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Mental cruelty – ground for divorce

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Cruelty to women has existed since the Vedic era. Cruelty was referenced in the Indian Penal Code, but it wasn't defined until supporting case law was published. Cruelty is defined as both physical and mental abuse. Physical cruelty is easier to establish, but mental cruelty is considerably more difficult to establish and specify in a debate. It might range from continual verbal abuse to constant monitoring of a person's activities. It is also true that marital rape is not deemed cruelty, demonstrating the law's age and conservatism. It is in desperate need of reform and requires significant legislative changes.

Keywords: *divorce, cruelty, mental cruelty.*

INTRODUCTION

Cruelty is defined in the Black's Law Dictionary as the intentional and malicious infliction of physical suffering upon living creatures particularly human beings or, as applied to the latter, the wanton, malicious and unnecessary infliction of pain upon the body or the feeling and emotions. Irrespective of this, Cruelty as a ground of divorce under the laws was not accepted. There is a misconception that Hindu Law focuses on the complete suppression of women's rights. According to Rigveda, Women were equal to men and wrote "access to and capacity for the highest knowledge, even the knowledge of the Absolute." The problem came with Manu

Smriti. This text used the idea of Hindu Marriage as a Sacrament and used it to make sure women were complacent to their husbands irrespective of how he treated them. This led to women's suppression in the post-Vedic era leading to cases of cruelty, adulteration, and lack of education for women.

Any marital actions that can cause the other's irritation do not amount to cruelty. Even, mere trivial irritations, quarrels between partners, arising in everyday married life, do not amount to cruelty. In marital life, cruelty can be of an unfounded type and can be subtle or brutal. Words, movements, or mere silence, violent or non-violent, are all included in this. It is baffling to see how society for so long saw Cruelty not as a ground for divorce, even now it needs much stronger provisions to ensure there is no exploitation of women and men in marriage through cruelty.

CURRENT POSITION

It is not so easy to accurately identify the current position of 'Cruelty as a ground of divorce' but there have been major reforms in India, as the law keeps on changing and evolving. However, with the changing times, one thing is clear that there is a 'Need for Reforms in Cruelty as a ground of divorce'. This is evident with the continuous modifications and amendments. Before marriage was deemed to be a sacramental bond of seven ages which could not be broken but this changed and with change in the time it was indeed realized that marriage is not permanent and if one spouse is not happy in the marriage, they can take relief through a divorce. Cruelty is defined and explained in several acts across the codified Indian Law, the following are its examples:

Hindu Marriage Act, 1955: Section 13(1) of Clause (ia) of the Act includes cruelty as a ground for a divorce decree. It notes that the other party treated the petitioner with cruelty after the solemnization of the wedding¹

¹ Hindu Marriage Act 1955, s 13(1) (ia)

Special Marriage Act, 1954: “Clause relating to cruelty under the Act is identical with the analogous clause of Hindu Marriage Act, 1955.”² Section 27(d) of the Act provides that the respondent has treated the plaintiff with cruelty since the solemnization of marriage.

Parsi Marriage and Divorce Act, 1936: Clause (dd) of section 32 of the Act states “that the defendant has since the solemnization of marriage treated the plaintiff with cruelty or has believed in such a way as to render it in the judgment of the court improper to compel the plaintiff to live with the defendant.”³ Under the same provision, there is another clause that is close to physical cruelty.

Section 32 of Clause (e) runs –

“That the defendant since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution.”⁴

Indian Divorce Act, 1869: In 2001, before the Indian Divorce (Amendment) Act, cruelty for the husband, any kind was not a basis for divorce. But the cruelty of the husband combined with Adultery was the basis of the wife's divorce. The amended section of Clause (x) 10 Runs of the Act:

“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.”⁵

The Dissolution of Muslim Marriage Act, 1939: “Section 2(viii) of the Act lays down grounds for a decree for dissolution of marriage. It states that a woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage.... that the husband treats her with cruelty, that is to say, habitually assaults her or makes her life miserable by

² Dr. Paras Diwan, *Law of Marriage & Divorce* 412 (5th ed., 2008)

³ Parsi Marriage And Divorce Act 1936, s 32(dd)

⁴ Parsi Marriage And Divorce Act 1936, s 32(e)

⁵ Indian Divorce Act 1869, s 10(x)

cruelty of conduct even if such conduct does not amount to physical ill-treatment, associates with women of evil repute or leads an infamous life, attempts to force her to lead an immoral life, disposes of her property or prevents her exercising her legal rights over it, obstructs her in the observance of her religious profession or practice, or if he has more wives than one, does not treat her equitably following the injunctions of the Quran.”⁶ Thus, cruelty is exhaustively described under Muslim law. Any husband's activities beyond the aforementioned clauses would not be protected by cruelty. If one cursorily analyzes the above formulations of cruelty, it is obvious that the notion of cruelty is shifting.

