

THE SARCOPHAGUS OF HUMAN PSYCHOLOGY: UNEARTHING THE CODEX OF TRUTH BEHIND DISPUTE RESOLUTION

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Sometimes, God doesn't send you into a battle to win it; he sends you to end it.

- Shannon L. Alder

Abstract

Cruelty, a problematic or disputed word, derives its origin from the French word *cruelte*. Cruelty basically is the result of the human mind, which has not been able to resolve the deep conflict from within. This is could be due to the failure to cooperate, control or compromise in any situation. This has purely been seen in Families under Turmoil, Siblings under pressure or the Spouse being torn apart or an individual unable to rightfully express herself/himself.

Every problem has a cause, and every cause has an effect. That is the mystery behind resolving a dispute in the turbulent waters of the mind. That is an art that can be achieved by certain individuals, like Marriage Counsellors, Negotiators, and Mediators. In this paper, we shall be highlighting upon the role played by these Marriage Counsellors, Mediators, and Negotiators in the art of resolving the basic issue behind Cruelty. It is any day better to resort to these forms of dispute resolutions, rather than putting extensive pressure on the courts. The basic emphasis will be laid on the Secondary data collected from scenarios, where these remarkable individuals have eased the pressure put forth on the courts, to resolve trivial matters of the mind. Matters like, Spouse Bonding, Sibling rivalry and Ancestral Property ownership.

Key words: marriage counsellors, negotiators, mediators, dispute resolution, cruelty, dispute

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Introduction

Marriage in India is considered as a sacrament and pious. The bride and groom take vows to live together for the rest of their lives, but sometimes the marriage suffers a major setback due to various psychological and emotional imbalances. No marriage is free from disputes but the problem arises when there is a greater degree of disagreement between spouses which disrupts their relationship to a greater extent resulting into ego clashes between them. When the ego or sense of respect for a person is hurt, every person reacts in a different form which comes out in the form of cruelty. An act maybe cruel or not, depending upon its severity and nature. There are a number of marriages united by astrology, divided by judgment where the court has granted divorce by blending the concept of cruelty with irretrievable breakdown of marriage¹.

The human psychology plays an important role in determining the human conduct and behavior which has an inseparable nexus with 'cruelty'.

Any human element within the ambit of what may be called as a family or an ideal relationship shall be deemed to be called as the source point of cruelty. Understanding the psychology of the other half of any relationship undergoing mental or physical cruelty can help reaching the root cause of cruel behavior or conduct. Stress should be laid down to preserve the institution of marriage² which could be achieved only by knowing the problem and finding an alternative peaceful solution to it through mediation and counseling rather than opting for divorce.

To define cruelty precisely is not possible. It is nothing other than a person in a dominating position exploiting a person in a weaker position through physical force or mental assault. And this is all due to fundamental issue of possessiveness, dominance, lack of understanding, issue of blind power and last but not the least undue influence.

No problem is a problem without a solution and even the fundamental problems behind cruelty can be dealt through a "dialogue", i.e., mediation, counseling and in hard cases negotiation.

The Hindu Marriage Act, 1955 lays down cruelty as a ground for divorce under Section 13(1)(1-a), there is no clear definition laid

¹ Anurag Sharma v. Manushi Sharma, AIR 2016 DELHC.

² Baljinderkaur v. hardeepsingh, AIR 1997 SC.

down defining cruelty for the first time, as the term cruelty was defined in the case *Russel v. Russel*³.

In *Suman Singh v. Sanjay Singh*⁴ Where husband seeks divorce from wife on the ground of cruelty done in some past incidents the court in this case held that some isolated incidents that took place long in past cannot become a subsisting cause of action to seek divorce after 10 years. Incidents should be recurring in nature and should have not been compromised by the other spouse in past.

Causes of cruelty

Any kind of family dispute arises out of a cause and has an effect in the form of cruelty. It need not be a single cause but because of multiple reasons which can be segregated broadly as:

- **Spouse rivalry:** Cruelty cannot be measured in dimensions. What is cruelty in one case may not be the cruelty in other circumstance and largely depends upon the type of life the parties are accustomed to, or their economic and social conditions and their culture and human values to which they attach importance.⁵ When the ideologies don't match, there are chances of rivalry arising among the two, destroying the relationship slowly from the root. Spouse rivalry can be due to emotional distress, financial problems, sexual desires, dowry demands, non-cooperation, lack of understanding, or even some nuance reasons. Such reasons creates disturbance in their life and causes various psychological imbalance and results in causing cruelty upon the other spouse either mentally or physically.

