



CRUELTY AS A GROUND FOR DIVORCE

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INTRODUCTION

Divorce, also known as dissolution of marriage, is the termination of a marriage or marital union, the cancelling and/or reorganizing of the legal duties and responsibilities of marriage, thus dissolving the bonds of matrimony between a married couple under the rule of law of the particular country and/or state. Cruelty has been a ground for matrimonial relief under various personal laws.

Cruelty as a ground for divorce is widely accepted by almost all the legal systems of the world. In countries like U.S.A, Canada, Mexico, South Africa, Australia, New Zealand, China, Japan, Russia, India and in many Latin American countries, is a ground for divorce.

PROVISIONS FOR CRUELTY AS A GROUND FOR DIVORCE

- Section 13 of The Hindu Marriage Act, 1955, provides for dissolution of a Hindu marriage by a decree of divorce on 13 grounds, one of them being cruelty.*¹

Under the Hindu Marriage Act, 1955 cruelty is a ground for claiming judicial separation and is available both to husband and wife who were married either before the Act came into operation or thereafter. The Act provides that either party to a marriage,

whether solemnised before or after the commencement of the Act, may present a petition for judicial separation on the ground that the other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.

According to the act,

“Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnisation of the marriage, treated the petitioner with cruelty”

- Cruelty is one of the 12 grounds for divorce under Section 27 of The Special Marriage Act, 1954.*

According to the act,

“Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent has since the solemnization of the marriage treated the petitioner with cruelty”

- Section 2 of The Dissolution of Muslim Marriages Act, 1939, provides for 8 grounds on that a girl married underneath the Muslim law is entitled to get a decree for dissolution of her marriage. One of them being cruelty.*³

According to the act,



“Grounds for decree for dissolution of marriage.—A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

that the husband treats her with cruelty, that is to say,—

1. habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

2. associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran”

- ***Section 32 of The Parsi Marriage and Divorce Act, 1936, provides for 11 grounds for divorce. One of them is cruelty.***⁴

“Any married person may sue for divorce on any one or more of the following grounds, namely: that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant: Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it

should grant a decree for divorce or for judicial separation only”

- ***Adultery plus cruelty is one of the 7 grounds of dissolution of marriage of Christians provided by Section 10 of The Indian Divorce Act, 18695***

Under the Indian Divorce Act a wife is entitled to present a petition to the district court or to the High Court for the dissolution of her marriage on the ground that, since the solemnisation of her marriage her husband has been guilty of adultery coupled with cruelty, as without adultery she would have been entitled to a divorce a mensa et thoro. As is clear, cruelty under the above provision, by itself, is no ground for dissolution of marriage and the wife can sue for the relief only when there is adultery coupled with cruelty on the part of the husband.⁶

According to the Act,
 “Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.”

None of these Acts, however, define as to what cruelty clearly is.

MEANING OF CRUELTY



Every matrimonial conduct, which can cause annoyance to the opposite, might not amount to cruelty. Mere trivial irritations, quarrels between spouses that happen in every day married life, may additionally not amount to cruelty. Cruelty in marital status life is also of unfounded variety, which might be refined or brutal. It should be words, gestures or by mere silence, violent or non-violent.

The idea, meaning and also the concept of cruelty changes from time to time, varies from place to place and differs from individual to individual. It's not identical for persons placed in different economic conditions and statuses. Perhaps, this can be the rationale why the legislature has not, in any of the Acts, outlined as to what cruelty is and has left it to the best judgement of the Judiciary to come to a decision as to what amounts to cruelty to a specific person during a particular set of circumstances. Various Judges have, in varied judgments, outlined on what amounts to cruelty, however, yet again, those definitions don't seem to be general, but are associated with the facts and circumstances of those specific cases.

“The said provision does not define cruelty. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty”⁷

“What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case”⁸

“What constitutes mental cruelty for the purposes of section 13 (1) (ia) Of the Hindu Marriage Act, 1955 will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home”⁹

“Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case”¹⁰

“Allegation made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty. A conscious and deliberate statement levelled with pungency and that too placed on record, through the written statement, cannot be so lightly ignored or brushed aside.”¹¹

The key things to be understood regarding cruelty are:

a) Whether the intention is an essential element?

