



CAULDRON OF DEFINING “CRUELTY” IN INDIAN FAMILY LAWS

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ABSTRACT:

A marriage is a legal sanctity or a binding contract that brings together two parties and different grounds have been set up by the courts in India in order to bring a marriage to an end, cruelty being one of them. Cruelty has not been defined anywhere in the Indian Marriage Act and totally depends upon the facts and the circumstances of the case. The human brain is very complicated and the actions of the same are similarly complex. The meaning of the term cruelty is complicated to define as well as it may differ from person to person considering there is no barrier to love, you cannot value it. Until the provision of the marriage laws (amendment) act 1976, the term “cruelty” was known to be the only factor for judicial separation, now it stands as a ground for divorce as well. The scope of the term “cruelty” has changed from time to time depending on the circumstances and currently there exists physical cruelty and mental cruelty, and to understand cruelty properly it is important to understand its jurisprudential basis. Many aspects or criteria have been laid down in order to create a minimum basis of cruelty in addition to tests of cruelty though there still does not exist a definite definition of the same. The

present paper strives to explain to its readers the concept of cruelty, what are the different kinds of cruelty, its jurisprudential aspect and why the term has not been explained under the Indian Family law.

I. INTRODUCTION:

The meaning of the term marriage has been changed through ages and differs from the ideologies of one person to another.¹ In simple terms, a marriage is a legal sanctity or a binding contract that brings together two parties, i.e., two people or two families.² Even though the notion of marriage is the same all over the country, the method of solemnising the same is vastly different compared to each other. Various laws have been laid down for the legalisation of the same in the country, keeping in mind their religious beliefs, norms, and etcetera.³ It is sanctioned by the state and could be separated only by the same, by going through the process of divorce. Any right or any mutual obligation that the parties had towards each other, comes to an end with divorce. Divorce is the legal discontinuance of a marriage.⁴

Different grounds have been set up by the courts in India in order to bring a marriage to an end. Various parameters are set that have to be met in order to get a divorce and cruelty is one of the parameters. Until the Marriage Laws (Amendment) Act, 1976, cruelty could be used only as a ground of judicial separation. But after the amendment, cruelty

¹ Barbara A. Atwood, *Marital Contracts and the Meaning of Marriage*, 54 ARIZ. L. REV. 11 (2012).

² Sharma I, Pandit B, Pathak A, Sharma R, *Hinduism, marriage and mental illness*, 55 Indian J Psychiatry 243 (2013).

³ Anushka Khaitan, *Divorce under Different Personal Laws in India: A Comparative Study*, LATEST

LAWS (Feb. 18, 2021, 10:04 AM), <https://www.latestlaws.com/articles/divorce-under-different-personal-laws-in-india-a-comparitive-study/>.

⁴ *Divorce*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2003).



is considered to be a ground for divorce as well.⁵

Any kind of distress caused to either of the parties due to the other comes under the ambit of cruelty. This includes physical cruelty and mental cruelty.⁶ The meaning of the term “cruelty” is not fixed and depends entirely upon the facts and details of the case. So, what we consider cruelty in present times, might not come under the ambit of cruelty in the near future.

II. Meaning and concept of term cruelty:

• What is Cruelty?

Cruelty is “conduct of such a character as to have caused danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger.”⁷ For the sake of understanding, cruelty usually means any matrimonial action that brings any one or both the spouses any kind of pain or distress irrespective of whether it is physical pain or mental pain.⁸ Cruelty has not been defined under the law and totally depends upon the facts and the circumstances of the case. The meaning of the same may differ from person to person. As there is no definite meaning of the term “cruelty”⁹, what we consider as cruelty today, might not be considered as cruelty by future generations.

• Evolution of Cruelty

Until the provision, The Marriage Laws (amendment) act 1976, the term “cruelty” was known to be the only factor for judicial separation.¹⁰ The term was practised in a very restricted manner saying “if any party treats the other with such cruelty which causes reasonable apprehension in the mind of the other that it is injurious and harmful for him/her to live with the other, then it becomes the valid ground for judicial separation”¹¹. Some changes were made in the same after 1976, Marriage laws, altering the words of the section “as to cause a reasonable apprehension in the mind of others that it is harmful and injurious for him to live with another party”. Subclause “(i-a)” was added in section 13(1)(i) that increased the spectrum of cruelty to become a ground for divorce as well. The same was done with the help of the landmark case, *Narayan Ganesh Dastane v. Sucheta Dastane*.¹²

• Kinds of Cruelty

The scope of the term “cruelty” has changed from time to time depending on the circumstances. As of now, cruelty does not only include physical harm i.e. domestic violence but also adds various acts that might cause emotional or mental torture. The agony may be brutal or complex; irrespective of signals or by mere silence. Both physical and

⁵ Boparai, Harinder, *THE EXPANSION OF MATRIMONIAL CRUELTY*, 23 Journal of the Indian Law Institute 34 (1981).