A small incidence of neglect or indifference may not lead to rivalry and become a reason for cruelty, but when such incidences done repeatedly affecting the other spouse physically and mentally will amount to cruelty.

The Supreme Court of India while exercising inherit powers under Article 142 has laid down precedents in various matters relating to spouse rivalry where the marriage is broken irretrievably and there is no chance of reconciliation between the parties.

³ (1880) LR 14 Ch D 471.

⁴ AIR 2014 (SC).

⁵ Naveen Kohli v. Neelukohli, AIR 2006 (SC).

- In *Romesh Chandra v. Savitri*⁶, in this case the husband was not dutiful and did not fulfill his responsibilities towards the child. He contributed nothing towards the upbringing of the child and therefore the marriage was dead and continuance of it would amount to cruelty. The rivalry between spouses was for more than 25 years and finally decree of divorce was passed.
- *Praveen Mehta v. Inderjit Mehta*⁷, high degree of cruelty was inflicted upon husband by the wife. The parties lived separately for 10 years and finally awarded divorce as their marriage was dead.

Supreme Court recently in *Narendra v. K. Meena*⁸ held that continuous effort of women asking the husband to separate from his parents will amount to cruelty. The wife was highly suspicious in nature and imposed various allegations on husband for extra marital affair and repeatedly asked to separate from his family, such behavior was torturous the husband and resulted in mental cruelty.

The cases of cruelty arise not only because of the actions of other spouse but the actions of any of the spouse children by a previous marriage. In *Hall v. Hall*⁹, cruelty caused by husband in an indirect manner by going against the marriage agreement and keeping the children from previous marriage at home, these children behaved in a ruthless manner, and on one occasion beat her, but in this case divorce was not granted since the child was a minor and the husband repeatedly asked the child not to do so and took necessary steps to save the marriage.

Such rivalry among spouses lead to irretrievable breakdown of marriage where it becomes impossible for one spouse to live with other and the court has to grant decree of divorce as the purpose of marriage is not served.

- **Sibling rivalry:** A marriage becomes stronger when a child is born, both the husband and wife have equal responsibility to look after their children. Sometimes parental attention is given only to one child because of its gender, capabilities and other factors thus making the other child feels neglected. The fact

⁶ AIR 1995 (SC).

⁷ AIR 2002 (SC).

⁸ AIR 2008 (SC).

⁹ 42 Cal. 2d 435.

that parents knowingly or unknowingly have a favorite child has been proved in an English survey whereas; the parents are not ready to accept the same. Such discrepancies in a parent's treatment can create negativity in sibling relationship¹⁰ and from an early age itself the feeling of jealousy, anger, distress and bitterness is developed. Succession, Inheritance of property, unequal estate distribution creates major disputes among siblings.

Prior to Hindu Succession Act, 2005 females were not treated as coparcener; therefore, she cannot become Karta as well. Courts in India have given diverse views regarding female acting as Karta.

In the landmark judgment *Mrs. Sujata Sharma v. Shri Manu Gupta*¹¹ after 2005 amendment act, inequality was removed by allowing female to be Karta of family. The Indian society still favors male than females, and male members of the family are given more importance and power, though there has been changes in family structure but the fact cannot be denied that India still remains a male dominant society. Sibling rivalry may also arise due to dispute among siblings on who will become the head of family after the death of father.

Lack of love, cooperation and understanding among brothers and sisters develops resentments even among their marital relationships like continuous taunting by wife over having fewer shares in the property, thereby causing cruelty. Sometimes because of child favoritism mental agony is developed between the partners.

