



## THE CHANGING TRENDS OF CRUELTY – A CAUSE FOR DIVORCE - AN ANALYSIS IN THE LIGHT OF JUDICIAL PRONOUNCEMENTS.

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### **Abstract**

*The foundation of a sound marriage is tolerance, adjustment and respecting one another - Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage - Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven - All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and always keeping in view the physical and mental conditions of the parties, their character and social status - A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage - The Courts do not have to deal with ideal husbands and ideal wives - It has to deal with particular man and woman before it – In these aspects, the author is going to analyse the changing trends of cruelty which is now a days a main cause for divorce.*

### **Meaning of Cruelty**

The word 'cruelty' has not been defined in the Hindu Marriage Act. Cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence. The Shorter Oxford Dictionary defines 'cruelty' as 'the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness'.

The concept of cruelty has been used in Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse<sup>1</sup>.

The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

The concept of cruelty has been explained as an intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, maliciously, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity and outrage. It has been also described such as "cruel and abusive treatment, "cruel and barbarous treatment, or "cruel and inhuman treatment"<sup>2</sup>. Malevolent intention is not essential to cruelty but it is an important element where it exists<sup>3</sup>. Cruelty has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other<sup>4</sup>.

In **Rajani v. Subramonian**<sup>5</sup>, the Kerala High Court observed that the concept of cruelty depends upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by standard of modern civilization in the background of the cultural heritage and traditions of our society. In the case of **Siraj Mohamedkhan Janmohamadkhan v. Haizunnisa Yasinkhan & Anr**<sup>6</sup>, the Supreme Court stated that the

<sup>1</sup> *Shobha Rani vs Madhukar Reddi: Equivalent citations: 1988 AIR 121, 1988 SCR (1)1010.*

<sup>2</sup> *See May v. May, 62 Pa. 206; Waldron v. Waldron, 85 Cal. 251, 24 Pac. 049, 9 L.r.A. 48T; Ring v. Ring, 118 Ga. 183, 44S.E. 801, 62 L.R.A. 878; Sharp v. Sharp, 16 111. App. 348; Myrick v. Myrick, 67 Ga. 771; Shell v. Shell, 2 Sneed (Tenn.) 716; Vignos v. Vignos, 15III. 180; Poor v. Poor, 8 N. II. 307, 29 Am. Dec. 604; Goodrich v. Goodrich, 44 Ala. 670; Bailey v. Baiey, 97 Mass. 373; Close v. Close, 25N.J.Eq. 520; Cole v. Cole, 23 Iowa. 433; Turner v. turner. 122 Iowa, 113.97 N.W.*

<sup>3</sup> *Halsbury's Laws of England [Vol.13, 4th Edition Para 1269.*

<sup>4</sup> *In Savitri Pandey v. Prem Chandra Pandey: (2002) 2 SCC 73.*

<sup>5</sup> *AIR 1990 Ker. 1*

<sup>6</sup> *(1981) 4 SCC 250.*



concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. ....Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

### **Mental Cruelty; Meaning of**

"Mental Cruelty" is an unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse<sup>7</sup>."

**Mental** cruelty must be of such a nature that the parties cannot reasonably be expected to live together. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made<sup>8</sup>." In **Savitri Pandey v. Prem Chandra Pandey**<sup>9</sup>, the Supreme Court stated that "Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. In the case of **Gananath Pattnaik v. State of Orissa**<sup>10</sup> the Supreme Court observed as under:

"The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case."

The term mental cruelty has also been examined by the Apex Court Court in **Parveen Mehta v. Inderjit Mehta**<sup>11</sup>. In this case the Supreme Court of India observed as under:

"Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty, *it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty*. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

In **A. Jayachandra v. Anel Kaur**<sup>12</sup>, the Apex Court observed as follows:

"Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the

<sup>7</sup> 24 American Jurisprudence 2d.

<sup>8</sup> V. Bhagat v. D. Bhagat (Mrs.): (1994) 1 SCC 337).

<sup>9</sup> (2002) 2 SCC 73.

<sup>10</sup> (2002) 2 SCC 619.

<sup>11</sup> (2002) 5 SCC 706.

<sup>12</sup> (2005) 2 SCC 22.



spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty”.

