



## The Concept of Cruelty in Hindu Marriage Act in India

\* Prof. Kamlesh M. Pandya.

\* Assistant Professor, SHETH D.L.LAW COLLEGE., Bhuj-Kachchh (Gujarat), India.

### ABSTRACT

*The era of 1955 is the most important for the Hindu. Pre 1955 era was considered as uncodified Hindu Law. It was the need of that era that led the Parliament to enact four Acts for the Hindu. The Hindu Marriage Act, 1955 is one of the examples of them. Inter Caste Marriage, Marriages with widow, Re marriages all are not taboo by the Act as all were in pre-1955 era. Even Marriage is considered as a pious knot in Hindu Law. Hindu Law is based on Hindu Religion. So, there was no any provision for DIVORCE in uncodified Hindu Law. The Male-dominated Hindu Society was ended by the Hindu Marriage Act. Both the spouse are entitled for DIVORCE. However, Cruelty has always been a burning topic for the SUPREME COURT OF INDIA regarding this Act. The concept of CRUELTY have been mentioned both in the provisions for JUDICIAL SEPERATION and DIVORCE. However, it is difficult task to consider cruelty even after 59 years i.e., from the enactment of the Act.*

**Keywords : The Hindu Marriage Act – Cruelty – Mental and Physical types – Various facts – Supreme Court of India – English Cases- Wear and tears of life.**

### (1) INTRODUCTION:

Before 1955 era, it was not so easy to get divorced for a Hindu person. Because as per Hindu Religion, the marriage was considered as a pious knot. So we cannot find any provision for Divorce in uncodified Hindu Law that is known as, Shashtras, Puranas, Ved and other pious or holly books related with Hindu Religion. Considering various stigmas in social life of the Hindu, the parliament decided to enact laws related with the Hindu. However, it was a difficult task to do so. The Hindu Marriage Act, 1955 revolves round the valid marriage between the Hindu, Valid rites of Hindu marriage, provisions for maintenance and divorce. The provisions for divorce as well as judicial separation have been taken from the concept of Western theory. So, the western theory has been entered by way of codification in Hindu Society! Cruelty is the ground of DIVORCE and JUDICIAL SEPERATION between the parties.

### (2) HINDU MARRIAGE ACT, 1955- A BIRD EYE VIEW :

The Hindu Marriage Act, 1955 is the Act No. 25 of the year 1955. This Act is the separate Act for all the Hindu Community, whether belongs to MITAKSHAR or DAYABHAGA or other Hindu Branches. The short title says that the purpose of the Act is to amend and codify the law relating to marriage among Hindus. There are 30 Sections in the Act. As per Section 2 of the Act, the Act is applicable to Hindu, Jain, Sikh and Buddhist. It has been also mentioned that the Act is not applicable to Muslim, Christian, Parsi and Jew. Section 3 is the Interpretation Clause, as it defines the terminologies that have been used in the Act. Section 5 deals with VALID MARRIAGE. Section 6 deals with the guardianship in the matter of marriage. The most important provisions deals with the Act are as such:

SECTION 9 : The Restitution of Conjugal Rights.

SECTION 10 : The Judicial Separation.

SECTION 13 : Divorce.

SECTION 22 : In camera Procedure.

SECTION 24 and 25 : Temporary and Permanent Maintenance respectively.

Other sections deal with the ceremony of Hindu Marriage, of-fences related with marriages, procedures to be followed in such cases and other matters related with marriages.

### (3) PROVISIONS FOR CRUELTY:

#### 3.1 CRUELTY, one of the grounds for JUDICIAL SEPARATION:

Section 10(1) (b) : Either party to a marriage, whether solemnized before or after the commencement of the Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party has 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.

#### 3.2 CRUELTY, one of the grounds for DIVORCE:

Section 13(1)(i-a) : 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 has, after the solemnization of the marriage, treated the petitioner with **CRUELTY**.

#### 3.3 Effect of Condonation of CRUELTY:

Section 23(1)(b) : In any proceedings under this Act, whether defended or not, if the court is satisfied that the ground of the petition is the ground specified in clause (f) of sub-section 10, or in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been necessary to or connived at or condoned the act or acts complained of, or where the ground of petition is **CRUELTY**, the petitioner has not in any manner condoned the cruelty, then in such a case, but not otherwise, the court shall decree such relief accordingly.

