

Concept of Cruelty under Hindu Marriage

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INTRODUCTION

Hindu marriage is a holy sacrament in the life of a Hindu with other various sacraments, which are known as important for the complete life. Marriage is the valid way for male and female to live together and perform their duties and husband-wife are considered to be one in law. In 1869 the Indian Divorce Act was passed but it had remained in applicable to the Hindus and after the Independence on 18th may 1955 The Hindu Marriage Act has been passed which governs all the matters and situations related to Hindu marriage.

Marriage in one's life is a big thing. In our Hindu religion it is believed that marriage with a person is for seven births. It's not a child play. But sometimes such things takes place between the couple that they decide to part ways. Divorce is a legal term used for legal termination of marriage. Cruelty is one of the grounds of divorce.

Every marital conduct, which can cause annoyance to the opposite, might not quantity to cruelty. Mere trivial irritations, quarrels between spouses, that happen in regular married life, might also not quantity to cruelty. Cruelty in marital life is also of idle selection, which may be refined or brutal. it's going to be words, gestures or by mere silence, violent or non-violent.

To represent cruelty, the conduct complained of ought to be "grave and weighty" therefore on return to the conclusion that the petitioner mate can't be fairly expected to measure with the opposite mate. It should be one thing a lot of serious than "ordinary wear and tear of married life". The conduct taking into thought the circumstances and background has got to be examined to succeed in the conclusion whether or not the conduct complained of amounts to cruelty within the legal philosophy.

Conduct has got to be thought-about, as noted on top of, within the background of many factors like social station of parties, their education, physical and mental conditions, customs and traditions. it's tough to put down a certain definition or to present thoroughgoing description of the circumstances, which might represent cruelty. It should be of the sort on satisfy the conscience of the Court that the link between the parties had deteriorated to such extent thanks to the conduct of the opposite mate that it might be not possible for them to measure along while not mental agony, torture or distress, to entitle the whiney mate to secure

divorce. Physical violence isn't fully essential to represent cruelty and a regular course of conduct inflicting immeasurable mental agony and torture may well 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.¹

The word cruelty has not been defined in Hindu Marriage Act, 'cruelty' contemplated under clause (ia) of section 13(1) neither attracts the old English doctrine of danger, nor the statutory limits embodied in old sections 10(1)(b) of Hindu Marriage Act. After the amendment of 1976, cruelty contemplated by Section 13 (1) (ia) is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent or that it has become impossible for spouse to live together.²

A. Jyachandra V. Aneel Kaur

The Supreme Court has expressed the view cruelty. The expression "cruelty" has been issued in relation to human conduct or human behavior. It is a conduct in relation to or in respect of matrimonial duties and obligations. The cruelty may be mental or physical, intention or unintentional. If it is a physical, the Court will have no problem in determining it. It is question of fact and degree, if it is a mental, the problem presents difficulties. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other.

Anita Krishna Kumar Kachba v. Krishna Kumar Ram Chandra Kachba³

The court stated that "cruelty" is a relative term. It varies from person to person, and case to case. The allegation and conduct of one particular type may not amount to cruelty in all the cases. It depends upon the status of the spouses and the atmosphere in which they live, that has to be understood by seeing neatly the background behind it and effect which is likely to be caused by such allegations and conduct. Cruelty implies and means harsh conduct and of such intensity and persistence which would make it impossible for the spouse to operate the marriage. Cruelty, though not defined in the

¹Gadhre, THE INDIAN EXPRESS <<http://www.legalservicesindia.com/article/1900/cruelty-as-a-ground-for-divorce.html>> (28th Dec., 2019).

² Dr.U.P.D. Kesari, MODERN HINDU LAW 23(25th ed., 2019).

³ AIR 2003 Bombay 273.

Act, is to be determined on the basis of proved facts and circumstances of the case. No defined formula can be had for cruelty.

Features of Cruelty

The features of cruelty are as followed-

➤ Impossible for spouse to live together.

It is sufficient that if the cruelty is of such type that it becomes impossible for spouses to live together.

➤ False Allegations

The leveling of false allegation by one spouse about the other having alleged illicit relations with different persons outside wedlock amounted to mental cruelty.

