

'MATRIMONIAL CRUELTY': THE CHANGING DIMENSIONS

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Abstract

Divorce as rule in all the matrimonial laws, is based on the number of grounds upon which the spouses of marriage can seek the remedy to terminate the marriage bond. Marriages has its significance in the every individuals life, but it's also important to discuss the intricacies of the separation as it's a right provided to all men and women on different grounds to the separate if the marriage is not considered happy. Recognizing the changing rates of marriage and divorces especially, on ground of cruelty is necessary in analyzing today's family structure. Courts play an important role in striking a balance between the changing needs of the society and protection of the freedom of the individual the paper analyses the concept of cruelty was non-existent under ancient law, The Supreme Court and the High Courts who are the protectors of constitutional rights through several judgments have elaborated the exact extent and nature of the cruelty ensuring to protect the guarantee given by the Constitution. The judgments in fact have clarified the law to a large extent and subsequently cruelty as ground of matrimonial relief was introduced by Parliament under various personal laws in India. The author shall make a comparative study of concept and evolvement of cruelty as a ground of matrimonial relief refereeing progressive judicial approach, Law Commissions reports and legislations on it.

Key words: matrimonial cruelty, matrimonial relief, divorce

Introduction

Cruelty is ground for matrimonial reliefs under all the matrimonial laws in India. Though the term has been defined but it has been used in respect of or in relation to conjugal duties and responsibilities. It is course of conduct which is adversely affecting the other. The legal concept of cruelty is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. It may be mental or

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physical, intentional or unintentional. According to apex court¹, the theory of cruelty has varied from time to time, from place to place and from individual to individual. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by the standard of modern civilization in the background of the cultural heritage and traditions of our society. Of all matrimonial offences cruelty is probably most difficult to define because acts of cruelty are indefinitely variable, further the act or conduct which may be regarded as cruelty in one may not be regarded cruel in another. The court has observed that 'cruelty has no definition; in fact such definition is not possible. In matrimonial cases it can be of infinite variety.

The concept of cruelty is very subjective because it varies with time, person and place. The same also indicated in earlier legal commentaries and cases. According to Blackstone², under the old English law, a husband could correct his wife even by beating. Chaucer gives an instance (among others) where a husband broke the legs of his wife since she disregarded his instructions to visit a particular place. According to Manu, a husband should beat his wife only with a rope or split. In an early English case *Russel v. Russe*³ cruelty is defined as 'it is a conduct of such a character as to have caused danger to life or health, bodily or mental, give rise to reasonable apprehension of such danger'. But now there is, sea change in the attitude of the courts, In recent judgments acts of physical violence by husband against their wives are highly disapproved⁴. As pointed aptly by Justice Grover⁵, 'cruelty has to be defined with regard to social conditions as they exist in the present day, and not according to the rigid tenants of Manu and other law givers of bygone ages. The courts have also observed that concept of cruelty is fast changing thus it has to be viewed against background of way of life of parties, qualifications, the length of married life, their social & economic conditions, mental & physical conditions etc., thus, even, precedents cannot be always relied upon.

¹ Vinta Saxena v. Pankaj Pandit, AIR 2006 SC 1662.

² Commentaries on the Laws of England, Fourth Edition at pp. 444-45.

³ (1897) AC 303.

⁴ Shyam sunder v. Shantamani, AIR 1962 Ori 50; Gurchanran Singh v. Waryam Kaur, AIR 1960 Punj.

⁵ Gurdev Kaur v. Sarwan Singh, AIR 1959 Punj 162.

Statutory provisions

Cruelty as ground for matrimonial relief has been included under various personal laws as:

- **Hindu law**

In Hindu Marriage Act, 1955 according Sec. 13 (1)(ia) “Any marriage solemnized, whether before or after the commencement of this act, may on the petition presented by either husband or wife, be dissolved by a decree of divorce on the ground that the other party has after solemnization of marriage, treated the petitioner with cruelty”. It was added by Marriage Laws (Amendment) Act, 1976 earlier it was only ground for Judicial separation⁶. Another significant change brought about by 1976 amendment is that the concept of cruelty has been enlarged, earlier it was confined to “such cruelty so as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party, however, now the petitioner has simply to establish that the respondent has ‘treated the petitioner with cruelty’”. Now there is no condition as regards the nature or fear of injury or harm. The grounds for judicial separation and divorce being common, alternate relief⁷ and conversion of decree of divorce to judicial separation and vice-versa are permissible, depending on where the marriage is completely broke down or there is scope of reconciliation⁸.