In *P L. Sayal v. Sarla Rani* ¹²Case the parties who married and had two children, but it turned out to be an unhappy marriage. The wife consulted a fakir who gave her some love-potion to be administered to the husband. She administered the same to the husband which made him seriously ill. The



husband had to be admitted to the hospital. After discharging from the hospital, the husband petitioned for judicial separation on the ground of wife's cruelty. The court granted the decree saying that the husband could not be expected to live in the constant fear that it may happen again and the intention of the wife was not important. The Court did not consider intention to be cruel as an essential element of cruelty as a ground for divorce.

b) Whether act or conduct constituting cruelty is aimed at the petitioner?

The courts are of the view that cruelty should be aimed at the petitioner. In *Trimbak Narayan Bhagwat v. Kamudini Trimbak Bhagwat*¹³, the husband lost his mental balance and had to be sent to a mental home. On his release from the home, he stayed at the matrimonial home though he had not regained his mental balance completely. One day, he attempted to strangle the wife's brother and the next day, one of his own children. The wife filed for judicial separation on the grounds of cruelty. It was held that in mental cruelty, it was not important whether the act or conduct was aimed at the petitioner or some near and dear ones of the petitioner.

c) Whether the act or conduct constituting cruelty emanates from the respondent?

In India, most couples live in joint families, and the in-laws subject many times wives to ill treatment. In *Shyamsunder v. Santidevi*¹⁴, the wife, soon after the marriage was severely ill treated by her in-laws, while the husband stood idly, taking no steps to protect his wife. The court held

that the intentional omission to protect his wife amounts to cruelty on the husband's part.

DEFINITION OF CRUELTY

The legislature has, in almost all the matrimonial laws, left it to the judiciary to interpret, analyse and define what cruelty is. The judiciary has crossed lengths and breadths in discharging its burden and has declared every human activity creating physical or mental hardship as amounting to cruelty. Physical force which causes bodily injury,¹⁵ conduct of the other party which puts the health of the petitioner in jeopardy, systematic neglect and abuse, drunkenness,¹⁶ refusal to co-operate in family affairs, false charge of adultery,¹⁷ cruelty to a child to wound the mother's feelings, insulting conduct resulting in melancholia, installing a woman in the house and threatening to elope with her, association with other women, conviction for a criminal offence in which the other spouse is implicated against his/her will, excessive or revolting sexual demands,¹⁸ sodomy, unjustifiable refusal to have sexual intercourse,¹⁹ sterilisation by the husband without the wife's consent,²⁰ unreasonable insistence on the use of contraceptives²¹, misconduct in relation to third person, communication of venereal disease, unwarranted imputations of unchastity,²² insistence to change his or her religion, complete denial of coitus, have all been held to be acts of cruelty.

Let us look at the definition of cruelty, with the help of various case laws.

- **V. Bhagat v. D. Bhagat (Mrs.), (1994) SCC 337 23**



A two judge Bench referred to the amendment that had taken place in section 10 and 13 (1) (ia) after the Hindu Marriage Laws (Amendment) Act, 1976 and proceeded to hold that the earlier requirement that such cruelty has caused a reasonable apprehension in the mind of a spouse that it would be harmful or injurious for him / her to live with the other one is no longer the requirement. Thereafter, this court proceeded to deal with what constitutes mental cruelty as contemplated in section 13 (1) (ia) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this court quoted extensively from allegations made in the written statement and the evidence brought on record and came to hold that the

said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

- **A. Jayachandera versus. Aneel Kaure; (2005) 2 SCC 22 24**

It has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment in the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

- **Samar Ghosh versus. Jaya Ghosh, (2007) 4 SCC 511**

It was held "the concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious belief, human values and their value system".

