



CRUELTY AS A GROUND FOR DIVORCE: A SWORD OR SHIELD

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ABSTRACT

This article is an attempt to reflect the concept of cruelty in the present world. Since cruelty is considered to be the major ground for divorce due to the increased numbers of dissolution of marriage on this ground therefore the author has chosen this specific ground for research at this need of the hour. The fallacious use of the protective law which has been legislated for cruelty is now being shamefully used as a weapon against the other. The loopholes in interpreting the law are now being twisted and crumpled as per the requirements of the litigants.

KEYWORDS : cruelty, mental cruelty, torture, matrimonial relations

INTRODUCTION

The Shorter Oxford Dictionary defines 'cruelty' as 'the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness'. The term cruelty means the intentional infliction of physical or mental distress especially when considered for granting of divorce. The Hindu Marriage Act, 1955 under Sec 13(1) (1-a) articulates the provisions relating to cruelty as the other party has, after the solemnisation of the marriage, treated the petitioner with cruelty. This provision did not define the term cruelty. Under section 498(A) (a) of Indian Penal Code defines cruelty as any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Cruelty thus may be Physical or Mental. Physical Cruelty constitutes a violence of certain degree where bodily injury is inflicted or where there is reasonable apprehension of danger to life, limb or health. Mental Cruelty denotes a set of circumstances of malicious false accusation, rudeness, forcing wife to prostitution, threatening a pregnant wife, subjecting the other partner to indignity. Prior to the amendment, the Supreme Court examined this concept in the landmark case of N.G Dastane v. S.Dastane, the court observed that "the enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent." In the case of Sirajmohmedkhan v. Haizunnisa & anr., the Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. Wherever cruelty is to be examined the entire background of the life of the parties to marriage has to be considered. In matters of cruelty continues acts of cruelty has to be established. In V. Bhagat v. D. Bhagat, it was observed by the court that mental cruelty in Section 13(1) (1-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with other. Mental cruelty is of such a nature that the parties cannot reasonably be expected to live together. Though it is for the court to decide the case based on facts and circumstances but what constitutes cruelty is an important aspect of all concern. The law has been misused by both husband and wife in filing suit for divorce against each other taking the ground as cruelty. Even a mere happening or not happening of event has also creates a distance and misunderstanding between parties which inclines towards the ground for divorce. The essential ingredients of cruelty are fact of Separation, Intention to bring cohabitation to an end, absence of consent and absence of conduct giving reasonable cause to quite the matrimonial relations.

CRUELTY AGAINST HUSBAND

Physical violence is not absolutely essential; a uniform course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of the Hindu Marriage Act, 1955. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leads to constant disturbance of mental peace of the other party. In Gangadharan vs T.K. Thankam, The cruelty should be of such a nature as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent that it would be impossible for them to live together without mental agony, torture or distress to entitle the party to secure divorce. In The conduct of the wife should be so grave and weighty that the husband cannot reasonably be expected to live with the wife. It must be serious than ordinary wear and tear of married life. While deciding cruelty the court must read the mind of the parties to evaluate their conduct. In such a situation it is difficult to start with a presumption that parties are reasonable people because it is hard to think and behave as reasonable people. In the case of Neelima Verma v. Manish Kumar, the Apex Court deemed it appropriate to enumerate the instances of human behaviour which may be relevant in dealing with the cases of mental cruelty. One of the instances reflects mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

Every person has the right to have dignified life and enjoy personal liberty. Doing a job is not a bad thing but without the consent of the spouse amounts to cruelty. In Surinder Kaur v. Gurdeep Singh, case where wife accepting job at a place different from marital home without consent of the husband, which rendering her unable to discharge her marital duties imposed upon her by the marriage. Hence from it could be inferred from the conduct of the wife that she had withdrawn from the marital home without reasonable excuse and hence amounting to cruelty against husband.

There are various circumstances where neither the parties nor even the trial court or High Court could able to understand and fails to interpret the provisions laid down under Section 498 (A) of the Indian Penal Code relating to the essentiality of cruelty. In Mangat Ram v. State of Haryana, the Supreme Court has made it crystal clear for the attraction of Section 498 (A) of Indian Penal Code. To attract Section 498(A), the prosecution has to establish the wilful conduct on the part of the accused and that conduct is of such a nature as is likely to drive the wife to commit suicide. The Supreme Court fails to see how the failure to take one's wife to his place of posting, would amount to a wilful conduct of such a nature which is likely to drive a woman to commit suicide again they fail to see how a married woman left at the parental home by the husband would by itself amount to a wilful

conduct to fall within the expression of 'cruelty', especially when the husband is having such a job for which he has to be away at the place of his posting.

In *Imlesh v. Amit*, case the wife is taking the advantage of Section 498(A) and filled a case under it but the court is of the opinion that levelling indecent allegations against the father-in-law and also involving the husband and his family in false case on the criminal side, was sufficient to treat the respondent with cruelty though it may be mental alone and the husband was entitled to a decree of divorce and the wife was not entitled to any relief.

After the solemnization of the marriage and with the promise taken by both the parties before nuptial fire the spouses are obliged to perform their conjugal duties. In *Smt. Sangeeta Shukla v. Ganesh Shukla*, where wife not doing any domestic work and abusing her in-laws and her husband, not caring for in his illness, quarrelling with him and going to her parents place amounts to cruelty and husband is entitled for the decree of divorce

CRUELTY AGAINST WIFE

Even in the absence of specific act, cruelty can be established if cumulative effect of acts and omissions on part of spouse created sense of humiliation, insecurity and harassment in other spouse. In *P. Jayaram v. Smt. P. SudhaLaxmi*, case nothing on record disclosing that wife had ever exhibited any disrespect towards parents of husband so cruelty was not by established by the husband. Even when wife went to her parent's house for delivery of child after delivery no attempt was made by the husband to bring her back despite requests by wife and her family members. Thus show acts and omissions on part of husband created sense of humiliation, insecurity and harassment with wife.

Cruelty in law is different from what we understand in its generic sense. In *A. Jayachandra v. Aneel kaur*, the Supreme Court held that the expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree.

If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

In another instance when the family members of the wife are insulted in her presence on small matters it is an act of cruelty. Under the matrimonial relations, the wife can always reasonably visit the house of her parents even she is married and she sacrifices for the sake of her husband. It does not mean that she ceases her relations with her parents permanently. If she makes reasonable demand to visit the house of her parents rarely, it is not a bad demand nor, it should be held to be unreasonable demand. The females are very sensitive in nature. They can tolerate and hear any insult committed by her husband but it is very difficult for them to tolerate or bear the insults of their parents, brothers and sisters as held in the case of *Balwinder Kaur v. Bhajan Singh*.

CONCLUSION

The matrimonial relations are made in heaven. The basic requirements of a successful relationship include sharing common interests, communicating on a regular basis, showing appreciation and affection, embracing intimacy, and showing real empathy. Ups and downs may arise in life but to overcome it is the art of a successful life. Even the law permits cruelty as a ground for divorce but one should not use it as a sword or shield in his/her matrimonial relief unless the situation demands.