The court further observed that “Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence”.

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". Conduct has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. *It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty.* Married life should be reviewed as a whole and few isolated instances over a period of years will not amount to cruelty. Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life, would not be adequate for grant of divorce on the ground of mental cruelty<sup>13</sup>.

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. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. *Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.* Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. *It may be words, gestures or by mere silence, violent or non-violent.* "Mental cruelty" is a problem of human behaviour. This human problem unfortunately exists all over the world. Intention to injure was not necessary ingredient of cruelty (Lord Merriman, in *Waters v. Waters* (1956) 1 All. E.R. 432<sup>14</sup>). 'It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is cruelty if a reasonable person (Sherman, J. in *Hadden v. Hadden*, *The Times*, December 5, 1919<sup>15</sup>). In *Prichard v. Prichard* (1864) 3 S&T 523, the Court observed that “*repeated acts of unprovoked violence by the wife were regarded as cruelty, although they might not inflict serious bodily injury on the husband*”. Wilde, J.O. in *Power v. Power* (1865) 4 SW & Tr. 173 observed that “cruelty lies in the cumulative ill conduct which the history of marriage discloses”.

In **Samar Ghosh v. Jaya Ghosh** (*Supra Note*), a three-Judge Bench, after dealing with the concept of mental cruelty, has observed thus:

“...Human mind is extremely complex and human behaviour is equally complicated. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive<sup>16</sup>.

<sup>13</sup> *Hemali Bindesh Kelaiya Vs. Bindesh Jayantilal Kelaiya: MANU/MH/0355/2014*

<sup>14</sup> *Source: Samar Ghosh vs Jaya Ghosh: MANU/SC/1386/2007: (2007) 4 SCC 511.*

<sup>15</sup> *Source: Ibid*

<sup>16</sup> *Ibid.*



1. On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
2. On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.
3. Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.
4. Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.
5. A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.
6. Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.
7. Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.
8. The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.
9. Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.
10. The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.
11. If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.
12. Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.
13. Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.
14. **Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.** The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.
15. Mere austerity of temper, petulance of manners, rudeness of language, want of civil attention and accommodation or even occasional sallies of passion will not amount to legal cruelty<sup>17</sup>.
16. A fortiori, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessities is not cruelty<sup>18</sup>.

Cruelty includes both willfulness and malicious temper of mind with which an act is done, as well as a high degree of pain inflicted. Acts merely accidental, though they inflict great pain, are not "cruel," in the sense of the word as used in statutes against cruelty. "Cruelty" has an inseparable nexus with human conduct or human behavior. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been considered by their social status<sup>19</sup>.

In **Vinita Sexena Vs Pankaj Pandip**<sup>20</sup>, the Supreme Court held that, "mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the Section. It is to

<sup>17</sup> *Sonali Samal Vs. Vikrant Parida, MANU/OR/0132/2016.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Vishwonath S/o Sitaram Agrawal v. Sau Sarla vishwanath Agrawal: [2012] 7 S.C.R 607).*

<sup>20</sup> *MANU/SC/8038/2006.*



be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case”.

#### **What Amounts to Cruelty?**

**In Bravery v. Bravery** (1954) 1 WLR 1169, by majority, the Court held as under: 'If a husband submitted himself to an operation for sterilization without a medical reason and without his wife's knowledge or consent it could constitute cruelty to his wife. But where such an operation was performed to the wife's knowledge, though without her consent and she continued to live with him for thirteen years, it was held that the operation did not amount to cruelty.'

**In Ward v. Ward** [(1958) 2 All E.R. 217, a refusal to bear children followed by a refusal of intercourse and frigidity, so that the husband's health suffered, was held to be cruelty; so also the practice by the husband of coitus interruptus against the wish of his wife though she desired to have a child. Cases involving the refusal of sexual intercourse may vary considerably and in consequence may or may not amount to cruelty, dependent on the facts and circumstances of the parties<sup>21</sup>. **In Sheldon v. Sheldon**, [1966] 2 All E.R. 257, Lord Denning, M.R. stated at p. 259: "The persistent refusal of sexual intercourse may amount to cruelty. The several acts of alleged cruelty, physical or mental, should not be taken separately. Several acts considered separately in isolation may be trivial and not hurtful but when considered cumulatively they might well come within the description of cruelty<sup>22</sup>."

