

# CRUELTY- A GROUND FOR MATRIMONIAL RELIEF

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## ABSTRACT

*The word 'cruelty' has not been defined in the Hindu Marriage Act, 1955. Generally, cruelty is any behavior which causes a physical or mental, intentional or unintentional. The era of 1955 is the most important for the Hindu. Pre 1955 era was considered as uncodified Hindu Law. Marriage is considered as a pious knot in Hindu Law. Hindu Law is based on Hindu Religion. So, there was no any provision for divorce in uncodified Hindu Law. The Male-dominated Hindu Society was ended by the Hindu Marriage Act. Both the spouse are entitled for DIVORCE. However, Cruelty has always been a burning topic for the supreme court of India regarding this act. The concept of cruelty have been mentioned both in the provisions for judicial separation and divorce. However, it is difficult task to consider cruelty even after 59 years i.e., from the enactment of the act.*

**Key words:** *Cruelty, Uncodified, Divorce, Marriage*

## 1. INTRODUCTION

Under the Hindu Marriage Act, 1955, cruelty was one of the ground only for obtaining judicial separation and not a ground for obtaining divorce. The word cruelty was not defined in the Act but in Section 10 which dealt with judicial separation the word cruelty was used in a restricting sense. It says that either party to a marriage may present petition praying for a decree for judicial separation on the ground that the other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner which will be harmful or injurious for the petitioner to live with the other party.

Section 13 of the Act deals with divorce. When the Act was originally enacted it did not have cruelty as one of the ground for seeking divorce. The Legislature of Uttar Pradesh wished to include cruelty also

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as a ground for divorce and Section 13 of the Hindu Marriage Act was amended to include cruelty as a ground for divorce. The amendment was to the effect that in sub-section (1) of Section 13

The word 'cruelty' has not been defined in the Hindu Marriage Act, 1955. Generally, cruelty is any behavior which causes a physical or mental, intentional or unintentional. If it is physical, the question of question of fact and degree arises. If it is mental cruelty, the enquiry must begin depending upon the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. The concept of cruelty has been used in Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 as a ground for divorce but it does not define cruelty.

Section 2 is the interpretation clause of the Act. But neither in Section 2 nor in any section of the Act, the meaning of the word cruelty is not mentioned. So in that case, the respected court has to depend on external aid in each case. The honorable supreme court of India depends upon the decisions of English courts regarding this matter since the commencement of the Act. After verifying the various decisions of the honorable judiciary of our country, the meaning of cruelty is given as:

1. CRUELTY INCLUDES PHYSICAL AND MENTAL CRUELTY.
2. CRUELTY IS THE *RES GESTE* THAT ADVERSE AFFECTS ON THE MENTAL AND PHYSICAL HEALTH, SOCIAL STATUS AND LIFE STYLE OF THE OTHER PARTY.

## 2. DEFINITION OF CRUELTY

### 2.1. 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'.

### 2.2. By legal dictionary

As applied to people, cruelty encompasses abusive, outrageous, and inhumane treatment that results in the wanton and unnecessary infliction of suffering upon the body or mind.

## 3. BEFORE 1955 ERA

Before 1955 era, it was not so easy to get divorced for a person belonging to Hindu community. Because as per Hindu religion, the marriage is considered as a pious knot. So it is difficult to find any provision for Divorce in uncodified Hindu Law that is known as, Shashtras, Puranas, Ved and other pious or holly books related with Hindu Religion. The parliament decided to enact laws related with the Hindu considering the various stigmas in social life of the Hindu. However, it was a difficult task to do so. The Hindu Marriage Act, 1955 revolves round the valid marriage between the Hindu, Valid rites of Hindu marriage, provisions for maintenance and divorce. The provisions for judicial separation and divorce have been taken from the concept of Western theory. So, the

western theory has been entered by way of codification in the Hindu Society! Cruelty is now a ground for divorce and judicial separation between the parties

#### 4. CRUELTY IN EYES OF THE COURT

There are various grounds to claim divorce on basis of cruelty and types of cruelty, which are identified by the courts in their various judgments and the courts provide a legal backup for -the sufferer in this sense. They have given following explanation within the scope of cruelty under section 13(1)(Ia);

- It is sufficient that if the cruelty is of such a type that it becomes impossible for spouses to live together,
- The leveling of false allegation by one spouse about the another having alleged illicit relations with different persons outside wedlock amounted to mental cruelty,
- A husband cannot ask his wife that he does not like her company and saying her to stay with other members of the family in matrimonial home. Such an attitude amounts to cruelty in itself on the part of the husband.
- Social torture by anyone of the spouses to the other, found to be as the mental torture and amounts to cruelty.
- If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention does not make any difference in the case. The cruel treatment may also result from the cultural conflict between the parties.
- A party can cause mental cruelty when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires an expert psychological treatment to restore his mental health.

