

LAW RELATING TO CRUELTY IN INDIA

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Abstract

Cruelty is not a new concept in India. Though its recognition has been recent but it was born ages ago. This paper aims to focus on the meaning, nature and the problems in defining cruelty. The paper reflects the implications of cruelty on the parties as well as reaction of the society towards such happenings and the rate of acceptance of such affected people by the Indian society at large. This paper further brings out the need and benefit of settlement of marital dispute by marriage counsellors, mediators and the effective role played by them in preventing the disintegration of society. Though it is difficult to give a particular definition to cruelty or put it in a straight jacket formula, its wider scope can be interpreted. This paper, hence, focuses on cruelty as a concept, its nature and the role played by mediators, marriage counsellors in order to settle the marital disputes.

Key words: cruelty, marriage counsellors, mediation

Introduction

Cruelty as such does not have a specific definition nor do we have any straightjacket formula to describe it. The society is evolving in nature. The level of cruelty has been varying, ranging from causing hurt to endangering one's life. On a broader sense, cruelty is the act of harming or causing to harm a person which has direct effect upon his/her life. Various physical, mental, cultural and societal factors can be responsible for the commission of an act of cruelty. In some cases, it is seen as a practice and tradition more than as an offence. For example, in the practice of Sati the widow was made to immolate herself in the pyre of her husband. Apart from this, various other heinous acts had to be undergone by women such as shaving off her head, isolating her from the general society etc.

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Cruelty is an abstract concept. It is very hard to define, contain or limit it to an extent. Hence, no jurist, judge, legislator has been able to specifically define it. The scope of cruelty has always been extending in nature, earlier cruelty was limited to harm or hurt caused, now if a husband makes repeated demand for dowry or if wife burns the educational degrees of her husband, also amounts to cruelty. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs¹. This wider aspect has been evolved owing to the changing circumstances, mind sets and ideologies of society.

Nature, meaning and problems in defining cruelty

Why does cruelty take place in the first place? Cruelty acts as an instrument to assert or show dominance over the other. It is the ability to influence others to do or not to do an act. It is basically associated with the self- satisfaction which one receives since he/she is in a position to 'control' the other. It is more or less the exercise of power in order to boost one's self ego. As discussed earlier, cruelty cannot be contained and put within a box. It takes various shapes and sizes. It may include physical, verbal, emotional, financial and the recently acknowledged mental cruelty. Mental cruelty is a concept that has been recognised in the recent past. It can take any form i.e. either violence or by sheer attitude or behaviour. Hence, the scope of cruelty cannot be restricted as it may vary with society and classes. Say for in urban areas, mental and financial abuse is more common and in the rural areas, physical abuse is an everyday activity. Hence, the legislators and jurists face the problem in defining it. However, if the definition of cruelty is put into one well knitted structure, then the acts in the nature of cruelty may go unpunished. This will have dangerous implications on the society. Hence, cruelty has to be judged taking into consideration entire facts and circumstances of case and not by any predetermined rigid formula². Silence amounts to cruelty as well in few circumstances. Section 498-A of Indian Penal Code, 1860 defines cruelty. The language of this provision speaks of a past conduct which drives a woman to commit suicide at a later date³. The coercion of any women by any man demanding property or money also amounts to cruelty as per Sec 498-A. In the view of Supreme Court, any

¹ Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619.

² Ravi Kumar v. Jumlidevi, (2010) 4 SCC 476.

³ S.C. TRIPATHI & VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN 143 (Central Law Publications, 2015).

wilful conduct which is likely to drive a woman to commit suicide or danger to life, limb or health would constitute cruelty⁴. Further, the conduct, gravity of the acts or whether it would likely drive her to commit suicide would help us infer cruelty⁵. However, the person who commits suicide should be a prudent person and the day to day disagreements within the family does not amount to cruelty⁶. It is more in the recent past that mental cruelty has been accepted. Earlier, it was restricted to physical. Owing to the changes in society and huge recognition been given to mental state of being, mental cruelty has also been inducted.

The courts generally do not apply limitation period against delayed complaints⁷ as it is understood that in country like India, where women are used to being in a cocoon, it is not easy for them to come out and speak up against the cruelty they are undergoing. The society does not accept this and judges them instead. Moreover, there is constant fear of being abused again by her husband or his relatives which is one of the strongest reasons as to why women don't dare come out to talk about it in first place. Hence, it is a continuing offence. Teasing and ill- treating by a spouse for the mistakes which could be pardoned is also in the nature of cruelty⁸. Owing to these wide arrays of interpretations, it is almost next to impossible to categorize cruelty under a subheading.

Role of mediation in marriage

It is the spirit and not the form of law that keeps justice alive.