### 4. MEANING OF CRUELTY:

Section 2 is the interpretation clause of the Act. But neither in Section 2 nor in any section of the Act, has the meaning of the word cruelty been mentioned. So in this case, the respected court has to depend on external aid in each case. Our honourable supreme court of India has been depending on the decisions of English courts regarding this matter since the commencement of the Act. After verifying various decisions

of the honourable judiciary of our country, we can give the meaning of cruelty as such:

1. CRUELTY INCLUDES PHYSICAL AND MENTAL CRUELTY.
2. CRUELTY IS THE **RES GESTE** THAT ADVERSE AFFECTS ON THE MENTAL AND PHYSICAL HEALTH, SOCIAL STATUS AND LIFE STYLE OF THE OTHER PARTY.

#### 5. CASE STUDY RELATED WITH CRUELTY IN MATRIMONIAL MATTER:

In the case of Smt. Mayadevi Vs. Jagdish Prasad : A.I.R. 2007 SUPREME COURT 1426, honourable Justice Dr. Arijit Pasayat, in para 13 says "the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven."

It means, if the tolerance extends beyond limit, then a party has to approach before the court.

These are some examples related with this matter.

#### 5.1 WESTERN CASES:

Indian Judiciary has to depend on the decisions of the English courts. As our legislation has adopted the concept of divorce from the western legislation, we cannot ignore the cases of honourable WESTERN CASES.

#### 5.1.1: RUSSEL V. RUSSEL: 1897(A.C.)(395) ( HOUSE OF LOARD) :

In this case, Earl Russel and Mabel Scott married in 1890 and then in December 1891, Mrs. Russel filed a petition of Judicial Separation against Mr. Russel. She accused her husband of committing sodomy with a male friend. However, she could not win in the case. Thereafter, Mr. Russel filed a petition for Judicial Separation stating that it was the cruelty on the part of her wife by making false charge of sodomy. And it was granted and then Mrs. Russel made an application for Appeal against the decision. The Appeal authority decided cruelty as a conduct of such character as to have caused danger to life, limb or health or as to give rise to reasonable, apprehension of such danger.

#### 5.1.2: BUCHLER VS. BUCHLER: (1947) 1 ALL.E.R. 319

The case has been mentioned in Mamta Namdeo Vs. Ghanshyam Bihari Namdeo : A.I.R. 2013 Chhattisgarh 88 in para 13 mentioning a case decided by Calcutta high court in 1989.

In this Buchler Case, it so happened that the husband formed an association with a male friend. This caused the wife a great distress and she had to face comments from relatives and neighbours. The husband did not pay proper attention of her request to end the relationship and also cleared his throat to leave if she did not like it. When she approached for considering cruelty in the side of husband, it was held by honourable Lord Asquith that there must be something more serious than ORDINARY WEAR and TEAR OF THE MATRIMONIAL LIFE. So it was not considered as cruelty in this case.

It means that to constitute a cruelty in the side of petitioner, the petitioner should prove that the facts are such as that is more serious than ordinary wear and tear of the matrimonial life.

#### 5.1.3: SHELDON VS. SHELDON : (1966) 2 ALL.E.R. 257 :

On 8<sup>th</sup> July 1950, Richard Sheldon, then aged 26, married Barbara Sellers, then aged 21. In 1958, the husband had to go on his work to Scotland for about a year. He came home occasionally for weekends; but he never had sexual intercourse with his wife on these visits. It continued even after his return from Scotland after 1 Year. They used to sleep in same bed but the husband did not respond to the wife. It affected on

the health of the wife, even the doctor had to speak with the husband about his conduct. But all had been proved a vain. Thereafter she filed a divorce petition on the ground of cruelty against her husband.

Honourable Judges, Lord Denning MR, Davis L.J. and Salmon L.J. Decided that the husband's refusal of sexual intercourse over so long period without excuse, causing great injury to his wife's health, amounted to cruelty. The petition was granted.

#### 5.2 INDIAN CASES:

It began from 1975 that Indian Judiciary had to peep in the life of the spouse to find out the meaning of cruelty. No doubt, Indian Judiciary had to decide the cases by the external aid, such as, the decisions of English court, relevant books related with family matters and what not!

