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Can Impotency be considered as Cruelty?

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The main goal of marriage is to produce offspring. An impotent individual may be legally married under Hindu law. A powerful person can so be married to a eunuch. Although divorce and marriage laws differ from culture to culture, their fundamental purpose—to bring justice to the victim—remains the same. The law makes sure that the husband and wife honour their sacred union and one another, but it also makes sure that no one is forced to endure abuse or disrespect and that they have the freedom to end their marriage at any moment. A victim may receive remedy in several additional methods outside divorce, including recovery of marital rights and judicial separation. The laws governing divorce in India differ from person to person depending on their religion, caste, and location of birth. The inherent right to profess and practise religion must be distinguished from categorization that is patriarchal and unsupported by science. Several high court decisions have stated that claims of incapacity that cannot be established constitute cruelty. When a meeting is merely partial, consumption is not taken into account. In any demand for annulment of marriage brought about by the impotence of one of the spouses, the burden of proof is with the petitioner to establish that the respondent is impotent. Medical tests are frequently cited as proof. According to Article 21 of the Indian Constitution, court orders for impotency tests do not violate a person's right to privacy. Additionally, divorce medical examinations are not necessary for situations when the parties are appealing their divorce. I have given a detailed explanation regarding the accusation of impotency as cruelty. I have also incorporated some of the famous cases and also the various famous Judgements and laws that back them.

Keywords: *impotency, cohabitation, divorce, evidence, cruelty.*

INTRODUCTION

In India, getting married is essential to building a strong social network. It is considered that a man and woman are incomplete without one another. Until he marries, a man cannot have a tangible life. A man is just half of himself, and marriage is the only way for him to become whole. It has long been recognised that marriage is a sacred union. It is an unbreakable bond between two people who are made of flesh and bones, and it must endure in the hereafter. The "sublime" is the goal of marriage. One of the pillars of marriage, in the opinion of the courts, is intercourse, and any marriage would be doomed to failure if there was no robust and harmonious sexual activity. One of the purposes of marriage is conjugal sex. When one of the partners is unable of achieving this goal, it might lead to the breakup of the marriage.

IMPOTENCY AND ITS MEANING

Impotence can be implied as the lack of a man's ability to continue sexual activity and thus finally being a justifiable reason for divorce. It can be considered a mental as well as a physical condition that renders marital satisfaction almost impossible. Impotence is the inability to engage in sexual activity or a situation when coitus is either impossible or extremely painful.¹ As previously noted, there are several forms of impotence.

General and Relative: A person with general, universal, or absolute impotence is unable to engage in sexual activity with anyone. Relative impotence, also known as *quoad hunc* or *quoad hanc* impotency, can be directed towards a specific individual. A man could be seductive to one woman but not to another. Even if the spouse is solely proven to be impotent in connection to the other spouse, the court may nevertheless provide a remedy.

Permanent and Temporary: Impotence may be transient and treatable. It could even be long-lasting.

¹ 'Samar Som v Sm. Sadhana Som' (*Indian Kanoon*) <<https://indiankanoon.org/doc/279839/>> accessed 15 December 2022

Physical Impotency and Mental Impotency: Although a lack of structural limitation might not exist, the fact that there exists refusal is because of an unstoppable aversion to the consummation act.

MEANING OF CONSUMMATION

Consummation is routine or full-scale sexual activity. Any penetration, no matter how fleeting, does not equal the completion of a marriage. A successful encounter requires thorough and total penetration.² The ability to conceive does not depend on the ability to engage in sexual activity, and the incapacity to conceive is not a reason for annulment. Vera copula, the natural form of coitus without the ability to conceive, is the term used to describe sexual activity or consummation. A true copula consists of an erection and intromission, or a man penetrating a female. It doesn't matter how much sexual enjoyment each party gets. Many of our religious teachings lay a lot of emphasis on a girl's virginity. The girl's virtue is therefore highly valued and regarded as being essential to the marriage. Premarital sex is expressly forbidden in the texts for both male and female participants. In most cultures, a woman is considered unclean and so unfit for marriage if she participates in sexual activity before being married. Under family law, the marriage may be dissolved if there is no consummation. The fact that this law discriminates against women and that marital rape is still not illegal in many countries makes the victim helpless just because they are married is why so many people disagree with it.

MEANING OF DIVORCE

The legal dissolution of a man and woman's marriage is known as divorce. In India, a petition by either the husband or the woman is required before a court may issue a divorce. After a divorce, issues including alimony, child custody, visitation rights, the division of assets and debts, etc. are resolved. Even if the divorce's jurisdiction varies, it may be categorised as either a fault divorce or a no-fault divorce (mutual divorce). In some circumstances, it may not be necessary to establish the spouse's guilt. Judicial separation should not be confused with the

² 'Vinay Kumar v Jaya' (CASEMINE) <<https://www.casemine.com/judgement/in/56e668e3607dba6b53433fde>> accessed 15 December 2022

idea of divorce. The legal separation between a husband and wife is known as judicial separation, and it is granted by the court when a petition is filed by either the husband or the wife, or both. In a judicial separation, the husband and wife's marital ties are still intact and neither of them is free to be remarried. Divorce should not be confused with the idea of a marital annulment. Marriages that are annulled are declared invalid from the beginning. The marriage is deemed to be invalid by the court, and the husband and wife should proceed as if it never existed. Divorce is a separate notion from the other two types of separation. It is more strongly enforceable legally and makes the husband and wife more accountable.