"in matrimonial relationship, cruelty would obviously mean absence of mutual respect



and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Cruelty in a matrimonial relationship may take the form of violence; sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial behaviour defies any definition and its category can never be closed. Whether husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety - it may be subtle or even brutal and may be by gestures and words" 25

RECENT CASES

- *Samdeep Mohan Varghese vs Anjana on 15 September, 2010* 26

HIGH COURT OF KERALA AT ERNAKULAM. Mat.Appeal.No. 99 of 2009) Dated :15/09/2010

Issues: Does the concept of matrimonial cruelty vary in accordance with the religious persuasions of individuals? Is a spouse bound to suffer greater amount of matrimonial cruelty because the spouses belong to a religion which considered marriage as indissoluble? Can the secular constitutional republic recognise and accept the existence of different varieties of matrimonial cruelty - Hindu cruelty, Christian cruelty, Muslim cruelty and secular cruelty? Should not matrimonial

cruelty entitling a spouse for divorce yield to a uniform conceptualisation notwithstanding the different semantics employed in different pieces of matrimonial legislations applicable to different religions? Should not the courts take inspiration from Art.44 of the Constitution and attempt to understand the concept of matrimonial cruelty in a uniform manner to ensure that the right to life under Art.21 s made effective and meaningful under the matrimonial roof and to liberate spouses from a marital life in perpetual fear of contumacious cruelty? These questions arise before us in these appeals.

Facts: The parties are spouses. Their marriage took place in accordance with the Christian religious rites on 20.1.2001. The marriage is admitted. After marriage, the spouses set up residence at Mumbai. They resided together till 14.5.2004. On that day, the respondent/wife returned from the matrimonial home and took up residence along with her sister at Bangalore. She issued Ext.A1 notice demanding divorce and return of properties on 14.12.2004. The same was served on the appellant. There was no response to Ext.A1. Thereafter, the appellant filed a petition for restitution of conjugal rights before the Family Court, Bandra on 30.12.2004. Later, the same was transferred to Family Court, Ernakulam as per order of the Supreme Court and the same was renumbered as O.P.399 of 2006. The wife filed O.P.69 of 2005 before Family Court, Ernakulam claiming divorce on the ground of cruelty and non-consummation of marriage. Wife had further filed O.P.68 of 2005 claiming return of gold ornaments, money etc. The husband/appellant herein in O.P.68 of 2005 had staked a counter claim



for return of ornaments, money etc. allegedly due to him.

Held: The learned Judge of the Family Court, by the impugned common order, came to the conclusion that the wife was entitled for a decree for divorce on the ground of cruelty under Section 10(1)(x) of the Divorce Act. The claim of the wife for divorce under Section 10(1)(vii) on the ground of refusal to consummate the marriage was rejected by the Family Court. O.P.69 of 2005 was thus allowed. Husband's prayer for restitution of conjugal rights in O.P.399 of 2006 was turned down by Family Court. The claim for return of money in O.P.68 of 2005 was allowed in part. The counter claim of the husband was rejected. In the appeal, the impugned order was upheld.

CONCLUSION

Both mental and physical cruelties are included as cruelty in modern times. While physical cruelty is easy to determine it is difficult to say what mental cruelty consists of. Perhaps, mental cruelty is lack of such conjugal kindness, which inflicts pain of such a degree and duration that it adversely affects the health, mental or bodily, of the spouse on whom it is inflicted.

In *Savitri Pandey v. Prem Chandra Pandey* (2002)²⁸, case it was held that physical cruelty comprises of the acts which endangers the physical health and includes the inflicting of bodily injury. Mental cruelty consists of conduct which causes mental or emotional sufferings. It was in the case of *G. V N. Kameswara Rao v. G. Jabilli* (2002)²⁹ held that mental cruelty is to be assessed keeping in mind the social status

of the parties, their customs and traditions, their educational level and their living environments. Mental cruelty can consist of neglectful and deliberate harassment, false accusation of adultery or unchastity, false charge of impotency, undue familiarity with third person, deprivation of property, drunkenness, false criminal charge by one spouse against the other, reprehensible conduct, refusal to have marital intercourse, refusal to consummate marriage, communication of disease, demand for dowry etc.

CONCLUSION

It is true that the Cruelty is one of the grounds of Judicial Separation and Divorce. As the word cruelty has not been defined in many Acts, it has to leave on the Judiciary to decide each and every case for deciding the same. Facts are the most important in each case. Because our Indian Judiciary says that cruelty can be decided by the education, life style and social status of the spouse. It means, cruelty in one case cannot be treated as such in other cases. The life style of one case or class may be different than that of the other. And it opens the door of discussion for the courts in each case. By this way, Divorce Acts have been a heaven for the lawyers.