I've mentioned 10 cases decided by Indian Judiciary.

#### 5.2.1: DR.NARAYAN GANESH DASTANE VS.SUCHETA NARAYAN DASTANE (1975 A.I.R.1534 SUPREME COURT OF INDIA)

Both the parties were well educated and from reputed families, though the circumstances made the husband to file a petition of Divorce against his wife on the ground of cruelty.

#### Allegations of Husband ( Dr.Dastane )

- (1) The respondent used to describe the appellant's mother as a boorish woman;
- (2) On the day of 'Paksha' (the day oil which oblations are offered to ancestors) she used to abuse the ancestors of the appellant;
- (3) She tore off the 'Mangal- Sutra';
- (4) She beat the daughter Shubha while she was running a high temperature of 104°;
- (5) One night she started behaving as if she was 'possessed'. She tore off the Mangal-Sutra once again and said that she will not put it on again; and
- (6) She used to switch on the light at midnight and sit by the husband's bedside nagging him through the night, as a result he literally prostrated himself before her on several occasions.

#### Allegations of WIFE (Sucheta )

"Special instructions given by my husband.

- (1) On rising up in the morning, to look in the mirror.
- (2) Not to fill milk vessel or tea cup to the brim.
- (3) Not to serve meals in brass plates cups and vessels.
- (4) To preserve carefully the letters received and if addresses of anybody are given therein to note down the same in the note book of addresses.
- (5) After serving the first course during meals, not to repeatedly ask 'what do you want?' but to inform at the beginning of the meals how much and which are the courses.
- (6) As far as possible not to dip the fingers in any utensils.
- (7) Not to do any work with one hand.
- (8) To keep Chi. Shuba six feet away from the primus stove and Shegari.
- (9) To regularly apply to her 'Kajal' and give her tomato juice. To make her do physical exercise, to take her for a walk and not to lose temper with her for a year.
- (10) To give him his musts and the things he requires when he starts to go outside.
- (11) Not to talk the calendar."

In this case, it was decided that all the facts deal with the behavior of wife can be amounted to MENTAL CRUELTY. But as the husband has condoned the cruelty of his wife by continued sexual relation with her, as per section 23(1) of the Hindu Marriage Act, the divorce petition cannot be granted.

#### 5.2.2: SHOBHA RANI VS. MADHUKAR REDDY: AIR 1988 SC 121

Shobha Rani, the appellant, the wife was a post-graduate in biological sciences. The husband, Madhukar Reddi was a

medical doctor. They were happily married on December 19, 1982. But their happiness did not last longer. They started exchanging letters with bitter feelings. Then they began to accuse each other. At one stage, they thought of winding up by mutual consent. But unfortunately, it did not materialize. Ultimately they landed themselves in the Court. The wife moved the Court for divorce on the ground of cruelty. The wife in her evidence before the Court has stated:

“My Mother-in-law always used to make demand for money from my parents. I used to tell my parents about what was happening to me in that house. I used to keep silent when my mother-in-law made demands for money. The respondent also sometimes used to make demands for money. I used to tell him as to why should I ask money from my parents, and I also used to tell him that I would not ask my parents. But he used to reply that such things were only there in olden times and not now and that therefore, I should ask money from my parents. There were fixed deposits receipts in my name in the Bank upto one and a half to two lakhs. Besides this there was house plot in my name at Jubilee Hills. I was afraid of telling my husband and my parents in law that I would not ask my parents for money. This I was afraid because I had an apprehension that something would be done to me either physically or mentally if I told them so. I entertained this apprehension because this went on regularly every day, that is their demands for money. I was afraid to go back again to the respondent's house because I felt that the pestering for money will go on like this. I, therefore, developed aversion for going back to the respondent. For that reason, I joined as a school teacher.”

The husband in his letter Ex. AI dated August 28, 1983 wrote to the wife:

“Now regarding Dowry point, I still feel that there is nothing wrong in my parents asking for few thousand rupees. It is quite a common thing for which my parents are being blamed, as harassment.”