PARTY LEGALLY ELIGIBLE TO FILE A SUIT

Under the 'Dissolution of Muslim Marriages Act'³, only the wife may launch a lawsuit if her husband is unable of doing so. According to the 'Parsi Marriage and Divorce Act',⁴ either party to the marriage, and not just the party who has been wronged, may file a lawsuit. This thus justifies the fact that an impotent partner has the legal right to file a lawsuit regarding the annulment of marriage on the point that impotency has made the act of consummation impossible. Contrarily, only the aggrieved party, or the individual whose marriage cannot be completed because of the impotence of his or her spouse, may initiate a lawsuit based on the 'Hindu Marriage Act'⁵, the 'Indian Divorce Act'⁶, and the 'Special Marriage Act'⁷.

TIME LIMITATION FOR FILING OF SUIT

Before submitting a petition for nullity, no set amount of time must pass.⁸ When a medical test revealed that the woman would not be able to complete the marriage in 'Urmila Devi v Narinder Singh',⁹ the termination of the marriage happened immediately and within 4 months a petition

³ Dissolution of Muslim Marriages Act 1939

⁴ Parsi Marriage and Divorce Act 1936

⁵ Hindu Marriage Act 1955

⁶ Divorce Act 1869

⁷ Special Marriage Act 1954

⁸ 'T. Rangaswami v T. Aravindammal' (*Indian Kanoon*) <<https://indiankanoon.org/doc/1404896/>> accessed 15 December 2022

⁹ 'Smt. Urmila Devi v Shri Narinder Singh' (*Indian Kanoon*) <<https://indiankanoon.org/doc/1767454/>> accessed 15 December 2022

for annulment was also submitted. In the case of ‘Samar Som v Snigdha’,¹⁰ on the question that why the lawsuit was brought after having completed more than 10 years of marriage, there are no hard and fast rules that determine the time frame within which lawsuits can be brought up. Therefore, the question of the nullity of the petition was denied. The parties to ‘Rita Nijhawan v Balkishan Nijhawan’,¹¹ had married in the year 1954, with the petition submission date to be the year 1967. As ruled by the court that a delay in the situation cannot be a reason not to provide relief. A simple delay in applying according to section 19 (1)¹² cannot be used as a weapon of justification for denying any sort of relief.

POTENCY BEING ACHIEVED POST-FILING OF SUIT

The respondent must demonstrate that they were functional before the petition's filing. In Samar v Snigdha,¹³ the respondent-wife underwent surgery only after the case was filed at the advice of her doctor. According to the statute, a decree of nullity may be issued if it can be demonstrated that the respondent was impotent at the time of marriage and remained so until the lawsuit was instituted. In this case, when the court inquired about the couple's willingness to reconcile, the husband petitioner responded negatively. It was decided that the marriage was invalid. The burden of proof is with the petitioner to show that the respondent was impotent up until the petition's filing date. However, it is a challenging task for the petitioner to prove the point and to justify the fact that they didn't cohabit as the result of impotency that existed during their long married life and that the condition did exist during the time petition was filed in the respective court. Both the ‘Hindu Marriage Act’,¹⁴ and the ‘Indian Divorce Act’,¹⁵ which are applied in the first and second cases, had comparable restrictions regarding impotence up until the Hindu Marriage Act's section 12(1)(a)¹⁶ was changed.

¹⁰ ‘Samar Roy Chowdhury v Sm. Snigdha Roy Chowdhury’ (*Indian Kanoon*) <<https://indiankanoon.org/doc/356166/>> accessed 15 December 2022

¹¹ ‘Rita Nijhawan v Balakishan Nijhawan’ (*Indian Kanoon*) <<https://indiankanoon.org/doc/778651/>> accessed 15 December 2022

¹² Divorce Act 1869, s 12(1)(a)

¹³ Samar Roy (n 10)

¹⁴ Hindu Marriage Act 1955

¹⁵ Divorce Act 1869

¹⁶ Hindu Marriage Act 1955, s 12(1)(a)

PROVISION OF CURE

The other statutes, except the Dissolution of Muslim Marriage Act¹⁷, make no reference to impotence's ability to be cured. However, one might infer from the court rulings that, if someone after undergoing a medical procedure becomes capable of getting married, that same person should not be termed as impotent. However, not agreeing to have undergone medical treatments would make others assume that he is impotent. It was decided in the case of 'Samar v Snigdha',¹⁸ that the curability of impotence is not a pertinent factor. However, it was determined in 'Suvarnabahen v Rashmikant',¹⁹ that impotence might originate from either an "incurable" structural deficiency in the genital organs or from a "moral" or mental disability toward the other spouse that prevents consummation. In 'Laxmi v Babulal',²⁰ the wife might still be considered to be impotent after the procedure had been successful and her vagina had been rebuilt. The court concluded that surgically constructing an artificial vagina allows for the consummation of sexual acts after taking curability into account. On the contrary, the 'Dissolution of Muslim Marriage Act',²¹ gives a nod to the phenomenon of getting cured of impotency. If the respondent spouse is willing to get the defect corrected through surgery and can depict before the court that he has regained his potency within a time frame of 1 year, it would be sufficient to consider the marriage valid.