- **Special Marriage Act, 1954**

This statute covered cruelty as ground for matrimonial relief under Sec. 27 (1)(d) & Sec. 23, which is similar to Hindu Marriage Act, 1955.

- **Parsi law**

With amendment in year 1988 a new clause 32 (dd) was added in Parsi Marriage and Divorce Act, 1936, thus, brings concept of cruelty at par with Hindu law and Special marriage Act. Prior to 1988 it was only ground for judicial separation⁹. But the old clause retained under Sec. 32 (e) which states “it amounts to cruelty if defendant has infected petitioner with

⁶ Sec. 10 of Hindu Marriage Act, 1955.

⁷ Sec. 13-A, Hindu Marriage Act, 1955.

⁸ Refer cases: *Manisha Tyagi v. Deepak Kumar*, AIR 2010 SC 1042 (Divorce decree converted to Judicial separation); *Chetan Kumar Naik v. Geetaben*, AIR 2012 Guj. 68 (decree of judicial separation converted to divorce).

⁹ Sec. 34 of Parsi Marriage and Divorce Act, 1936.

venereal disease or has compelled her to be prostitution or caused voluntarily grievous hurt¹⁰ to petitioner”.

• **Christian law**

Indian Divorce (Amended) Act 2001 has completely transformed the original Act¹¹ and the now its ground for divorce under Sec. 10 (x) and for judicial separation under Sec. 22. The statutory position now as regards cruelty is that a marriage may be dissolved if the respondent ‘has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent. Prior to 2001 amendment, a wife could seek divorce if the husband had been guilty of cruelty coupled with adultery. The husband could not take the plea of wife’s cruelty to obtain dissolution; he had only ground available to him was adultery. But cruelty, as ground for judicial separation was available to both the parties to marriage and it continues post 2001 amendment also.

• **Muslim law**

A Muslim husband may divorce his wife without assigning any reason or pleading any ground. Before enactment of Dissolution of Muslim Marriage Act, 1939, Muslim wife had limited right of divorce by way of *khula* or *Mubarat*. But under this Act she has statutory right to obtain divorce on certain grounds, wherein cruelty is one of the grounds. Under Act¹² a wife may file petition for divorce on the ground that the husband treats her with cruelty, that is to say,

- habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
- associates with women of evil repute or leads an infamous life,
- attempts to force her to lead an immoral life, or
- disposes of her property or prevents her exercising her legal rights over it, or

¹⁰ *Ibid.*, Sec 2 (4) defines “grievous hurt”.

¹¹ Indian Divorce Act, 1869.

¹² Sec. 2 (viii) of Dissolution of Muslim Marriage Act, 1939.

- obstructs her in the observance of her religious profession or practice, or
- if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran.
- **Criminal law**

For safeguarding the interest of woman against cruelty which they face behind the four walls of their matrimonial home, the Indian Penal Code, 1860 was amended in 1983 and inserted Sec. 498A¹³ which deals with 'Matrimonial Cruelty' to a woman. Matrimonial Cruelty in India is a cognizable, non-bailable and non-compoundable offence.

- **Domestic Violence Act, 2005**

Any kind of abusive behavior by husband or male partner or their relatives (includes male and female relatives). It need not be physical abuse. It could also be verbal, emotional, sexual or economic abuse. This is a special law focused on victims and giving them relief from domestic violence. Women can file an application under this law. This does not stop her from seeking other civil or criminal action against the offenders.¹⁴

Judiciary approach in granting relief on 'cruelty'

The Indian courts have given objectively extensive connotation to legal cruelty:

- **Intention to be cruel:** The definition has been shaped and re-shaped to fit the needs of the society and to ensure maximum protection to the weak and helpless. It is however important to keep in mind, at this stage. In *Gollins v. Gollins*¹⁵ the husband was lazy and was heavily indebted and wife as to face creditors & bailiffs, though no physical harm but strain of debt tell upon her health. The court held "What's important is the conduct of respondent and not his state of mind." Motive, malignity or malicious intention has never been considered as ingredient of cruelty. There are hardly any cases on it under Indian

¹³ Sec. 498 A – It can be invoked only by married women on husband or relatives willful conduct likely to drive woman to commit suicide/cause grave injury/danger to life.

