

WIDENING CONCEPT OF CRUELTY AS A GROUND OF DIVORCE: A POST-MODERN APPROACH

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Abstract

Marriage is a social union or a legal contract between two people called spouses who possess certain rights and obligations. As there is increase in the number of marriages every day, at the same time breakdown of marriages in the society has also been seen to be increasing whether by fault of husband or wife. Though cases filed by wife against husband and in-laws claim maintenance and divorce but all complaints are not bona-fide. So, misuse of the cruelty on the name of is very much relevant in the coming time. Though there are plenty of laws in this regard for one party only which left the other party with no security In this insight, the paper explores the various issues related to misuse of this ground of divorce i.e., cruelty and also its expanding horizons and try to analyze its postmodern approach with the help of pertinent judicial interpretations. So the need of the hour is to introduce some provisions to safeguard the rights and interests of the other party too.

Key words: marriage, cruelty, misuse of law, post-modern approach

Introduction

In India, marriage defines as a social union or a legal contract between man and woman Called spouses to get social status in the society that establish various rights and obligations upon both the parties. According to Hindu Marriage Act, 1955, Hindu marriage is considered as a sacrament. It totally transforms one's entire life style, manner of living and creates a new sphere of duties, privileges, joys, obligations etc. But the idea of the Hindu marriage does not only restrict to two consenting adults. It is the union of two entire families which can be deducted from various rites and ceremonies happened in the wedding ceremony. It is one of the important religious sacraments which cannot be dissolved just like that.

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But in today's dynamic society, what is happening the breakdown of marriages has been seen to be increasing whether by fault of husband or wife. Earlier in British India, courts did not allow divorce except in certain communities in which it was permitted by custom. Before Hindu Law Committee i.e., Rao Committee has found evidences that there were number of cases of breakdown of marriages where re-marriage was desired but was not permissible. So with this, The Hindu Marriage Act came into force on 18th May 1955 wherein divorce was permitted only to mitigate greater hardship for grave reasons.

The Hindu Marriage Act, 1955 provides various grounds of divorce but it did not include cruelty as a ground of divorce. It was mentioned only as a ground for judicial separation. Later, with the development of matrimonial obligation it was realized that there is no use of maintaining such a marriage which has lack of emotional bond or support between the two parties.

With the Act 44 of 1964, an amendment had come therein permitting parties to obtain decree for divorce just two years after passing of the decree for judicial separation on ground of cruelty, provided the parties do not resume co-habitation in the meantime. However it was only after a lapse of two decades vide Act 68 of 1976, parties were permitted to seek divorce on the ground of 'cruelty' being practiced by other spouse. So, The Hindu Marriage (Amendment) Act, 1976 includes cruelty as a ground for divorce.

Now the question arises what constitutes cruelty? Cruelty is a term which cannot be defined in the limited words. It was held in *Ravi Kumar v. Julmi Devi*¹, that cruelty has no definition; in fact such definition is not possible. It is not necessary that what is considered as cruelty today should be considered as cruelty tomorrow or vice versa. For instance, In *Holmes v. Holmes*², the husband's conduct was highly reprehensible. He used to assault and abuses his wife and once he demanded upon sexual intercourse with her in the presence of two other men. In spite of all this men was not held guilty on the ground of cruelty. But now days, such acts come under cruelty. There is however, a sea change in the attitude of the courts. So, one cannot close the concept of cruelty under four walls. In *Gurdevkaur v. Sarwan Singh*³, where the court laid down the principle that cruelty has to be defined with regards to social conditions as they exists in the present day, and not according to the rigid tents of Manu.

¹ (2010) I DMC 411 SC.

² (1755)2 Lee: 161 ER 283.

³ AIR 1959 Punj, 162.

The concept of cruelty is widening its scope day by day. All the complaints which are filed are not bona fide. So, misuse of law now comes into the picture. As the society is changing, the scenario is also changing. So, the researcher tries to analyze the whole concept of cruelty as a ground of divorce in various perspectives with the help of various judicial interpretations.

Aims & objectives

The aim & objective of this research paper is to critically analyze the different facets of cruelty as a ground of divorce with the help of pertinent judicial interpretations. Also, this paper tries to deal with the post-modern approach of cruelty and tries to highlight the misuse of this ground by the women section of our society.

Scope & limitations

The research paper limited its scope to some prominent considerations of cruelty as a ground of divorce in Hindu Marriage Act, 1955 only.