⁶ Kamlesh M. Pandya, *The Concept of Cruelty in Hindu Marriage Act in India*, 3 Indian Journal Of Research 95 (2014).

⁷ House of Lords in *Russell v. Russell*, (897) A.C. 305.

⁸ Anil Malhotra & Ranjit Malhotra, *Marriage and Divorce - Complete Constitutional Justice*, 2015 INT’L Surv. FAM. L. 121 (2015).

⁹ *Raj Talreja v. Kavita Talreja*, AIR 2017 SC 2138.

¹⁰ Anil Malhotra & Ranjit Malhotra, *Divorce Nullity and Related Matters under the Hindu Marriage Act 1955*, 2005 INT’L Surv. FAM. L. 275 (2005).

¹¹ Boparai Harinder, *The Expansion of Matrimonial Cruelty*, 23 Journal of the Indian Law Institute, 34 (1981).

¹² *Narayan Ganesh Dastane v. Sucheta Dastane*, AIR 1975 SC 1534.



mental agony come within the ambit of cruelty.¹³

- Physical Cruelty

Any act done by one of the spouses that brings any kind of physical injury to the limb, health or the body of the other shall be recognised as the conduct of physical violence or physical cruelty.¹⁴ This kind of cruelty is very common in India and is easy to carry out, and comes under the ambit of domestic violence as well. In the famous case of *Swati v. Arvind Mudgal*¹⁵, it was held by the court, “In order to constitute physical cruelty one or two acts are more than sufficient even if the single act may be so grave and weighty that it could be satisfied that the test of cruelty amounts to physical cruelty”.

- Mental Cruelty

Mental cruelty has not been defined or mentioned clearly under any law. It is entirely subjective and depends totally upon the person, time, the facts and circumstances of the case.¹⁶ As for now, by going through the previous judgments, the courts have considered social values, norms, religious norms, culture, place in the society, thinking, lifestyle, status and the surrounding of the party regarding the case, as some of the crucial factors to determine mental cruelty. In the case of *Manmohan Singh v. Ameeta Preet*¹⁷, the court observed that mental cruelty compared to physical cruelty is a lot more painful. And provisioning a long period

of time for healing with words or touches might not be able to remove those scars or heal the victim. The pain stays with the victim all along.¹⁸

III. Cruelty as a Ground of Divorce:

With marriage comes rights and duties that have to be reciprocated by both the parties.¹⁹ With the obligations comes marital intercourse towards the society and the community.²⁰ Both parties have to be respected and deserve explicit compliance. Therefore, both come under the obligation of fulfilling the marriage. Depending upon the various circumstances that may fall upon, if either one of the parties chooses to end the marriage, or does not want to carry out the obligation of being in marriage anymore, the innocent spouse has to be provided with some benefits against the former. Until “The Marriage Law (Amendment) Act 1976”, cruelty was a ground for judicial separation only. Before this amendment, the Supreme Court of India, during the landmark case of *Narayan Ganesh Dastane v. Sucheta Dastane*²¹, held that “the inquiry, therefore, has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.” As of now, depending upon the facts and circumstances of the case, cruelty is a ground of divorce as well.

¹³ S. P. Khetarpal, *The Modern Concept of Cruelty*, 6 MALAYA L. REV. 303 (1964).

¹⁴ *Id.*

¹⁵ *Swati v. Arvind Mudgal*, 218(2015) DLT 729.

¹⁶ *Supra* note 8, at 3.

¹⁷ *Manmohan Singh v. Ameeta Preet*, 2003(1) HLR 289.

¹⁸ *Supra* note 8, at 3.

¹⁹ Weitzman, Lenore J., *To Love, Honor, and Obey? Traditional Legal Marriage and Alternative Family Forms*, 24 *The Family Coordinator* 531 (1975).

²⁰ Abhijith Krishnan, Agnes K. Varkeychan & Sachin Sathyarajan, *Ambiguity in Nature of Marriage: Rendering Domestic Violence Act Spineless*, 6 NUALS L.J. 47 (2012).

²¹ *Narayan Ganesh Dastane v. Sucheta Dastane*, AIR 1975 SC 1534.