➤ Cruelty on women's part

The husband cannot ask his wife that he does not like her company, but she can or should stay with other members of the family in matrimonial home. Such an attitude is cruelty in itself on the part of the husband.

➤ Social Torture

Social torture by anyone of the spouses to the other, found to be as the mental torture and cruelty.

➤ In case of mental health.

A party can cause mental cruelty when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health. Cruelty includes physical as well as mental cruelty. However, the applicability of term cruelty has been changing according situations.

Types of Cruelty

Basically the cruelty is of two types i.e. physical cruelty and mental cruelty

Physical Cruelty

Acts of violence against another spouse resulting in injury to body, limb or health or causing a reasonable apprehension thereto, have been traditionally considered as physical cruelty.

Laloo v. Bachi

It was laid down that in order to constitute physical violence, one or two acts are more than sufficient. Thus may be a single act of violence be so grave and weighty, that it could satisfy the test of cruelty but problem would arise in the cases where minor acts of physical violence are alleged by the party. Even in these cases there is no problem. It can be determined by keeping in view number of factors such as age, environment, physical and mental condition, status, education etc. it is well settled principle that in order to determine cruelty whole of matrimonial relations must be taken into consideration. The facts which are alleged by the parties must not be taken in isolation but cumulatively.

Thus ill-treatment, beating, causing bruises on the body etc. are all instances of physical cruelty.⁴

Mental Cruelty

Mental Cruelty has more devastating effect on health than physical violence. It directly effects the emotion of the person. However, in case of mental cruelty, a particular conduct has to be accessed in light of person with normal

psychological standards and not with person with hyper sensitive nature. Since mental cruelty can be inflicted in various shapes, no definite parameters can be laid down to define "mental cruelty". Mental cruelty is recognized as under:-

False accusation of adultery

- Refusal of marital intercourse.
- Undue familiarity with person of opposite sex.
- False charge of impotency.
- Drunkness
- Forcing wife to prostitution.
- Threat to commit suicide.

Hon'ble Supreme Court has defined mental cruelty in V. Bhagat v. D. Bhagat

Mental cruelty in Section 13(1)(i-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 the other. In other words, mental cruelty should be of such a nature that the parties cannot fairly be expected to measure along. the case should be specified the wronged party cannot fairly be asked to place up such conduct and still swallow different party. it's not necessary to prove that the mental cruelty in like, to cause injury to health of the petitioner. whereas inward at such conclusion, regard should be had to the status, instructional level of parties, the society they move in, the probabilities or differentwise of the parties ever inhabitation just in case they're already living apart and every one other relevant facts and circumstances that it's neither doable nor fascinating to line out thoroughly. what's cruelty in one case might not be cruelty in another case. it's a come to be determined in every case having concerning to the facts and also the circumstances of that case.⁵

Changing position of concept of cruelty Naveen Kohli Vs. Neelu Kohli [AIR 2004 All 1]⁶

Facts:

The appellant, Naveen Kohli got married to Neelu Kohli on 20.11.1975. Three sons were born out of the wedlock of the parties.

According to the appellant, the respondent is bad tempered and a woman of rude behaviour. After marriage, she started quarrelling and misbehaving with the appellant and his parents and ultimately, the appellant was compelled to leave the parental residence and started to reside in a rented premises from May 1994.

The appellant alleged that in the month of May 1994, when he along with the respondent and their children visited Bombay to attend the golden jubilee marriage anniversary of his father-in-law, he noticed that the respondent was indulging in an indecent manner and found her in a compromising position with one Biswas Rout. Immediately thereafter, the appellant started living separately from the respondent since May 1994. The appellant suffered intense physical and mental torture.

According to the appellant, the respondent had withdrawn Rs. 9,50,000/- from the Bank Account of the appellant and

⁵Dr. U. P. D. Kesari, MODERN HINDU LAW, (ed.8, 2011).

⁶ AIR 2004 SC 5111.