DEFECTS THAT DO NOT FALL IN THE BOUNDARY OF IMPOTENCY

It is incorrect to define sterility or infertility as impotence. Nullity is not justified by sterility without impotence. The legislators did not intend to imply infertility or the inability to conceive by using the word "impotent." Impotence in this context refers to the inability to complete the marriage or to engage in typical sexual activity. Even if a person is infertile, they may still be able to engage in sexual activity. However, sterility alone is not sufficient to declare the marriage

¹⁷ Dissolution of Muslim Marriages Act 1939

¹⁸ Samar Roy (n 10)

¹⁹ 'Suvarnabahen v Rashmikant Chinubhai Shah' (*Indian Kanoon*) <<https://indiankanoon.org/doc/402685/>> accessed 15 December 2022

²⁰ 'Smt. Laxmi Devi v Babu Lal' (*Indian Kanoon*) <<https://indiankanoon.org/doc/151394/?type=print>> accessed 15 December 2022

²¹ Dissolution of Muslim Marriages Act 1939

null and void. It doesn't matter how much sexual satisfaction the petitioner had. Therefore, it cannot be stated that the respondent is impotent when the petitioner is not sexually satisfied. The fact that a woman has not reached puberty is not a basis for divorce because it in no way prevents marriage from taking place. The reason for the wife's refusal to stay in a sexual relationship with her husband was her impotency.

The marriage might not have been consummated if the husband had not approached the situation properly. In that situation, the husband's testimony that he continued to make attempts for consummation on numerous occasions cannot be trusted, and the wife cannot be declared to be impotent. Impotence might not always result from the absence of sexual desire alone. It has been noticed that a brief lack of sexual desire may be caused by fear, worry, a sense of guilt, timidity, and other factors, or it may even result from overindulging in sex. The assumption that one spouse is impotent because the other is over-sexed is unjustified.

DEFECTS THAT SATISFY IMPOTENCY

Fecundity extra doesn't equal marriage consummation. The fact that a kid is born does not necessarily mean that the marriage has been completed because 'Fecundation ab extra' is a known possibility. Even when conception occurs, there may not have been legal intercourse. There is a potential that semen will come into contact with the vagina and lead to pregnancy without penetration or routine sexual activity. In such a situation, the birth of a child results from an unintentional freak of additional fecundation during an unsuccessful attempt to consummate. Impotence may result from organ malformation. Impotence in women is a result of vaginismus. Impotence may be brought on by physical inability or psychological inhibition. In some circumstances, the wife may not be able to consent to sexual activity because the husband's organ is enormous. A decree of dissolution may result from a spouse's natural or inherent impairments that prevent consummation. The refusal to complete the marriage may be taken as evidence of impotence by the court. Just though there isn't a physical or anatomical abnormality doesn't mean that the marriage can't be dissolved. The marriage shall be dissolved by the court if it is established that having a sexual relationship is practically impossible due to mental apathy that is expected to last a lifetime.

A mental flaw or mental obstruction that prevents marriage from being consummated is likewise grounds for annulment and is equivalent to a physical deficiency. Impotence may be caused by a lack of sexual desire, timidity, or psychiatric issues including depressed psychosis. Even if someone is capable of having sex, they may not be able to do it with their partner. And regardless of his or her general potency, in such a situation, he must be viewed as impotent about that marriage. Instead of general sexual activity, what determines whether a declaration of nullity should be granted is the ability to consummate the marriage with the other spouse. Impotence can lead to a poor erection or early ejaculation. It may be specific or generic, appearing as an aversion to sexual activity, dread, lack of confidence, etc. The husband is entitled to a decision of nullity on the grounds of impotency if the wife has repulsive and incurable syphilis that makes it impossible for them to get married.

QUESTION REGARDING THE BURDEN OF PROOF

The court may require a petitioner who alleges that the respondent is unable to consummate the marriage to give details addressing the reasons why they believe this to be the case. Without a doubt, the woman has the burden of showing the husband's incapacity, and the court would not carelessly infer this impotence from the mere fact that the wife mentions it. As it contains a derogatory statement about the other party's manhood or femininity, the burden of proof is high for the petitioner. The preponderance of the evidence is used to decide the issues, and the burden of proof changes as the trial progresses. If a state of circumstances is demonstrated to exist at a specific period, it is presumed to persist unless a party asserting the opposite presents convincing evidence to the contrary.