The trial court said: “Though one would not justify demands for money, it has to be viewed in this perspective. The respondent is a young upcoming doctor. There is nothing strange in his asking his wife to give him money when he is in need of it. There is no satisfactory evidence that the demands were such as to border on harassment.”

Even honorable High Court has mentioned “Though one would not justify demands for money it has to be viewed in the circumstances from a proper angle. The respondent is a doctor, if he asks his rich wife to spare some money, there is nothing wrong or unusual.”

However, the honorable Supreme Court of India treated it as cruelty.

To demand dowry is cruelty. The Supreme Court has also held: “the word

‘Cruelty’ has not been defined. Indeed, it could not have been defined. It has been used in relation to or in respect of matrimonial duties and obligations. It is a course of 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 to determine it. It is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of cruel treatment and 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. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself

is proved or admitted.”

### **5.2.3: BROJA KISHORE GHOSH VS. SMT. KRISHNA GHOSH:**

**A.I.R.1989 CALCUTTA 327**

In this case honorable Calcutta high court in Para 10 says :” What act would constitute mental cruelty depend upon the circumstances of each case, e.g. environment, status in society, education, cultural development, local customs, social condition, physical and mental conditions of the parties. Each case depends upon a variety of facts and circumstances.”

### **5.2.4 : SMT.MAYADEVI VS. JAGDISH PRASAD : AIR 2007 SC 1426**

Appellant used to demand money from her husband for her father. She used to quarrel with her husband and she also used to beat her children. Once she left her husband's house with her three children who thereafter found in the well. The dead bodies of the children were taken out along with her. Then she was convicted for the murder of the children under section 302 of Indian Penal Code. All the facts were taken as res geste cruelty to her husband. The trial court and High court of Rajasthan confirmed her cruelty and divorce. On appeal the Supreme Court also affirmed the same.

### **5.2.5 : Mrs. Deepalakshmi Saehia Zingade v/s Sachi Ramesh Rao Zingade :**

**(AIR 2010 Bom 16)**

In this case 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.

### **5.2.6: SMT. SUMAN KHANNA VS. SHRI MUNNISH KHANNA:**

**Delhi High Court : 18/2/2011 :**

The wife was a constant influence of her parents and she used to leave the matrimonial house time and again at the instance of her parents. She also tried to commit suicide. Instead of serving food to the invited friend of the husband, she served merely tea and biscuits. In para 22, honourable Justice Shri Kailash Gambhir has held that PARANTS SHOULD NOT BECOME UNINVITED JUDGES OF THE PROBLEMS OF THEIR DAUGHTERS. Further it has been held that in this case, the parents, instead of putting out the fire have fuelled and fanned it. All the matters were treated as Cruelty and the Divorce was allowed. The appeal of the wife was not allowed.

### **5.2.7: SMT.SHASHI BALA VS.SHRI RAJIV ARORA:**

**Delhi High Court: 21/3/2012:**

The Petitioner of the case, the wife, was complaining from the beginning that the husband, the respondent was not a man of her taste. She did not response to participate in traditional ceremony of dud-mundri. She also did not take interest in the dinner after wedding. Even she did not allow her husband to have sexual intercourse at the first wedding night. She also filed false cases against her husband. All these were treated as MENTAL CRUELTY by the learned Judge of Delhi High Court. Further in Para 12, honourable Justice Shri Kailash Gambhir has held that SEXUAL INTERCOURSE IS A MEANS AND AN INTEGRAL ONE OF ACHIEVING ONENESS IN MARRIAGE.

### **5.2.8: VISHWANATH S/O. SITARAM AGRAWAL VS.SAU. SARLA AGRAWAL :**

**Supreme Court of India : 4/7/2012 :**

The wife had publicised in the newspapers that her husband was a womaniser and drunkard. She had also made false cases against her husband. All were treated as Mental Cruelty. The Divorce was granted in the appeal.

### **5.2.9: MAMTA NAMDEO VS. GHANSHYAM BIHARI NAMDEO:**

**A.I.R. 2013 CHH. 89**

They were married as per Hindu Rites sometime in June 1994. During this period, four children were born from the wedlock,

out of which one has died and three are alive and living with their father. According to the husband, she expressed unwillingness to live with him, as she wanted to marry with other person. She was in habit of abusing, misbehaving and threatening to inflict in false criminal cases including dowry cases. Then they started to live in separate rooms and then he was forced to file a divorce petition. Additional District Judge, Bemetara, in civil suit no.7-A\2004 granted the divorce petition on dated 21/9/2004. Hence, this appeal has been filed by the wife in the High Court.