Literature review

- **Satyajeet A. Desai, “MULLA HINDU LAW”, 21st Ed., 2010**

The book dealt with all the Acts related to Hindus. It consists of The Hindu Marriage Act, 1955; The Hindu Succession Act, 1956; The Hindu Minority and Guardianship Act, 1956; The Hindu Adoptions and Maintenance Act, 1956 etc. It also deals with the sources of Hindu laws. The book is very much useful for the in depth study of the concept of cruelty. It explains the expanding horizons of cruelty with the help of pertinent judicial interpretation. It says that the legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined by any statute of the Indian legislature relating to marriage and divorce; nor has the expression been defined in the Matrimonial Causes Act, 1950. But instead of that it tried to explain or define cruelty with the help of some case laws. It also dealt with some broad general principles of cruelty like intention, physical assault, mental assault etc.

- **Kusum, “FAMILY LAW LECTURES, FAMILY LAW I”, 3rd ed., 2011**

This book provides a comprehensive, authoritative and lucid treatment of the various grounds of divorce. The work touches upon and explains various facets of cruelty which is one of the

important grounds for divorce. It explains the post-modern approach of cruelty. The concern in this era of modern matrimony is, how to strengthen the institution of marriage, where relations are considered as formality and what should be the mechanism to vigor the family values in the upcoming generation, where spouses are not ready to accept challenges of modern life. Now, there is an increasing trend of the misuse of this clause which has been beautifully explained in this particular book.

- **Paras Diwan, “FAMILY LAW”, 9th ed., 2009.**

In British period, there was no concept of divorce. That time courts did not allow divorce except in certain communities in which it was permitted by custom. But when The Hindu Marriage Act came into force on 18th May 1955, divorce was permitted to mitigate greater hardship for grave reasons. So, what was the reason behind that? So, the book provides the reason of this specific question. The book is very much useful for tracing the origin of the concept of divorce and cruelty.

- **U.P.D. Kesari, “MODERN HINDU LAW”, 9th ed., 2013**

As the name of the book reflects, it exclusively deals with the Hindu Law only. It explains the nature of Hindu law in the Rigvedic period, Samvedic period, Vedic period etc. It comprises of various sources and schools of Hindu Laws, the whole concept of marriage in Hindus, divorce, maintenance, adoption, inheritance and succession, minority and guardianship etc.

Research questions

- What are the expanding horizons of cruelty as a ground of divorce in terms of social and legal perspective?
- What is the post-modern approach of this widening concept of cruelty?
- How in today’s society women are taking advantage and misusing this ground?

Research methodology

The research methodology used is purely doctrinal method. A large number of books written by several authors, articles and internet sources are used to conduct the research since the topic demands an in depth study of the concept of cruelty as a ground of divorce. Tools taken in the project preparation have been

secondary. The only primary source which has been referred is the bare Act.

Cruelty as a ground of divorce: Social and legal perspective

Unless allowed by custom, divorce was not recognized by the general Hindu law as administered by courts in British India.⁴ It is conceded in all jurisdictions that public policy, good morals and the interest of the society require that the marriage relation should be surrounded with every safeguard, and its severance allowed only in the manner and for the cause specified by law.⁵ Divorce is not encouraged and permitted only for grave reasons. Moreover, even when any ground laid down in the section exists, the court will not as a general rule entertain a petition for divorce within one year of the marriage.⁶ That limitation of one year will show that the intention of the legislature was to provide for opportunities for mutual adjustment and reconciliation.⁷

As enacted originally Hindu Marriage Act, 1955 did not have cruelty as one of the grounds for seeking divorce. The Legislature of Uttar Pradesh wished to include cruelty as a ground for divorce and with that view in mind by its Act No.13 of 1962, Section 13 of the Hindu Marriage Act was amended to include cruelty as a ground for divorce. In 1976 Parliament amended Section 13 of the Hindu Marriage Act, to make cruelty also a ground for divorce. This amendment extended to the whole of India except the State of Jammu and Kashmir. So, in this way, The Hindu Marriage (Amendment) Act, 1976 includes cruelty as a ground for divorce.

Various personal laws have included the statutory provisions of cruelty as a ground for matrimonial relief. But this research paper is restricting its scope to Hindu marriages only. Section 13(1)(ia)⁸ of The Hindu Marriage (Amendment) Act, 1976 says that if the respondent has persistently or repeatedly treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.⁹ After the amendment,

⁴ SATYAJEET A DESAI, MULLA HINDU LAW 905 (21st ed. 2010).

