



A COMPARISON OF INDIA'S DIVORCE LAWS WITH SPECIAL RELATION TO CRUELTY

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ABSTRACT

The concept of cruelty is not new to civilization. It had deep roots that date back to antiquity. Although the method of carrying out such cruelty was different, it still remains. from the prehistoric age to the contemporary era, and up to the present. Initially, cruelty was solely thought to refer to physical abuse, but today it also covers mental and emotional abuse. Cruelty was seen by numerous personal laws as a legal basis for divorce. People of several religions held the opinion that a marriage cannot be regarded as a decent marriage if the foundation of the relationship is founded on violence or terror.

Keywords: *Keywords: Divorce, Cruelty, Personal Laws, Physical and Mental Cruelty.*

Introduction

As a woman of Indian descent, I have always been familiar with the phrase "pati parmeshwar," which denotes that your husband is your God and that you must obey everything he commands without question or protest. However, modern women no longer subscribe to this antiquated myth. All of this has been spread by the male-dominated society in an effort to maintain power and create sole rights, but in a marriage, the rights of the husband and wife are equal. Each of them made numerous attempts to save their marriages by putting aside their divergent points of view since in India, relationships are still valued more than individual lives, but not at the expense of or to the detriment of others. The researcher has outlined a number of aims and hypotheses for this study work in order to determine the cause and preventative measures for such an incident.

Objective

1. To discuss the concept of cruelty in personal Laws.
2. To discuss the changing scope of cruelty in present days.
3. To check whether the remedies given to the aggrieved person is sufficient.
4. To check the satisfaction level of society from the available remedies.

Hypotheses

1. Laws available to society against the commission of cruelty are sufficient.
2. Laws are not being misused by the couple.
3. Cruelty is considered as a ground of Divorce in all personal Laws.

Research Methodology

The researcher compiles data from secondary sources (such as publications, case law, and various laws) in order to offer the study based on that data.

Historical Background

Cruelty was never taken into account as a reason for divorce before the Hindu Marriage Act of 1955; instead, it was only used in situations of judicial separation. In certain situations, the injured party must establish that the cruelty is so severe or intolerable that continuing a relationship with their spouse is becoming challenging. This was upheld by the Supreme Court in the seminal case of *Dastane v. Dastane* in 1975, which discusses cruelty specifically with reference to mental cruelty and establishes that a healthy mind is likewise a necessary component of a healthy existence.

Cruelty as a basis for divorce was added to the Act in 1976 as a result of this change. The Court did rule, however, that the subject matter of the case should be the only factor considered by the courts for making a cruelty determination. With the exception of the two words "persistently or repeatedly" that were added, there was no distinction between the reasons of cruelty that resulted in judicial separation and the grounds of cruelty that resulted in divorce after this Act's amendment. This amendment significantly increased the weight of establishing cruelty as a basis for divorce over proving it as a basis for judicial separation. As a result of the addition of this reason under Section 10(1) of the Hindu Marriage Act of 1955, "Cruelty" now has a self-contained term.

Meaning of Cruelty

Violence or violent deeds are referred to as cruelty. A minor altercation, trifles, concerns with behavior, or disagreements between spouses do not fall under the definition of cruelty. In the married lives of couples, this conduct is extremely prevalent. Acts that qualify as cruel should be serious and severe in character. Grave violence need not always take the form of physical assault. Aside from physical abuse, which is a key component of cruelty, routine mistreatment or mental torment of one spouse or the other also falls within the definition of cruelty.

The setting of a married life makes it difficult for a couple to live a calm life. There isn't an exclusive definition for what constitutes cruelty, but if we look at local instances of domestic abuse or marital abuse, we can identify some circumstances that fall within this category. These circumstances include:

- The physical torture or abuse on the spouse by the spouse.
- Having Extra-Marital affairs or committing adultery with not spouse's knowledge and even accepting it publically.
- The regular epitome of affliction, rage with yelling or abusing at the spouse.
- Demoralizing and restricting the spouse by every means to be an independent individual.
- Compelling the spouse to obey the directions and act accordingly and lefther with no other option for establish herself as an independent.
- Not disclose any information or incident of having sexually transmitted disease and so on.
- The conduct by either of the spouse should be of such a nature which should fall in the ambit of cruelty under the Matrimonial Law. The Court must look all the background and reasons due to which the married couple wants to get break down their Marriages and the Court has to investigate the circumstances and conditions for the declension of the marriage.

