



CRUELTY: A VITAL GROUND FOR DIVORCE

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Abstract

As we know that a Hindu Marriage is a sacrament and the other Marriages are purely a Civil Contract. The Hindu Law never static: It was dynamic and was changing time to time so in order to bring reforms in Hindu Law, a Bill i.e. Marriage & Divorce was introduced in the Parliament in 1954-55. Divorce is a tool to dissolve a Marriage and the parties can seek the Divorce on the various grounds. However, Cruelty is a vital ground for Divorce in all Religions Marriage. It's a kind of character as to cause danger to life, limb/health. It is specifically depend upon the fact & circumstances, character, way of life of the parties, their social and economic conditions, their status, customs and traditions. It's tough to categorise, although it is mainly classified into two heads: (a) Physical Cruelty & (b) Mental Cruelty. Though the concept of English Law and the Hindu Marriage Act in terms of Cruelty as a ground of Divorce or Judicial Separation is more or less the same, yet the Ld. Judge in India still hold that the marriage is a sacrament taking into consideration the social and cultural conditions of our Country.

INTRODUCTION

'Divorce' as defined in the **Oxford English Dictionary** – is '*legal dissolution of marriage*'¹ & the **William Shakespeare** thus refers to it as "The comedy of errors".

¹ Oxford English Dictionary.

D.Tolstoy in his celebrated book 'The law and practice of divorce and matrimonial cases'. Defined Cruelty in these words:

'Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger'.²

Divorce in general means the breakage / dissolution of a marriage with the help of Law of land, so that one party can free from marital bounding and leave the other party. One of the major reason for divorce is "Cruelty". Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be words, gestures or by mere silence, violent or non-violent. The Hindu Marriage Act-1955 has given the legal provision for divorce on the basis of cruelty under section 13(1)(ia) as follows:

"Any marriage solemnized, 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 solemnization of the marriage treated the petitioner with cruelty".

HISORICAL POSITION OF DIVORCE IN HINDU

Hindus believe that the marriage is a Holy sacrament and it is also important for the complete life. As we know that our

² D. TOLSTOY, THE LAW OF PRACTICE OF DIVORCE AND MATRIMONIAL CASES 61(6TH ed.).



Legislation has adopted the concept of Divorce from the English Legislature as the Indian Divorce Act was passed in 1869 but it had remained inapplicable to the Hindus and in 1954-55 the Hindu Marriage Act was passed and governs all the matter related to the Hindu Marriages, so the Indian Judiciary somewhere has to depend on the decision of English Law.

Hindu marriage is made in heavens, so there is no question of breaking them on earth. Separation, which originally was close to blasphemy is longer so. Slowly and steadily the concept gave away with the social reformers increasingly agitating for the emancipation of women saying that women must not be chained with a man devoid of all virtues of a reasonable husband.

The British Government frowned upon any effort to make radical changes in Hindu law, despite the Hindu reforms' agitating for such changes. According to former Chief Justice of India Mr. P.B. Gajendragadkar, that was the reason why the growth of Hindu Law was arrested during the whole British period.

*"When we became free and the Indian Parliament, which was sovereign, began to function, the age of commentators came to a close and that of legislators commenced. Naturally one of the first tasks to which Parliament addressed itself was to change Hindu Law with a view to modernizing its provisions and wherever necessary, to effecting changes on the basis of social justice"*³

This is how the eight years of Indian independence, the Hindu Marriage Act 1955 came into existence in our Country. Section 13 of the Hindu Marriage Act deals with the

grounds on which the parties can seek a decree of divorce from a competent Court having jurisdiction to entertain such petition. Sub-sections (1) & (1A) of section 13 of the Hindu Marriage Act, 1955 prescribes the grounds on which either of the parties can seek a decree of divorce from a court of law.

GROUND FOR DIVORCE....

Following are the grounds under which either of the parties are entitled to seek the decree of divorce under section 13 of the Hindu Marriage Act, 1955.

- (a) Adultery
- (b) Cruelty
- (c) Desertion
- (d) Conversion or Change of religion
- (e) Insanity
- (f) Leprosy
- (g) Venereal disease
- (h) Renunciation of World
- (i) Presumption of death
- (j) Non-resumption of cohabitation after passing a decree for Judicial Separation.
- (k) Non-resumption of cohabitation after passing a decree for Restitution of Conjugal Rights.