When a wife was still a virgin when the husband submitted the petition but was unable to consummate the marriage, it is now the husband's responsibility to show that he regained potency before doing so. The logical conclusion will be that he is impotent if he fails to demonstrate his potency. The delay of the petitioner increases the burden of proof, which is already high. However, if the respondent has not suffered in any way as a result of the delay, then it is not a complete ban.

IMPORTANCE OF EVIDENCE IN MATTERS OF IMPOTENCY

The norms of evidence apply to proving impotence in the same way they do elsewhere. Impotence that is physically unsuited for consummation must be demonstrated or at least supported by facts. The evidence must be substantial rather than merely circumstantial. There is no minimum standard of proof required to establish impotence. According to Section 134 of the Indian Evidence Act²², the quality rather than the quantity of the evidence must be sufficient. The evidence for impotence does not deviate in any way from this rule either. The fact that there hasn't been sexual activity for a long time can be used as evidence by the court.

Physical unfitness for consummation must either be established by evidence or supported by events. It was up to the court to infer that the failure to consummate the union was caused by the wife's incapacity if it could be conclusively demonstrated that the powerful husband's repeated efforts to get the union consummated, using every method short of force, had been uniformly failed. If presented in nullity actions for incapacity, non-accessibility evidence is allowed. Only spouses would be aware of the importance that occurs from psychological inhibition, and it would be difficult to prove it with medical documentation. The parties to the marriage who can directly attest to the fact that impotence exists are the only witnesses who can determine its existence. Additionally to medical proof, the husband or wife, depending on the situation, who hasn't received any sex from their spouse, could typically provide additional proof of impotence.

If believed, even the petitioner's unsupported testimony is sufficient. In circumstances of incapacity, the only source of corroboration is the testimony of the other spouse. According to section 120 of the Indian Evidence Act, the second spouse is an eligible witness.²³ Additionally, the parties' actions after their marriage serve as reliable witnesses. In 'Surinder Singh v Nirmaljit Kaur'²⁴, the wife told her coworker about the occurrences right away after the wedding. Although her colleague was unable to provide any concrete proof of the claims made by the

²² Indian Evidence Act 1872, s 134

²³ Indian Evidence Act 1872, s 120

²⁴ 'Surinder Singh v Nirmaljit Kaur' (*Indian Kanoon*) <<https://indiankanoon.org/doc/1887014/>> accessed 15 December 2022

wife, she supported what the woman had said. She was therefore considered a relevant witness. It might be argued that a marriage was not consummated if a wife is discovered to be a virgin and to have a normal hymen. The husband's inability to engage in sexual activity at the pertinent period was proven and established, even though a medical test found the husband's organ to be in perfect constitutional health. Courts are always subject to the criteria that will protect from harm to natural delicacy and sensibility when requiring a physical examination of the party with the sickness.

Either on its initiative or at a party's request, a court can order a medical examination. A divorce court has the power to order someone to undergo a medical examination. The court should exercise this authority, though, if the petitioner has a strong *prima facie* case and sufficient evidence is available. Medical proof is the best indicator of impotence. A cross-examination of the medical expert who examined one or both parties will take place. When the respondent relies on a medical professional's certification that he was sexually capable and potent on the given day, the doctor's declaration must be strictly proved by having him or her examined. Such certificates cannot stand on their own. The physician giving the certificate must defend his evaluation of the potency in court, suffer cross-examination, and explain the tests he utilised to reach his conclusion. Even if it is true that a party cannot be made to undergo a medical examination by a board of doctors created by a valid court order, a party's refusal to submit to a medical examination has its scenario as a result of inference.

The court may reasonably infer an adverse conclusion when a party declines to appear for a medical examination. When a party declines to comply with a medical examination in a dispute where the outcome of the case depends on the condition of his mind and body, The court may make a presumption or conclusion that is unfavourable to the obstinate party. Such a party is on an equal footing with one who improperly hides evidence he has in his possession. The negative implication that any court may make is based on the facts of each case and takes into account the fact that the best evidence was not allowed to be presented to the court. If a defendant wrongfully withholds evidence, every presumption in his favour consistent with the accepted or proven facts will be made against him. If one of the individuals agrees to a medical

examination and gets a clean bill of health, the situation becomes much more solidified. The nature of slander serves as the foundation for impotence.

It is a stigma on one person's personality in society. It shouldn't have been decided in such a hasty fashion. Because she had the choice to decline, the spouse's refusal of a medical checkup could not be used as a basis for a negative inference. In *'Samar Som v Sudhana'*²⁵, both the appellant-husband and the respondent-wife declined to defend themselves on the witness stand. The husband's testimony was accepted without question. However, that was not definitive. Although the accusations are uncontested at the trial and are made by one side against the other in secret, the court must be convinced of their veracity before a decree of nullity can be issued. Even though the wife was testifying ex-parte, the court did not find the charges made by the husband against her to be true. The respondent's wife in *'Jayaraj v Mary'*²⁶ never showed up for court proceedings, didn't file any paperwork, and didn't give any testimony. According to the ruling, she was a crucial party, and in a matrimonial court, it may be necessary for the sake of fairness that both spouses be present during the hearing.