- **Cruelty towards parents:** Parents will always think of the well-being of their children and would want to see their children grow, prosper and they will do anything unconditionally for their welfare. Usually no parent asks for favors from their children but when in an old age they expect care, help and attention from their children, in our Hindu society it is a son's pious obligation to maintain and take care of his parents at an old age. Usually upon getting married there is a change between parent and son's relationship and there is neglect towards the old age parents by the son or tortured by the daughter in law by continuous harassment

¹⁰ Where there is a will: Law and Emotion in Sibling Inheritance Disputes, https://lawexplores.com/where-theres-a-will-law-and-emotion-in-sibling-inheritance-disputes/#fn_90, (last visited on 28.12.2017).

¹¹ AIR 2010 (DELHC).

towards them. Various courts have recognized that sons have responsibility towards their old aged parents, and if the wife persistently asks husband to separate from his parents, this will also constitute as act of cruelty.¹²

*Rajini v. Sandeep*¹³ the wife imposed false allegations of dowry on husband and his parents whereas the marriage was concluded in a very simple manner without asking for any dowry. Earlier the wife lived with husband and his family but later she continuously forced the husband to live separately and purchase a house for her despite knowing that he is in a weak financial position. The court held that forcing the husband to live separately from his parents will amount to cruelty and is sufficient ground for divorce.

In *Vijay Kumar Gupta v. Mool Chand Gupta*¹⁴ the sons abused and tortured their father for not giving any share to them in the property and transferring the house in favor of their mother in his will.

Role of marriage counselors and mediators

The human psychology is Wide Ocean where there are goldfish, poppies, sharks and whales if the whales are larger dreams and ambitions, the goldfish and poppies are happiness in abundance. Whereas the sharks are methods to rule the mind wherein till greed comes in front of them they would not respond. The mediator has to rule the mind of both the parties and play with the psychology of people in such a manner as to make them understand the ultimate object is preservation of family. What the human mind fails to understand is the very factor of understanding itself which is highlighted in mediation, counseling and negotiation, where the human mind is given an option to realize what it actually wants. The human mind becomes subtler and more responsive.

The role of Alternative Dispute Resolution can be traced back to historic times. The practice has been continuing even before the British introduced the concept of formal court system. The disputes of various families were decided amicably by the elders and respected people of the village collectively called as the panchayats. Slowly and gradually along with the establishment of courts mediation especially with respect to family matters has

¹² Narendra v. K. Meena, AIR 2008 (SC).

¹³ AIR 2015, (PUBHC).

¹⁴ AIR 2012, (ALLHC).

been given a greater importance. The art of mediation requires the mediator to understand the source of the problem, the source of the psychology of problem, the source of the demand made by both the sides. Last but not the least the ability to find a solution by overcoming psychological barriers.

In a mediation traditionally both the parties are brought together and made to speak out their problems which of course on the Indian front would be the literal creation of Kurukshetra war but this war is with dialogue and not with weapons, it's a war of minds where the mediator's mind is that of Lord Krishna and once both these sides have chosen to lay down their weapons to abuse and shouting, the mediator gives both an opportunity to recall what exactly caused the problem wherein both the sides are even able to recall the pleasant memories because after all the Pandavas and Kauravas was also brothers who played and ate together, so the mediator personally listens to both the sides and understands the barrier pulling both the sides apart, he understands the cause, the effect and he also understands the weaknesses and when he shares the same with both the sides in a manner where an amicable solution may be drawn. Both the sides tend to come down to a reasonable solution on their own, thus ensuring the Kurukshetra war doesn't have to end in bloodshed as it once originally did.

But then the mediation may not be the right solution to every problem because sometimes in order to help a stubborn mind, you also need a one on one approach where comes in the very aspect of digging down to the roots of the psychological problems of persons mind, thus enabling him to understand the problem is within himself and no other world, and where comes the wisdom of Birbal from Mughal empire who could go down to the source of the problem and understand an individual easily and effectively thus coming out with a powerful solution through counseling. Usually counseling is an aspect that has been seen amongst husband, wife, siblings, children of old aged parents and even second wife/the children of second wife.

A counseling task is nothing but creating a sense of sensibility within a person's soul so that the person is able to make sensible decisions and not end everything that took years to nurture. A counselor will always listen to both the sides and not try to make the people come out with the solution but actually help people to understand why one needs a solution at one place which can only be achieved by breaking through the stubborn wall created between the minds of individuals. A counseling procedure can

take hours, days, and can even sometimes fail, but it is the closest method to find an everlasting solution. The very fundamental method behind finding solution through counselor requires years of practice in the art of psychology, psychoanalysis, psycho matrix.