IV. Jurisprudential Basis of Cruelty:

To understand “matrimonial cruelty”, it is pertinent to know the jurisprudential aspect of the same that has been built upon five theories that could be found in various legal systems. These five theories are:

1. Dominance Theory:

Suppression of women has existed in the world from time immemorial and is still visible in this period. Aristotle, affected by the basis of his time said “women belonged with slaves as naturally subordinate and quite unworthy of participation in public affairs.”²² He further also stated “while young she remains under the control of her father, after marriage under the control of her husband and after his death under the control of her sons, she does not deserve complete independence at any time.”²³ Women, starting from their birth to their deaths, were dominated by men and had no independence whatsoever as the society was full of male-dominated or patriarchal families. So women, for centuries, have been taught to be quiet and in some places are still tolerating everything. It is a known fact that there are people who still believe that women belong under the ownership of men. There exist so many instances where the dominance of men could be reflected in the literature (Manu, Narada, etc.)²⁴. The dominance theory provides that cruelty as an act symbolises the same dominance of men over women. Any act of a man that reflects dominance over a woman and if such an act has caused any mental

injury to the woman, it amounts to cruelty and falls under the dominance theory.

2. Aimed at Theory:

If an act of cruelty or any act which is causing any physical or mental injury to any of the spouse and the said act has been specifically targeted on the said person it is known as aimed at theory. When looked into classical British law in the initial stages, when the cruelty as a ground for divorce was taken, the intention was considered to be an essential requirement for divorce cases. If any party was moving to the court of law on the ground of cruelty, the intention was an essential requirement to provide. When you have the intention to act cruelly against someone, you are aiming at that person. Any act of cruelty that is done with an intention shall fall under this theory. But with various cases such as *Gollins v Gollins*²⁵, where it was proved that intention is not an essential ingredient to constitute cruelty, or in the case of *Williams v. Williams*²⁶, where the court found that if a person has enough knowledge regarding his or her actions and jeopardizes the health of the concerned party, it falls under cruelty, and etc, the court found that any act which has been done even without the intention of causing cruelty but has caused any bodily or mental injury is enough for getting a divorce. Even though the intention is irrelevant today, it is an important part of the theory on which cruelty as a ground for divorce is based. In the famous case of *Bhagwat v. Bhagwat*²⁷, the husband was suffering from schizophrenia and in two different instances tried to strangle

²² Dobbs, Darrell, *Family Matters: Aristotle's Appreciation of Women and the Plural Structure of Society*, 90 *The American Political Science Review*. 74 (1996).

²³ *Id.*

²⁴ H. P. Varshni, *Legal Rights of Women in Hindu Law*, 42 *ALLAHABAD L.J.* 26 (1944).

²⁵ *Gollins v. Gollins*, 1964 AC 644.

²⁶ *Williams v. Williams*, [1963] UKHL 6.

²⁷ *Trimbak Narayan Bhagwat v. Kumudini Trimbak Bhagawat*, AIR 1967 Bom 80.



his wife's brother and her son. Here the wife was granted judicial separation even though the intentions behind the husband's cruelty were missing.

3. Protection Theory:

This theory comes into play when any of the spouses is treating the other spouse with cruelty. Entering into a marital tie does not mean that the spouses have received the right to treat each other in ways that might cause him or her mental or physical agony. In cases where such agony persists, cruelty as a ground for judicial separation or divorce comes as a protection or as a remedy for the harm caused to the spouse. And the aggrieved party for the purpose of protection can approach the court of law. As there still are many joint families in India, any ill-treatment or torture, physical or mental, by any member of the family that is not the husband, wherein the husband does not try to stop such conduct shall also fall under the ambit of cruelty, and under protection theory, the wife could file for judicial separation or divorce.²⁸ So cruelty as a ground for divorce from the perspective of protection, protects the spouse, the victim from cruelty.

4. Impossibility Theory:

In case if one of the spouses feels that the marriage has reached a limit that it has become impossible to live with each other because of the act of cruelty done or continuously being done by the other spouse against him or her, or when the relationship has deteriorated to such an extent that it not possible to reconcile or live with each other while not constantly going through mental or physical agony, and where the mutual

consent for divorce is missing, the victim could move to the court of law stating it is impossible to live with the said spouse.

5. Impact Theory:

Impact theory is somehow in contrast to the aimed theory. In that scenario, the court has observed that intention is not an essential requirement to prove cruelty. But in this scenario, any act which has impacted one of the spouses in any manner that is causing mental injury to him or her, even though the said spouse did not mean to cause such injury, he or she would still be liable for cruelty as the intention of causing such injury is immaterial. If there exists any mental injury, caused by any of the spouses, it is a good ground for cruelty. In the case of *P L Sayal v. Sarla Rani*²⁹, The wife had an apprehension that her husband does not love her anymore. She went and asked a baba/fakir for help regarding her situation at home and got a tonic or love potion that would help her make her husband start loving her again. She took it and gave it to her husband due to which her husband went ill and almost reached his death. The husband filed a suit for divorce on the ground of cruelty where the wife contended that it was not intentional. The court observed that here the intention was immaterial.