⁴R.K. Agarwal HINDU LAW 23 (25th ed., 2015).

deposited the same in her account. The appellant alleged that the respondent got a false first information report registered against him under Sections 420/467/468 and 471 IPC, which was registered as Case No. 156 of 1995. According to him, the respondent again got a case under Sections 323/324 I.P.C. registered in the police station Panki, Kanpur City and efforts were made to get the appellant arrested.

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.

Wife appealed in High Court and HC held evidence on record not properly appreciated by Trial Court. A finding that husband immorally cohabited with another lady recorded by the High Court. On that ground held, that it amounted to misconduct and was uncondonable for the purpose of Section 13(1)(a) of the Hindu Marriage Act and suit for divorce dismissed.

Hence, the husband is appealing in SC for the decree of divorce.

Judgement:

From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty.

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.

SC 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 SC set aside the judgment of the High Court and directs that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955.⁷

Ramesh Chander v. Smt. Savitri

The Supreme Court held that where marriage was dead both emotionally and practically, continuance of marital alliance would be cruelty specially when child born out of wedlock having now grown and being in service. In this case 25 years elapsed since the husband, a sanitary inspector and wife is a school teacher, having enjoyed the company of each other as husband and wife. Within 25 years this is the second round

of litigation which routing to the trial court and high court has reached the apex court. It cannot be disputed that husband has not been dutiful and conscious of his duties towards his wife or his son. He did not contribute towards anything the upbringing of the child. In such conditions continuance of marriage would be cruelty to wife. The court directed dissolution of marriage.⁸

Smt Suresha Bala v. Rajbir Singh⁹

The Punjab and Haryana High Court was faced with a case where ground of cruelty by wife was taken by husband. It was alleged that wife was addicted to smoking in order to get divorce. But no evidence was available to establish the cruel act on part of the wife. She was instead forced to leave the matrimonial home. It was held that the husband could not take advantage of his own wrong to say that she made him to starve sexually. Thus, the decree of divorce was refused.¹⁰

Cruelty is a mixed question of law and fact

What is cruel treatment being to an oversized extent a matter of truth or a mixed question of law and truth and no dogmatic answer is given to the variability of issues that arise before the Court in these reasonably cases. The law has no customary by that to live the character and degree or cruel treatment that will satisfy the check. it's going to contains a show of temperament, feeling or permeation whereby one offers vent to his or her feelings, while not aiming to injure the opposite. It needn't contains protest against the opposite however could by misconduct indirectly touching the opposite relation even if it's not aimed toward that relation.

It is necessary to weight all the incidents and quarrels between the parties keeping visible the impact of the temperament and conduct of 1 relation upon the mind of the opposite. Cruelty is also inferred from the facts and marital status relations of the parties and interaction in their lifestyle disclosed by the proof and illation on the aforesaid purpose will solely be drawn in any case the facts are taken into thought. wherever there's proof of a deliberate course of conduct on a part of one, meant to harm and offend the opposite relation, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.¹¹

Conclusion

Hindus consider marriage to be a sacred bond. Prior to the Hindu Marriage Act of 1955, there was no provision for divorce. The concept of getting divorced was too radical for the Indian society then. Now the law provides for a way to get out of an unpleasant marriage by seeking divorce in a court of law. Cruelty is one such ground of divorce. Basically we have seen that cruelty includes physical and mental cruelty. The term cruelty differs from case to case and circumstances to circumstances. Therefore, it can be said that cruelty is a dynamic concept which is being evolved with the time.

⁸Dr. U. P. D. Kesari, MODERN HINDU LAW, p. 112 (ed.8, 2011).

⁹ AIR 1997 Punjab & Haryana Highcourt, 74.

¹⁰Dr. Dr.U.P.D. Kesari, MODERN HINDU LAW, p. 138 (ed.8, 2011).

¹¹Prashant Ghai, UNDERSTANDING CRUELTY, GROUND FOR DIVORCE IN INDIA <<http://prashantghai.com/cruelty-grounds-divorce-india/>> (18th Jan 2019, 18:30).

⁷Gadhre, CRUELTY GROUND FOR DIVORCE, <<http://www.legalservicesindia.com/article/1900/cruelty-as-a-ground-for-divorce.html>,> (20th Jan 2019 18:00).