As a result, The wife was ordered to come to court to testify, and the court concluded that if she did not, steps should be taken to compel her to attend the court's examination. The respondent's wife in *Joy v Shilly*²⁷ remained out of the case. The petitioner's husband showed up for the interview and supported the claims in the petition with his testimony. where the only accessible proof was the wife. The absence of the spouse led the court to assume that the wife's accusations were accurate. The wife must provide proof that she was completely virgin on the day her petition was filed. Whether or whether the wife was a virgin is completely irrelevant if she was able to demonstrate that the husband lacked sexual ability. The court won't give you another chance to show that you're ready to get married.

²⁵ Samar Som (n 10)

²⁶ 'Jayaraj Antony v Mary Seeniammal' (*Indian Kanoon*) <<https://indiankanoon.org/doc/319980/>> accessed 15 December 2022

²⁷ 'Joy v Shilly' (*Indian Kanoon*) <<https://indiankanoon.org/doc/718514/>> accessed 15 December 2022

TEST OF REGAINING OF POTENCY THROUGH COHABITATION

In 'Usman v Inderjeet'²⁸, for the respondent-husband to be able to marry the appellant wife, the impotent husband's lawyer claimed that the appellant wife should be made to live with the respondent-husband. Therefore, the court ought to put off issuing a nullity decree. Decision made that giving men the benefit of the doubt would promote their superiority over women. It would be insulting to a wife to ask her to share a bed with an ineffective husband. In 'Laxmi v Babulal'²⁹, in the lower court, an effort was made to get the wife to visit the husband so that he could examine her and decide whether or not they might have sex. The Rajasthan High Court ruled that convincing the parties to consent to the possibility of having sexual relations is not the court's job. The lower court in 'Rita Nijhawan v Balkishan'³⁰ Nijhawan suggested that the appellant wife should have provided the husband with the appropriate stimulation. The Delhi High Court ruled that no one had proven that the appellant's inhibitions prevented the respondent from having sex with his wife. Instead, it is the appellant's case, which we accept, that the respondent's sexual abysmal ness was the reason he was unable to consummate.

The impotent husband has the chance to prove that he no longer lacks erectile function. When the husband requests a chance to prove the end of his impotence in court, The delay of a declaration of dissolution is permitted by Section 2(c)³¹. The opportunity becomes unavailable unless the husband applies. The wife does not have to give her husband access for the year just because she has the option to. It is not essential to list the procedures by which such cessation could be proven, however, it is obvious that one of them is the production of medical documentation. Others might be just as effective. As a result, a woman cannot be forced to participate in a humiliated husband's experiments because neither proviso 2(c)³² nor any other provision of the Act specifically forbids such coercion or necessarily implies it. The necessity of giving a year is supposed to serve as a safeguard against error or a premature or hasty annulment of the marriage when the removal of the complaint or disproof of it is available. If

²⁸ 'Ushman v Inderjit' (*Indian Kanoon*) <<https://indiankanoon.org/doc/1397038/>> accessed 15 December 2022

²⁹ Smt. Laxmi Devi (n 29)

³⁰ Rita Nijhawan (11)

³¹ Dissolution of Muslim Marriages Act 1939, s 2(c)

³² *Ibid*

possible, the parties will have the chance to resume cohabitation during the year-long delay in the annulment of their marriage.

EITHER PARTY ACCUSES THE OTHER OF IMPOTENCY

In the case of *G v G*³³, the couple sought the cancellation of the marriage due to the reason of both suffering from impotency. The fact that the union was not legally consummated was acknowledged. The marriage between the couples wasn't completed, it was found. their union, even if there was no obvious or obvious basis for this. The court issued a nullity ruling without asking who the offending party was since it was content that "quoad hanc et quoad hunc" meant that the marriage had not been consummated and would not be. The court also ruled that two people shouldn't be forced to live together in misery for the remainder of their lives.

CONTROVERSY OF CLAUSE

In the case of *Bawi v Nath*³⁴, Justice Jaswant Singh stated, "It is no doubt true that clause (a) of Section 12 (1) of The Hindu Marriage Act is not happily worded." However, considering the accepted rule of interpretation which denies that a statute, not be understood in a way that makes the intended meaning absurd or useless. The words "at the time of marriage" that appear in the clause must be construed in the way that best fits the enactment's subject matter and the legislator's intended goal. The sentence must be interpreted logically. In the same instance, Justice Anant Singh added that Section 12 (1) (a)³⁵ as written appears to be impractical in numerous situations and that the legislature may wish to consider changing it appropriately to make it more practical. A suitable ground for annulling a marriage should be the husband's incapacity, which can happen up to a specific age after the wedding and persists for an acceptable amount of time following.