Legal Provisions for Divorce on Cruelty under Various Personal Laws at a Glance:

Personal laws	Section	Provision	Relief
Hindu Law	U/S- 10 and 13 1 (i) of Hindu Marriage Act,1955	Treated the plaintiff with physical or mental harassment after Marriage	Court may grant either judicial separation or Divorce.
Muslim Law	U/S-2 (ix) Dissolution of Muslim Marriage Act, 1939	Six conditions are defined and explained which amounts to cruelty with wife	Marriage will be Dissolved. Relief is specifically available to wife.
Christian Law	U/S- (x) and 22 of Indian Divorce Amended Act, 1869	Treated the plaintiff with such apprehension to cause her/him injury.	Court may grant either judicial separation or Divorce.
Parsi Law	U/S- 32(d) and 34 of Parsi Marriage and Divorce Act, 1936.	Treated the petitioner with such cruel behavior which render improper to mandate the petitioner to live with the respondent under the same roof.	Court may grant either judicial separation or Divorce.
Special Marriage	Section 27 (1) (a) and 23(1) (a) of Special Marriage Act 1954.	Behaved cruelly with petitioner after Marriage.	Court may grant either judicial separation or Divorce.
Criminal Law	Section 498A of Indian penal Code, 1860.	Intentional act of husband and his family members, of such nature which brings a wife to suicide or causing grievous injury or danger of life.	Imprisonment upto 3 years and fine also.

Judicial Attitude towards Cruelty Under Hindu Law

Any act or action committed by a spouse against other which consists any bodily injury, harm or injury to any body part or cause likely such harm, consider earlier as a legal cruelty, but in matter of physical cruelty, it depends upon the situations of every case which are always differ from the prior one. To check which act of violence is considers as a physical cruelty Supreme Court gave various decision to prove such instance.

In *Saptami v. Jagdish*¹ the husband steadily maltreated his wife and jumped beyond his limits in front of his

father-in law on one day, when he pushed her and causing such bodily injury which results blacken her body. In *Sundar Lal v. State*² husband and his family members made regular demands of dowry. In a view to cause her mentally and physically torture he strangled his wife and made her in the state of suffocation which later causes her death.

Mental Cruelty: It is an act done by the partner to cause emotional, psychological, mental harm to his/her partner in such a manner that he or she cannot able to live a normal life. As per Cambridge Dictionary Mental Cruelty³ means “*behavior that makes other person suffer emotionally but does not involve physical violence.*”

In *N. Sreepadachar v. Vasantha Bai*⁴ the husband was tortured by his wife in public and even hold his collar for not cooking the food for her and when he offered her the food she threw the plate on his head and threaten him that she will burn herself alive and give a fabricated complaint to the police which made him into a trouble and also states in front of others that her husband wants to kill her to get her insurance claim.

The court observed in this case that it is not necessary cruelty can do only through physical acts; it can be done mentally also. Cruelty in each case must be judged with the relations among the spouses and with their effect in future.

In *Nirmala Manohar Jagesha v. Manohar Shivram Jagesha*⁵ the Bombay High court laid down the concept of cruelty as follows:

1. Cruelty under marital laws means such treatment with the other spouse which cannot expect from him/ her and not possible for the other spouse to live a normal life with him/her.
2. The concept of danger mentioned under English Law, is not acceptable in India.
3. The making of false and meaningless allegations of sterile, disloyalty itself amounts to cruelty in marital laws.

In *D. Bhagwat v. V. Bhagwat*⁶ Supreme Court observed and defined cruelty as such conduct of other partner which imposes such mental pain and agony as it would not be possible to live with each other under the same roof. In this case wife to defend herself make false allegations to husband and his family and while cross examination said that he and his whole family is a lunatic, but still she wants to be live with her husband. The act of wife consider and taken by the Supreme court as a cruelty and her very intention was also clear that she only wants to take revenge after moving back to her matrimonial house.

In *Dastane v. Dastane*⁷, Justice Chandrachud said that cruelty does not contain a single act but it contains

number of acts observed in many cases. Law does not require that at the primary appearance of cruel act, the other mate must leave the wedding home in case the proceeded dwelling together be understood as an approbation. Such a development will obstruct compromise. Furthermore, along these lines baffle the kind hearted motivation behind marriage laws. The Change of phrasing as for cruelty brought by Amendment Act of 1976 in Section 13(1) (I-9) has its effect on the reaction of judiciary to such provision. Prior to the said change, the Supreme Court had held in *Dastane v. Dastane*⁸ that mischief or damage to wellbeing-ness, notoriety or the like would be a significant thought in deciding if the lead of the respondent adds up to Cruelty. The courts with regards to present-day living have seen that, the facts demonstrate that conventional idea of Hindu spouse. As she was considered to be *Dharmapatni, Ardhangini or Bharya*, which means along these lines that she needs to pursue the spouse way and be in his organization as his very own piece of body, but this idea has experienced an adjustment in the present situation. Issues between the modern couples in such manner are on-increment normally on the grounds that, there are an enormous number of marriage accomplices who are taught and have a profession of their very own in administration or calling and they need to proceed with that vocation during the whole time of their marriage life.

In such conditions, if a spouse demands his employed spouse to leave the job for all time and to live with him else, he records an instance of cruelty against her and looks for separation on a similar ground - what is the arrangement? Reacting to this inquiry D.M. Dharmadhikan Justice of the M P High Court in *Smt. Vibha Srivastava v Dinesh Kumar Srivastava*⁹ talked that every life partner is qualified for an equivalent voice in the ordering of the issues which are their normal concern. Neither has a making choice, despite the fact that they should attempt so to orchestrate their issues that they get to know one another as a family furthermore, not separated. If such a game plan is disappointed by the outlandish wants of the candidate, his case to separate on the ground of cruelty that his significant other isn't happy to go along with him at the expense of relinquishing her profession for all time ought not be acknowledged.