V. Cruelty in the eyes of the court:

As discussed earlier, the meaning of the term "cruelty" varies from time to time and adjusts according to the surrounding, depending on cultural and social norms and standard of living. Many aspects or criteria have been led down in order to create a minimum basis of

²⁸ Jayna Kothari, *Criminal Law on Domestic Violence: Promises and Limits*, Economic and Political Weekly, Nov.12, 2005, at 4843.

²⁹ P L Sayal v. Sarla Rani, AIR 1961 Punjab 125.



cruelty in addition to already known physical cruelty.

- **Tests of Cruelty:**

- Subjective:

This test of cruelty is not based on the perspective of a prudent or reasonable man of the society but takes into consideration the effect or agony on the victim caused by his or her spouse. The test takes into account what an individual is going through rather than considering an ideal man or woman of society. In *Savitri Pandey v. Prem Chandra Pandey*³⁰, it was held that any particular act or conduct might be causing cruelty to one prudent mind and not to the other, as sensitivity may vary from person to person. Lord Reid's view in the famous case of *Gollins v. Gollins*³¹, "In marital affairs, we are not dealing with objective standards, it is not a matrimonial offence to follow the standard of the reasonable man (or the reasonable woman) we are dealing with this man or this woman." has been taken into consideration in various Indian cases such as *Shobha Rani v. Madhukar Reddi*³², where the court understood that instead of the ideal family notions only that particular man or woman should be taken into consideration. Even in the case of *Narayan Ganesh Dastane v. Sucheta Dastane*³³, it was held that "the court has to deal, not with an ideal husband and an ideal wife (assuming any such exists) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a

matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

This test understood that cruelty might vary from person to person and works upon each individual accordingly.

- Objective:

This test states that if any act, behaviour or conduct is cruel from the perspective of a reasonable, prudent man of a society, then the said act shall come under the ambit of cruelty. For instance in the case of *Smt. Kamini Gupta v Mukesh Kumar Gupta*³⁴, where the husband was tired from his wife's behaviour of insulting and taunting him unreasonably, the court held in favour of the objective test. That it has to be seen from the perspective of the general mass of how a prudent man would have behaved. In a similar case of *Kiran Mandal v. Smt. Mohini Mandal and others*³⁵, the court stated that cruelty includes both physical as well mental torture and it would be hard for any prudent or reasonable man to live with his wife wherein the wife is continuously insulting and taunting him.

So the courts with the help of the objective test determined whether any act, behaviour or any conduct as per the views of any reasonable prudent man, should come under the ambit of cruelty.

Many aspects or criteria have been led down in order to create a minimum basis of cruelty in addition to already known physical cruelty. As there is no fixed definition of cruelty in

³⁰ Savitri Pandey v. Prem Chandra Pandey, AIR 2002 SC 591.

³¹ Gollins v. Gollins, 1964 AC 644.

³² Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121.

³³ Narayan Ganesh Dastane v. Sucheta Dastane, AIR 1975 SC 1534.

³⁴ Smt. Kamini Gupta v. Mukesh Kumar Gupta, AIR 1985 Delhi 221.

³⁵ Kiran Mandal v. Smt. Mohini Mandal 1989 1 PLR 553.



Indian Family Law, these parameters, which includes continuous ill-treatment, unsoundness of mind, refusal to have sexual intercourse and etcetera are provided in the legislature in order to determine cruelty. These parameters are not the actual determinants of cruelty and the same depends entirely on the facts and the situations of the case.

- Unsoundness of mind.

If either one of the spouses is mentally ill or is undergoing some kind of incurable mental disease that is creating trauma or is giving rise to a reasonable fear making the other party live in constant dread of getting injured or getting harmed, shall be considered as a valid ground of cruelty. As it was held in *Smt. Uma Wanti v. Arjan Dev*³⁶, “although the wife is not an unsound person, her peculiar way of behaviour towards him is sufficient to constitute legal cruelty”.

- Attempt to commit suicide.

Living with a suicidal person is as dangerous as being suicidal. If either of the spouses is suicidal and has tried committing suicide several times, it not only creates fear but also gives rise to mental pressure on the significant other. Threatening about committing suicide also comes under the same umbrella. It was held by the Madhya Pradesh High Court in the leading case, *Harbhajan Singh Monga v. Amarjeet Kaur*³⁷, “threats of committing suicide by one spouse constitutes cruelty to others thus it is a valid legal ground to seek divorce”.