³³ 'G v G' (CASEMINE) <<https://www.casemine.com/judgement/uk/5a8ff8de60d03e7f57ecec32>> accessed 15 December 2022

³⁴ 'MST. BAWI v NATH' (CASEMINE) <<https://www.casemine.com/judgement/in/56b495dd607dba348f015878>> accessed 15 December 2022

³⁵ Hindu Marriage Act 1955, s 12(1)(a)

CRUELTY AND IMPOTENCY

According to section 10 (1) (b)³⁶ of the 'Hindu Marriage Act', It was legal for the wife to request legal segregation in *Rita Nijhawan v Balkishan Nijhawan*³⁷. "An intention on the part of one spouse to injure the other is not a necessary element of cruelty as a matrimonial offence," the law states. There are still open categories for cruelty. The continual rejection of consummation is not disregarded. It is therefore well established by law that if one party to a marriage, who is of sound bodily capacity, refuses to engage in sexual activity, that refusal would constitute cruelty and enable the opposite party to obtain a judgement. The court determined that it would not be relevant legally whether the refusal to consummate was caused by the respondent's sexual weakness, which prevented him from engaging in sexual activity with the appellant, or by any deliberate refusal on the part of the respondent; this is because the outcome in either scenario is the same, namely cruelty by denying the appellant access to normal sex. The husband's continued inability to engage in regular sexual activity as a result of his sexual weakness made the appellant's emotional suffering, physical danger, and health concerns inevitable, and the conclusion of cruelty followed naturally.

The wife, in the opinion of the court, had convincingly shown that her husband had, the way she was treated, a harsh way to give her a valid reason to believe that staying with the respondent would be hurtful and damaging to the appellant. As a result, the appellant would be eligible for a Legal segregation decree under Section 10(1)(b)³⁸ of the 'Hindu Marriage Act'. The court in *Augustine v Kunjamma*³⁹ held this, In a marriage, deprivation of sexual activity would have a highly negative impact on a female body, which causes melancholy, even resentment. Justices A. Muhamed Mustaque and Kauser Edappagath made up the Division Bench of the Kerala High Court, a conclusion that falsely asserting infirmity is mental cruelty, therefore, has constituted a legitimate reason to dissolve a marriage. The respondent and appellant were a married couple who both worked as doctors. Both of them had filed legal

³⁶ Hindu Marriage Act 1955, s 10(1)(b)

³⁷ Rita Nijhawan (n 11)

³⁸ Hindu Marriage Act 1955, s 10(1)(b)

³⁹ 'Augustine And Anr. v Kunjamma Kuriakose And Anr' (*Indian Kanoon*)

<<https://indiankanoon.org/doc/8048/>> accessed 15 December 2022

complaints against one another: the wife for return of marriage and the husband's request for divorce. After the trial, the Court, by the contested common order, dismissed the appellant's original petition and granted the respondent's initial petition, awarding the latter a decree for the restoration of her marital rights. The complainant had asked for a decision of nullity because the respondent had deceived him by withholding crucial information about her mental state to get his assent to the marriage. Additionally, he had asked for a divorce based on the respondent's brutality and his incurable insanity. Even though the appellant claimed that the respondent had received therapy from two psychiatrists and the respondent essentially admitted as much, the appellant took no action to interview the psychiatrists or produce the patient records. The respondent must have been incurably insane at least two years before the petition's presentation, continuously, for a continuous period, to obtain a decree dissolving a marriage under Section 10 (1) (iii).⁴⁰ The Bench stated, "*The word 'suppression' does not occur in Section 19 of the Act.*" "*Force*" and "*fraud*" are words used by the Parliament. There must be an information exchange before one party agrees to the other's marriage. This Section cannot be interpreted as requiring one spouse in a marriage to disclose all of their personal information to the other. The Bench decided that the claim related to suppression and that failure to reveal a particular piece of information cannot be considered fraudulent conduct unless the person failing to disclose it was obligated to do so by law. Therefore, the wife's failure to disclose her hallucination problem before marriage was not a suppression of substantial truth. Since he gave his agreement to the marriage, it could not have been obtained fraudulently. Upon considering the appellant's case, the Bench expressed the opinion that there was no reason to doubt the evidence the appellant provided that during the time they shared a home, the respondent had committed a variety of behaviours ranging from numerous emotional distress by acting She behaved in an immature, irrational, and unusual way, was always sleepy, languid, and unsanitary, made strange hand gestures, spoke incoherently, and frequently screamed that some gang was leaving. According to the Bench, the alleged behaviour need not be so extreme to facilitate cohabitation nearly intolerable or that would constitute cruelty if it endangered life, limb, or health. There must be a more serious issue at hand than just "ordinary wear and tear of marital life."

⁴⁰ Divorce Act 1869, s 10(1)(iii)

It is enough if one spouse behaves and acts in such a way toward the other that the other spouse has reasonable grounds to believe it is unsafe for them to remain married. The Bench went on to say that cruelty is not always motivated by malice. There may be instances of cruelty caused by the party's negligent but unacceptable behaviour. The lack of intention shouldn't matter in this circumstance if, by common sense in human affairs, the behaviour complained of may otherwise be seen as cruel. In *Samar Ghosh (supra)*⁴¹, the Supreme Court ruled that cruelty is not always characterised by intention and that the party's request for redress cannot be rejected because there hasn't been willful or intentional mistreatment. The false claim that the appellant had erectile problems and was unable to engage in sexual activity was made by the respondent against the appellant as yet another aspect of the respondent's mental cruelty that was canvassed by the appellant.