{Under the Hindu Marriage Act on these above grounds men & women can claim for the decree of Divorce before the concern Court of Law}

STATUS OF THE CRUELTY IN THE HINDU MARRIAGE ACT 1955 (as Amended in 1976)

As per the Hindu Marriage Act 1955 Cruelty was not a ground of Divorce, it was only a ground of Judicial Separation U/s 10 of Hindu Marriage Act.

³ JUSTICE GANJENDRAGADHKAR, 59TH REPORT OF LAW COMMISSION OF INDIA.



Under Section 13 of Hindu Marriage Act, 1955, Divorce-(1) Any marriage solemnized, 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-

(ia) has, after the solemnization of their marriage, treated the petitioner with cruelty.⁴

LEGAL CONCEPT

CRUELTY (one of a ground of divorce) Section 13(1)(i-a) of Hindu Marriage Act says that any marriage solemnized 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 solemnization of the marriage, treated the petitioner with Cruelty.

On the filing of a Divorce petition, if the Court is satisfied that the ground of the petition is the ground of specified in clause (f) of the sub section (1) of section 13 of Hindu Marriage Act, where the ground of petition is Cruelty, then in a such case the Court shall decree such relief accordingly. When we study a matrimonial matters, we found that every matrimonial matters are dedicate to the humanity and emotional bonding which demands love, affection, trust, respect, regards and dedication with each other.

In general every matrimonial conduct, which may cause annoyance to the other, may not be treated as cruelty to the other party. The conduct of a party should be grave & weighty; it must something more serious than an ordinary wear & tear of a normal married life. So at the time of the consideration of a matrimonial matter, Court observed the back

ground, social status, education, physical, mental / status of education of a party and after the such observation if the Court found that the relation between the parties had deteriorated and it would not be a possibility to live together without any distress, mental agony and torture, pass a decree for divorce.

CRUELTY IS DIVIDED INTO TWO PARTS:

There are various grounds to claim on the basis of Cruelty and type of Cruelty but in various judgments it's specifically divided into two parts i.e.

(A) MENTAL CRUELTY

(B) PHYSICAL CRUELTY

(A) Mental Cruelty, that creates an adverse effect on the mental status as well as the social & life style of the other party.

*Case Laws along with Judgments related with cruelty in matrimonial matters :

Mental Cruelty in Section 13(1)(ia) can broadly defined as that the 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 party, so we can say that the mental cruelty must be of such a nature that the parties can't reasonably be expected to live together.

What is cruelty in one case may not amount to cruelty in other case having regard to the facts & circumstances of a case. What is cruelty in one case may not amount to cruelty in other case. In other words, Cruelty is not defined in the Act but it's a relative term. It varies from person to person there can't be laid down any straight jacket formula and each case has to be examined on its own facts.

⁴ Section 13 of Hindu Marriage Act, 1955 (Bare Act).



Cruelty depends upon various factors which includes the status of the spouses and the atmosphere in which they live. Cruelty implies and means harsh conduct and of such intensity and persistence, which would make it impossible for the spouse to operate the marriage. It is not necessary to prove that the mental cruelty is such as to cause injury to health of the party.

..... (A) MENTAL CRUELTY :

An act of mental cruelty is far more severe and dangerous than an act of physical violence. What constitutes mental cruelty has been out line in following cases:

Mental Cruelty can be inflicted by many ways. A false criminal case to harass the husband/wife would be an act of mental cruelty

NON-CORDIAL BEHAVIOUR OF WIFE :

It is indeed true that marriage is a sacred relationship between husband and wife. In a traditional society like ours, when a boy marriage a girl, he not only bring a wife to his home, but also bring a daughter –in-law for the family. Thus, the behavior of a women has to be seen both as a wife and a daughter-in-law.

Rama Kanta V/s Mohinder Laxmidas Bhandula (Punjab & Haryana High Court 1995)⁵

In this case the Hon'ble High Court has observed that the behavior of the wife in the matrimonial home not cordial, she was disrespectful towards her in-laws, threat to commit suicide & file a false complaints U/s 498A/34 of IPC against husband & his relatives (which ended in acquittal) . Her this

⁵ Rama Kanta v. Mohinder Laxmidas Bhandula, A.I.R. 1956 P&H 98:(1995) 2 HLR 315.

conduct made it impossible for the respondent to live peacefully with her in the conjugal home (matrimonial home).