⁵ *Ibid.*

⁶ Section 14: No petition for divorce to be presented within one year of marriage.

⁷ SATYAJEET A DESAI, MULLA HINDU LAW, 905 (21st ed. 2010).

⁸ 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-(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty.

⁹ *Ibid.*

parliament had deleted words “as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.”¹⁰ In *G.V.N. Kameswara Rao v. G. Jalili*¹¹, it was held that cruelty need not be of such nature as to create reasonable apprehension that it would be harmful for petitioner to live with the other party. It would be cruelty if the act is committed with an intention to cause suffering to the other party.¹² But later, when it was accepted that the objective of a good divorce law is to protect the innocent party, the intention as an essential ingredient of cruelty was abandoned. Basically, cruelty should be determined by the court if it will satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it has become impossible for them to live together happily or without mental agony, torture or distress.

Of all the matrimonial offences, cruelty is probably the most difficult to define. The idea, the meaning and the concept of cruelty changes from time to time, varies from place to place and differs from individual to individual. It is not the same for persons situated in different economic conditions and status. Perhaps this is the reason why the Legislature has not, in any of the Acts, defined as to what cruelty is and has left it to the best judgement of the Judiciary to decide as to what amounts to cruelty to a particular person in a particular set of circumstance. In *Sukumar v. Tripati*¹³, it was held that the legislature and judge deliberately avoided formulating any definition of cruelty, because acts of cruelty are infinitely variable, and no attempt at drawing a complete list as to what constitutes cruelty can ever succeed. Under The Hindu Marriage Act, cruelty includes both physical as well as mental cruelty¹⁴. But now with the remarkable development of cruelty, it has been interpreted, so as to bring the concept in consonance with social facts and needs of the

¹⁰ In doing so the intention of the Parliament appears to be that it did not wish to define the legal conception of cruelty and the kind and degree of cruelty necessary to amount to a matrimonial misconduct giving a right to the other spouse to bring a petition for judicial separation or for divorce. Parliament appears to have avoided the danger of any attempt at giving a comprehensive or inclusive or exclusive definition of 'cruelty' and left it for the Judge-made-Laws. As such the matter is now left to the courts to determine on the facts and circumstances of the case whether the conduct amounts to cruelty or not.

¹¹ A.I.R. 2002 S.C. 576.

¹² PARAS DIWAN, FAMILY LAW 161 (9th ed. 2009).

¹³ AIR 1992 Pat 32.

¹⁴ Mental cruelty can particularly be defined as that conduct which inflicts upon the other party such mental pain as would make it not possible for that party to live with the other.

contemporary society. In *Dastane v. Dastane*¹⁵, an attempt was made to define cruelty. It is defined as it may be subtle or brutal, physical or mental. It may be words, gestures or mere silence. In *Russel v. Russel*¹⁶, (contains the earliest formulation of cruelty and to a great extent that formulation is still valid), cruelty is defined as under:

“Cruelty is a conduct of such a character as to have caused danger to life or health, bodily or mental, gives rise to reasonable apprehension of such danger.”¹⁷

Expanding horizons of cruelty

There is no proper criteria that particular act would come under cruelty or not. What would constitute cruelty would depend on various factors like social, cultural and economic background of the parties, their way of life, mental and physical conditions etc. Day by day the concept of cruelty is widening its scope. Now, it could be physical or mental or emotional, direct or indirect, intended or unintended. In *B.N. Panduranga v. S.N. Vijay Laxmi*¹⁸, husband claimed that his wife was schizophrenic and narrated certain acts of her wife like removing mangalsutra and kumkum, throwing bangles etc. However, in spite of all this he lived with her for four years. Court held that it will not come under cruelty. Also, court held that “while arriving at such a conclusion, regard must be given to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together and all other relevant facts and circumstances.”¹⁹ However, In *Parin Mehar Seshu v. Parimi Nageshwar Sastra*,²⁰ court held that removing mangalsutra was considered to constitute cruelty because such type of an act is not acceptable from an educated Hindu Brahman woman. To claim that the particular act will come under cruelty, it is necessary to prove that the act is more serious than the ordinary wear and tear of marriage. In *Bajrang Gangadhar v. Pooja Bajrang Revdekar*²¹, a husband petition for divorce alleging cruelty by wife on the fact that the wife makes her grievances in loud voice. Court dismissed his petition and according to the court, instances alleged to establish her cruelty were only day to day quarrels over trivial matters and normal wear and tear is expected in every

¹⁵ AIR 1975 SC 1534.