It was determined in *K. Srinivas Rao v D. A. Deepa*⁴² that making false, indecent defamatory claims about a spouse or a spouse's family members in the pleadings constitutes Psychopathic treatment of the other spouse. The respondent asserted that the appellant was unable to engage in sexual activity because of erectile dysfunction, but she also acknowledged that they had a satisfying sexual relationship after July 2010 in the same breath. As a result, the Bench declared that accusing a spouse of having erectile dysfunction or impotence in a counter statement during a divorce case will surely be considered cruel, as the respondent had woefully failed to back up the assertion she had made. Therefore, it was decided that the respondent had committed mental cruelty by accusing the appellant without cause. By Section 10(1)(x)⁴³ of the Act, the Bench found that the appellant had sufficiently pled for the issuance of a divorce judgement on the grounds of cruelty. The appellant and respondent's marriage was dissolved, the challenged rulings were partially overturned, and the respondent's plea for the restoration of marriage rights was rejected down. The plea was partially approved by the Karnataka High Court Division Bench, which was comprised of Justices S. Sunil Dutt Yadav and K.S. Hemalekha. The

⁴¹ 'Samar Ghosh v Jaya Ghosh' (*Indian Kanoon*) <<https://indiankanoon.org/doc/766894/>> accessed 15 December 2022

⁴² 'K. Srinivas Rao v D.A. Deepa' (*Indian Kanoon*) <<https://indiankanoon.org/doc/14713882/>> accessed 15 December 2022

⁴³ Divorce Act 1869, s 10(1)(x)

parties' union of marriage was dissolved due to mental cruelty to the wife's unsupported accusations against the husband. The petition for a divorce that the husband filed under Section 13(1)(ia)⁴⁴ and claimed was due to cruelty was denied. The husband then filed the current appeal, which was accepted by the court. Claiming a husband's impotence in front of his family amounts to emotional distress and spousal cruelty and is grounds for divorce. The question at hand is whether or not the wife's claim that the husband has the capacity and capacity to fulfill conjugal obligations has led to mental brutality as defined under Section 13(1)(ia).⁴⁵

Section 13(1) (ia) of the 1955 Hindu Marriage Act states, "cruelty" includes both physical and mental abuse, and determining whether someone has committed cruelty would require weighing the overall impact of the relevant facts and circumstances that have been proven through admissible evidence. The Court it was stated, "*No prudent woman would think of making an allegation of impotency in the presence of others, rather she would take necessary steps to see that the reputation of the husband is not affected and not thrown out in public.*" It cited the case of 'G. Padmini v G. Sivananda Babu'⁴⁶, in which it was noted that false accusations against the spouse regarding his inability to have children without providing any supporting evidence would cause him great mental pain.

The Court further noted that even though the Hindu Marriage Act, Section 13 of 1955 does not list impotence, falsely asserting impotence as grounds for divorce would surely cause mental instability and constitute mental cruelty as specified in Section 13(1)(ia)⁴⁷ of the Act, allowing the husband to file for divorce based on cruelty. In *Pramila Bhatia v Vijay Kumar Bhatia*⁴⁸, the Supreme Court determined that because the wife had not expressly presented proof to show that the husband was genuinely impotent, the claim would remain simply an allegation and have the impact of degrading the husband, which is cruel. The Court held "*in light of the allegations having not been proved to be genuine, and calling the husband an impotent without legally*

⁴⁴ Hindu Marriage Act 1955, s 13(1)(ia)

⁴⁵ Hindu Marriage Act 1955, s 13(1)(ia)

⁴⁶ 'G. Padmini v G. Sivananda Babu' (*Indian Kanoon*) <<https://indiankanoon.org/doc/1230532/>> accessed 15 December 2022

⁴⁷ Hindu Marriage Act 1955, s 13(1)(ia)

⁴⁸ 'Smt. Pramila Bhatia v Vijay Kumar Bhatia' (*Indian Kanoon*) <<https://indiankanoon.org/doc/1427039/>> accessed 15 December 2022

substantiating the same, itself would amount to cruelty within the meaning of Section 13(ia)⁴⁹ of the Act and the trial Court was not justified in holding that the cruelty asserted by the husband is not proved. Thus, we are of the considered opinion that the judgment and decree of the Family Court need to be set aside and the petition filed by the husband under Section 13(1) (ia)⁵⁰ of the Act needs to be allowed granting a decree of divorce in favour of the husband."