**In Jem v. Jem** [(1937) 34 Haw. 312], the Supreme Court of Hawaii mentioned that “cruel treatment not amounting to physical cruelty is mental cruelty”. “To prove a case entitling a spouse to divorce on the ground of mental cruelty, the evidence must show that the conduct of the offending spouse is unprovoked and constitutes a course of abusive and humiliating treatment that actually affects the physical or mental health of the other spouse, making the life of the complaining spouse miserable, or endangering his or her life, person or health (In *Rosenbaum v. Rosenbaum* [(1976) 38 Ill.App.3d. 1] the Appellate Court of Illinois ).”

**In Dr.(Mrs.) Malathi Ravi, M.D vs Dr. B.V . Ravi M.D<sup>23</sup>**, the Supreme Court held that “not printing the names of the husband’s parents name in the naming ceremonies of child tantamount to totally ignoring the family of the husband”. Further the court held that “Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonized feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances”.

*"Whether a petitioner is entitled to claim decree of divorce merely on the ground that the respondent has failed to prove the charges of 'cruelty' levelled in the counter by way of defence, against the petitioner?"*

The Andhra Pradesh High Court held that “It is not sufficient to contend that charges made in the written statement are unproved, and therefore, amount to 'cruelty'. What is further necessary for the petitioner to prove is that the said charges are false. The burden is on the petitioner to show that the charges are false. The burden cannot be thrown on the respondent because respondent has not come to the Court for seeking any relief. It is settled law that in all matrimonial causes burden of proof is on the petitioner. Particularly in cases of 'cruelty' it is for the petitioner to prove the element of 'legal cruelty'. Merely because the respondent would not be in a position to prove the allegations should not give a premium to the petitioner. Such inability to prove the allegations by the respondent may be due to variety of grounds. Further, though the subsequent event of making allegations in the written statement against the petitioner can be a ground for claiming a decree of divorce in a petition on ground of 'cruelty', it is for the petitioner to prove that the allegations are false, baseless, malicious etc. The fact that the respondent could not prove the charges leveled in the defence may not supply a ground in favour of the petitioner to grant a decree of divorce. As laid down in *K. Lalitha Kumari v. K. Rampradasa Rao*, 1992 ALT 631 and the second is *Jayakrishna Panigrahi v. Surekha Panigrahi*, 1995 (3) ALD 195. it is *no doubt* open for the petitioner in a petition for

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<sup>21</sup> Source: *Ibid*

<sup>22</sup> Source: *Ibid*.

<sup>23</sup> MANU/SC/0578/2014.



divorce on ground of 'cruelty' to seek a decree of divorce on grounds arising out of charges levelled in the written statement by the respondent which amount to 'cruelty'<sup>24</sup>.

#### **Unsoundness of Mind**

In *Smt. Uma Rani vs. Arjan Devi*<sup>25</sup>, it has been held that Under the Act, cruelty is not defined, but it is settled law that if the cruel behaviour of one spouse is of such a nature as to give rise to a reasonable apprehension in the mind of other spouse, that it will be harmful or injurious on the other one to live with the first spouse, it constitutes a legal cruelty. The day to day behaviour of the appellant was such as to disturb the mental peace and harmony of the respondent which definitely amounted to legal cruelty. She may not be of the unsound mind, but her peculiar ways of behaviour proved by the respondent are sufficient to constitute that legal cruelty. The husband could not live with peace in the company of the appellant. Peace was always disturbed due to her peculiar ways of behaviour, and thus he cannot be disbelieved that her behaviour was cruel to him.

#### **Attempt to Commit Suicide**

In *Harbhajan Singh Monga vs. Amarjeet Kaur*<sup>26</sup>, it has been held that threats of committing suicide by one spouse constitutes cruelty to other.

