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ABUSE OF HINDU MARRIAGE ACT

1955 BY WOMEN

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ABSTRACT

With every law being enforced, there follows an abuse of the provisions of the Act. In this research paper, we have talked about the abuse of Hindu Marriage Act 1955, specifically by women. Hindu Marriage Act is a gender specific act, slightly inclined towards women and this becomes a reason for them to misuse the Act for their benefit. We have explained this issue with the help of case studies and examples. We have specified the ways through which this Act is abused and the role of gender dynamics in power imbalances. We have mentioned the impact this abuse tends to have on the society. Legal reforms and remedies are also provided, so that, this abuse can be minimized by the courts as well as the citizens.

With the help of this research, we wish to bring certain reforms in the Hindu Marriage Act 1955. For this purpose, we have also suggested some recommendations for facilitating smooth enforcement of the Act without any abuse.

LIST OF CASES

SR. NO.	NAME OF CASES
1	Mangesh Balkrushna Bhoir v Sau. Leena Mangesh Bhoir
2	Mrs. Deepalakshmi Sachin Zingade v. Sachin Ramesh Rao Zingade
3	Anil Bharadwaj v. Nimlesh Bharadwaj
4	Joydeep Majumdar v. Bharti Jaiswal Majumdar
5	Amarjeet Singh v. Union of India

1. INTRODUCTION

A thorough legal framework for divorce in Hindu marriages is provided by the Hindu Marriage Act of 1955. It lists several justifications for filing a divorce petition in court. Having sex freely outside of marriage, being cruel or abandoned, turning to another religion, being mentally ill, contracting infectious diseases, giving up on life, and going missing for seven years or longer are some of these reasons. Wives may also file for divorce on certain grounds, including the husband's second marriage, maintenance concerns, guilt for sodomy or rape, early marriage, and divorce by consent. By allowing a period of reflection prior to granting a divorce by mutual consent, the Act ensures that Hindu marriage dissolution is a just and equitable process that treats both parties equally.

The statement made by Justice S. Vaidyanathan of the Madras High Court that "*unfortunately, there is no law like Domestic Violence Act for husband to proceed against the wife*" has received a lot of attention from the public, jurists, and litigants because it appears that the statement is accurate given the current situation, in which Indian courts are also the scene of false litigation, especially regarding women's laws like Domestic Violence, 498A, Maintenance, and in some instances, divorce law also.

2. ABUSE OF HINDU MARRIAGE ACT, 1955

The abuse of the Hindu Marriage Act, 1955 typically refers to situations where individuals manipulate or misuse the provisions of the act for personal gain or to the detriment of others. This can manifest in various ways, such as:

- ❖ **False Claims:** Some people may file for divorce or make false claims of marriage under the act in order to take advantage of certain legal loopholes or to obtain benefits like money or property.
- ❖ **Bigamy:** The act forbids a person from getting married a second time while they are still legally married to their first spouse.
- ❖ **Dowry Harassment:** Although the act expressly forbids dowries, some instances of harassment connected to dowries persist.
- ❖ **Misuse of Maintenance Provisions:** During divorce proceedings, spouses may demand unfair amounts of money in violation of maintenance provisions.
- ❖ **Fraudulent Conversions:** There have been instances of people converting to Hinduism

under false presences in order to get married under the Hindu Marriage Act.

- ❖ **Unfair Use of Divorce Grounds:** Certain people may take advantage of divorce grounds, such as cruelty or desertion, in order to obtain a favourable outcome in the divorce process.
- ❖ **Caste-Based Discrimination:** When looking for a marriage partner, some people may use the act to discriminate on the basis of caste or community.

These are just a few examples of how the Hindu Marriage Act can be abused. Legal disputes, social problems, and personal hardships can result from such abuses. Legal authorities and the judiciary frequently use legal processes to deal with these abuses, and there have been talks about changing the act to stop its misuse and make it more in line with changing social norms.

3. GENDER DYNAMICS AND POWER IMBALANCES

The roles and responsibilities of women in marriage are very different from those of men. The man helps the family, and his value can be calculated economically. In a marriage, the woman takes on a submissive role as the homemaker. She is the family's and community's cultural norm repository. However, under matrimonial laws, this unequal status between the spouses is not recognised. When filing for divorce, adultery, desertion, and cruelty are the same specified grounds that apply to both men and women.

However, the cruelty incidents that men bring up in their divorce petitions differ significantly from the cruelty incidents that women use as justification. It's analogous with comparing apples and oranges.

Let's look at some of the issues that are discussed in divorce cases that are being heard by our courts.

While filing for divorce, husbands cite various acts of cruelty against their wives. These include failing to prepare meals on time, forgetting to make tea when the husband returns from work (even though the wife may also be an earning member), refusing to have sex, ending a pregnancy, covering her head in public or in front of in-laws, refusing to wear sindoor or a mangal sutra, the symbols of marriage, demanding to establish a separate residence apart from the joint family, filing a case under Section 498A of the Indian Penal Code (relating to dowry), and more.