#### 5. WHAT AMOUNTS TO CRUELTY?

##### 5.1. Unsoundness of Mind

In the case of *Uma Rani vs. Arjan Devi*<sup>3</sup>, it has been held that Under the Act, cruelty is not defined, but 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 amounts to legal cruelty. She may not be an unsound mind, but her peculiar ways of behaviour proved by the respondent are sufficient to constitute the 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.

##### 5.2. Attempt to Commit Suicide

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<sup>3</sup> AIR 1995 P H 312, I (1996) DMC 519, (1995) 110 PLR 530.

In the case of *Harbhajan Singh Monga vs. Amarjeet Kaur*<sup>4</sup>, it has been held that threats of committing suicide by one spouse constitutes cruelty to other.

### 5.3. Making False Allegations

Making false allegations against the husband for 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 is entitled to a decree of divorce in such circumstances. The same view has been expressed by the Hon'ble Delhi High Court in the case of *Jai Dayal vs. Shakuntala Devi*<sup>5</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.

### 5.4. 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"

### 5.5. 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.

### 5.6. 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).

### 5.7. 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

### 5.8. Living Apart:

Living apart and depriving husband of cohabitation is also an act of cruelty

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<sup>4</sup> AIR 1986 MP 41

<sup>5</sup> AIR 2004 Delhi Page 31

### 5.9. 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>6</sup>.

### 5.10. Defamatory Publication against Husband in the News Paper

It held that 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 causes mental cruelty. Further the court held that "the cruel behavior of the 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, 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 was entitled to a decree for divorce<sup>7</sup>

### 5.11. Gets Rid of a Pregnancy without the Consent of the Husband

Where a wife gets rid of a pregnancy without the consent of her husband, she causes him mental torture and deprives him of the pleasure and pride of being a father<sup>8</sup>.

### 5.12. Refusal to have Sex

If either of the parties to a marriage being a healthy physical capacity refused to have sexual intercourse 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 and 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 intercourse 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>9</sup>

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<sup>6</sup> *Yogesh Chandra Joshi vs. Murni Joshi; MANU/UC/1486/2010.*

<sup>7</sup> *Vishwanath S/o Sitaram Agrawal vs. Sau. Sarla Vishwanath Agrawal; MANU/SC/0513/2012*

<sup>8</sup> *Kalpna v. Surendranath MANU/UP/0169/1985; Equivalent Citation : AIR 1985 All 253*

<sup>9</sup> *Anil Bharadwaj v Nimlesh Bharadwaj; MANU/DE/0293/1986 = AIR 1987 Delhi 111*

## **6. PROVISIONS FOR CRUELTY:**

### **6.1. CRUELTY, one of the grounds for judicial separation:**

Section 10(1) (b): Either party to a marriage, whether solemnized before or after the commencement of the Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.

### **6.2. CRUELTY, one of the grounds for DIVORCE:**

Section 13(1)(i-a) : 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 dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty.

### **6.3. Effect of Condonation of CRUELTY:**

Section 23(1)(b) : In any proceedings under this Act, whether defended or not, if the court is satisfied that the ground of the petition is the ground specified in clause (f) of sub-section 10, or in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been necessary to or connived at or condoned the act or acts complained of, or where the ground of petition is cruelty, the petitioner has not in any manner condoned the cruelty, then in such a case, but not otherwise, the court shall decree such relief accordingly.

## **7. 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. As per Hindu Marriage Act, 1955, cruelty is one of the grounds of Divorce and judicial separation. As the word cruelty has not been defined in the Act, it is left on the Judiciary to decide each and every case for deciding the same. Facts are the most important in each case because the Judiciary says that cruelty can be decided by the life style, education and social status of the spouse. It means, cruelty in one case cannot be treated as cruelty in other cases because the life style of one case or class may be different than that of the other.



Therefore, it opens the door of discussion for the courts in each case. By this way, the Act is a heaven for the lawyers. When we go for the interpretation of the section 13 (1)(ia) of the Hindu Marriage Act-1955 we can find that the cruelty cannot be restricted in a boundary of physical harm but it has the meaning beyond that. Physical violence is not absolutely essential to constitute cruelty, a consistent course of conduct inflicting immeasurable mental agony and torture may constitute cruelty At last we can conclude that anybody can reach the court for the divorce on basis of cruelty, but, the case will be decided by the mere facts of that case, court can extend or summarize the meaning of cruelty according to their own interpretation but within the boundary of the law.