#### **Making False Allegations**

Making false allegations against the husband of having illicit relationship and extra marital affairs by wife in her written statement constituted mental cruelty of such nature that husband cannot be reasonably asked to live with wife. The Court found that the husband in such circumstances was entitled to a decree of divorce. The same view has been expressed by the Hon'ble Delhi High Court in the case of *Jai Dayal vs. Shakuntala Devi*<sup>27</sup>. Nagpur Bench of Bombay High Court in another case ruled that "making false allegations of physical and mental torture against husband amounts to mental cruelty". Where a wife lodges false reports of non-bailable offences against the husband and his relations, who have to rush to the court to obtain bail in order to avoid arrest, she causes husband deep anguish and brings disgrace and ignominy to the husband and his relations, besides causing harassment<sup>28</sup>.

#### **Illicit Relationship is not Always Cruelty**

The Supreme Court in a case held that "the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty"<sup>29</sup>.

#### **Pub Visit not Cruelty**

In a case the Division Bench of Justices Vijaya Kapse Tahilramani and Anil Menon of Bombay High Court ruled that pubbing habit of wife is not a reason to get a divorce on grounds of cruelty.

**Long Absence of Physical Company:** Long absence of physical company cannot be a ground for divorce if the same was on account of husband's conduct - (*A. Jayachandra vs Aneel Kaur*: MANU/SC/1023/2004).

**Beating Wife:** The ill-treatment or treating the wife with cruelty, does not lie merely in beating her. A long course of ill-treatment would ultimately result in beating<sup>30</sup>.

**Living Apart:** Living apart and depriving husband of cohabitation is also an act of cruelty<sup>31</sup>.

#### **Insulting Husband before Friends and Relatives**

**Insulting husband before friends and relatives** by saying "*tu cori hea, teri ma bhi cori hea*", (VERNACULAR TEXT COMMITTED) certainly constitute the mental cruelty to the husband and cannot be set aside lightly<sup>32</sup>.

#### **Defamatory Publication against Husband in the News Paper**

Held it was mala fide and the motive was to demolish the reputation of the husband in the society by naming him as a womaniser, drunkard and a man of bad habits caused mental cruelty. Further the court held that "the cruel behaviour of the

<sup>24</sup> *Naval Kishore Somani vs Poonam Somani*; Equivalent citations: 1998 (5) ALD 349, 1998 (5) ALT 234, I (1999) DMC 415.

<sup>25</sup> AIR 1995 P H 312, I (1996) DMC 519, (1995) 110 PLR 530.

<sup>26</sup> AIR 1986 MP 41.

<sup>27</sup> AIR 2004 Delhi Page 31.

<sup>28</sup> *Kalpna v. Surendranath* MANU/UP/0169/1985; Equivalent Citation : AIR 1985 All 253.

<sup>29</sup> *Ghusabhai Raisangbhai Chorasiya & Ors. Vs State of Gujarat*, CRIMINAL APPEAL NO. 262 OF 2009. Date of Judgment 15/02/2015.

<sup>30</sup> *Chintagunti Jagannadham vs Chintagunti Savithramma*, Equivalent citations: AIR 1972 AP 377.

<sup>31</sup> *Ranbir Singh vs Balbir Kaur*, Equivalent citations: II (1995) DMC 516.

<sup>32</sup> *Yogesh Chandra Joshi vs. Munni Joshi*; MANU/UC/1486/2010.



wife has frozen the emotions and snuffed out the bright candle of feeling of the husband because he has been treated as an unperson. Thus, analysed, it is abundantly clear that with this mental pain, agony and suffering, the husband cannot be asked to put up with the conduct of the wife and to continue to live with her. Therefore, he is entitled to a decree for divorce<sup>33</sup>.

#### **False Allegations**

False allegations against the character of any spouse made by the other spouse constitutes mental cruelty and that such mental cruelty will be a valid ground for passing a decree of divorce under the provisions of Section 13(I)(ia) of the Hindu Marriage Act<sup>34</sup>.

#### **Gets Rid of a Pregnancy without the Consent of the Husband**

Where a wife gets rid of a pregnancy without the consent of the husband, she causes him mental torture and deprives him of the pleasure and pride of being a father<sup>35</sup>.

#### **Staying together under the Same Roof is Not a Pre-Condition for Mental Cruelty**

Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof<sup>36</sup>. While staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable<sup>37</sup>.

