



# Analysis: Cruelty as a Ground for Divorce

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## Introduction

Cruelty is a type of a behaviour which causes physical or mental harm to a person. However, a mere quarrel, petty outrageous behaviour of certain indifferences between the spouses does not come under the scope of cruelty because comes under ordinary wear and tear of marriage. There are two types of cruelty which is mental and physical cruelty. Conducts that are of grave and severe nature would amount to cruelty, grave violence doesn't always conclude that it has to be physical violence, the continuous process of ill-treatment or mental torture by either of the spouse would amount to mental cruelty . For example, a mere disagreement between husband and wife would not amount to mental cruelty but continuous disagreements about the same issue could affect them mentally and this will amount to mental cruelty. And conducts where there is an involvement of physical violence, bodily injuries or a threat to life , limb and health and where either of the spouse is causing apprehension in the mind of other spouse then it will constitute physical cruelty.

## Historical Aspect

Hindu Families and marriages were steeped in age-old customs and cultures. For a Hindu, marriage is considered as an obligation and also it is sacramental. It was reflected as a bond of seven births, predestined by gods. Ancient Law Makers have over emphasised the duties of wife and reproached her to be fully devoted to her husband , even though ,marriage was thought to be equally binding men and women. In the traditional era, Men started taking advantage of this situation and they started showing cruelty towards women by various means such as desertion, polygyny , beating and such practices became more common.[1]According to the Rigveda, women and men were treated equally and equal amount of respect was given to both husband and wife further when it comes to matrimonial alliance, wife was given the same amount of respect and position as of the husband in the matters of religious ceremonies, rights along with her husband[2] . Hence Rigveda was considered to be the highest social status to the women in the ancient time. Whereas Manusmriti gave women a vulnerable standing in the Hindu society ,Manusmriti encouraged cruelty against women in several ways like, wife was obliged to serve her bad husband in an extreme good way , wife could not marry again after the death of her husband but the husband could re-marry in case of death of his wife , further husband had the right to beat his wife is she goes wrong somewhere.[3]And this shows how poorly women were suppressed and they were victim of physical abuse and was asked to tolerate it as their duty.

The early decades of independent India observed codification of the personal laws of Hindus, the reform was brought by the assortment of personal laws and this reflected the independent Indian's leaning significance as regards to equality and non-discrimination enshrined in the Constitution of India. And after the development of personal Hindu laws in 1770s, ultimately Indian Divorce Act was passed in the year 1869 and the act was applicable to the Hindus till the year 1955, and after that the Hindu Marriage Act was passed and since then the act had been governing all the matters pertaining to Hindu Marriage. However, the Hindu Marriage Act did not provide cruelty as a ground for divorce and it was only a ground for judicial separation and it's the amendment of 1976 which had been a game-changer, the Hindu Marriage gave the right to get separated or even get divorced on the ground of mental or physical cruelty.

### **Current Aspect**

According to the Hindu Marriage Act, Cruelty is now considered as a ground for divorce in which physical and mental abuse is one of major reason which leads to Divorce in India. As mentioned previously of all the matrimonial offences, cruelty is the most difficult one to define. The judges and legislatures have intentionally avoided articulating any kind of definition of cruelty because there are no set and defined parameters of what constitutes cruelty. The court in the case of Sukumar v. Tripathi[4] observed that “no attempt at drawing a complete list as to what constitutes cruelty can ever succeed”. Furthermore, a deed which has held to be cruel in one case might not be so in another as it entirely depends upon the facts and situations of each individual case. In the case [5], it was held that determination of any particular conduct by any party would amount to cruelty or not will depend on the social status of the parties and this will be only the relevant consideration. Therefore, it depends upon case to case whether an act of cruelty has been committed or not.

In accordance with section 13(1)(a) of the Hindu Marriage Act, 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 ended by a decree of divorce on the ground that the other party has, after the solemnisation of the marriage, treated the complainer with cruelty[6]. Cruelty, which is a ground for dissolution of marriage, can be characterised as unjustifiable action by one person toward another that can trigger danger to life, limb, or health, bodily or mental, or that gives rise to a rational fear of such danger. The definition of cruelty is evolving, and today's definition incorporates both emotional and physical cruelty.

Cruelty is a basis for divorce in India, according to different personal rules. “A woman married under Muslim law shall be allowed to obtain a decree for the dissolution of her marriage on the ground that her husband treats her with cruelty...” says Sec. 2 (vii) of the Dissolution of Muslim Marriage Act, 1939[7].

