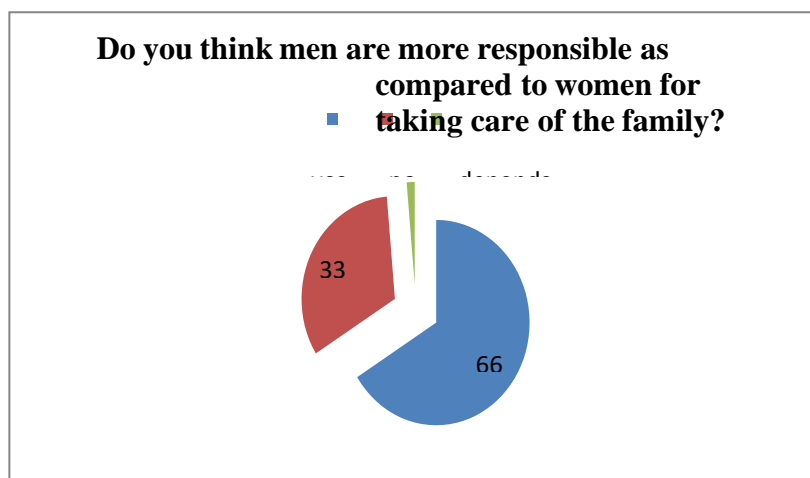
**Source :** Information provided by respondents filling questionnaire during data collection, 2024  
The outcome was 88% were wanting men's cell and 11 % were against the need while rest said depends.



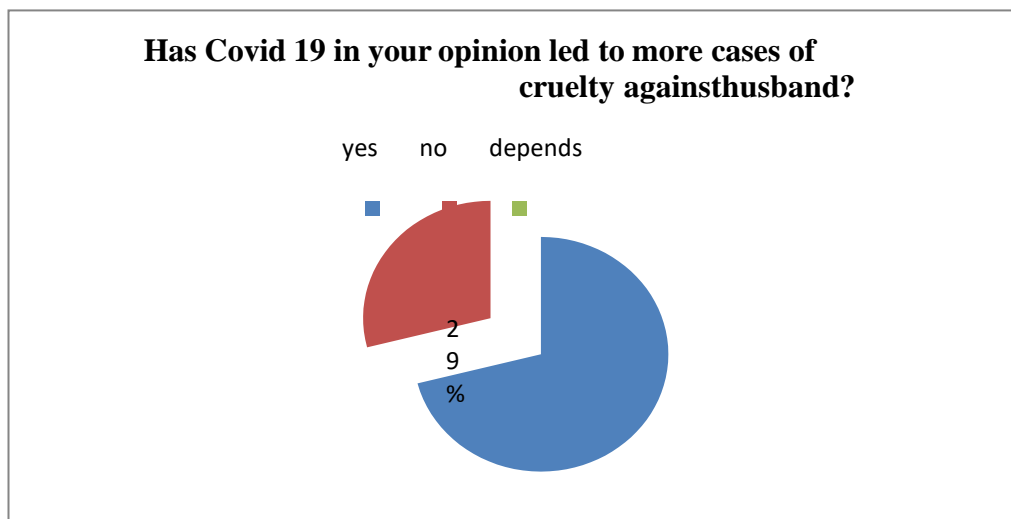
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
This response shows that 74% of the people want men's helpline.



**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
When asked about rape of men and cruelty, 59 % got thumbs up and rest reflected thumbs down.

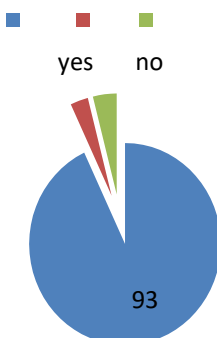


**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
The response to this question from questionnaire came as 66:33:1 (yes: no: depends).



