

Cruelty

India, marriage is not a mere contract but a sacrament and is treated as such even under law. We derive our laws of marriage from those of Manu, the lawmaker of ancient India. Marriage is the most fundamental basis of family and consequently the society and its interactions. It encompasses the entire spectrum of not only physical, mental, social, psychological and religious aspects but socio-economic aspects of civilized society as well. Consequently under Indian laws it is not easy to dissolve a marriage once contracted. The concept of quick divorces does not exist in India. It is often time consuming and not easily granted.

Section 13 of the Hindu Marriage Act 1955 deals with divorce and sub-section (I a) in cruelty as a ground for the dissolution of marriage. Physical cruelty is easily discernible; bodily harm or injury or even grievous threat to life or limb. It is easily recognized and punished. The other forms of cruelty are not so straightforward to pin down. The court is required to make in depth inquiries with respect to the nature of the cruel treatment meted out and whether one spouse considers it harmful even dangerous to live with the other.

Under Section 13(ia) of the Hindu Marriage Act, 1955; Mental cruelty is broadly defined as that moment in time point when either party causes mental pain, agony of suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. 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 and environment in which they live. The conduct of the concerned party should be grave and weighty and it must be much more serious than the ordinary wear and tear of daily life. The court has to take into consideration the mental and physical condition of the parties, their characters and their social status.

Since mental cruelty in matrimonial cases can be varied and sometimes very subtle; gestures, words and actions, it is impossible to have a uniform standard to go by. Some instances illustrative of what defines mental cruelty as described by the Supreme Court of India (SC) are enumerated here. On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make it possible for the parties to live with each other, could come within the broad parameters of mental cruelty.

On a comprehensive appraisal of the entire matrimonial life of the parties involved, it becomes abundantly clear that a situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party. Mere coldness or lack of affection cannot amount to cruelty however 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. Mental cruelty is a state of mind - The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other over a long period of time may lead to mental cruelty.

An unrelenting course of abusive and humiliating treatment calculated to torture, discommode or render miserable the life of one spouse. 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 weight. 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.

The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction. Emotional upset may not be a valid ground for granting a divorce on the grounds of mental cruelty.

Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life is also not an adequate for granting a divorce on the grounds of mental cruelty. 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. This may amount to mental cruelty; 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. Unilateral decision of refusal to have intercourse for considerable periods of time without there being any physical incapacity or valid reason may amount to mental cruelty. Unilateral decisions made by either husband or wife after marriage to not have child from the marriage may amount to cruelty. 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 involved - In such situations, it may lead to mental cruelty. In these acts that cause mental agony to one of the parties in the marriage, intention to be cruel is not necessary. It is sufficient if cruelty is such that it is impossible for spouses to live together. If there is an appeal for divorce due to irretrievable breakdown of marriage, only the SC has the jurisdiction under Article 142 of the Constitution, to grant a divorce on grounds of irretrievable breakdown of marriage.

Whereas a single solitary instance of conduct or behaviour does not amount to cruelty, and a continuousrepeated reprehensible behaviour by the spouse has to be proved beyond doubt, even a single act of cruelty is sufficient to grant decree for dissolution of marriage. Whereas a threat to commit suicide in itself is not cruelty, but if uttered during the course of a domestic tiff may be tantamount to cruelty. On the other hand if a wife initiates criminal proceedings, this act of mere initiation does not tantamount to cruelty, however if the allegations that have led to arrest or prosecution are false, the consequent humiliation, embarrassment and suffering of the husband and /or his family, amounts to cruelty to the husband.

Some recent judgments of the Mumbai High Court have also taken into account different aspects of the changing social fabric. If the wife does not complete her household chores, maintains a clean house and keeps fresh food ready for the husband, it amounts to cruelty to the husband. If the husband does nothing but eating and sleeping other than his earning his livelihood, it amounts to social cruelty to the wife. And of course there is the age old judgment that if a wife publicly abuses the husband, his parents and relatives in public it clearly amounts to cruelty to the husband. On the lighter side, if a wife removes her mangalsutra, without the specific knowledge, permission of the husband, it can amount to cruelty to the husband.

There is cruelty and there is cruelty.... It is time that the lawmakers changed the archaic patriarchal structure of the laws which are heavily in favour of the husband. It is time they take into account the increasing literacy and education level of wives, their contribution to the national economy and the ever-increasing global awareness due to electronic media and modify the Indian divorce laws making them more humane and women friendly.