The word cruelty has been rendered a basis for dissolution of marriage under Section 32 (dd) of the Parsi Marriage and Divorce Act, 1936, as follows: “That the defendant has treated the plaintiff with cruelty or has acted in such a way as to make it in the judgement of the Court inappropriate to force the plaintiff to live with the defendant after the solemnization of marriage.[8]”

In Hindu Marriage Act, 1955 cruelty was not a ground for divorce but was only a ground for judicial separation. However, this was upheld by the Supreme Court in the case of Narayan Ganesh Dastane v Sucheta Narayan Dastane[9] in 1975. Nonetheless the amendment of the act in 1976, integrated cruelty as a ground for divorce. The definition of cruelty under this

act was modified in accordance with the reform in law. Prior to the amendment, the complainant had to have been treated with such cruelty that he or she had a fair fear that continuing to live with the respondent would be detrimental or injurious to his or her safety. In *Dastane v Dastane*[10], the Supreme Court held that determining whether a spouse has been subjected to cruelty is a subjective matter that courts can determine on a case-by-case basis. This ground was established to look almost identical to the cruelty ground .

According to the statistical report of National Family Health Survey (NFHS-4) directed by the Union ministry has discovered that one-third of ever-married women (33%) have experienced spousal physical, sexual, or emotional violence by their current husband.[11] And among ever-married women ageing between 15-49 have experienced physical violence and sexual violence since the age of 15 and 83 percent report show their current husbands as wrongdoers of the violence. The women have claimed under the study report , the most common form of sexual violence committed by their husbands was the use of physical force to have sexual intercourse especially when they did not want to (6%) which definitely amounts to marital rape. However, marital rape is also a form of cruelty imposed upon women. Marital Rape within the custom of marriage is not an offence in India even when it comprises of physical, sexual and mental cruelty. It is an interference upon the common basic right to dignity of the women. The Report conducted by Justice Verma Committee also pointed out that, according to the year 2010 study around 18.8 per cent of women were raped by their partners and not once but on many occasions.[12]

The report made by Justice Verma Committee also highlighted the fact that women who belong from rural areas were more likely (36%) than women who are from urban areas (28%) to go through one or more forms of physical violence. These statistics are evident of the various components of cruelty perpetrated on women. India is a signatory to the United Nation Convention on the Elimination of All Types of Discrimination Against Women (CEDAW), and recognizes that discrimination against women violates the principles of equality of rights and human dignity.

Based on the above data, it is evident that cruelty occurs in various forms. There is no one category of cruelty and therefore it becomes more difficult to lay down what exactly constitutes cruelty. Mental cruelty comprises inflicting suffering and agony on the partner in some way which makes it difficult for the two spouses to live together under the same roof.

### **Physical Cruelty**

Physical cruelty includes beating, slapping and other forms of physical harm. Sexual cruelty on the other hand includes forcing the partner to indulge in intercourse or unnatural sex. And according to the statistics reports, beating , slapping , using of force by husband over wife is still being encouraged and women are mum about it because she thinks it's her duty to bear tortuous behaviour and also because of the societal pressure and when a wife actually asks for a divorce, no one supports her decision not even her own parents. In several judgments, it has been observed that intention is irrelevant to determine physical cruelty but if intention is present during the conduct then it will definitely amount to physical cruelty. In modern era it differs from case to case, depending upon the gravity of acts and susceptibility of petitioner but during traditional era , there was a very limited list to determine physical cruelty , and which was causing injury to body or affecting someone's physical health.

## **Mental Cruelty**

Mental cruelty, as described in Section 13(1) (i-a), is behaviour that causes the other party such mental pain and misery that it is impossible for that party to live with the other[13]. To put it another way, mental cruelty must be such that the parties cannot fairly hope to work together. As stated previously, Cruelty need not be physical. If from the conduct of the spouse it is established or conclusion can be legitimately drawn that the treatment of the spouse is such that it causes apprehension in the mind of the other spouse, about his or her mental wellbeing then this conduct amounts to cruelty , the same was held in the case of *Maya Devi v. Jagdish Prasad*[14].

A basis for divorce, where one spouse's course of conduct (not involving direct violence) causes such anguish that it endangers the life, physical wellbeing, or mental health of the other spouse," according to Black's Law Dictionary [15]. Mental cruelty isn't something that can be described in a set of uniform provisions . What constitutes mental cruelty is neither fixed nor restricted. "Sadly, this human problem stays all over the world"[16]. Changing lifestyles, schooling, family patterns, modernization and globalisation, and the increased use of social and electronic media are only a few of the many factors that are causing mental cruelty to grow in diameter. In *Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan*,[17] the Supreme Court stated that the "concept of legal cruelty changes according to the changes and advancement of social concept and standards of living".