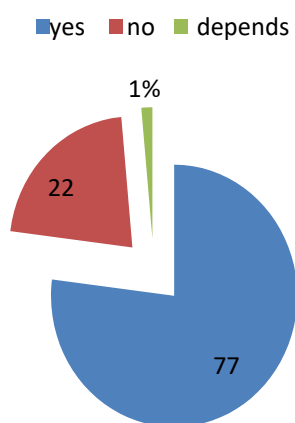
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
The outcome to the question was divided as 71: 29 where 71 % said yes and latter said no.

**Do you believe Lok Adalat/Meditation Centers or Reconciliation Centers can be beneficial in resolving such conflicts?**



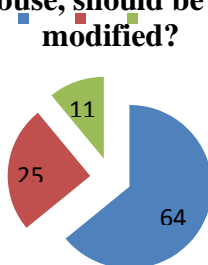
**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
Majority of the respondents favoured the question that they believe Lok Adalts, Mediation centres are the dispute resolvers.

**Do you believe the man should be educated about the need of reporting acts of abuse towards them?**



**Source:** Information provided by respondents filling questionnaire during data collection, 2024  
77% people responding to the questionnaire said yes, 22% said no and rest were divided on the response to both.

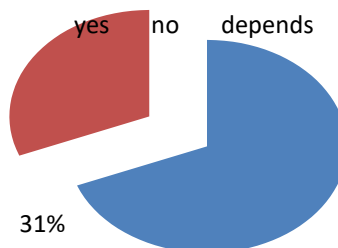
**Do you believe that special laws designed for the protection of women, which they have begun to abuse, should be repealed or modified?**



**Source:** Information provided by respondents filling questionnaire during data collection, 2024



**Do you believe that wives are more cruel to their husbands incities than in rural areas?**

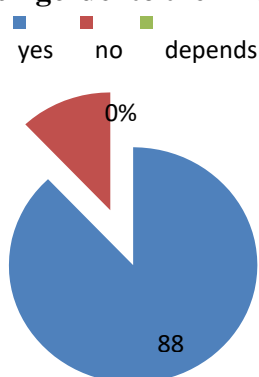


**Source:** Information provided by respondents filling questionnaire during data collection, 2024

The outcomes: Only 31% people were against, while 69% said favoured the question.

The following conclusions were reached: 25 percent people responded no, 64 percent of peoplesaid yes, 11 percent said depends.

**Do you believe that family courts should be formed in each Haryana district to settle such issues that result in wives beingcruel to their husbands?**

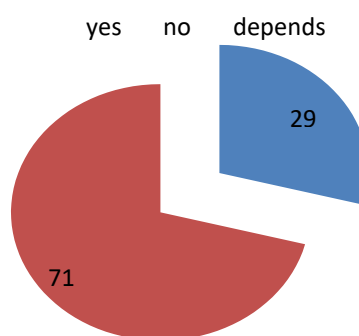


**Source:** Information provided by respondents filling questionnaire during data collection, 2024

The following were the outcomes: Only 12% of those polled said no, while 88% said yes.

**Do you believe that wives' maltreatment to their husbands ispunishable in The Indian Penal Code,**

**1860?**



**S**

Women have an important role in the family, yet they occasionally suffer as a result of it. Making false and vexatious accusations or claims against family members as a prominent woman of the family. Before taking any action against the husband or on the complaint of thewife, a thorough investigation should be conducted

to ensure that the main idea of the laws is not blocked by the severity of the cruelty. The family's good will has been harmed as a result of these fraudulent cases.

- The penal laws should be changed.
- Laws governing maintenance should be amended.
- Before filing a case against the husband, it should be mandatory to verify the complaints.
- Men's cells, like women's cells, should be present in every district.
- In terms of harassment, men and women should be treated equally, regardless of physical power.