Similarly, in *Samar Ghosh v. Jaya Ghosh*¹⁰ Supreme court laid down that denial by wife to mingle with her husband amounts to mental cruelty towards husband. It is the duty of wife, when she willfully accepted the marriage to perform all the obligations which were necessary to maintain a healthy matrimonial relation. Normal quarrels are the part of life; it is to be presumed that the life of husband and wife cannot be complete if they do not fight with each other. It's also been heard in our families or from society that love is persistent where, there are some fight on trifles.

Under Muslim Law

Under Muslim law Muslim women has right to file a case on the ground of Cruelty under dissolution of

Muslim Marriage Act 1939. This ground has been explained by the apex court in various cases. In *M. Begum v. M.K.R Khan*¹¹ Court said that it has adequate reason for dissolution of marriage. When cruelty done by husband with the self-explanatory instance given in the Act.

Similarly in the case of *Smt. Nafeesa v. Nishath*¹² husband usually commits physical cruelty with his wife due to which she left her matrimonial house in the condition of 5 month pregnancy. The conduct of husband towards his wife shows his negligence as well as cruelty. Thus dissolution of marriage is granted.

Under Parsi Law

In *Nusserwanji v. Shehra Cowasji Patuk*¹³ the cruelty was taken in its legal sense include not compulsory bodily assault either done by husband or wife. It includes crude behavior done by man or woman with his wife or her husband and Children. The important point was that is it possible to live with him/ her in normal prudence or compelling each other to live with them. The nature and behavior they pursue during their married life was also to be considered.¹⁴

In *Parveen Mehta v. Inderjit Mehta*¹⁵ mental cruelty is a condition of mind in which an obstruction has been caused either by the acts, conduct and situation of the case. An individual who is in normal state if being dispossessed of normal sexual life by the better-half and the spouse suffer pain, disappointment and annoyance of this act, said to be suffered from mental cruelty. Frequently causing humiliation in front of public or at public place can also amount to mental cruelty.

Thus, it has been observed that cruelty has enlarged its sphere and expanding the way of commission by the married couples upon each other. Somehow it has also been observed that in number of cases the laws are being misused by the female or using them as a weapon to threaten her husband and her in-laws. There is no need to make any special laws but now it's a time to stop the misuse by either party especially married woman. Through this paper I create a focus on the comparison of laws as well as the enlarged sphere of cruelty in the present time. To stop the commission of cruelty the court should focus the reason behind committing such act. In number of cases it has been found that cruelty begins on trifles but later on the reasons are so severe that they are not in a position to control.

Suggestions

1. This is suggested to the competent authority to make such laws so that the cruelty should stop against men, husband and his family members.
2. The establishment of Men's Cell like women cell where Men can lodge their complaints specially married

men against his wife Cruelty.

3. To check whether the provisions made for the protection are applicable properly and the victim can able to take remedies.
4. Education plays an important role in the development of an human being into a good human being and a life partner. So basic education and moral values must be compulsory for every individual.
5. Nowadays both husband and wife are working professionals. So to make a marriage successful it is necessary to lower the expectation from each other.
6. Marriages should not be done through force. They must be happen with free consent of the parties.

Conclusion

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁶

Keeping this in mind it can be said that cruelty by either husband or wife is a breach of the basic right to dignity and liberty. The Constitution of India, which is the grund-norm of the country, ensures the right to life with dignity as it is a part of right to life under Article 21. Inflicting physical and mental pain and suffering on the other amounts to a breach of the same. Due to the growing modernization and breakdown of family systems, the rate of divorce in India is increasing annually.

According to the reports of the National Crime Investigation Bureau, the number of complaints filed under Section 498A of IPC has been increasing proportionally since the beginning of the 21th century. The concept of cruelty is not clear; the burden will always be on the judiciary to decide whether an act is cruelty or not depending upon the facts and circumstances of the situation and the parties to the dispute.

It is very true that there are a lower number of complaints lodged for divorce on grounds of cruelty in comparison to other grounds of Divorce. As people may prefer settling themselves their disputes with whatever condition they are in. There is a need of an hour to understand that the provisions made are going to help and safeguard you from ill-treatments not for using them as a weapon and mis-used them against each other. So, laws may vary according to particular State Laws or the grounds which would fall under the scope of cruelty. After analyzing and discussing the aspect of cruelty researcher found that Cruelty is not a new concept for society. Cruelty is considering a valid ground of divorce under all the personal Laws.

Bibliography

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⁵ AIR 1991 Bom 259.

⁶ AIR 1994 SC 710.

⁷ 1975 HLR-31.

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⁹ AIR 1991 MP 346

¹⁰ (2007) 4 SCC 511

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¹² A.I.R. 2004 Ker. 22.

¹³ AIR 1938 Bom 81.

¹⁴ Under section - 43 of Parsi Marriage Act 1936.

¹⁵ (2002) 5 SCC 706.

¹⁶ Rajesh Sharma v. State of U.P. 2017 SCC On Line SC 821