¹⁶ (1997) AC 303.

¹⁷ *Ibid.*

¹⁸ AIR 2003 Kant 357.

¹⁹ *Ibid.*

²⁰ AIR 1994 AP 92.

²¹ AIR 2010 Bom 8 at 13.

matrimonial home. In 2010, an interesting case had come before the Bombay High Court in which a petitioner, a homoeopathic practitioner claimed for a divorce on the ground of cruelty. She said that her in-laws forced her to wear sari. Above petition was dismissed. A division bench of justices A.P. Deshpande and Rekha Sondurbaldota held that it will not amount to cruelty under the Hindu Marriage Act, 1955. In *Neelu Kohli v. Naveen Kohli*²², it was held that not any and every abnormal act of the other party can be viewed as mental cruelty.²³ So, the act will come under cruelty or not depends upon the court's interpretation as to keep in tune with the changing times. In *Abha Gupta v. Rakesh Kumar*²⁴, it was held that to force the partner to have a sexless life damages the physical as well as mental health of that partner. So, it would come under cruelty. There is a landmark case of *Praveen Mehta v Inderjit Mehta*²⁵, in which husband had filed a divorce petition against the wife on various grounds like allegation of non-cooperation in conjugal relationship as the result of which the marriage was not consummated, her abusive and the rude behaviour in the presence of elders and outsiders, police complaints against him and his partners, making false allegations that she has conceived and there was miscarriage, etc. The couple had lived together hardly for six months and were separated for ten years. All efforts to bring her around failed. And the court held that the acts which have been alleged were grave enough to constitute mental cruelty. In *Kalpna Srivastava v. Surendra Nath Srivastava*²⁶, A wife refused to prepare tea for her husband's friends and lodged false report on non-bailable offences against him and his relatives and also got rid of her pregnancy, the court held her guilty of cruelty.²⁷ In *Manisha Tyagi v. Capt. Deepak Kumar*²⁸, a wife comparing her husband with a barking dog and also filing false cases against him, and further making allegations of sodomy against him, and molestation against the father-in-law, was held to be guilty of cruelty against her husband. In *Mohinder Kaur v. Bhag Ram*²⁹, mere false allegation of second marriage has come under cruelty. Another landmark case which has set precedents for various other cases is of *Dastane v. Dastane*³⁰. In this case, the parties were highly educated and belonged to elitist

²² AIR 2004 All 1.

²³ *Nirmala Jagesha v. Manohar Jagesha*, AIR 1991 Bom 259.

²⁴ (1995) 1 HLR (P & H).

²⁵ AIR 2002 SC 2582.

²⁶ AIR 1985 All 253.

²⁷ *Alka Dadhich v. Ajay Dadhich*, AIR 2007 (NOC) 1558 (Raj).

²⁸ 2007(1) HLR 297 (P&H-DB).

²⁹ AIR 1979 Punj 71.

³⁰ AIR 1975 SC 1534.

class, were married on May 13, 1956. Two daughters were born out of the wed lock. On February 27, 1961, the wife left the home while she was three months pregnant. The husband filed a divorce petition under section 13(1)(iii) of Hindu Marriage Act, 1955. The husband alleged that her wife was treated for schizophrenia but her father fraudulently represented that she was treated for sunstroke and cerebral malaria. The court held that this constitutes cruelty on husband and divorce was given by the court. Also, mere allegations and counter allegations without proof thereof have been held to have constituted cruelty. There are two related cases in which Supreme Court has given this new angle to the concept of cruelty in matrimonial matters. In *Smt. Chanderkala Trivedi v. Dr. S.P. Trivedi*³¹, husband had filed a divorce petition on the ground of cruelty. The wife had filed a written statement alleging intimacy of her husband with another lady doctor after this, the husband came out with a case of undesirable association of the wife with young boys. Lower court dismissed the petition but the High Court granted divorce on the ground of cruelty. The wife appealed in the Supreme Court. The Supreme Court maintained the decree for divorce on certain conditions that the husband would provide a flat and Rs. 2 lacs for the welfare of the wife and the findings of fact recorded by the lower courts were deleted. Justice A.M. Sahai, speaking for the Bench observed, "Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband against wife as have been made in this case, then it is obvious that the marriage of the two cannot in any circumstance be continued any further."³² So, mere allegation of cruelty against a spouse without any convincing and cogent evidence amount to cruelty.³³ But, merely because there are allegations and counter allegations, a decree for divorce cannot follow.³⁴ Another ground of cruelty was noticed in *Mango v. Prem Chand*³⁵ and *Rabindranath v. Promila*³⁶. The court had adopted a more rational and logical view by holding that cruelty by the in-laws amongst whom the wife is normally expected to live, tantamount to cruelty committed by the husband especially if he does nothing to prevent or mitigate it.