Therefore, as a silver lining, the majority of respondents believed that cruelty to husbands is unjustified, and they do not respond to the family's honour in any way. To counteract the societal evil of dowry and matrimonial atrocities against married women, the Criminal Law Amendment Act of 1983 introduced section 498A (Chapter XXA) pertaining to cruelty by husbands or relatives of husbands. This feminist move was taken to improve the family system for the greater good of society. One side wants to safeguard society from crimes against women, while the other wants to include matrimonial cruelty in the penal code to make it more severe in order to reduce wife battering and the dowry system, which has tainted society. There are various clauses in the penal code that deal with marriage offences. Under the Indian Penal Code, 1860, the wife faces cruelty by her husband or relatives in dowry demands prior to unnatural death within seven years of marriage (304B), or by causing woman's death (302) amounting to murder. Cruelty is extended to death in both sections 498A and 304B. A person who has been prosecuted under section 304B can be convicted under section 498A even if they have not been charged under that provision. However, against husband and his relatives, this shield has become nothing more than a multifunctional blade.<sup>iv</sup>

#### ***In famous case of Preeti Gupta v. State of Jharkhand,<sup>v</sup>***

The Supreme Court stated that the entire section 498A of the Indian Penal Code needs to be re-examined. All of these suggestions go counter to the provision's rigidity. The simple concept presented here is that if procedural rules are made excessively difficult, the substantive law's goal will be defeated. Because this crime is so closely linked to marriage and family, the procedural laws' simplicity will allow for an agreeable resolution of family issues. If a chance for reconciliation is not given, the family as a whole will be destroyed. The primary precept of family law, however, is that the family should be made, not broken. The primary goal of this provision was to create a society free of family conflicts. However, major misapplication of the law has resulted in a slew of marriage issues in society. In a writ case challenging section 498A's constitutional validity, the Supreme Court held that just because the statute was constitutional and *intra vires* did not offer unscrupulous people the power to wreck personal vendettas or harass others. The topic of how sister-in-laws become victims of Section 498A without having any connection to cruelty has been well studied. Not only that, but there are several incidents of 498A being used against distant relatives, friends, matchmakers, and even priests. According to the Supreme Court, the significant increase in matrimonial litigation are on a bogus criminal charge of cruelty has been used as a basis for matrimonial relief. As decided by numerous High Courts, false cases of bigamy against spouse or under the Dowry Prohibition Act, 1961 as well as the Indian Penal Code amount to cruelty. The goal, according to the Supreme Court, was to get to the source of the dowry threat. However, if the provision is abused, a new form of legal terrorism could emerge. Even the courts have agreed that making a false claim of cruelty is cruel. This is the irony of law: one piece of protective legislation has become a cause for others to be protected. It is a common belief that the perpetrator of cruelty in matrimonial disagreements is always the husband, because he is the strongest, and the victim is always the fairer sex, i.e. the wife. However, it cannot be ruled out that the wife had never been harsh to her husband. Earlier acts of maltreatment perpetrated by the wife were not mentioned. It is the first time in the history of the legal system that a case of cruelty perpetrated by a wife has been brought before the Supreme Court for a ruling. Prior to the stated judgment, the only type of cruelty that could be used as a basis for a marriage dispute was physical cruelty. Though the court must decide the case based on the evidence and situations, what qualifies cruelty is an important aspect because the abuse of laws by wives against husbands is on the increase in society, as well as some Indian urban educated women seem to be trying to turn the tables and using these laws as a weapon to obtain specific personal revenge on their husbands and honest relatives, but there are certain grounds on which cruelty against husband can be established:-

- IPC Section 498-A.
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- Desertion by wife.
- Wife committing Adultery
- Bride opting for the wedding except her first wedding without even bidding for the annulment.
- Regularly visiting her parental house without appropriate reasons.
- Making demand for the transfer of property rights in her name.