Anupama Panday V/s Asutosh Panday (High Court of Uttrakhand 2011)⁶

In this case at the time of Appeal before the Hon'ble High Court (DB) observed that the wife insulted husband and his other family members in the presence of guest – foul language used by the wife against the husband and in-laws- Husband stated that when the wife refused to go back with him to Holland, and he tried to contact on phone with her and children, he was not allowed to talk to them, nor wife called back him- Husband has successfully proved a case for Divorce on the ground of cruelty-Appeal dismissed.

Rani Bai alias Sakuntla Verma V/s Chandershakher Verma (High Court of Chhatisgarh) (DB)

Husband got compassionate appointment after the death of his father and he is responsible to look after his mother along with two sisters-When husband refuse advise of his wife to live separately and avoid their responsibilities, wife had gone away to her matrimonial home with her father where she fermented troubles in marital relations of her brother and sister of husband and ultimately marriage between them has been dissolved-Wife has also filed an application U/s 125 of Cr.P.C. to harass her husband alleging certain false allegations-Mental Cruelty has been made out due to obstinate conduct of wife- Husband entitled to get decree of Divorce.

⁶ Ashutosh Pandey & Ors. V. Smt. Anupama Pandey & Ors., (2011) UK HC.



Harbhajan Singh V/s Amarjeet Kaur, AIR 1986 MP 41⁷

The wife not only refused to do house hold work, but in presence of guest, also forced the husband to clean the dining table, utensils and crockery. She even slapped the husband. She used to keep her husband waiting outside the house for half an hour or more on his return from the office. She went to the extent of leveling false charges of embezzlement against her husband to the bank authorities, where he was employed.

(B) PHYSICAL CRUELTY:

Dr. Lokeshwari V/s Dr. Srinivasa Rao (AIR 2000 AP 451: (3) ALT130 : II (2000)⁸

Divorce on the ground of Cruelty (Physical & Mental) - Appeal – Wife attempt to throw the child on road and in a hotel threw a chappals/sleepers at the husband causing humiliation and embarrassment to him – Acts of the wife cruel towards husband and an element of cruelty is apparent in her act making life of husband miserable – Courts below rightly granted a decree of divorce in favor of Husband – Appeal dismissed.

Fact of the case: The husband has filed OP No. 2 of 1988 U/s 13(1)(ia) of the Hindu Marriage Act, 1955 seeking divorce his marriage with the appellants – wife on the ground of cruelty. The husband has alleged that the wife was cruel towards him and narrated several incidents about her cruel and humiliating acts towards him. In his evidence, he deposed that the wife is cruel towards him and never treated him as her husband. He spoke about specific incidents of her cruelty and humiliating acts towards

him. He deposed that when he took her along with the child to Dr. S. Venkateswara Rao house at Siddipat, she created ugly scenes there also, which have been corroborated by the testimony of other witness i.e. PW2. The husband further deposed that while returning from Siddipet, the wife stopped the car near the Sanjay Theatre near the outskirts of Hyderabad and attempted to throw the child on the road. In another incident, the husband deposed, in order to see that the wife changes her attitude towards him, he took her to Siddarth Hotel. Even at the Hotel, the wife became furious for no reason and threw the Chappals/sleepers at him humiliation and embarrassment to him. To corroborate the nature, attitude and behavior of the wife, the husband examined his friends Dr. S. Venkateswara Rao who also spoke about the adamant behavior of the wife towards the husband. Even the evidence of another witness i.e. Pw3 who is the father of husband (PW1) is to the same effect that he wife humiliated the husband and treated him

A. Jaichandra V/s Aneel Kaur (2005) 2 SCC 22 : AIR 2005 SC 534⁹

Wife asking the Police as to why he (husband) was not being handcuffed. When the family members of the wife in her presence have beaten up and threatened the family of the husband is an overt act of cruelty by itself.

IN ADDITION TO:

There is a specific provision U/s 23A of Hindu Marriage Act, that in a divorce proceeding on the ground of Cruelty,

⁷ Harbhajan Singh Monga v. Amarjeet Kaur, A.I.R 1986 MP 41.

⁸ Dr. Lokeshwari v. Dr. Srinivasa Rao, A.I.R 2000 (3) ALD 350, 2000 (3) ALT 130, II (2000) DMC 351.

