

LAWS RELATING TO CRUELTY IN INDIA

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If you want something to last forever, you treat it differently. You shield it. You protect it. You neither abuse it nor expose its elements. You lovingly polish it until it gleams like new. Marriage is one such thing. But when cruelty starts replacing love, what once gleamed will start appearing as drab as dust.

“Cruelty is the law pervading all nature and society and we can't get out of it if we would.” When this happens wedlock's tend to break. The Indian Marriage Act nullifies a marriage by means of divorce. Section 13 of the Hindu Marriage Act, 1955, provides for dissolution of a Hindu Marriage by a decree of divorce on 13 grounds, Section 2 of the Dissolution of Muslim Marriage Act, 1939, on 8 grounds, Section 32 of the Parsi Marriage and Divorce Act, 1936, on 11 grounds, Section 10 of the Indian Divorce Act, 1869, on 7 grounds of dissolution of marriage of Christians. All of these acts indubitably have cruelty as a major ground for nullification. However none of these acts define what cruelty is.

In matrimonial Life, cruelty can be defined in many ways. It has many perspectives which depend upon the socio-economic status and circumstances of parties to marriage. It varies from person to person. It also varies with time, place, economic status and other circumstances.

In the case of *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan*¹, this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

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¹ *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan*, (1981) 4 S.C.C 250.

Under the Hindu Marriage Act 1955, as enacted originally, cruelty was not a ground for divorce but, it was a strong ground for judicial separation. It is only after its amendment that cruelty also became a ground for divorce along with judicial separation. Though mentioned in Section 13(1)(a) of the Hindu Marriage Act, it does not give the definition of cruelty and also does not specify the nature of cruelty.

Under Section 2(viii) of the dissolution of Muslim Marriage Act, 1939, women are given divorce on the grounds of cruelty. Under Section 27(d) of the Special Marriage Act, 1954 and Section 10 of the Indian Divorce Act, 1869, women and men are given divorce on the ground of cruelty. In all above mentioned acts cruelty is not defined but it is only one of the grounds for divorce.

Cruelty can be both physical and mental. Physical cruelty provides more of a direct evidence i.e., it can be perceptible when compared to mental cruelty. Cruelty can be judged by the circumstances. A conduct can be declared cruel if it makes staying together impossible for the parties to marriage. Mental cruelty can be drawn from the facts and circumstance of the case whereas physical cruelty can be drawn from the conduct of one spouse toward the other spouse which endangers the other spouse physical health. Therefore, repetitive abuse, inhumane treatment known also domestic violence amounts to cruelty. The usual ground for cruelty is violent behavior but there is more into it. Damaging each other physically and mentally where there is verbal abuse, violent language, threats of harm, continuous quarrel, anger, screaming etc makes the parties of marriage undesirable to live together and this amounts to cruelty.

The example of mental cruelty can be seen in the case of *Mohinder Kaur v. Bhaq Ram*², where the husband filed a suit for restitution of conjugal rights alleging that his wife was living in adultery with another man. But these allegations were found to be unjustified and so the wife filed a suit for judicial separation alleging cruelty for the false allegations on her. It was on the grounds of mental cruelty. Under Section 498A of Indian Penal Code, husband or relatives of husband of a woman subjecting her to cruelty can be punished with an imprisonment and fine.

Here, mens rea should be necessarily proven here, which can be defined as the malafide mental element to commit a crime and also omission of any act of a person would definitely result in a crime. It is an essential element in many crimes. To establish

² Mohinder Kaur v. Bhaq Ram, 1978 SCC OnLine P & H 202.

cruelty the intention need not necessarily be to hurt the other person. Even if a spouse hurts the other spouse mentally or physically in an ordinary sense without having an intention to hurt, then it can become criteria for divorce. Therefore, mens rea is not a necessary element in matrimonial cruelty.