#### **Hardly Allowing to have Sexual Intercourse**

In *Geeta Yogesh Mehta vs Yogesh Jethalal Mehta*<sup>38</sup>, it was held that the appellant-wife hardly allowed the respondent-husband to have sexual relationship with her - Respondent-husband suffered mental cruelty because of non-consummation of marriage with the appellant-wife.

#### **Refusal to have Sex**

If either of the parties to a marriage being a healthy physical capacity refused to have sexual intercourse, the same would amount to cruelty entitling the other party to a decree. A normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. If this is not possible due to ill health on the part of one of the spouses, it may or may not amount to cruelty depending on the circumstances of the case. But willful denial of sexual relationship by a spouse when the other spouse is anxious for it, would amount to mental cruelty, especially when the parties are young and newly married<sup>39</sup>."

**Calling Husband as Fat: In SA Vs AA**<sup>40</sup>, Hon'ble Mr. Justice Vipin Sanghi of High Court of Delhi on 22.03.2016 held that "calling of names and hurling of abuses such as 'Hathi', 'Mota Hathi' (fat elephant) and 'Mota Elephant' by the appellant in respect of her husband – even if he was overweight, is bound to strike at his self respect and self esteem and amounts to cruelty and is a grounds for divorce as it is "destructive of the matrimonial bond".

**Coming Late without Informing Wife is Cruelty: In Mrs. Deepakshmi Sachin Vs. Sachin Ramesh Rao Zingade**<sup>41</sup>, Hon'ble Judges P.B. Majmudar and R.V. More, JJ.of the High Court of Bombay held that "A housewife would normally expect her husband to be at home within reasonable time at night. if the husband regularly comes late at night after midnight any wife can have reasonable apprehension about the character of her husband. it is always expected from the husband at least to inform the wife on telephone that she may not wait for him for long and he may come late at night or he may not come at all. The fact that the appellant was required to wait upto midnight for arrival of her husband at home without any information can be an act of cruelty on the part of the husband to the wife.

<sup>33</sup> *Vishwanath S/o Sitaram Agrawal vs. Sau. Sarla Vishwanath Agrawal*; MANU/SC/0513/2012.

<sup>34</sup> *Nandita Roy (Nee Ghosh) vs Asish Kumar Roy, II (1996) DMC 688.*

<sup>35</sup> *Kalpna v. Surendranath* MANU/UP/0169/1985; *Equivalent Citation : AIR 1985 All 253*

<sup>36</sup> *K.Srinivas Rao Vs D.A.Deepa*; MANU/SC/0180/2013.

<sup>37</sup> *Ibid.*

<sup>38</sup> *I (1998) DMC 546.*

<sup>39</sup> *Anil Bharadwaj v Nimlesh Bharadwaj*; MANU/DE/0293/1986 = *AIR 1987 Delhi 111.*

<sup>40</sup> MANU/DE/0727/2016.

<sup>41</sup> MANU/MH/1017/2009.



The Madras High Court held that “If the husband wants to have divorce on the ground of cruelty by the wife he must specifically and clearly state in what way the wife treated him with cruelty<sup>42</sup>”.

In **P.Nirmala vs K.Muruguselvam**<sup>43</sup>, the Madras High Court held that calling husband in a singular words in an indecent manner without any due respect and treating him as inferior to her status and also call him as less educated and utter as 'after all a diploma holder' and utter him as not possessing any masculine characters amounts to cruelty. Further the court held that “treating and abusing the parents of the husband in a shabby manner also amounts to cruelty”.

#### **Gaining Weight after Marriage**

Bombay High Court Bench comprising of Justice M.S. Sonak and Justice A.S. Oka, while dismissing a divorce petition, held that gaining weight after marriage cannot be ground for divorce. The court further, observed that the allegations that the Respondent being of quarrel some nature and that the Respondent is adamant constitute the normal wear and tear of marriage and by itself no ground for divorce. The court also stated that “*even assuming that there is an irretrievable breakdown of marriage, under Section 13 of the said Act, the breakdown of the marriage is no ground to grant a decree of divorce. Unless one of the grounds set out in Sub- section (1) of Section 13 of the said Act is established, a decree of divorce cannot be passed*”<sup>44</sup>.

