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CRUELTY AS A GROUND FOR DIVORCE

Before 1955 era, it had been not very easy to urge divorced for a Hindu person. Because as per Hindu Religion, the marriage was considered as a pious knot. So we cannot find any provision for Divorce in uncodified Hindu Law that's referred to as, Shashtras, Puranas, Ved and other pious or holly books related with Hindu Religion. Considering various stigmas in social lifetime of the Hindu, the parliament decided to enact laws related with the Hindu.

However, it had been a difficult task to try to do so. The Hindu Marriage Act, 1955 revolves around the valid marriage between the Hindu, Valid rites of Hindu marriage, provisions for maintenance and divorce. The provisions for divorce also as legal separation are taken from the concept of Western theory. So, the western theory has been entered by way of codification in Hindu Society. Cruelty is that the ground of DIVORCE and JUDICIAL SEPERATION between the parties.

Cruelty as a ground of divorce under Hindu law

The legal conception of cruelty and therefore the quite degree of cruelty necessary to amount to a matrimonial offence has not been defined by any statute of the Indian legislature concerning marriage and divorce; nor has the expression been defined within the matrimonial causes Act, 1950, or in any enactment in England. The danger of any attempt at giving a comprehensive definition was that it'll cause social control and restrictive operation of the concept of cruelty. The universal thinking is that the concept should be left free and unrestricted in order that any act could also be interpreted as amounting to cruelty. This has, however, led to unpredictability and speculation. If the established definition is accepted, it'll mean that legislative wisdom in our country is either incapable or unimaginative in providing a definition of the term. The law on the topic hitherto been gathered from decided cases and

courts in India had accepted and adapted to the conditions in India, the principles underlying the judge-made law on the topic in England. the accepted legal meaning in England, as also in India of this expression, which is quite difficult to define, had been, conduct of such character on have caused dander to life, limb or health(bodily or mental), on produce to an inexpensive apprehension of such danger. Of all matrimonial offences cruelty is that the most difficult to define. The legislatures and judges have deliberately avoided formulating any definition of cruelty because there are not any set and defined parameters of what constitutes cruelty.

It may be noticed that cruelty intrinsically wasn't a ground for relief by way of divorce before the amendment to the present section by the amending act of 1976, but was only a ground for relief of legal separation under cl (b) of s 10(1).

In the case of **Sukumar v. Tripathi**¹ the court observed that “no attempt at drawing an entire list on what constitutes cruelty can ever succeed”. Moreover an act which has held to be cruel in one case won't be so in another because it completely depends upon the facts and circumstances of every individual case. Lord Denning within the case of **Sheldon v.**

Sheldon² said,

“The categories of cruelty aren't closed. Each case could also be different. We affect the conduct of citizenry who aren't generally similar. Among the citizenry there's no limit to the type of conduct which can constitute cruelty. New sort of cruelty may happen in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is that the wonderful (sic) realm of cruelty.”

However, within the famous English case of **Russel v. Russel**³ which contains the earliest formulation of cruelty, an effort was made to define it.

“Cruelty was held to be a conduct of such character on have caused danger to life or health, bodily or mentally, gives rise to reasonable apprehension of such danger. The definition includes both physical and mental cruelty within its scope but it also emphasizes on the standard nineteenth century belief that no act can amount to cruelty unless it creates a fear or actually causes injury to the petitioner”.

¹Sukumar v Tripathi A.I.R. 1992 Pat. 32

²Sheldon v Sheldon (1966) 2 ALL E.R. 257

³Russel v Russel, 1997 A.C. 303

In a recent judgment it's been held by the Supreme Court that since "cruelty is getting used in reference to human conduct or human behavior, it's all the harder to define it. It's the conduct in reference to or in respect of matrimonial duties and obligations. It's a course of conduct of one which is adversely affecting the opposite ."⁴

Before the amendment of the Hindu Marriage Act in 1976, cruelty was a ground for legal separation only. The change in law within the year of 1976 made it a ground for divorce also "keeping in sight the changing modes of the society"⁵. The amendment also made it clear that so as to constitute cruelty there's no need for a fear of danger or injury to life to him/her while cohabitation. The words "as to cause an inexpensive apprehension within the mind of the petitioner that it'll be harmful or injurious for the petitioner to measure with the opposite party," were omitted from Section 10(1) (b) of the Hindu Marriage Act,⁶ it's laid down that, a wedding are often "dissolved by a decree of divorce on the bottom that... after the solemnization of marriage, treated the petitioner with cruelty." Therefore, after marriage it's open for both husband and wife to urge a decree for divorce if either of them treats the opposite cruelly. The overall idea, however, is that it's usually the husbands who treat their wives with cruelty. But it's not so. Under the Indian Divorce Act, 1869 cruelty as a ground for divorce was available to a wife only, but, under the Special Marriage Act, 1954 it's available to the husband also on the wife who may present a petition on the bottom that the respondent has, since the solemnization of marriage, treated the petitioner with cruelty.⁷ it's also important to notice that the term "respondent" even includes a "child who beat his father on the behest of the mother."⁸ Where the husband fails to guard his wife from his nagging parents, he has been held to be guilty of cruelty.⁹