If the complaint by wife against husband and his family is fraudulent, then it is cruelty of husband by wife and this can lead to divorce. The High Court of Bombay in the case of *Shri Mangesh Balkrushna Bhoir v. Sau. Leena Mangesh Bhoir*³, the court has given judgement regarding the false complainant against the husband and his family members by wife, and they got acquitted, such complaint by wife amounts to cruelty, for which divorce can be obtained by husband.

This applies vice-versa too, if the husband files a false complaint then it also amounts to cruelty. In the case of *K. Srinivas v. K. Sunita*⁴ where the Apex Court held that it is a settled point of law that if either spouse lodges a false complaint, it would invariably amount to cruelty and would enable the other spouse to file a petition for divorce. The Court said that whenever a complaint filed by the wife against her husband under Section 498A, IPC is rejected, and the husband and his family members are subsequently acquitted; then it can be said that the complaint filed by the wife is fraudulent.

Male chauvinism is one of the major reasons for the breaking of wedlock in India. It can be defined as the myth that men are superior to women. It is a well-known fact that India is a male dominant society and this is can be seen in matrimonial life as well. It is the women who leaves her home after marriage and moves in with her husband to his house. In many of these cases the women get married in different places and she has to leave her job to move with her husband. The men tend to control the life of the women after marriage. They become more dominant and prefer their wife should stay at home. In fact in many cases the women are more talented than men but due to the nature of society they tend to go with the decision of her husband and suppress her professional skills. This dominant character of men can be said as cruelty which is one of the main reasons for divorce. When the women seeks to have more freedom there maybe ego clashes, which causes misunderstanding between the husband and wife.

³ *Shri Mangesh Balkrushna Bhoir v. Sau. Leena Mangesh Bhoir*, AIR 2016 (NOC 364) 172.

⁴ *K. Srinivas v. K. Sunita*, (2014) 16 S.C.C 34.

In India, dowry death is also one of most important ground for cruelty. Women are great victims of dowry system in India due to the nature of male dominated society. Dowry death can be defined as death of the women where they are killed or driven to kill themselves due to the continuous harassment and torture by her husband and in laws for increase in dowry apart from what is gifted during her marriage. Dowry can be in the form of money or any property as well. The system of dowry has become part of our tradition and it is accepted by our society as a whole, which has become a customary rule that is required to be followed by everyone. It is now considered as a moral duty of the bride's father to give dowry to marry his daughter. When the demand by the bridegroom and his families becomes unbearable, it leads to the harassment of the bride and her family and amounts to cruelty. Cruelty can be punished respective of the reason for which the parties filed the suit. Section 304B of the IPC mentions about the punishment for dowry death with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

In the case *Mustafa Shaikh v. State of Maharashtra*⁵, the Court held that where death of wife was caused due to poisoning within one year of her marriage, and there were evidence of witnesses clearly show that, after her marriage he was subjected to torture and harassment for demand of gold jewels and money by the accused. Accused is liable for punishment under Section 498-A of the Indian Penal Code.

Marital rape is one of the grounds for cruelty. Rape is one of the most heinous crimes committed by men against women. Marital rape can be defined as unwanted or forceful sexual intercourse by a man without the willful consent or by the use of threat and physical harm towards his wife. A marriage is a bond of trust and affection but a husband exercising sexual superiority by the means of demand and forcing his wife, certainly amounts to cruelty. Though in India, there are many laws to punish the rapist, these laws do not give protection to married women against forceful sexual intercourse by her husband. So, women suffering such problem don't have any legal remedy because marital rape is not considered to be an offence, therefore victims in these cases are condemned to bear the pain silently and have no remedy. It is necessary that laws should be implemented so that women get protection against marital rape. Though Section 375 of Indian Penal Code provides provision for commitment of rape, it also

⁵ *Mustafa Shaikh v. State of Maharashtra*, (2012) 11 S.C.C 397.

gives exception that rape by husband is not an offence and it is therefore not punishable.

In the case of *State of Maharashtra v. Madhkar Narayan*⁶ the Supreme Court has held that every woman is entitled to her sexual privacy and it is not open to for any and every person to violate her privacy as and whenever he wished. Though marital rape is genuine type of wrongdoing against women in India, it is not criminalized and needs governments' consideration, yet. Since, the rate of marital rape is alarmingly high in India, it is necessary that the crime of marital rape should be criminalized.