- Habitual dishonesty towards the husband.
- Misrepresenting of her monetary state for the purpose of extracting few bucks;
- Spreading fictional or untrue stories of harassment in ears of peers.
- Unrestrained involvement in groom's personal and professional living.
- Showcasing highly uncontrollable and aggressive behavior.
- sending money to her paternal family without husband's knowledge
- Harassing the husband for monetary expenses for her paternal family.
- Threat to leave matrimonial home.
- Tearing garland on the juncture of wedding.
- Making of contentions against husband for having illicit relations with another woman.
- Terminating pregnancy without the husband's valid and free consent.
- Bride scaring to execute suicide.
- Wife's nasty actions, included tearing the husband's clothes, refusing to make food, and breaking the mangalsutra. etc.
- Abusing the male legal mate.
- Accusing the male legal mate by insulting him.
- Refusing to have sexual intercourse with her husband without any sufficient reason.
- Lowering reputation or defaming the husband.
- Lodging false FIR against in-laws and husband.
- Misbehavior of the wife like putting pressure on the husband to leave his home, insisting him for a separate residence, mentally torturing him.

### **Laws Relating to Women and their Misuse**

Due to the growing problem of dowry deaths in the country, it was thought necessary to include strong rules in substantive and procedural criminal law that would effectively deal with heinous acts of mental cruelty against helpless wives. On the recommendations of the 91st Law Commission, the IPC, IEA, CrPC were amended in 1983. S. 498A, 406 of the IPC, 1860, S.113-B of the IEA, 1872, The Protection of Domestic Violence Act, 2005 under sec 31 of the Indian Penal Code, Section 304B of the Indian Penal Code, Section 3, 4 and 5 of the Dowry Prohibition Act 1961, and others are for the benefit of women in need. Various attempts were made at the international level to protect women. Women's issues were highlighted at international conferences such as Vienna 1993, Cairo 1994, Copenhagen 1995, and Beijing 1995. The United Nations commemorated the 50th anniversary of the 'Declaration of Human Rights' in 1998 with a global campaign to end gender-based violence and discrimination, however, nowadays, it is usual for a wife to impose her own terms on her husband and in-laws, even if she is mentally and physically absent. Many husbands and their elderly parents committed suicide as a result of being abandoned by everyone, including the police, courts, and civil groups.

### **Adverse Impact of Misusing S.498A of Indian Penal Code, 1860**

Anyone who has wrongly been accused in complaints or F.I.R. is said to be the victim. An untrue complaint has mean consequences for the accused's social and economic future. A complainant may be a victim herself, especially in circumstances where the complaining wife has no other source of income. Because the arrest of a husband's close family members leads to the couple's divorce, leaving her at the mercy of her biological parents. Minor children who are married are innocent victims who suffer no legal consequences, but they do confront societal issues such as single parenting and a criminogenic upbringing that leads to a shattered personality. All parties involved have suffered greatly as a result of the criminal trial. Even just a clean acquittal in court would not be enough to remove the humiliating scars. A large number of these concerns have sparked significant social unrest, jeopardizing society's peace, harmony, and happiness.

Furthermore, the inclination of parties to falsely implicate one another has an impact on actual cases.

- Negative effects of misuse of the provision :- Increasing divorce cases.
- Women's reliance on their parents and brothers if they are not monetarily independent.
- The false accusation and prosecution have a negative impact on the future of the husband's family's unmarried daughters.
- It has a significant impact on their personality and political thinking
- It fosters corruption in the police and society.
- Many lawyers encourage complaints to overstate the amount owed to them as streedhana in order to earn commission on the money received by women by abusing this provision. It is a shame to the advocacy

profession.

- There has been an increase in the number of suicides. When a woman abuses Section 498A of the Indian Penal Code, 1860, she commits the following crimes:
- Crimes against her husband and his family.
- Assault on her children, who would suffer as a result of their separation and stress.
- Breach of her religious vows taken during her marriage.<sup>vi</sup> It is a crime against the integrity of the courtroom.
- Assault against police and public officials who have aided her as a traumatised woman.
- Criminal offences against society, the social order, and values.
- Crime against women, which is in jeopardy because of her. It means that abusing S. 498A is a crime punishable by seven times the maximum penalty allowed under the law.