³¹ JT 1993 (4) SC 644.

³² *Ibid.*

³³ Pramod Bijalwan v. Satindra Dutt, AIR 2008 (NOC) 508 (Utr.).

³⁴ V. Bhagat v. Mrs. D. Bhagat, AIR 1994 SC 710.

³⁵ AIR 1962 All 447.

³⁶ AIR 1979 Ori 85.

Changing scenario: A postmodern approach

The above chapter dealt with the various facets of cruelty. The concept of cruelty is widening its scope day by day which increases the misuse of this ground. The time has come in which small act of the either party which forms the reason to not continue the marriage would amount to cruelty. Though, it is the duty of the court to decide the case on the basis of facts and circumstances. There is a remarkable change in the development of cruelty that it has been so interpreted as to bring the concept in consonance with social facts and needs of the contemporary society.³⁷ The ground of cruelty is an important aspect as misuse of Laws by the parties in society is increasing day by day with a very high pace and most apparently some Indian Urban educated women are using these laws as a weapon to unleash personal vendetta on their husbands and relatives. It is a tragedy that the law which was enacted to protect the interest of a particular group of people in a marriage is now being misused by the same group of people. This can be seen with the help of various judicial interpretations. For Instance, lodging false criminal complaints by the wife against husband and her in-laws, threatening to leave husband's home and threat to commit suicide by the wife, cruel behavior of wife where she refuses to cook food properly or on time and breaking of the mangalsutra in the presence of husband's relatives, wife refusing to have sex with husband without any sufficient reasons regarded as one of the ground of cruelty and for such mental cruelty, husband can file a divorce petition on the ground of cruelty like, lowering reputation of the husband by using derogatory words in presence of family members and elders, conduct and misbehavior of the wife against husband i.e., pressuring husband to leave his home, insisting for the separate residence, mentally torture and disrespectful behavior towards husband and in-laws as well etc. there are some other grounds of cruelty too i.e., mental disorder and unsoundness of wife, Impotency of wife, illicit relationship of wife with a man other than her husband and etc.

Earlier it was a trend that only women can be subjected to cruelty by their husband, in laws and other relatives but now the whole conception and presumption has been changed. So, there are various pertinent judicial interpretations in which wife were held as 'cruel' to the husband:

³⁷ PARAS DIWAN, FAMILY LAW 162 (9th ed. 2009).

In *Mrs. Deepalakshmi Saehia Zingade v. Sachi Ramesh Rao Zingade*³⁸, a petitioner/wife filed a false case against her husband on the ground of 'Husband Having Girl Friend' which is proved as false in a court of law so it can be considered as cruelty against husband.³⁹

In *Anil Bharadwaj v. Nimlesh Bharadwaj*,⁴⁰ a wife who refuses to have sexual intercourse with the husband without giving any reason was proved as sufficient ground which amounts to cruelty against husband.

So, from above judicial interpretations it can be deduced that the glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relatives is fast emerging. A strict law need to be passed by the parliament for saving the institution of marriage and to punish those women who are trying to misguide the court by filing false reports just to make the life of men miserable and 'justice should not only be done but manifestly and undoubtedly be seen to be done'.

A critical analysis

Cruelty is given as one of the ground for divorce. The term in itself is very vague and impossible to define. It includes physical as well as mental acts which makes impossible for the other party to live with his/her partner and to continue with the marriage. The term is very sensitive and should be used very carefully. Various acts like demand of dowry, domestic violence by husband and his family, expectations for a boy child from the woman despite of the fact that the gender of the baby entirely depends on the male, use of abusive language or offensive words by either of the party, mental torture by threatening someone to commit suicide, false complaints and allegations by either of the party etc come under the meaning of cruelty. The concept of cruelty as a ground for divorce came into an existence to preserve the interests of aggrieved party. But, with the development of the society, concept of cruelty has widened its scope, which opens the chance to misuse of this ground. The parties to the marriage are changing the definition of cruelty for their own benefits. Judicial interpretation has also widened its scope to the great extent which can be easily seen with the help of certain case laws.