CONCEPT OF MATRIMONIAL CRUELTY IN PENAL CODE

Section 498A (Chapter XX-A) relating to brutality by husbands or relatives of husbands to tackle the social evil of dowry and marital atrocities against married women was introduced into the Criminal Law Amendment Act, 1983. Section 498A of Indian Penal Code, 1860 is a cognizable and non-bailable offense and reads as follows: “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”⁷ “There are several provisions in penal law relating to offenses of matrimonial nature. A married woman is subjected to cruelty under the Indian Penal Code, 1860 by her husband or his relatives (498A) or by the same husband and his relatives in demands of dowry preceding unnatural death within seven years of marriage (304B) or causing woman’s death (302) amounting to murder.”⁸

Cruelty Under the Protection of Women from Domestic Violence Act 2005

The Protection of Women from Domestic Violence Act 2005 defines “Domestic Violence” for the first time in Indian law. It is a comprehensive definition and captures women’s experience of abuse and includes not only physical violence but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is based on international law concepts, such

⁶ Dissolution of Muslim Marriage Act 1939, s 2(viii)

⁷ Indian Penal Code 1860, s 498A

⁸ K.D. Gour, *A textbook on the Indian Penal Code* 714 (2001)

as the United Nations Resolution on Violence Against Women and the Model Code. The Domestic Violence Protection of Women Act 2005 is a civil law aimed at offering relief to women who face violence at home. The Act makes no changes to the current system of personal law on family matters.

Yudhishtir Singh vs Smt. Sarita:⁹ In this case, the respondent averred that her husband, who was posted as Junior Engineer at Village Gotan was depriving her of the company. She was kept at the ancestral house at Mandore instead of at Gotan. He used to visit on weekend. Whenever she requested to take her to Gotan, it was rejected on the ground that her father did not meet the demand of Scooter and Rs. 11,000/- in cash.

The efforts made by the relatives to drop the demand of Scooter and payment of cash did not succeed. She was asked to leave the house. The husband did not make any effort to bring her from her parents' house. On the contrary, with a contract view, second marriage strategies were evolved including securing a decree for divorce. It is also alleged that whenever she visited her matrimonial home, she was not being accepted and sent back. In the case of Yudhishtir Singh, the court ruled that a husband cannot tell his wife that he dislikes her company but that she can or should stay with other family members in the marriage home; such an attitude is cruel in and of itself. It refers to the method through which a court can use its discretionary power to decide on a case of cruelty.

Smt. Anita Gaur vs Sri Rajesh Gaur¹⁰

This is an instance of Wife Against Husband Mental Cruelty. The following are the facts of the case:

The couples' marriage was solemnized on May 12th, 1999, according to Hindu rituals and procedures. The party moved from Dehradun to Mumbai after the wedding, where the husband, Rajesh Gaur, began his own business. There were two children born out of wedlock. The two parties were having a pleasant connection. However, after a few years of marriage,

⁹*Yudhishtir Singh v Smt. Sarita* AIR 2002, Raj. 382

¹⁰ *Smt. Anita Gaur v Sri Rajesh Gaur* 2020

husband Rajesh Gaur noticed a shift in his wife Anita Gaur's behaviour. The husband said that his wife, Anita, had been harsh to him. It was claimed that precious items such as jewelry, cash, and other valuables began to vanish from the house. Rajesh Gaur's spouse began receiving threatening phone calls from various people demanding that he refund their money or else he will be abducted. When the wife Anita's calls were investigated, it was discovered that she had borrowed money from numerous people at a monthly interest rate of 10%. Anita Gaur, her wife, had also bought clothes and accessories for her on credit. Following this, the unscrupulous individual who had lent money to Smt. Anita Gaur began pursuing her husband, Rajesh Gaur and threatened to seize his flat. As a result, the couple fled Mumbai and returned to Dehradun to avoid the threat to their life and liberty. Following her return to Dehradun, the village residents held a panchayat in which Smt. Anita Gaur, the appellant herein, confessed her mistake in writing. Despite confessing her error, she continued to argue with her husband, Sri. Rajesh Gaur, on numerous occasions, made it difficult for the two to live together peacefully.

Borrowing money without the husband's knowledge or removing jewels, ornaments, or expensive items from the house are both considered harsh to the spouse. The parties' marriage is a partnership built on trust and confidence. Any behaviour on the part of either spouse that violates this trust and confidence is considered cruelty on that spouse's behalf. This case is an excellent illustration of a situation in which the husband's life and limb were jeopardized due to the wife's inadvertence. Furthermore, by stealing decorations from her own home, the wife has betrayed the faith that the husband has placed in her. As a result, the Court was perfectly justified in issuing the appellant's husband's divorce judgment.

CONCLUSION

“No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment.”¹¹ It can be said, with this in mind, that the cruelty of any husband or wife is a violation of the human right to dignity and liberty. The Constitution of India, which is the country's fundamental standard, provides the freedom to live with them. Dignity is part of the

¹¹ Universal Declaration of Human Rights 1948, Art 5

right to life, as provided for in Article 21 of the Indian Constitution. An infringement of the same amounts to causing physical and emotional pain and suffering on the other. The rate of divorce in India is rising annually due to the growing modernization and deterioration of family structures. The number of complaints lodged under IPC Section 498A has risen proportionately since the beginning of the 21st century, according to data from the National Crime Investigation Bureau. Some of the laws are indeed discriminatory against women to compensate for the ill-treatment they have suffered in the past few years and are now facing. We may take an example to help the proposal. Section 32(2) of the Domestic Violence Protection of Women Act, which states that “Upon the sole testimony of the aggrieved person, the court may conclude that an offense under subsection (1) of section 31 has been committed by the accused.”

Without carrying out any investigation, however, as to whether the complaint filed is real or false, and the husband and his family members could face social and mental humiliation. On the contrary, in-laws such as those relating to marital rape which is not at all beneficial to women, we should not ignore the deficiencies. Thus, the laws relating to cruelty in all its ways and kinds need to be specifically laid down. The legislators will then be required to provide the 'word' with a ground to stand on rather than keep it dangling. Once the notion of cruelty is apparent, depending on the facts and circumstances of the case and the parties to the conflict, the responsibility will still be on the judiciary to determine whether or not an act is cruelty.