When either the husband or wife is having an extra matrimonial affair, this amounts to mental cruelty. By having an affair outside the marriage, may not be only religiously wrong, but it is morally wrong as well. Under Section 497 of Indian Penal Code, the man who has an extramarital affair with a married woman is punished but there is no law punishing the married women for having extra matrimonial affair.

Under the Section 13(1)(i) of the Hindu marriage act and section 27(1)(a) of the special marriage act, after the solemnization of the marriage, voluntary sexual intercourse with another person than the married men and women, then the marriage between them can be dissolved. Also, if they don't want divorce they can file for judicial separation on the ground of adultery committed. This will give them time to think whether they want divorce or not.

Under the Muslim personal law, a husband can divorce his wife if she is involved in any extra matrimonial affair and same applies for the wife as well. Under Section 2(Viii)(b) of the dissolution of Muslim Marriage Act which provides the ground for divorce if the husband associates with women of evil reputé or leads an infamous life, considering such an act as mental cruelty. Under the concept of lian, if the husband falsely accused wife for adultery, then the wife can seek divorce under that ground.

Under the Divorce Act, 1869, Section 10(1)(i), the husband and wife, after the solemnization of marriage, husband and wife can seek divorce on the ground of adultery. Also Section 22 of the same act provides judicial separation on the ground of adultery. Advancement of social concept and standards of living. Under Section 32(d) of the Parsi Act, adultery is a ground for divorce and judicial separation can be obtained under Section 34(d) of this Act.

⁶ State of Maharashtra v. Madhkar Narayan, AIR 1991 S.C.C 207.

All these act provides divorce for extramarital affair as a direct ground, it can amount to mental cruelty only when either of the spouse has been mentally disturbed this does not mean that mere suspicion by the wife is cruelty, there should be some cruel behavior to declare mental cruelty.

In *K.V. Prakash Babu v. State of Karnataka*⁷, has held that solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife that cannot be regarded as mental cruelty. The prosecution case was that the wife felt extremely hurt and, eventually being unable to withstand the conduct of the husband who was allegedly involved in an extra-marital affair, put an end to her life. The high court upheld the trial court judgment convicting him under Section 498A and also held him guilty for driving his wife to suicide.

Another reason for divorce is impotency of either the husband or wife, concealing of such facts during marriage and which is known after marriage leads to mental cruelty. Impotency is the condition where the neither of the spouse, who is incapable of having sexual activities or refuses to engage in sexual intercourse. If the couple knew about the impotency during their marriage, though accepts each other cannot seek for divorce, it is only when such case where they don't about it then, it leads to mental cruelty.

Cruelty in marriage which once pertained to the husband and his family has now been extended to women also. This makes it difficult for the husband to live with her. The behavior of women has changed which lead to the seeking of divorce in courts by men, nowadays. Therefore it can be analyzed that Indian courts are granting divorce to husbands from their cruel wife. The cruelty by wife towards husband ranges from denial of having sexual intercourse to filing of a false complainant.

In *Dastane v. Dastane*⁸, the Supreme Court has reviewed the law relating to cruelty. In that case the marriage took place in 1956, the husband filed the petition for judicial separation on the ground of cruelty. The allegation was that the wife was threatening to put an end to her own life or to set fire to the house. She was abusing the husband and his parents. It was held by the Supreme Court, reversing the view of high court on this point that this would amount to cruelty.

⁷ K.V. Prakash Babu v. State of Karnataka, 2016 S.C.C OnLine SC 1363.
⁸ Dastane v. Dastane, 1975 AIR 1534.

Also a case⁹ was filed by Mrs. Mayadevi against the judgment of the Rajasthan High Court confirming divorce granted to her husband by the lower court. She was the wife of Mr. Jagdish Prasad and the mother of 4 children. The sought divorce alleged that he was subjected to mental and physical cruelty. He said that she did not even provide food to him and his children and used to falsely implicate him in a case of dowry demand. She also threatened to kill the children and put the blame on him and his family members. She was temperamentally so cruel that she killed 3 children for which she was convicted. The trial accepted the allegations and granted divorce.