³⁸ AIR 2010 Bom 16.

³⁹ *Ibid.*

⁴⁰ AIR 1987 Del 111.

In *Kalpna v. Surendranath*,⁴¹ it has been observed that where a wife who refuses to prepare tea for the husband's friends and the frequent insults on various occasion were declared by the court as cruelty to husband.

In *Parin Mehar Seshu v. Parimi Nageshwar Sastra*,⁴² the court held that removing mangalsutra was considered to constitute cruelty because such type of an act is not acceptable from an educated Hindu Brahman woman.

In *Nijhawan v. Nijhawan*,⁴³ a wife/petitioner claimed that her husband does not perform sexual intercourse in spite of the fact that the couple had already a child. It was held that even in the case where the child was born out of marriage, sexual weakness of husband can be held as a valid ground for divorce. Marriage without sex is an anathema. Sex is the foundation of marriage and without a harmonious sexual activity marriage is of not of much use.

Widening scope of cruelty can be easily deducted from the above judicial interpretations. For example, in the first case cruelty was declared on the ground that wife refused to prepare tea for the husband's friends. It was held that she not only hurts his ego but causes him humiliation before his friends who may not be tiring of lavishing praises on their wives. According to the judicial interpretation in this case, this comes under cruelty. This is the irony of this time that although the term 'Cruelty' contains very big and terrified problems of either parties to marriage but due to the widening scope or in other words can be said, due to the change in the meaning of marriage and its sanctity, narrow problems are coming within the ambit of Cruelty. Such change reconstructs the whole purpose of cruelty. Mental cruelty should be of such type which creates apprehension of danger, fear and torture in the mind of aggrieved party. But here, only to refuse to prepare tea in front of husband's friend neither creates any apprehension of danger, fear and nor creates such problems which form the situation of divorce.

In second case, it was held that only removing of mangalsutra by an educated Hindu Brahman Woman would amount to cruelty. It should be on woman's choice whether she wants to wear mangalsutra or remove it.

⁴¹ AIR 1985 All 253.

⁴² AIR 1994 AP 92.

⁴³ AIR 1973 Del 200.

In last case, sexual weakness of husband can be held as a valid ground for divorce which is valid in one sense because marriage without sex is an anathema. Sex is the foundation of marriage and without a harmonious sexual activity marriage is of not of much use. But, in this case the couple had already a child in spite of that this petition was entertained and held valid.

On the one hand, our judiciary incorporated this ground for the safeguard of aggrieved party in the marriage. Also, judiciary defines cruelty in such a way that the act should be grave enough to constitute the ground of cruelty. Before giving divorce, they first try to settle the dispute between the parties, if conditions become such worst that there is no alternative remain then only divorce happens. But such cases show that because of its widening concept cruelty seems to be a negative ground which can be easily misused by either of the party.

Conclusion

In India, the scope of Hindu personal law is very wide in covering divorce, and the recent new landmark judgments laid down new meaning and scope of cruelty which has further widened its scope with the change of time. Cruelty basically means unwarranted and unjustifiable conducts on the part of defendant which cause endure suffering and distress to the other spouse thereby destroying his/her peace of mind and making living with such spouse unbearable and impossible, completely destroying real purpose and object of matrimony. It would of course be difficult to define the expression, there cannot be any hard and fast rule in interpreting cruelty and therefore the term cannot be put in a water tight compartment. It must be judged on the facts of each case having regard to the surrounding circumstances. Whether one spouse is guilty of cruelty is essentially a question of fact and previously decided cases have little value. But the concern in this era of modern matrimony is, how to strengthen the institution of marriage, where relations are considered as formality and what should be the mechanism to vigor the family values in the upcoming generation, where spouses are not ready to accept challenges of modern life. Recent trends in matrimonial cases have shown a shift from traditional divorce to fabricated divorce on baseless grounds, and for which to prove their personal affiliation rather priorities sometime they exaggerate to take the plea of either dimension of cruelty which was recently done by the women. The judiciary is only a hope in this regard to suggest or formulate an apparatus by which the real intension of the parties can be judged.

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