### Judicial Response to Misuse of Legal Protection by Women

The ultimate purpose of any court system is to discover the truth, punish the guilty, and protect the innocent. Investigators and judges start with the presumption that the defendants are guilty and that the complainant is telling the truth. Rather than becoming bloodhounds, investigative agencies and the courts function as watchdogs. Female criminality is often thought to be more damaging to society, which is why women are less likely to be suspected of committing crimes. When they are suspected, they are less likely to be indicted and prosecuted, and if they are, our criminal justice system punishes them gently. The importance of the court's recommendations extends beyond the fate of S. 498A. In both overt and covert ways, the idea of a silent sufferer kind who can do no harm has influenced how justice is administered. The presumption of innocence does not apply to accused people, yet regulations do provide for the presumption of women's innocence. Judges nearly usually rely on their rational thinking of information gained from their social circles when it comes to women's difficulties. Women in India are perceived as inferior members of the society who could never do something bad but are harassed by men. However, as time passes, judge observations and statements reveal a growing sense of dissatisfaction with the statute. Here are a few recent legal rulings. In a recent case, *Sushil Kumar's case*,<sup>vii</sup> the SC declared that the purpose of the provision is to prevent the threat of dowry. However, as the petitioner correctly points out, there have been several cases where complaints have been filed that are not genuine and have been brought with an ulterior intent. In such circumstances, the accused's acquittal does not always erase the humiliation he or she endured prior to the trial. As observed in *Malavi Hussain Haji Abraham Umarji v. State of Gujarat*,<sup>viii</sup> While interpreting a provision, the Court can only interpret the law, not legislate it. If the legislature deems it essential, it may revise, modify, or repeal a legislative provision that has been exploited and subjected to abuse of the legal process. The Punjab and Haryana High Court has taken notice of the bride's apparent attempts to blame the groom's family members after things go wrong between the couple.

The claim has been made in response to a complaint lodged by Krishna Wanti and five other people through R S Bajaj, an attorney, highlighting the terrible condition of circumstances. The Petitioners had appealed the Trial Court's order summoning them under Section 319 of the Code of Criminal Procedure. Initially, the FIR was filed against the youngster, his family, and close relatives, according to Bajaj. The allegations were proven to be untrue during the investigation. As a result, the challan was only issued against Ashok Kumar's husband. The groom's old mother married sister-in-laws, maternal uncle, and paternal uncle were summoned after the complainant filed an application. Bajaj contended that under Section 319 of the Code of Criminal Procedure, the court must be convinced that the prosecution's evidence, if unrebutted, would lead to the conviction of the persons sought to be added as defendants in the case. In this circumstance, "satisfaction" was absolutely missing. The court also failed to take into account the bride's normal tendency to include her family and close relatives. As a result, the provisions of the Indian Penal Code (IPC) sections 406 and 498-A, which deal with cruelty to a married woman and criminal breach of trust, were being grossly misapplied.

The current situation was a textbook example. After hearing the arguments, Honourable Justice Harbans Lal ordered the trial court's decision summoning six of the groom's relatives to be set aside. The Delhi High Court made the following recommendations to address the situation in *Savitri Devi v. Ramesh Chand*.

- Bail should be available for marital offences;
- Offences should be compoundable
- Civil authorities will conduct an investigation; minor children will not be arrested.

In this case, Justice J.D. Kapoor of the Delhi High Court advised the authorities and legislators to reassess the situation and legal provisions. The Supreme Court advised the following corrective steps in *Sushil Kumar Sharma v. Union of India and others*, observing that the courts must deal with the matter within the present system.

- The courts and investigation authorities should not take the allegations lightly, and

- They should not adhere to any rigid formula, preconceived thought, or viewpoint.