Intention of the alleged party is one among the common things which the courts see while determining whether a specific act is cruel or not. The words "has treated" within the Act denotes a conscious action on the part of respondents where an act of cruelty is established. Despite this, intention isn't an important ingredient of cruelty. Within the case of **Bhagwat v. Bhagwat**¹⁰, the Bombay Supreme Court supported the facts of the case held that though the intention of the husband wasn't to be cruel to his wife, his act amounted to cruelty. Though he

⁴Sobha Rani v. Madhukar Reddi (1988) 1 S.C.C. 105

⁵V. Bhagat v D. Bhagat (1994) 1 S.C.C. 337

⁶Sec 13(1) (i-a), hindu marriage act, 1955

⁷Sec 27(d), special marriage act, 1954

⁸ Savitri v mulchand, A.I.R. 1987 Del 52

⁹Shyam sunder v. santa devi A.I.R 1962

¹⁰Bhagwat v bhagwat, A.I.R 1997 Bom 80

suffered from schizophrenia it had been not an honest defense to the plea of cruelty taken by the wife. Recently the Supreme Court while hearing a case on cruelty as a ground of divorce held that, the acts of the respondents need to be grave so as to constitute cruelty. At an equivalent time it might be seen whether it might be bearable for an inexpensive person to measure under such circumstances. Since marriage may be a delicate and pious bond the determination of cruelty has got to be done supported the psychological changes within the behaviour of the spouse. Mere petty quarrels and quibbles aren't sufficient to constitute cruelty. The Supreme Court also said that tolerance and adjustment are necessary to stay a wedding going and thus trifling differences between the spouses or quarrels can't be exaggerated to the extent of filing for divorce.

The United Nations General Assembly defines "violence against women" as "any act of gender-based violence that leads to, or is probably going to end in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring publicly or privately life."¹¹

Matrimonial cruelty can happen either physically, mentally, emotionally or sexually. Since India has been a patriarchal society, women are treated inferior to the lads since ages. They need been treated as their property and are expected to serve them throughout their lives.

Physical cruelty isn't a rare phenomenon within the country. The National Family Health Survey (NFHS-4) conducted by the Union ministry has revealed that one-third of ever-married women (33%) have ever experienced spousal physical, sexual, or emotional violence by their current husband.¹² Among ever-married women age 15-49 that have experienced physical violence and sexual violence since age 15, 83 percent report their current husbands as perpetrators of the violence. the ladies under study report that the foremost common sort of sexual violence committed by their husbands was the utilization of physical force to possess sexual activity especially once they didn't want to (6%). Marital rape is additionally a sort of cruelty inflicted upon women. Rape within the institution of marriage isn't an offence in India even when it comprises of physical, sexual and mental cruelty. it's an intrusion upon the essential right to dignity of the ladies . The Justice Verma Committee Report also points out that, consistent with 2010 study around 18.8 per cent of girls are raped by their partners not

¹¹United nations general assembly declaration on the elimination of violence against women(1993)

¹² Ministry of Health and Family Welfare, Government of India, National Family Health Survey (NFHS-4) 2015-2016, available at <http://rchiips.org/NFHS/NFHS-4Reports/India.pdf> , last seen at feb 22, 2021, 8:11 P.M

once but on many occasions.¹³ Not only in India, is violence against women present, but even within the United States the reports indicate that around 10-14% of girls experience rape within the institution of marriage. 10% of the ladies who reported emotional violence shared that their husbands usually said or did something to humiliate them ahead of people whereas 8% said that their husbands insulted them or made them feel bad about themselves. A side from them, another 6% complained that their husbands threatened them to harm someone on the brink of them.

The report also highlights the very fact that ladies in rural areas were more likely (36%) than women in urban areas (28%) to experience one or more sorts of spousal violence. These statistics are evident of the varied dimensions of cruelty inflicted on women. Since India is signatory member of The “United Nations Convention on the Elimination of All sorts of Discrimination against Women” (CEDAW) it's viewed that discrimination against women violates the principles of equality of rights and respect for human dignity.

Based on the above data, it's evident that cruelty occurs in various forms. There's nobody sort of cruelty and thus it becomes all the harder to get down what it exactly constitutes. Mental cruelty includes inflicting agony and distress on the partner in how which makes it difficult for the 2 persons to measure together. Physical cruelty includes beating, slapping and other sorts of physical harm. Sexual cruelty on the opposite hand includes forcing the partner to enjoy intercourse or unnatural sex. The courts in India have also recognized denial of sex during a marriage as a component of mental cruelty.

¹³ Anvesha Kumar & Ipsita Mazumdar, 'Bride' and Prejudice — Marital Rape and the Indian Legal Dilemma, 2 NSLJ, 24 (2013)