In this process, the counselor needs to firstly: Calm the person down, create a methodology where the person can trust the counselor and start to share everything and this is only possible with time and proper dialogue between the counselor and the person and once the counselor has managed to understand the crux of the problem the counselor will draw out an amicable solution and convince the person as to why a beautiful solution should be drawn. Over the past the counselors have been successful in many cases where there is a need for people to realize why court is not the ideal solution.

- **Marital counseling:** It is performed by counselors through diagnosis, therapy, and treatment of personality and relationship problems. Marriage counselors come from the field of psychiatry, social work, psychology, and other related fields. Counseling aims at helping people to help develop insight and understanding into the nature of problems and the causes and factors which produced them.
- **Marital mediation:** Mediation is dispute resolution mechanism to resolve the disputes among spouses. Marital mediation can be opted when couples have “failed” marriage counseling. The mediator’s goal is to help parties resolve their conflicts by agreeing to behavior changes in specific problem areas. Improved relationships may result from the process of communication in mediation, as well as from the process of trust building which occurs when the parties make and keep commitments to one another.¹⁵

Marital disputes are very different in nature from any other kind of legal dispute as it involves families, emotions, sentiments, motivation, personal liabilities, and social responsibilities of both the parties. In such a case directly coming to a conclusion without any counseling or mediation will destroy both the partners. The counselors and mediators play a very important role as they have to deal with the heavy emotions and misunderstanding between the partners. Therefore, to save the institution of marriage there is heavy responsibilities on courts to find out a way out instead of breaking the marriage. It is mandatory by the law for making a

¹⁵ Flower Harper and Mariam Harpert, *Lawyers and Marriage Counseling*.

serious attempt for reconciliation between parties. Section 23(2) of the Hindu Marriage Act, 1955 makes it obligatory and mandates the court before making or arriving upon any conclusion or decision every endeavor has to be made to bring reconciliation between the parties and for the purpose of aiding such reconciliation the court may even adjourn the proceedings¹⁶. Under Section 89 of the Civil Procedure Code, 1908 the court is given power and jurisdiction to refer the dispute or litigation to an arbitrator without even existence of an arbitration clause and under Code of Civil Procedure Order XXXIIA Rule 3 imposes duty upon courts to make efforts for settlement in suits relating to matters concerning a family therefore making it binding for court to give wise chance to arrive at a conciliated or negotiated settlement.

In *Smt. Hina Singh v. Satya Kumar Singh*¹⁷ the judgment passed by the Family Court was challenged whereby the judges ordered for dissolution of marriage by mutual consent and grossly ignoring all the mandatory provisions of settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat as under Civil Procedure Code, 1908 and Hindu Marriage Act, 1955. The High Court set aside the impugned order and considered as being erroneous in law and observed “in matrimonial disputes Order XXXIIA was inserted as because for the sensitive area of personal relationship special approach is needed keeping in view the forefront objective of family counseling as a method of achieving the ultimate object of preservation of the family”.

Conclusion

A country cannot progress if people of that country do not have faith in the legal system, a country's development can be seen through capability of its legal system to render justice. Pending litigation has become a major problem, more than countless number of cases that are pending in the district courts and with the shortage of judges. It has now become the need for an hour to solve the disputes by an amicable settlement through Alternative Dispute Resolution. Especially in any matter relating to family dispute whether divorce, maintenance, custody, or any matrimonial cause should be settled through mediation since the ultimate goal is to preserve the interest of the family and not break the institution of marriage.

¹⁶ Section 23(3) of Hindu Marriage Act, 1955.

¹⁷ AIR 2007, (JHRHC).

The Supreme Court in *Gaurav Nagpal v. Sumedha Nagpal*¹⁸ observed that:

People rushing to courts for breaking up of marriages should come as a last resort, and unless it has an inevitable result, courts should try to bring about conciliation. The emphasis should be on saving of marriage and not breaking it. As noted above it is more important in cases where the children bear the brunt of dissolution of marriage.



¹⁸ AIR 2009 (SC) 557.