In **Som Mittal v. Karnataka Govt.**, Justice Markandeya Katju has correctly articulated his opinion. The absence of a provision for anticipatory bail has been proved to cause enormous unfairness and suffering to inhabitants of Uttar Pradesh. For example, fraudulent FIRs are frequently filed, for example under section 498-A of the Indian Penal Code. There have been a few incidents that have been reported. Many incidents go unreported. However, it is sad that no reliable data on its usage is accessible. However, courts across the country are reporting that the abuse of matrimonial offences has reached a critical level, as evidenced by comments made by higher courts in a number of cases.<sup>ix</sup> In **Kanaraj v. State of Punjab**, acts attributed to such individuals must be proven beyond a reasonable doubt, and they cannot be held accountable based on speculation and innuendo. The inclination to implicate husband's family as suspects must be avoided." "Whether one partner has been unkind to another is essentially a factual matter.," the Supreme Court stated in **Mohd. Hoshan v. State of A.P.** The impact of complaints, accusations, or taunts that constitute to cruelty on a person is determined by a number of elements, including the victim's sensitivity, social background, surroundings, education, and so on. Furthermore, mental cruelty differs from person to person based on the degree of sensitivity, courage, and stamina

### No Casual Arrest

Arresting a person deprives him of his most prized rights to life and liberty, hence it should only be done in rare circumstances. The Hon'ble High Court of Allahabad has taken a step forward by ordering police officers to make arrests only after they have complied with the recently amended provisions of S.41 and 41-A of the Code. Furthermore, the Division Bench of the Hon'ble High Court of Allahabad has advised Magistrates to grant remand in cases of matrimonial disputes with extreme caution and care. When an arrest is made without complying with the newly revised provisions of S. 41 and 41 A of the Code, remand must be refused and the accused must be freed on bond.

### Mediation and Conciliation

Higher courts have mandated that matrimonial matters be referred to conciliation and mediation, and also that the officers and judicial court make every effort to resolve disputes through these means. When an application under section 156(3) of the Code is filed in court, the court has specifically directed Magistrates to refer the matter to a mediation and conciliation centre. And only in those circumstances, when magistrates' opinions that no such compromise, settlement is feasible, would an order for the filing of a formal complaint be issued. According to the Supreme Court, knowledgeable practitioners of the Bar have a fundamental social responsibility to ensure that the social infrastructure of domestic life is not ripped or destroyed. They must make a concerted effort to assist the parties in reaching a mutually agreeable solution to the problem.

### Recommendation for Re-Look

Because judges are worried about the greater public interest, the Supreme Court has determined that the entire set of regulations must be re-examined. The fact that the clause is constitutional does not give unscrupulous people authority to carry out personal vendettas or harass others. As a result, the legislature may need to figure out how to deal with people who file bogus complaints or claims. The Supreme Court of India has instructed the Law Commission of India to explore appropriate steps and legislative revisions.

### Liberal and Human Approach towards Accused

The country's higher courts are aware of society's evolving requirements and realistic realities. An examination of certain recent Supreme Court cases reveals that the Court has taken a humanitarian approach to accused persons who have been unfairly accused. The girlfriend or concubine of the husband is not considered a "relative of the spouse," according to the Court. It may be a reason for judicial separation, but it is not cruelty under section 498-A of the Indian Penal Code; similarly, it has been found that 'petty quarrels' isn't cruelty under section 498-A of the Indian Penal Code. I.P.C. The woman gave birth to a male kid in this circumstance, and the husband did not even come to view the infant. It was determined that there was no cruelty involved. As a result, the Apex Court's attitude has shifted, indicating that the court recognises the importance of the problem of legal provisions being misused. In addition, it has stressed in various decisions the need for judges and prosecutors to proceed with caution in these types of situations.<sup>x</sup> In this case, Justice Katju is correct in suggesting that anticipatory bail be used so that innocent family members are not harassed.