Divorce petitions filed by women typically have very different grounds. Their foundation lies in the matter of basic survival: forcing her out of the marital home, incessant demands for dowry or taunting her parents for their inability to provide a larger dowry, not paying maintenance, stealing her jewellery and other valuables, which she considers her stridhan, keeping her from pursuing gainful employment or depriving her of her income, disparaging her moral character, severe physical, sexual, or emotional abuse, denying her custody or access to the children, etc. These are the main reasons why the woman filed for divorce.

In patriarchal societies with patrilineal housing, women typically leave their birth families and move in with their husbands, where they have not even had their right to residence recognised until recently. The husband may simply forbid her from entering again and then claim desertion when the wife is sent to deliver the child to her birth family. The concept of constructive desertion, which applies when a husband intentionally forbids his wife from returning, was not developed by courts for a long time. As a result, it is evident that men and women experience the ground of desertion in different ways.

As the husband was the lord and master (pati parameshwar) and it was the wife's sacred duty to obey him, it was the husband's prerogative to choose the location of the matrimonial residence. If the wife started working somewhere far away, the husband could file for restitution of conjugal rights, which the courts would grant. This is the case even though, in 1955, the Hindu Marriage Act converted Hindu marriages into legally binding civil unions.

The Hindu Marriage Act, 1955, like many other traditional marriage laws, has been criticized for perpetuating certain gender dynamics and power imbalances within Hindu marriages in India. Here are some key points to consider:

- **Patriarchal Norms:** The Act perpetuates and reflects patriarchal norms in many ways. It frequently assigns women to more submissive roles and men to positions of authority. For example, it customarily gives husbands more authority to make decisions in the marriage.
- **Arranged Marriages:** In Hindu culture, arranged marriages are common, even though they are not limited to the Hindu Marriage Act. These arrangements can occasionally result in power imbalances because one or both parties may feel pressured to live up to expectations from their families or society.

- Dowry: Although it is prohibited, some situations still involve the practise of dowry. When the bride's family is expected to give the groom's family a sizeable dowry, this can result in financial power imbalances.
- Maintenance and Alimony: Provisions for maintenance and alimony are included in the Act. These provisions may occasionally be abused or applied inconsistently in divorce or separation cases, creating disparities in financial power.
- Cruelty and Desertion Grounds: The Act allows for divorce based on these two categories. These clauses may occasionally be abused, leading to one party falsely accusing the other, thus escalating power disparities.
- Cultural Expectations: Gender dynamics in Hindu marriages are frequently influenced by cultural norms and expectations. There may be pressure on women in particular to adopt traditional roles and behaviours.
- Property Rights: Although the Act has been amended to better protect women's property rights, property disputes persist, and women may still face discrimination in the ownership of real estate.
- Religious Conversion: There have been cases where people have converted to Hinduism or another religion only to get married under the Hindu Marriage Act. This has led to concerns about the power dynamics surrounding conversion.

These power disparities and gender dynamics have been addressed. The Act's amendments and other laws, such as the Protection of Women from Domestic Violence Act, are designed to give Hindu married women greater rights and protection. Over time, these dynamics will also be challenged and altered by shifting educational and social norms.

4. IMPACT ON FAMILIES AND SOCIETY

The wife can file a complaint against husband under Section 498A, IPC, The Hindu Marriage Act, 1955 and the Domestic Violence Act, 2005. But there have also been cases where a wife filed a false complaint against her husband. Since Indian laws are biased in favour of women, the husband had no recourse in such situations. The inequitable nature of these laws makes it evident that, in contrast to other Indian laws, the burden of proof in cases pertaining to the protection of women rests with the accused to establish his innocence. This implies that, in the event that a wife files a First Information Report (FIR), the husband and his family members are promptly taken into custody without giving them a chance to be heard.

However, the High Court of Bombay's decision in the case of *Shri Mangesh Balkrushna Bhoir v. Sau. Leena Mangesh Bhoir*¹, rendered on December 23, 2015, offered some respite to the husband in situations involving false accusations. The Court decided that a wife would be cruel if she filed a false complaint against her husband and his family members, even though they were found not guilty and there was no evidence presented against them. Judge R.D. Dhanuka delivered the ruling, holding that the husband has the right to start a divorce petition against her wife for this reason.

The term "cruelty" is not defined in the IPC. Courts in India have defined cruelty as an inhumane act that injures the mental state of the victim and endangers their life. Either the husband or the wife may abuse the other person mentally or physically. According to Section 13(1)(i-a) of The Hindu Marriage Act, 1955, cruelty is one of the grounds for divorce, and the party requesting a divorce must prove that the husband and wife can no longer cohabit.

