1. INTRODUCTION

Human life on this earth is precious. As per the myth, human life is divided into four phases i.e. Brahmacharya Ashram, Gruhastha Ashram, Vanprastha Ashram, and Sanyas Ashram. In Gruhastha Ashram, it is emphasized that every person should marry and perform marital obligations towards wife, children and parents and form a happy family. All religions recognize importance of marriage. Lord Penzance in Hyde v. Hyde (1886) L R stated “Marriage is union for life of one man and one woman…..”. Hence it is made to form a family. Right to form a family is human right and recognized so in different international conventions. Art.16 of the Universal Declaration of Human Rights, 1948 declares “ every man and woman of full age have right to marry and to found a family and they are entitled to equal rights…..and family is the natural fundamental group unit of society.”

Family is the place of security, assistance, comfort, care and love. However, such place itself creates insecurity for certain women in orthodox patriarchal society. In such society, the family members subject these women to grave and heinous form of violence. Such violence results into violation of women’s rights as well as human rights, which includes right to life. Her subordinate position, game of power, inequality, economic dependence etc. are main reasons for violence against women. Violence by husband or intimate partner exists around the globe. Various researches have proved that one in three women globally experience some form of violence. The study conducted by World Health Organization on “Women’s Health and Domestic Violence in 2005 reveals that around the globe 35 to 76 % women out of 24,000 interviewed, had been physically or sexually assaulted since the age of 15 and majority of it was perpetrated by partner. Half of the women from various countries accepted the continuance of violence is observed and further study reveals that about 1/5 of women don’t communicate such violence to any state authority. The survey says that violence is one of the causes of death of women. Domestic violence takes in various forms including slaps, punches, kicks, assault with weapon, homicide, forced sexual relation, economic restrictions, denial of basic necessities like sufficient food, clothes, and
restrictions on socialization. Hence, such violence results in infringement of fundamental right to life enshrined in the Constitution of India and UDHR.

In India, the violence against the married women is not much different. As per National Crime Record Bureau, in all over India, a total number of crimes against women were 1, 55,553 in 2005 and in 2012 it was 2, 44,270. According to report of NCRB, in 2002 total 49,237 crimes have been reported for cruelty committed by husband and in 2012 the crime increased up to 1, 06,527, which shows that the violence against married women increased by almost three fold.

In order to curb violence against women by family members after marriage, Sec.498-A was added in Indian Penal Code, 1860 by Act 46 of 1983. This provision was added with the objective to punish husband and his relatives who subject the woman to cruelty. Under this section, cruelty means “any willful conduct which causes grave injury or danger to life, limb, and health (mental or physical) of women or harassment of women with intent to unlawful demand for any valuable property.” The definition given in section is not exclusive and concrete but inclusive. This offence is non-compoundable and non-bailable since its inception, but later on Law Commission of India in its 154th (1996) and 237th (2011) reports recommended that the offence shall be made compoundable. In Preeti Kumar v. State of Jharkhand (AIR 2010 SC 3363) the honorable Supreme Court observed that in the interest of society, the offence should be made compoundable.

On the recommendation of 59th Law Commission, 1974, cruelty is made part of civil laws. Cruelty is one of the grounds for divorce under all marriage laws existing in India. This could be availed by any of the parties to the marriage. The definition of cruelty is not given under personal laws, therefore, the role of judiciary has more of discretionary in this respect. Most of the times, the act of cruelty is individualized and depends upon petitioners’ social status, customs, family background, and traditions. The act of cruelty includes physical as well as mental cruelty. Therefore, various judgments of courts show that liberal interpretation is given to this term in civil cases. Repeated threats to commit suicide (Pankaj Mahajan v. Dimple (2011)12 SCC), continuous demands of dowry, false allegations against husband, doubts on reputation, character etc.
are actions of cruelty. Recently the Bombay High Court ruled that coming late regularly is also one kind of cruelty against wife (Times of India).