### Role of Judiciary in Preventing Cruelty against Husband in India

It is important to accept the fact that the society lacks two things i.e. equality. The Principle of graded equality is followed on the social plane in India meaning thereby elevation of some and degradation of others. On the other hand, some have a lot of wealth and some even can't afford one time meal if seen on economic plane difficulties. Women in India are perceived as inferior members of the society who could never do something bad but are harassed by men. However, as time passes, judge observations and statements reveal a growing



sense of dissatisfaction with the statute. Here are a few recent legal rulings. In a recent case, **Sushil Kumar's case**,<sup>xi</sup> the SC declared that the purpose of the provision is to prevent the threat of dowry. However, as the petitioner correctly points out, there have been several cases where complaints have been filed that are not genuine and have been brought with an ulterior intent. In such circumstances, the accused's acquittal does not always erase the humiliation he or she endured prior to the trial. As observed in **Malavi Hussain Haji Abraham Umarji v. State of Gujarat**. While interpreting a provision, the Court can only interpret the law, not legislate it. If the legislature deems it essential, it may revise, modify, or repeal a legislative provision that has been exploited and subjected to abuse of the legal process. The Punjab and Haryana High Court has taken notice of the bride's apparent attempts to blame the groom's family members after things go wrong between the couple. The claim has been made in response to a complaint lodged by Krishna Wanti and five other people through R S Bajaj, an attorney, highlighting the terrible condition of circumstances. The Petitioners had appealed the Trial Court's order summoning them under Section 319 of the Code of Criminal Procedure. Initially, the FIR was filed against the youngster, his family, and close relatives, according to Bajaj. The allegations were proven to be untrue during the investigation. As a result, the challan was only issued against Ashok Kumar's husband. The groom's old mother married sister-in-laws, maternal uncle, and paternal uncle were summoned after the complainant filed an application. Bajaj contended that under Section 319 of the Code of Criminal Procedure, the court must be convinced that the prosecution's evidence, if unrebutted, would lead to the conviction of the persons sought to be added as defendants in the case. In this circumstance, "satisfaction" was absolutely missing. The court also failed to take into account the bride's normal tendency to include her family and close relatives. As a result, the provisions of the Indian Penal Code (IPC) sections 406 and 498-A, which deal with cruelty to a married woman and criminal breach of trust, were being grossly misapplied. The current situation was a textbook example. After hearing the arguments, Honourable Justice Harbans Lal ordered the trial court's decision summoning six of the groom's relatives to be set aside. The Delhi High Court made the following recommendations to address the situation in

***Savitri Devi v. Ramesh Chand.***

- Bail should be available for marital offences;
- Offenses should be compoundable
- Civil authorities will conduct an investigation; minor children will not be arrested.

In this case, Justice J.D. Kapoor of the Delhi High Court advised the authorities and legislators to reassess the situation and legal provisions. The Supreme Court advised the following corrective steps in

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observing that the courts must deal with the matter within the present system.

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In **Kanaraj v. State of Punjab**, acts attributed to such individuals must be proven beyond a reasonable doubt, and they cannot be held accountable based on speculation and innuendo. The inclination to implicate husband's family as suspects must be avoided." "Whether one partner has been unkind to another is essentially a factual matter.," the Supreme Court stated in **Mohd. Hoshan v. State of A.P.** The impact of complaints, accusations, or taunts that constitute to cruelty on a person is determined by a number of elements, including the victim's sensitivity, social background, surroundings, education, and so on. Furthermore, mental cruelty differs from person to person based on the degree of sensitivity, courage, and stamina required to tolerate such abuse. Mental cruelty must be determined in each case based on its own facts." "The legislatures enacted Section 498-A of the Indian Penal Code was enacted largely to protect women from harassment. However, it has turned out to be somewhat counterproductive. On the basis of complaints filed under section 498-A of the IPC, women have been harassed, arrested, and humiliated in a number of situations. The truth or falsity of the claims must be proven. Although no authentic and prima facie material, such as medical evidence, is required for filing a complaint, a number of women have been arrested as a result of such allegations in many situations. In arrest circumstances, married young ladies are being arrested. When married young women are detained, their husbands and in-laws may oppose them. If

unmarried women are imprisoned, their chances of marrying will be hindered, and if government employees are imprisoned, their chances of finding work would be harmed. Only one lady is accused of being the victim in this case; yet, at least four women may be forced to go to jail before a trial, damaging their reputation and subjecting them to unpleasant treatment at the police station.<sup>xii</sup>