CRITICAL ANALYSIS

The law regarding abuse against the husband has been resolved by the Supreme Court following a plethora of false complaints from wives against their spouses. The wife filed a complaint against her husband in *Mrs. Deepalakshmi Sachin Zingade v. Sachin Ramesh Rao Zingade*², alleging that he had an extramarital affair, which was later proven to be true. The court took into consideration the wife's cruel act against her husband. In the same way, the court determined that a wife's refusal to engage in sexual relations with her husband qualifies as cruelty against him in *Anil Bharadwaj v. Nimlesh Bharadwaj*³.

Other grounds of cruelty against the husband are-

1. Adultery by wife during the lifetime of marriage.
2. Misuse of Section 498A, IPC, the Domestic Violence Act, 2005 and other laws.
3. Desertion by wife
4. The Cruel behaviour of a wife.
5. Filing a false criminal complaint with the intent to harm the husband and his family. Given the stark reality that wives frequently falsely accuse their husbands, I believe that the

¹ 2015

² 2009

³ AIR 1987 DEL 111

Bombay High Court's decision was entirely appropriate. As a result, I believe that this ruling should be followed nationwide in order to uphold the institution of marriage and to penalise women who attempt to deceive the court system by filing false complaints against their husbands.

5. LEGAL REMEDIES AND REFORMS

The following are some of the options available for taking legal actions against false allegations in India:

- **Seeking Anticipatory Bail:**

In India, the victim of a false allegation should first seek anticipatory bail from the closest court with jurisdiction to do so in the event that a First Information Report (FIR) is filed against them. This will protect them from being arrested on the basis of a false accusation. Under Section 438 of the Code of Criminal Procedure, anticipatory bail may be granted prior to the making of an arrest. By requesting anticipatory bail, the victim not only avoids an arrest that could result in severe mental suffering and reputational damage, but it also gives him more time to better prepare his defence.

- **Quashing of the First Information Report:**

The High Court of the appropriate state may, by filing an application under Section 482 of the Code of Criminal Procedure, quash a false allegation or complaint in the form of a First Information Report. The court has the inherent authority to secure the ends of justice by issuing the necessary orders. But the accused must prove a number of things, such as that the act or omission against which the allegation is made did not occur, that the incident described in the complaint never happened, that the allegations are unfounded and were made out of personal animosity, etc.

- **Provisions of the Indian Penal Code, 1860 :**

Section 209 of the Indian Penal Code stipulates that anyone who makes any false claim in a court of justice knowing it to be false will be punished with up to two years in prison and a fine. This punishment can also include intentional harm or annoyance. The court has sufficient authority to apply such provisions as a means of penalising the offender if it determines that the sanctity and validity of the courts have been violated. Moreover, anyone who believes that a criminal

conspiracy that is being formed could be used against him in the future may also invoke section 120B of the Indian Penal Code.

- **Provisions of the Indian Evidence Act, 1872 :**

Concrete evidence is a requirement for supporting any allegation in a court of law. According to Section 193 of the Indian Evidence Act, anyone who willfully provides false testimony during any stage of legal proceedings or creates false testimony that could be used during any stage of legal proceedings faces a maximum seven-year prison sentence in addition to a fine. Furthermore, Section 196 of the Evidence Act stipulates that an individual who presents false evidence as authentic or uses it themselves will face the same penalties as if they had provided false testimony.

- **Provisions of the Code of Criminal Procedure, 1973 :**

Any person who has been falsely accused has the right to compensation in the justice system under a number of sections of the Code of Criminal Procedure. The same is supported by Section 250 of the Code, which says that anyone who has been found not guilty may apply for compensation for suffering without a good reason. If the court finds that the accused is at fault, it may also decide to sentence the offender to a simple jail term.

6. RECOMMENDATIONS

The traditional Hindu notion of marriage is based on psychological concepts and guided by moral and compassionate religious precepts. But in the last few years, individualism and an egocentric perspective have shattered marital harmony, resulting in a variety of marital conflicts. It is still possible to preserve this important institution of marriage in the modern era by developing social and legal strategies. It is necessary to take both preventative and remedial action. There is no better plan than educating the next generation from an early age. Both high school and college curricula ought to include instruction on human moral principles.

The sacred element of Hindu marriage should be preserved through public education for the benefit of spouses, families, kids, and society as a whole. Promoting adherence to social norms in print and electronic media is crucial. At the university level, a curriculum for social, psychological, and legal studies rooted in Hindu ethos should be proposed for marital counsellors.

This curriculum should be distinct from western psychology. The system of marital counsellors should be implemented throughout society in place of horoscopes.

7. CONCLUSION

Even though there is no specific statute or provision in the Indian legal system which lists down protective measures against any false allegation or complaint, various relevant sections of the Indian Penal Code, Code of Criminal Procedure, Code of Civil Procedure, and the Indian Evidence Act can be used parallelly to obtain relief or initiate legal proceedings against frivolous allegations and complaints.

The need of the hour is to enact a statute by the legislature that holistically covers broad paradigms ranging from compensation to imprisonment and fine for false allegations in order to curb the growing menace of frivolous litigations in the country and ease the burden from the already burdened shoulders of the judiciary and the investigating agencies.

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