When a wife doesn't full fill her duties and doesn't show any interest in her matrimonial life this also amounts to cruelty. In a case, *Anil Bharadwaj v. Nimlesh Bharadwaj*¹⁰ the court held that the refusal of the wife to have sexual intercourse with the husband amounts to cruelty against the husband. Other grounds of cruelty against the husband are adultery by wife during the lifetime of marriage, misuse of Section 498A, IPC, the Domestic Violence Act, 2005 and other laws, desertion by wife, the cruel behavior of a wife, initiating criminal proceedings against the husband and his family members with malafide intention, etc.

The behavior of wife is very important in a matrimonial, if she cannot adjust in her in laws house or if she misbehaves in her in laws house, then the husband can seek divorce on the ground of cruelty.

In the case, of *Praveen Mehta v. Inderjit Mehta*¹¹, the appellant wife left the matrimonial home within few months of marriage and did not return for ten years. During her stay she never cooperated with the husband about sex since the first of the marriage. She misbehaved with the husband and other relatives. She misbehaved with the husband and other relatives, she refused medical treatment and made false plea of conception and miscarriage. The court held that it is a case of mental cruelty by wife and hence divorce was granted.

When a wife who willfully undergoes abortion against the wishes of her husband and his family members is guilty of cruelty to the husband. For abortion, the consent of the husband is equally important as that of the wife. Without the consent of the husband,

⁹ Smt. Mayadevi v. Jagdish Prasad, (2007) 3 S.C.C 136.

¹⁰ Anil Bharadwaj v. Nimlesh Bharadwaj, AIR 1987 Delhi 111.

¹¹ Praveen Mehta v. Inderjit Mehta, (2002) 5 S.C.C 706.

a wife cannot abort their child and if she does so, the husband can seek divorce.

In the instant case¹², Suman Kapur was aggrieved at the decree of divorce granted against her by a trial court and confirmed by the Delhi High Court. Both courts gave a finding that her three abortions without the knowledge and consent of her husband, Sudhir Kapur, was a valid ground for divorce. Disposing of the appeal, the Bench noted that Sudhir Kapur got remarried on March 5, 2007 before the expiry of the period of 90 days for filing appeal before this court and a child was born from the second marriage. It was held by High Court that:

Since, we are confirming the decree of divorce on the ground of mental cruelty as held by both courts, i.e. the trial court as well as the High Court, no relief can be granted so far as the reversal of decree of the courts below is concerned. At the same time, however, in our opinion, the respondent-husband should not have remarried before the expiry of period stipulated for filing appeal. Ends of justice would be met if we direct the respondent to pay Rs. 5 lakh to the appellant.

One of the best way through which marital disputes can be settled is through mediation and counseling. "During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to patch up and stay together. In either case, for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the high court and get the complaint quashed. If, however, they choose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone"¹³. The mediators with both the husband and wife individually to identify their problems and to find proper solutions rather that of divorce. It is a dispute resolution technique which helps to solve the conflicts.

Marital counseling is generally performed by a mental health professional which involves therapeutic analysis and insights. First, they mainly help a couple to distress and resolve conflicts and then to improve their relationship.

Both the mediator and counselor can work simultaneously for a couple, the advice of a counselor and facilitations by a mediator helps a couple to cope before, during and after divorce.

¹² Suman Kapur v. Sudhir Kapur, (2009) 1 S.C.C 422.

¹³ Dhananjay Mahapatra, SC allows couples to settle marital cruelty cases, TOI, Feb 23, 2013, 02.42 AM IST.

Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent. It differs among the people of different scenario. There is no provision of definition as to what exactly is. It is up to the judiciary to decide what amounts to cruelty to a particular person in a certain circumstances. In spite of the speculative nature of cruelty the marriage act in India considers cruelty to fall within the purview of matrimonial wrong.