- LJ Earl Warren

As right stated by Warren, law may take many forms, the ultimate aim of every form is to attain justice and welfare of the society. The application of same has been made by introducing the various types of dealing with conflicts apart from approaching the court. The basic aim of every marriage is to establish a lifelong bond. In fact, in the earlier period, divorce as a concept was not even in existence. A marriage was deemed to be an eternal union between two people. But with the change in times and circumstances, divorce got incorporated in our society. Cruelty as a ground for

⁴ State of A.P. v. M. Madhusudhan Rao, 2008 (11) JT 454 (S.C.).

⁵ Manju Ram Kalita v. State of Assam, 2009 (9) SCR 902.

⁶ Nachhettan Singh & Other v. State of Punjab, 2011 Cr. LJ 2292 (SC).

⁷ Arun Vyas v. Amita Vyas, AIR 1999 SC 20171.

⁸ Ramesh Kumar v. State of Chattisgarh, 2001 (7) SLT 356.

divorce is established under the Hindu Marriage Act 1955⁹ and various other personal laws. This showcases the graveness attached to the concept of cruelty and its impact on matrimonial relationships as well. However, it is funny how people relate the rise in number of divorce cases to women 'enforcing or demanding their rights'. From when did the act of enforcing one's rights become a cause of breakdown of a society?

Though women are voicing their opinions and condemning the cruel acts which they are subjected to, most of them are still under the shadows. Sometimes they tend to accommodate to such cruel behaviour keeping their family (mostly children's future) in mind. Apart from this, there is a huge non acceptance of women who revolt against issues, voice their opinion, divorcees etc. Owing to such low or minimal acceptance rate and the fear of society also acts as a major deterrent from coming forward. However, these things kept aside, it is always to see to preserve the best interests of the marriage instead of breaking it off. In case if acute conditions, where there aren't any options left, divorce may be the way. But since, marriage has a spiritual and pure connotation in the Indian society; it should always be aimed to ensure its existence. Divorce isn't that rampant in nature, at least in the case of India. The rate of divorce is at an all-time high. It is because of various conditions such as friction of opinions, ideas, behaviour, abuse, attitudes etc. The fact that both the spouses have ability to knock the doors of the court in these situations, such realisation is what has raised this rate. The value of marriage has loosened a little, it isn't that eternal bond that it was considered to be earlier. This has an impact on the society as it is not being given that much of value and this somewhat leads to breakdown of society and institution of marriage.

Here is where the mediation, marriage counsellors come into play. They aim to uphold the value in the institution of marriage and keep it intact. Most of the breakdown of marriages in the present scenario is due to ego clashes, differences of opinion, and other trivial issues which could be sorted with a proper discussion. Here is where mediators and counsellors do the magic. Their job is to ascertain the reason for such differences and try to eliminate the same to save the boat of marriage from drowning. Another advantage of this being, mediators play a neutral role and judge the case from a third party's point of view. There are heaps of cases pending in the courts, here is where mediation as a step is appreciated as the couples don't have to wait for their turn in the

⁹ Sec 13(1)(ia), Hindu Marriage Act 1955.

court and can file the same in mediation centres, thereby reducing the stress on the courts as well. It is less expensive, informal and flexible in nature. These Alternate Dispute Resolution methods are on a rise as they provide quicker, simpler decisions thereby avoiding the need of litigation.

Mediation is somewhat like Panchayat system in India. In this system, there is one on one contact and parties participate directly. A mediator presides over the discussion as neutral party and helps them come to an agreement amicably. These outside the court settlements have their own advantages being:

- Less time consuming: Mediation is comparatively less time consuming and efficient in nature.
- Confidentiality: There is a clause of high confidentiality. The decision of the mediation is communicated and the parties' details are not revealed. It cannot be witnessed by public like the case of litigation. It is a private affair. Justice Markanday Katju in the case of *Moti Ram Tr. Lrs. & Anr. v. Ashok Kumar & Anr*¹⁰, held that, "mediation proceedings are totally confidential proceedings. When the mediator is required to send the report of successful proceedings to the court, he doesn't require sending what transpired during the proceedings. In case the mediation was unsuccessful, he only needs to send the report stating 'Mediation has been.'"
- Cost efficient: Mediation has lesser burden on pocket as well.
- Discussion and settlement: Mediation is not about giving a decision like in the case of litigation. It is more of discussion between the parties and agreement to settle.
- Mutual Decision: The parties approach the mediator by consensus. The decision is taken by consensus and parties abide by the same.