Mental cruelty has to be deliberated in the light of the customs of marital ties of the precise society, to which both the spouses belong, their social values, status, environment in which they live. It is hard to establish the fact that the act of mental cruelty has been committed by one party and it is more hard to determine what will consist under mental cruelty. However, according to the reports Mental cruelty is the most easiest ground to file for a divorce in India. For example : If Party A wants a divorce and Party B doesn't want divorce then Party A will definitely try to fit the divorce petition under Mental cruelty.

The Supreme Court issued a list of examples depicting mental cruelty in the case of *Samar Ghosh v. Jaya Ghosh*[18]. The list, on the other hand, is not exhaustive, it can be called mental cruelty if a person refuses to have intercourse for a prolonged period of time without any physical incapacity or legitimate cause. It can be considered mental cruelty if either husband or wife chooses not to have a child after marriage. Frequent rudeness of language, petulance, and indifference, as well as sustained abusive and humiliating treatment intended to torture or make the spouse's life miserable, can constitute mental cruelty. Even ill-treatment by in-laws would amount to mental cruelty and apart from this if the husband or the wife undergoes sterilization or abortion (in the latter case) without the knowledge or consent of the spouse may also amount to mental cruelty.

## **Cruelty against men – Misuse of the ground**

The general belief is that husbands are the ones who are mean to their wives. However, this is not always the case. Especially urban educated women are misusing these laws as weapon to unleash personal vendetta on their husbands and innocent relatives , in the present era women are getting more benefits from these laws.

For example-

1. Lodging false complaint by the wife against her husband and family in the matters pertaining to dowry, and this is the most common ground in our country where wives are misusing dowry laws.
2. Wife threatening to leave husband's home also amounts to cruelty.
3. Desertion by wife which means wife purposely intending for separation.
4. Adultery by wife which means having a sexual relationship with some other man during the commitment of marriage.

In case of *Raj talreja v. Kavita talreja* [19], wife was making false accusations and defamatory remarks against her husband and his family, thereby lowering his reputation in front of his peers. The supreme court held that filing false complaints and passing defamatory remarks would amount to mental cruelty.

The laws prohibiting wives from being cruel to their husbands are less explicit than the laws prohibiting wives from being cruel to their husbands. Because of our country's long history of male dominance over women, it's difficult to believe that wives can also be cruel to their husbands. However, as women's visibility has increased, as has feminism's soaring waves, and as women's education and independence have grown, they have begun to violate legal protections against their husbands in order to satisfy their needs and demands. In a number of cases, Indian courts have recognised this fact and granted divorce to husbands on the grounds of mental abuse perpetrated by their wives.

The supreme court in the recent case of *Joydeep Majumdar v. Bharti Jaiswal* [20] observed that wife was levelling allegations which was affecting the career and reputation of husband and this will definitely amount to mental cruelty. In case of *Savitri Balchandani vs Mulchand Balchandani* [21], mother used to ask his son to squeeze the private part of his father and the court held that it would amount to cruelty and marriage was dissolved for the same. There has been a misuse of this ground especially to claim huge amount of damages. In a number of rulings, the courts have accepted this fact. As a result, if the wife files a false report, the police file an F.I.R., and the husband, as well as his family in some cases, is apprehended without being given the opportunity to speak up. The husband carries the entire burden of proof in proving his innocence.

## **Conclusion**

Considering the fact that cruelty is changing concept, certain laws are required to be updated with time as there are several cases of physical cruelty especially from the rural areas ,subsequently there is a need that rural areas do need more awareness programmes about the modernization of law .

No human shall be tortured or subjected to cruelty, inhuman, or degrading treatment or punishment.[22] With this in mind, violence by either a husband or a wife is a violation of the fundamental right to dignity and liberty. The Indian Constitution, which is the country's founding document, guarantees the right to a dignified life as part of the right to life under Article 21. A violation of the same is causing physical and emotional pain and suffering on the other.

Divorce rates in India are that every year as a result of increasing modernization and the breakdown of family structures. It is true, certain laws are skewed against women in order to compensate for the mistreatment they have endured in the past and continue to endure today.

Thus, there is a need to clearly law down the laws pertaining to cruelty in all its forms and also there is an urge to frame certain provisions for the matters relating to marital rape and till the concept of cruelty is not clear the burden will always be on the court to decide that whether a conduct by the party would amount to cruelty or not and the court has to be dependent upon the facts and circumstances of the situation. Therefore, lawmakers need to provide more clear terms for cruelty and also certain provisions for preventing misusing of the ground.

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