¹⁴ Sec. 2(a) read with Sec. 3 of Domestic Violence Act, 2005.

¹⁵ (1963) 2 All ER 966.

Divorce Act and Parsi Marriage and Divorce Act, 1936. But under HMA courts held without any hesitation that intention is not necessary. In *P.L. Sayal v. Sarla*¹⁶ the parties married in 1948, had two children but it was not happy marriage. Wife was crazy to get husband love & affection, consulted with fakir who gave portion to be administered by husband. He became ill with slow fever, giddiness & ultimately nervous breakdown with vomiting, loss of weight, abdominal burning, backache and other complications. He has to be admitted in hospital, during entire period wife was attending him day and night, repenting her conduct & her eyes were wet with tears constantly. On discharge husband filed petition for judicial separation (as then not ground for divorce). The court granted the decree observing parties state of mind irrelevant.

- **Act or conduct aimed at the petitioner or his/her near & dear ones:** A display of temper, emotion or perversion, giving vent to one's feeling, may amount to cruelty. In the case of *Ivens v. Ivens*¹⁷ the criminal and indecent assault by husband on his step- daughter amounts cruelty to wife. Later same was confirmed in *Trimabak Narayan Bhagwat v. Kumudini T. Bhagwat*¹⁸, husband acts were aimed at wife's brother and her father amount to cruelty.
- **Act or conduct must be that of respondent or his instance:** In India most couples lives in joint family and many times wife is subjected to in-laws cruel acts in which husband play no part. In *Shyamsunder v. Santadevi*¹⁹, soon after marriage wife was locked up, kept without food, ill-treated by in- laws, husband stood idly taking no part neither did anything to protect her. It was held "unintentional omission to protect wife amounts to cruelty".

Classification of cruelty

- **Physical cruelty:** Cruelty contemplated by the aforesaid legislations may be both physical and mental. Acts of physical violence resulting in injury to body, limb, health

¹⁶ AIR 1961 Punj. 125.

¹⁷ (1954) 3 All ER 44.

¹⁸ AIR 1967 Bom. 80.

¹⁹ AIR 1962 Ori. 50.

or causing reasonable apprehension of the same. In *Saptami v. Jagdish*²⁰ husband constantly abused and insulted the wife, ultimately one day push the wife at her father's house against the wall. It was the clear case of cruelty. If it is physical the court should have no problem to determine it because it is a question of fact and degree.

- **Mental cruelty:** It is the mental cruelty which may pose a problem and may present difficulty with the courts. It may not be possible for the courts to define mental cruelty exhaustively can broadly be defined as that conduct which inflicts upon the other party such mental pain and sufferings as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put in with such conduct and continue to live with the other party. Now mental cruelty need not be proved to be such as to cause danger to the health, limb or life of the petitioner. Cruelty should be of the type which 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 without mental agony, torture or distress.²¹

What would or not constitute mental cruelty is very subjective issue. It may not be single act or incidence but cumulative impact of respondent conduct on aggrieved party. In *Praveen Mehta v. Inderjeet Mehta*²² the apex court observed “Mental cruelty is state of mind and feeling, therefore, a matter of inference and inference has to be drawn on facts and circumstances taken cumulatively.”

Grounds and cases related to mental cruelty

- **Usually callous, neglectful and harassing conduct:** The two Indian cases provide excellent illustration of it. In *N. Sreedecharya v. Vasantha*²³, wife use to quarrel, insult, abuse, humiliate husband on trivial matters at public

²⁰ (1969) 87 CWN 502.

²¹ Justice A. K. Srivastava, Judge, Delhi High Court, *Cruelty as a ground for divorce or for judicial separation under the Hindu Marriage Act, 1955* Vol. 1(2) J.T.R.I. JOURNAL (1995).

²² AIR 2002 SC 2582.

²³ AIR 1970 Mysore 232.

places & made him laughing stock in locality. On one occasion insulted & humiliated in public bus & caught hold of him collar One day she made him cook food for her, when he served, she threw away plates saying it was badly cooked & he must apologize to him. Another day when he was going to office she caught hold him of neck & humiliated him before his friends. She uses to say that she wants her husband to die in an accident so that she could be provided with his provident fund & insurance money. This all made husband life miserable, husband had sleepless nights & started keeping ill- health. The apex court has held that mental cruelty is a state of mind and feeling thereof, a matter of inference and this inference has to be drawn from the circumstances taken cumulatively.