Honorable High Court in PARA 18 says that Condonation means forgiveness of the matrimonial offence and restoration of offending spouse to the same position as he or she occupied before the offence was committed.

It means to constitute CONDONATION, there must be two things:

(a) FORGIVENESS and (b) RESTORATION.

As per Para 17, there should be evidence on record of the case to show that the appellants had condoned the cruelty.

It was decided that (a) The conduct of the wife is amounted as CRUELTY.

(b) But, the husband had condoned the cruelty of the wife by having sexual relationship with her. Because, at the time of filing of divorce petition, on 25<sup>th</sup> March 2000, indisputably, both were residing in the same house. Their fourth child, RUBY, was born on 12<sup>th</sup> May 2000. Even, the husband gave her full support till the birth of the fourth child. So, the appeal was granted in favor of Wife.

#### **5.2.10 : OM PRAKASH PODDAR VS. RINA KUMARI: DELHI HIGH COURT : DATED 23/7/2013 :**

The respondent, wife, used to taunt on the sub standard life style of the husband and his parents. The utensils, furniture and the accommodations were not fit for her servants of her parental house. As both the parties lived separately for Five Years, the honourable Delhi High Court granted the Divorce Petition in favour of the husband.

#### **(6 ) CONCLUSION :**

##### **6.1 : Regarding the meaning of Cruelty:**

It is true that the Cruelty is one of the grounds of Judicial Separation and Divorce. As the word cruelty has not been defined in the Act, it has to leave on the Judiciary to decide each and every case for deciding the same. Facts are the most important in each case. Because our Indian Judiciary says that cruelty can be decided by the education, life style and social status of the spouse. It means, cruelty in one case cannot be

treated as such in other cases. The life style of one case or class may be different than that of the other. And it opens the door of discussion for the courts in each case. By this way, the Act has been a heaven for the lawyers.

##### **6.2: Condonation by the victim party:**

Sec.23 (1) is the exemption of cruelty. If a party condones the cruelty of other person, than the party cannot approach before the court for Divorce or for Judicial Separation.

But it is up to the court to decide whether any party has condoned the other one or not!

If Mr. A is the victim of cruelty of his wife. He files a petition of Divorce in Family Court, and then on hearing her accident, he suddenly goes to her and supports her in her ill condition. Mr. A does this as a human being. But it may be argued in favor of the wife that as Mr. A has condoned the cruelty by making treatment and showing love and affection towards her, then our Judiciary cannot but rejects Mr. A's Divorce Petition.

On the other hand, suppose Mrs. X files a petition of Divorce against her husband. There after the court comes to know about the pregnancy of her. In such case, instead of accepting the Condonation, Mrs. X can blame marital rape against the husband. In such case, Mrs. X can get the decree of divorce. So, it is difficult to interpret the Condonation.

##### **6.3: To rely on English Case:**

It has been 59 years of this Act. But still in 21<sup>st</sup> Century we cannot do without the help of English cases. We are thankful to the English Courts to help us in this matter. But English cases are based on their own culture and life style. The life style and culture of Hindu Family are different than those of the western country. The devotion towards the family is also important in Hindu Family. Our Judiciary should rely on Hindu Shashtras or uncodified Hindu Law as external aid.

##### **6.4: The Fountain of Love and Affection: Test:**

Section 23(2) casts a duty on the court to decide whether the fountain of love and affection between the parties has been dried up or not. If the court does not fees so, than the court cannot grant the petition. However, it is difficult to know the same.

By this way, we can see that the word CRUELTY under the Hindu Marriage Act, 1955 has been a difficult task. The words of Justice Dr.Arijit Pasayat in Para 12 of Smt. Mayadevi Vs. Jagdish Prasad : A.I.R. 2007 S.C.1426, still rings in our ears : " 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."

#### **REFERENCES**

• www.supremecourtindia.nic.in | • www.delhihighcourt.nic.in | • All India Reporter. | • The Hindu Marriage Act, 1955. | • All England Law Reports. |