#### **Kicking Daughter-in-Law and Threatening to Divorce**

In **Bhaskar Lal Sharma & Anr. Vs Monica**<sup>45</sup>, the Supreme Court held that allegations that Appellant No.2/mother-in-law kicked the respondent/daughter-in-law with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498A. further the held that even threatening that her son may be divorced for the second time could not bring out the offence under Section 498A of the IPC.

Shocked at the judgment the NCW filed a review petition, which was dismissed. Against this, the curative petition was filed contending that the judgment would have far reaching consequences for women’s rights all over India and needed to be corrected.

A three-judge Bench of Chief Justice Altamas Kabir and Justices P. Sathasivam and G.S. Singhvi, allowing a curative petition filed by the National Commission for Women (NCW), recalled the July 27, 2009 judgment pronounced by Justices S.B. Sinha and Cyriac Joseph and directed restoration of the special leave petition (SLP) filed by Bhaskar Lal Sharma and his wife for a fresh hearing.

The CJI-headed Bench issued notice on Monica’s curative petition. It, however, made it clear that the observations made in this case were confined to the curative petition and should not prejudice the outcome of the appeal<sup>46</sup>.

#### **Abusing in-Laws**

In **Vinod Kumar Subbiah Vs. Saraswathi Palaniappan**<sup>47</sup> A Bench of Justices Vikaramajit Sen and Abhay Manohar Sapre of Supreme Court ruled that “If a spouse abuses the other as being born from a prostitute, this cannot be termed as “wear and tear” of family life”. It is a clear case of cruelty. Further the Bench ruled that Making it impossible for any close relatives to visit or reside in the matrimonial home would also indubitably result in cruelty to the other spouse.

#### **Nature of Proof Required in Matrimonial Matter is Different**

In **Suman Singh v. Sanjay Singh**, 200 (2013) DLT 638 (DB), the MAT.APP. 68/2012 the Division Bench of Delhi High Court while relying upon **A v. B** 1985 MLR 326 observed that the nature of proof required in matrimonial matter is different, considering the fact that matters relating to the private intimate life of the parties are not supposed to be known to other persons, and no corroboration can be expected in such cases.

<sup>42</sup> *J. Shyamala vs P. Sundar Kumar*; Equivalent citations: (1990) 2 MLJ 198 & [MANU/TN/0679/1990.

<sup>43</sup> MANU/TN/0364/2012.

<sup>44</sup> *Milind Anant Palse Versus Mrs. Yojana Milind Palse*; FAMILY COURT APPEAL NO.106 OF 2005.

<sup>45</sup> MANU/SC/1335/2009; Equivalent Citation: 2009 (10)SCALE 744.

<sup>46</sup> <http://www.thehindu.com/news/national/supreme-court-recalls-kicking-daughterinlaw-not-cruelty-judgment/article4510382.ece>.

<sup>47</sup> MANU/SC/0492/2015.





“In *Vinita Saxena vs Pankaj Pandi*<sup>48</sup>, the Supreme Court observed that “Cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. Judges may not go in parallel with them. There may be a generation gap between the Judges and the parties. It would be better if the Judges keep aside their customs and manners. It would be also better if Judges less depend upon precedents.”

### Conclusion

Marriage as a social institution is an affirmation of civilized social order where two individuals, capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation. It stands as an embodiment for continuance of the human race. Despite the pledge and promises, on certain occasions, individual incompatibilities, attitudinal differences based upon egocentric perception of situations, maladjustment phenomenon or propensity for non-adjustment or refusal for adjustment gets eminently projected that compels both the spouses to take intolerable positions abandoning individual responsibility, proclivity of asserting superiority complex, betrayal of trust which is the cornerstone of life, and sometimes a pervert sense of revenge, a dreadful diet, or sheer sense of envy bring the cracks in the relationship when either both the spouses or one of the spouses crave for dissolution of marriage – freedom from the institutional and individual bond<sup>49</sup>. Of course, Human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. But the authors conclusion is that before that halt, as a human being we should try to convince our life partner by telling the value of life. Because life is made in the heaven and it is only for one time. We should not waste the life. Life is to live. Live and try to live with one spouse.

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<sup>48</sup> *Supra* Note 18.

<sup>49</sup> *Supra* Note:23.