It has to be noted at this stage that an unusually callous conduct or negligence alone cannot be proof of cruelty. *Dastane v. Dastane*²⁴ presents a high watermark case on mental cruelty. Mrs. Dastane used to make all sorts of vile, filthy and false allegations not merely against the husband but also all the members of the family. She vehemently abused him and swore to drag his entire family to ashes. She rebuked him publicly and even tore off her mangalsutra twice. She was mentally unbalanced but it made husband suffer. This was a clear case of mental cruelty.

- **False accusation of adultery or unchastity:** In *Saptmi v. Jagdish*²⁵, the husband constantly called wife prostitute, a girl on street like that. Later in, *Rajesh Kumar v. Rekha Singh*²⁶ court held “gang rape is neither cruelty nor adultery as rape is without consent. Further a rape victim doesn’t require divorce suit slapped on her but requires counseling, understanding, and moral support.” The courts held in multiple cases that if husband makes a false charge of adultery the wife can sue on that basis²⁷.
- **Demand of dowry:** The demand of dowry from wife or her parents amounts to cruelty.²⁸ However, making complaints

²⁴ AIR 1975 SC 1534.

²⁵ *Supra* 20.

²⁶ AIR 2005 All 16.

²⁷ *Refer, Ayesha v. Abdool* (1934) 59 Cal LJ 466, & *Ralla v. Imaman*, AIR 1949 All 445.

²⁸ *Sobha v. Mahukar*, AIR 1988 SC 1291.

to redress a grievance cannot per se constitute cruelty, unless they are false, malicious or motivated.²⁹

- **False complaint to employer:** In *Harbhajan Singh v. Amarjeet Kaur*,³⁰ the wife lodged false complaint against husband to his bank employee. In letters alleged that husband committed fraud in bank & he had withdrawn certain amount from bank by forging signatures. These were serious allegation if proved true he would be dismissed.
- **False criminal complaint:** Making a false criminal complaint and prosecuting the husband and his relative amounts to cruelty. *Naveen Kohli v. Neelu Kohli*³¹ the husband filed for divorce on grounds of 'cruelty', trial Court recorded specific finding about wife harassing and torturing husband, mentally, physically and financially. Decree of dissolution of marriage passed by trial Court marriage under Section 13, Hindu Marriage Act. The respondent against the appellant has filed number of cases including criminal complaints and every effort has been made to harass and torture him and even to put the appellant behind the bars by the respondent. The apex court held that "the word "cruelty" is used in Section 13(1)(i)(a) of the Act in the context of human conduct or behavior in relation to or in respect of matrimonial duties or obligations. Physical violence is not absolutely essential to constitute cruelty. A consistent course of conduct inflicting immeasurable mental agony and torture may constitute cruelty. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party". Hence court set aside the judgment of the High Court and directs that the marriage between the parties should be dissolved.
- **Second marriage:** False allegations of second marriage are mental cruelty.³² Mere allegation of cruelty against a spouse without any convincing and cogent evidence would in itself amounts to cruelty.³³ In *Sumer Sharma v.*

²⁹ M. Pushpalatha v. M. Venkateshwerlu, AIR 2010 (NOC) 709(AP).

³⁰ AIR 1986 MP 41.

³¹ AIR 2006 SC 1675. *Also refer* ,Gajalakshmi v. R. Saravanan, AIR 2004 NOC 459 (Mad); Harish Kumar v. Anita, AIR 2003 MP 197; Johnson v. Anita, AIR 2003 MP 271.

³² Mohinder Kaur v. Bahg Ram, AIR 1979 Punj 71.

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

*Madhurlata Sharma*³⁴ the first wife was not able to conceive, husband treated her with cruelty & married again, held cruelty by husband.