⁹ A. Jaichandra v. Aneel Kaur, (2005) 2 S.C.C. 22: A.I.R 2005 S.C. 534 (India).



respondent may not oppose the relief sought on the ground of petitioner's cruelty, but also make a Counter – claim for any relief under this Act on that ground: and if the petitioner's cruelty is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.

It is pertinent to mention here that, to maintain the privacy of the parties there is specific provision of U/s 22 in this Act, every proceedings shall be conducted in camera and it shall not be lawful to any person to publish any matter in relation to any such proceeding except a Judgment of High Courts & Supreme Court printed or published with the previous permission of the Court. Even the party names are not given in the cause list & at the time of hearing the matters called by its case numbers only.

In my view, at the time of proceeding I feel that parties also face a mental cruelty, as per the provision, that the proceeding should be held in camera; the proceeding should be conducted on day to day basis as also every effort should be made to complete the proceeding within a period of six months. Unfortunately, neither the proceedings are held in camera nor on day to day basis.

It is also pertinent to mention here that as per the Section 23(2) of this Act, that before proceeding to grant any relief under this Act, It shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavor to bring about a "reconciliation" between the parties.

CONCLUSION

Word of Cruelty has not been defined in the Hindu Marriage Act although it is a ground of divorce and judicial separation. It has to leave upon the judicial discretionary power of the Judges for which a judge considers the social/education status, life style, etc. of the parties and the cruelty in one case can't be treated as such in other case because of the life style, social/economic/education status & customs of a section of society may be different with the other society.

_____ after my observation & study of the matrimonial cases I have found that the cruelty can't be described into the words even covered into a boundary, in fact it's beyond that kind of explanations. In various cases I have seen in many matrimonial matters that the woman/wife is getting more of the benefits in the matrimonial laws and male/husband is helpless. Now days, general approach of Courts are so humble & humanitarian towards the parties. They called a meeting with the parties or send the matter for counseling and decide whether the formation of love and affection between the parties has been dried up or not, it's difficult to know but the Courts are made all possible efforts to reconcile the matter between the parties.

SUGGESTIONS

After my Research I would like to suggest: First after analyzing the Judgments, Books, Court proceedings and consulting to the seniors, I found that there is lack of awareness in the people regarding the law (cruelty) provisions and remedies. I think some legal institutions or the new comers in the field of law should provide with the legal aid and awareness to the people, especially who live in remote/rural areas. Although Delhi Law Service (DLSA) which work



under the supervision of the High Courts are also working in the remote areas for the weaker section of the society for the legal awareness and rights of the people. But it would not be enough so, NGOs and legal Institutions should come up and aware the society. Second reason is that families don't file suit for divorce under cruelty because of the family's reputation. On this issue I suggest that there must be a proper counseling by the help of professional counselors between the couple so that the main reason of the cruelty can come out and be resolved amicably and mutually because in my eyes the person who is doing cruelty is because of that person might be going under any psychological disorder in most of the cases and pre litigation mediation should be mandatory before filing a suit before the court of law. Thirdly I have observed that divorce cases not only in the matter of cruelty, but under all grounds take a long time which completely destroys the life of both individuals and their children if any, for this there should be a Summary Trial, made fast track courts in which there is already a provision to resolve the matrimonial case within the period of six months for the purpose of speedy disposal of cases. Somewhere in the middle what I found that women get the advantage in most of the cases and it is already presumed that the man / husband would have only done the cruelty against the woman. Courts should also consider and look each and every case of cruelty from both the sides. Fourthly the parties to the suit feels humiliated between the proceedings of the court because the proceedings are done in open court, for that matter there is also a provision in law that is the camera proceeding which means the case will be held only in the presence of the parties and their councils so that the privacy of the

case can be maintained and parties to the suit should not go through any humiliation. But unfortunately I found that courts do not follow these provisions. So in my opinion these provisions should be followed in the matrimonial cases amicably and wisely. These are the special kind of matters which cannot be treated in a general manner like civil/criminal matters. That on the same cause of action, various cases are made out between the parties for the different reliefs like divorce, maintenance U/s 24 of Hindu Marriage Act 1955 and U/s 125 of Cr.P.C, U/s 498A of IPC, Domestic Violence Act, Guardianship/Custody of Wards etc. So at last one thing I would like to suggest that just to stop the multiplicity of suits and for the proper adjudication of a matter all the above matters should be decided in a special Court, which will reduce the harassment and time of the parties.

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