- Making false allegations.

Creating false allegations regarding the spouse’s character is considered to be a personal ground in order to seek divorce. As per the case of *Jay Dayal v. Shakuntala Devi*³⁸, it was held by the court that, “making a false allegation of physical and mental torture against husband amounts to mental cruelty”.

- Denying sexual intercourse.

Sexual intercourse is one of the main components of having a healthy relationship. And in order to have a happy and peaceful marriage, it plays an important role too. In *Anil Bharadwaj v. Nirmlesh Bharadwaj*³⁹, it was held by the court that in case either of the spouses having a normal, fit and healthy physical condition, denies sexual intercourse with the other, without any proper justification would come under the ambit of cruelty as it leads to mental frustration. This would allow the other party to file for divorce.

- Defamation.

Bringing down a person's reputation in front of people does a lot of mental damage. Regularly obstructing and having condescending behaviour with the significant other in front of the whole community might bring in great pain and distress to the other and this too would come under the ambit of mental cruelty. It was held by the court in the case of *Vishwanath S/o Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal*⁴⁰, that “the motive was to demonise the reputation of the husband in the society by naming him as a drunk womaniser and man of a bad habit.

³⁶ Uma Wanti v. Arjan Dev, AIR 1995 P&H 312.

³⁷ Harbhajan Singh Monga v. Amarjeet Kaur, AIR 1986 MP 41.

³⁸ Jay Dayal v. Shakuntala Devi, AIR 2004 Delhi 39.

³⁹ Anil Bhardwaj vs Nirmlesh Bhardwaj, AIR 1987 Delhi 111.

⁴⁰ Vishwanath S/o Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal, AIR 2012 SC 2586.



This constitutes mental cruelty and this conduct of the wife has frozen the emotion and snuffed out the bright candle of the feeling of the husband thus it is clear that with this mental agony, pain, and suffering the husband would not be able to live with the wife, therefore entitled to a decree of divorce”.

Why is cruelty not defined under Indian family law?

The term “cruelty” has not been defined under the Indian Family law. Cruelty does include a large spectrum of possibilities which makes it very hard to confine it and give it a definite meaning. What might be cruelty to you, may not be considered as cruelty to the next person. What comes under the ambit of cruelty today under law, may not be recognized as cruelty in the near future. It was held in the case of *Mohd. Hoshan vs. State of A.P.*⁴¹, “Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of the sensitivity, degree of courage and endurance to withstand such cruelty. Each case has to be decided on its own facts whether mental cruelty is made out.” As the meaning of the term changes from person to person, from one case to another depending upon the facts and circumstances of the same and how the judges interpret the facts, it is really hard to give the term “cruelty” a definite meaning.

What are the issues arising due to the lack of any definition of the term cruelty?

As there exists no definite definition of the term “cruelty” in the Indian Marriage Act, it leaves a huge room for interpretation that might lead to misinterpretation or misuse of the term. Even though cruelty should be subjective, there needs to be a definition understandable by a prudent mind. As the law must not be this vague, a clear cut or a common standard for cruelty to be judged on is needed, which should further lay down some ground laws regarding what counts as cruelty and what does not that would help judges to see if someone is a victim of cruelty. The same should not be stringent and open to include new laws as behaviour or sensitivity varies from person to person and there might be ways of being cruel one doesn't know yet.

VI. CONCLUSION:

No man or woman deserves to be denied the basic right to dignity and liberty that is bestowed upon us by the constitution of India. Physical or mental, either kind of cruelty affects the mind of an individual. Further, cruelty by the wife or by the husband should not be tolerated in any form as it violates our basic fundamental right as an individual. Various laws have been laid down by the legislation in order to help curb different situations that might lead to matrimonial cruelty or any such social evil. But even after that, the situation with cruelty seems to be increasing day by day. Any party could reach the court for divorce on the grounds of cruelty now, but as there are no specific parameters to judge cruelty, the court decides the relationship between the spouse based on the facts and circumstances of the

⁴¹ *Mohd. Hoshan v. State of A.P.*, AIR 2002 SC 3270.



case and gives a judgement according to their own interpretation. Even though the meaning of cruelty is changing day by day, and what cruelty means today might not come under the ambit of cruelty tomorrow, there's a need to define what cruelty is under our legislation wherein the same must not be rigid so as to be open to new rigidities in married life and set down some ground rules that might help to understand the term better in the near future.