- **Impotency:** It needs not to be incurable to get relief.³⁵ Non-consummation of marriage by wife & rude and abusive behavior held cruelty.³⁶ Denial for conjugal relationship may be:
 - result of sexual weakness of respondent disabling him for union with appellant or;
 - because of willful by respondent.
- **Drunkeness:** It is *per se not cruelty*. It was held in *Chand v. Saroj*³⁷ “drunkness coupled with violence (forcing to eat non-veg & alcohol) amounts to cruelty, though not excessive drunkness.” But in *Raj v. Raj*³⁸ held “excessive drinking may amount to cruelty if cause great anguish & distress to other spouse who finds living together not only miserable but unbearable.”
- **Refusal to have children or termination of pregnancy without consent:** Parenthood is normal desire of every human being. A spouse who deprives the other of this pleasure and desire would be causing mental agony to the spouse.³⁹ Thus where a wife terminated pregnancy for her modeling career, spouse resort to sterilization, or *coitus interruptus*, refuse to access to spouse, thereby depriving the other of parenthood.
- **Deprivation of property:** In *Jagdish v. J. Saini*⁴⁰ husband took away jewelry of wife and sold it, held by court that ornaments carry sentimental value hence ground for cruelty if deprived of it. But where wife sells away the house gifted by her father, without her husband’s consent does not amount cruelty to husband.⁴¹

³⁴ AIR 2000 MP 26.

³⁵ *Samar v. Snigdha*, AIR 1977 Cal 213.

³⁶ *Praveen Mehta v. Inderjeet Mehta*, AIR 2002 SC 2582.

³⁷ AIR 1975 Raj 88.

³⁸ AIR 1984 Del 291.

³⁹ Kusum, ‘Deprivation of Parenthood: Whether amounts to Matrimonial Cruelty’, *Madras Law Journal* Vol. II, 1978, pp 28-30.

⁴⁰ 1978 HLR 304.

⁴¹ *K. Sreedevi v. K. Vidyasagar*, AIR 2014 (NOC) 405 (AP).

- **Birth of illegitimate child:** In *Madanlal v. Sudesh Kumar*,⁴² a child was born within six month of marriage. The suit was challenged because under Sec. 12 (2)(b)(ii) on ground of pre-marriage pregnancy petition for annulment must be filed within 1 year of marriage. Suppose if person fails to do so, should he be allowed to take recourse u/s 13 (1)(ii)(b)? Held that it amounts to cruelty, the judgment is socially just as no husband can live with it.
- **Ignorance to maintain:** In *Umat-ul-Hafiz v. Talib Husain*⁴³ the husband went abroad leaving behind two wives; he made maintenance provisions for one but ignored other. On suit of divorce by wife the court granted decree for divorce.

Conclusion

The legal concept of cruelty has varied from time to time and from society to society with the change in social economic conditions. In early law intention was considered to be essential element of cruelty; in modern law it is no longer so. Then modern law takes the view that the objective is to accord protection to the innocent party. Cruelty is one of the facts indicative of breakdown of marriage and the wordings of clauses under various personal laws give cruelty a very elastic meaning. Through amendments time to time in definition of cruelty under personal laws now includes both omission and act are ground for matrimonial relief in form of judicial separation and divorce. Despite the progressive approach of courts in matters of reliefs sought on ground of cruelty there is always threat on family structure of society. Dennings, L.J's warned once that 'if the doors of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament', he also stated 'the temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled'⁴⁴. There are large volume of case law around the legal concept of cruelty in India as well as abroad. Since the human nature is basic everywhere, the foreign decisions may be useful to us, but it should also not to be forgotten that in India a very large number of couples live in joint families, and living in the joint family has its own challenges and its peculiar problems which may not arise elsewhere.

⁴² AIR 1983 Del 93.

⁴³ AIR 1945 Lah 56.

⁴⁴ *Kaslefaky v. Kaslefaky*, (1950) 2All ER 398 at 403.

Since cruelty as concept defies definition and cannot be determined by rigid formula it must be judged after taking into account all the facts and circumstances of the case. It may be that various acts or conduct complained of, by itself and in isolation to each other, do not amount to cruelty, but in overall effect they amount to cruelty. It may also be emphasized that the existence of cruelty depends not on the magnitude of acts or conduct but on consequence they produce on the other party. As general rule is that the matrimonial relations must be considered as a whole and this rule is of special value when cruelty consists of not violent act but of injurious reproaches, complaints, accusations or taunts. Since no watertight definition of cruelty is possible, thus, any conduct of one spouse which causes disgrace to other spouse or subjects him or her to a course of annoyance and dignity must amount to legal cruelty. There can be no uniform definition of cruelty and it will be decided as per the facts and circumstances of every case⁴⁵, as also Lord Denning had held⁴⁶ that categories of cruelty in matrimonial cases are never closed.



⁴⁵ Raj Talreja v. Kavita Talreja, (SC) decided on Monday, April 24, 2017.
⁴⁶ Sheldon v. Sheldon (1963).