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Because judges are worried about the greater public interest, the Supreme Court has determined that the entire set of regulations must be re-examined. The fact that the clause is constitutional does not give unscrupulous people authority to carry out personal vendettas or harass others. As a result, the legislature may need to figure out how to deal with people who file bogus complaints or claims. The Supreme Court of India has instructed the Law Commission of India to explore appropriate steps and legislative revisions.

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### **In *Union of India v. Sankal Chand Himatlal Sheth*,**

says that Judiciary has the significant role for protecting and enforcing the fundamental rights of the victims which are guaranteed by the Indian constitution. The rule of the judiciary is to render the justice to those who suffered in justice at the hands of the state or any private person. Justice Untwalia has compared the judiciary to 'a watching tower above all the big structures of the other limbs of the state' from which it keeps a watch like a sentinel on the functions of the others limbs of the state as to whether they are working in accordance with the law and the constitution- the constitution being supreme'.

### **Ashok Kumar Thakur v. Union of India,**

held that in the traditional division between the various organs of the legal system, the role of judiciary comes into play once the state is enacted. In the process of interpretation of various statutes is, the judiciary promotes or impedes the objective of a law a process which is of special significance in the contest of social change. The judiciary in the realm of matrimonial relationship has the interpretational choice of either furthering the cause of matrimonial peace or endorsing the present social perceptions on matrimonial disputes. Needless to add that the language of the statutes and the legislative choices made in them have a significant bearing on how the courts operate. The general perception is that perpetuating cruelty is only the

domain of men folk.

**In Paramjeet Singh v. Ranjit Singh**, the Court held that allegations leveled against the husband-respondent in the complaint made to the police were not proved. It is also seen from the record that the appellant-wife leveled allegation against the character of her husband Ranjit Singh and the appellant-wife had mentioned in this complaint that the dispute had arisen between them as her husband was a man of bad character. The exact words used in Punjabi language were "*Pati Bad Chalan*". This application was moved by the appellant-wife before the Sub Divisional Officer on 04.07.1988 which was duly signed by her. It has come in the statement of the father of the appellant that her daughter Paramjit had filed an application against Ranjit Singh and an inquiry was conducted and report was submitted by the Senior Superintendent of Police on 22.08.1990. The allegations leveled against respondent husband were not proved. After crystallizing the evidence the Matrimonial Court had reached the conclusion that the appellant-wife was in the habit of leveling allegations one after the other against her husband which could not be proved by her.

permitted to even show his normal affection to the daughter of the wife although he was a loving father to the child. The husband also asserted that the wife desired sadistic pleasure at the discomfiture and plight of the husband which eventually affected his health and mental peace. In these circumstances, the husband has prayed that it would not be possible to continue the marriage with, the wife and he eventually filed a suit for the grant of divorce.<sup>xiii</sup>

The trial Court came to the conclusion that the following facts led to mental cruelty:

- Wife's refusal to cohabit with the husband.
- Wife's unilateral decision not to have children after the marriage.
- Wife's act of humiliating the husband and virtually turning him out of the apartment. The husband in fact had taken shelter with, his friend and he stayed there till official accommodation was, allotted to him.
- Wife's going to the flat and cooking only for herself and the husband was forced to either eat out or cook his own meals.
- The wife did not take care of the husband during his prolonged illness in 1985 and never enquired about his health even when he underwent the bye-pass surgery in 1993.
- The wife also humiliated and had driven out the loyal servant-cum-cook of the husband.

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