Hence, mediation as option is being explored a lot in the present scenario as it is being looked into as a more viable option. As the litigation drags for a number of years and such long rifts between the parties especially regarding family and marriage could be problematic. Hence, outside the court settlement leads to reducing the judicial backlog and reducing the burden. The reason why it takes a lot more amount of time in matrimonial issues is because

¹⁰ *Moti Ram Tr. Lrs. & Anr. v. Ashok Kumar & Anr.*, [2010] 14 (ADDL) SCR 809.

of its sacramental nature. Marriage is considered as a sacrament and not a contract like how other countries do. A lot is thought about before giving out a final decree. Hence, they need to be handled even more delicately and not in a hurry. Mediation is a voluntary process wherein parties agree to settle disputes. Parties can voluntarily terminate the mediation process as well. It is this flexibility what gives it a special status. This reduces the emotional and financial burden on the families and also promotes the interest of the family, and not only the individual. Hence, the Hindu Marriage Act 1955 specifies, in case of divorce by mutual consent, there should be the presence of irretrievable breakdown of marriage. Irretrievable breakdown here means the nature of marriage wherein even the court's verdict would not help revive the dead marriage as the parties' feelings and sentiments for each other have dried up. The fact that they are staying separately and are not willing to meet each other is also a form of mental cruelty upon both the parties¹¹.

In few cases, it is the court that decides and allocates parties for mediation or conciliation (as per Section 89 of Civil Procedure Code, where the court has the authority to refer cases for mediation), pre litigation counselling have been more effective. The parties are advised and counselled as to how their life is going to alter after the decree of the court. Basically, they are counselled regarding the entire pros and cons with regard to their separation and its impact. This is to ensure that the parties do not take any decision in haste. The difference between a judge and a mediator is that, a judge always tries to decide between right and wrong, whereas the mediator tries to amicably settle the issue neutrally. Under Quran as well, the marriage status needs to be maintained as long as possible. It also encourages, pre-divorce conference and mediation as a way to settle the misunderstandings. The mediator follows the following process while deciding the issue:

- **Introduction and Opening Statement:** The mediator describes the process, tells the options which are available to the parties and enlists the basic facts of the case.
- **Joint Sessions:** Herein, the parties are allowed to present their point of view in presence of the mediator. If the mediator has any doubts, he can ask questions regarding the same.
- **Separate Sessions:** The parties are questioned personally without the other party being present.

¹¹ K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226.

- Conclusion: The mediator delivers his opinion and as to what course to be adopted further.

Marriage counsellors, on the other hand, play the same role as that of mediator but have different approach to the problem, namely:

- Facts
- Identifying the issue behind the conflict
- Probing the probabilities of reconciliation
- Guiding and explaining the parties of the options available in order to avoid the parties from not taking any well thought decision.
- Making them aware of the legal paths available to them and further course of action.

Since, both mediators and counsellors' work towards the conciliation between the parties and giving relationships another chance, this step is proposed first the courts as well to see if there is any possibility of settlement. Moreover, these have been functioning very efficiently. There is a rise in the choice of mediation and counsellors instead of direct litigation.

As there isn't any law regarding mediation, the Indian Institute of Arbitration and Mediation (IIAM) has been set up in accordance with the rules of International Mediation Institute, Hague and the basic aim of IIAM is to help parties take maximum advantage of flexible and innovative procedures and quicker outside the court settlement which are legally binding¹².

The Mediation and Conciliation Rules, 2004 have been formed to aid the mediation process. According to the Mediation rules, the court has the power to appoint mediator, the qualification being a person who is expert in that field with fifteen years of standing or retired judges of Supreme Court/High Court/ Districts/Sessions judge or any person expert in the field of mediation¹³. Hence, in order to protect and prevent cruelty against women, various conventions have been laid down at international level as well. Women and children are often considered to be of vulnerable category. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been drafted and adopted by the United Nations General Assembly

¹² <http://www.arbitrationindia.org/>.

¹³ Rule 3, Mediation and Conciliation Rules, 2004.

(UNGA) so as to protect such acts against humans which out rightly violates their basic human dignity¹⁴. The Declaration of Elimination of Violence against Women¹⁵ was a convention which was adopted by UNGA specifically aiming at women and their pitiable situation. There are many other conventions and declarations which give importance problems experienced by women namely, the Convention on Elimination of All Forms of Discrimination against Women, Universal Declaration of Human Rights etc.

Conclusion

As stated by Abraham Lincoln, “Discourage litigation; persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expense, cost and time.” The cases of divorce, property and other family related matters are too delicate of an issue. Hence, in such cases, the courts find these alternatives outside the court settlement more reasonable and they suggest the same. As solving these type of cases needs more of humanitarian touch than that of defined rules and laws. Matrimonial related issues are not criminal per se, hence mediation is advised and it always hoped that a settlement is reached for as breakdown of family implies breakdown of society. As far as cruelty as such is considered, the Law Commission as per its 243rd report in 2012 called for stricter implementation of Sec 498A i.e., cruelty under the Indian Penal Code to avoid the misuse of the same¹⁶. All these conventions, rules, laws which are framed have justice as their aim. There have been cases of cruelty been committed against men as well. It is time we take a holistic approach and the cruelty laws need to be made gender neutral.



¹⁴ A/RES/39/46, 10th Dec 1984.

¹⁵ A/RES/48/104, 20th Dec 1993.

¹⁶ <http://lawcommissionofindia.nic.in/reports/report243.pdf>.