In the instance of the Delhi High Court's decision in *Kirti Nagpal v Rohit Girdhar*⁵¹, the wife's false claim of the husband's impotence during divorce proceedings constitutes cruelty under the Hindu Marriage Act. Justices Manmohan and Sanjeev Narula's bench ruled as follows: "No party can be excused of recklessness in allegations made before the court of law. The consequences of false assertions have to follow,". Further stated "It is also abundantly clear that due to the mental pain, agony, and suffering caused by the false accusations, the respondent [husband] cannot be asked to put up with the conduct of the appellant [wife] and to continue to live with her," The wife's appeal of a family court ruling approving her husband's request for a divorce was similarly denied by the High Court. When the couple was married in 2012, the husband was a divorcee and The wife was a female singleton. The wife's infertility prevented them from being married, therefore the husband soon filed a petition with the local family court to have the union declared null and void. The wife claimed in her defence before the family court that the husband's erectile problems (impotence) were the real reason the marriage did not end in consummation. She also accused her in-laws of torturing her. The dowry was also a demand. However, the family court dismissed her argument, pointing out that she had not provided any supporting evidence. The spouse, on the other hand, produced a medical record stating that he was not impotent. The family court gave the husband a divorce decree in February 2020 as a result of cruelty. The woman appealed this decision to the High Court because she had been fighting for the restoration of her conjugal rights and was prepared and eager to keep her marriage to her husband intact. However, the High Court dismissed her request, pointing out that the couple was divorcing by stating- "have been separated for more than eight years and since the separation has continued for a sufficient

⁴⁹ Hindu Marriage Act 1955, s 13(ia)

⁵⁰ Hindu Marriage Act 1955, s 13(1)(ia)

⁵¹ 'Kirti Nagpal v Rohit Girdhar' (*Indian Kanoon*) <<https://indiankanoon.org/doc/189868618/>> accessed 15 December 2022

length of time, it can be presumed that the marriage has irretrievably broken down". Additionally, the judge reminded the woman that "if it is established from the evidence that the allegations were false, then such baseless allegations made in the written statement can amount to cruelty and the Court can pass a decree of dissolution of the marriage".

PRACTICES OF CONDONATION

In *Rita Nijhawam v Balkishan Nijhawan*⁵², the court used judicial separation in light of the respondent husband's impotence, which was viewed as cruelty to the wife based on Section 10(1)(b)⁵³. The respondent's attorney attempted to argue that even if one or more of the conditions are fulfilled and the requirements for awarding remedy are satisfied, the court must be persuaded that the petitioner did not condone the cruelty in any way. The court will only be able to give the requested relief in these situations and no other situations. The defence claimed that since the appellant knew from 1957 onward that the respondent was sexually incapable of consummation and since that is the basis for the cruelty claim, the application that was later filed in 1967 would demonstrate that the appellant had approved the cruelty. The grounds for forgiveness were deemed to be invalid by the court.

The court will need to decide whether the previous cruelty rendered the current cruelty permissible if a later application is brought based on that act of cruelty. Physical acts of cruelty that, after they occur, may be excused by the people living together and from which it may be inferred that this specific act of cruelty had been excused are the types of cruelty that may be covered by Section 23⁵⁴. In this instance, the husband's sexual inadequacy and incapacity to consummate are what constitute the cruelty, which forms the basis of the petition. This type of mental cruelty is persistent and constant. Based on the court's conclusions that the husband is frail, it is clear that cruelty has continued for years, and the appellant's complaint dates back to 1954 when it was determined that the respondent was in the same poor condition. To be

⁵² Rita Nijhawam (n 11)

⁵³ Hindu Marriage Act 1955, s 10(1)(b)

⁵⁴ Divorce Act 1869, s 23

condoned, a family must live together, but since the parties claimed there was no regular sex life between them, there could be no possibility of condonation.

CONCLUSION

Impotence is the term used to describe a person's inability to have sex due to a medical or mental disorder. Furthermore, we've observed that ladies can have impotence just like males do. If a person in any way obstructs a partner's sexual performance, they may be deemed impotent. Different courts have taken varied approaches to a few impotence-related matters. Issues like whether a wife's virginity must be conclusively established to declare her Depending on the specifics of each case, factors like the respondent's burden of proof, the respondent's ex parte status, drawing unfavourable conclusions while the respondent refuses to submit to a medical examination, the delay in filing the petition, and the respondent's husband's incapacity may or may not apply. Therefore, it is up to the court to make suitable orders while taking the facts into account. Courts have also applied unconventional interpretations, particularly when there was no room for awarding a judgement of nullity for the husband's incapacity. Because the husband's inability amounts to cruelty toward the wife in specific situations, the court determined that the woman was entitled to a judicial separation.

The Indian Divorce Act⁵⁵ and Special Marriage Act⁵⁶ must be amended to reflect the impotency adjustment made to the Hindu Marriage Act⁵⁷. A suitable ground for annulling a marriage should be the husband's incapacity, which can happen up to a specific age after the wedding and persists for an acceptable amount of time following.

⁵⁵ Divorce Act 1869

⁵⁶ Special Marriage Act 1954

⁵⁷ Hindu Marriage Act 1955