

# Comparative Study of Cruelty as A Matrimonial Wrong Under Personal Laws in India

## Abstract

In India the harassment of a woman has become very common feature. The woman is tortured not only by her husband but also by her in-laws as well. Reasons are numerous. It can be on account of bringing no dowry, less dowry or there can be harassment because she cannot bear children and for many other reasons. Sometimes the beating coupled with harassment leads to murder or suicide. It is not that only uneducated men get involved in such kind of crimes but even educated men are indulged in such kind of crimes. With the march of time the concept of cruelty has also changed through judicial decisions given from time to time with application of different personal laws. This article is modest attempt to analyze concept of cruelty and to harmonious coexistence of under personal laws applicable in India.

**Keywords:** Marriage, Matrimonial Wrong, Personal Laws, Cruelty, Divorce, Assault.

## Introduction

Institution of marriage is as old as the dawn of civilization. Marriage is the foundation on which personal laws are based". It is the institution whereby men and women are tied in social and legal bond. In India marriage is considered as a sacrament rather than a contract, it cannot be dissolved at the whim and fancy of one of the parties to marriage. In order to obtain divorce one must show that the other has committed 'matrimonial offence' or 'matrimonial wrong'. Thus, divorce is not possible unless one of the spouses proves that other is at fault. This theory is known as fault theory. Among different grounds which are available under different personal laws, cruelty is one of the most prominent grounds for divorce and judicial separation.

Although in India, cruelty is a ground for dissolution of marriage and judicial separation, but no precise definition is given to the word 'cruelty' because "the acts or the conduct constituting cruelty can be so numerous and varied and it would be impossible to fit them into any water tight compartments"<sup>1</sup>.

Black's Law Dictionary defines;

"Cruelty" as the intentional and malicious infliction of physical suffering upon living creatures particularly human beings or, as applied to the latter, the wanton, malicious and unnecessary infliction of pain upon the body or the feeling and emotions.<sup>2</sup> The accepted legal meaning of 'cruelty' both in England and as well as in India is the expression as opined by Lopes and Lindley JJ in Russell Vs Russell<sup>3</sup>.

"Cruelty is generally described as conduct of such a character as to have caused danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger".

It may be noticed that under English law, the cruelty must be of such a character as to cause "danger" to life, limb, health or to give rise to reasonable apprehension of such a danger but under Hindu Marriage Act, 1955 provisions are "that the other party has after the solemnization of marriage treated the petitioner with cruelty". Thus, danger to life, limb or health or reasonable apprehension is of wider amplitude here which has to be interpreted from case to case. Acts as violence against another spouse resulting in injury to body, limb or health or causing a reasonable apprehension thereto, have been traditionally considered within ambit of cruelty.

In a Divisional Bench decision reported in (Gangadharan V. T.K. Thankam Shamsuddin<sup>4</sup>, J. speaking for the Divisional Bench has said:



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"It is difficult to lay down a precise definition or to give an exhaustive description of the circumstances which would constitute cruelty. Cruelty should be of such a nature as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent that it would be impossible for them to live together without mental agony, torture or distress to entitle the party to sue divorce. Physical Violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of the Act. 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".

In *Maya v. Brij Nath*<sup>5</sup> the court laid down that it is now well settled that the conduct complained should be grave and weighty so as to make cohabitation virtually endurable; it must be more serious than the ordinary wear and tear of marriage. The cumulative conduct while taking into consideration, the circumstances and the background of the parties has to be examined to reach a conclusion whether the act amounts to cruelty. In matrimonial cases, the Court is not concerned with the ideals in family life. It has only to understand the spouses concerned as nature made them, and consider their particular grievance<sup>6</sup>. *Jayachandra v. Aneel Kaur*<sup>7</sup>, mental cruelty was addressed 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. Mental cruelty falls within the purview of a matrimonial wrong.

#### **Objectives of Study**

To study and critically analyze concept of cruelty under different Personal Laws in India and to study in detail the existing legal provisions that are available on cruelty whether civil or criminal and then to spot out the deficiencies.

#### **Review of Literature**

The approach is mainly based on deplorable conditions of women discussing case-law along with statutory coverage under personal laws. The theoretical aspects of the article is extended to legislations under personal laws, judicial decisions, reports and other juristic works. Cruelty defined in *Black Law Dictionary* (2009) covers both physical and mental cruelty but most accepted definition in *Ganga Dharam V.T.K Thankan* (1988) held that it is difficult to define the term but cruelty constitute course of conduct inflicting immeasurable mental agony and torture. However in *Jayachandra V.Aneel Kour* (2004) mental cruelty was addressed in the light of social status and environment, court held that complaint should be grave and weighty to constitute cruelty. The provision of cruelty as a fault ground of divorce and judicial separation is well defined in law of marriages and divorce (2016) by Paras Diwan by comparing the provision under different personal laws. However in *Gurpreet Kaur vs Shri Rajeev Singh* (2017) while determining cruelty, the social and educational level of the parties was taken as a relevant factor. The different provisions which constitute cruelty have been

widely discussed by Mamta Rao (2017) along with the latest case laws. Every attempt is made to make to date and to incorporate latest cases from various High Courts and Supreme Court of India along with statutory laws to analyze the concept as matrimonial wrong.

#### **Development of Concept of Cruelty**

Concept of cruelty came to limelight in Indian legal system as a defence in a suit for restitution of conjugal rights. Slowly and gradually it also became a ground for a decree of Judicial separation which entitles a wife to live apart and claim maintenance etc. Recently, after the grounds of divorce have been liberalized, it has been codified in different personal laws. It assumes its present significance in personal laws by passing of Hindu marriage Act, Dissolution of Muslim Marriage Act, Parsi Marriage and Divorce Act and Indian Divorce Act.

#### **Cruelty as Ground of Divorce under Muslim Law**

According to the Koran<sup>8</sup>,

"Those persons who accuse an honourable woman but do not bring four witness to prove their charge, punish them with eighty lashes and do not accept their testimony thereafter in any Case. They are evil doers."

Main source of Muslims prohibits cruelty against woman in any form and stress is being laid that dignity of women should be maintained. In India, the Dissolution of Muslim Marriage Act was passed in 1939 with the view to improve the status of women. These women could now seek divorce from a court of law on ground of cruelty under section 2 (vii) of the Act. Even before the said Act came into operation, cruelty was recognized as ground of divorce. It was only in Maliki Law under which a woman could ask for divorce on grounds of mental cruelty<sup>9</sup>.

Cruelty as a matrimonial offence is though not defined but has given six illustrations of cruelty. Under Section 2(vii) of Dissolution of Muslim Marriage Act, 1939 various instances of cruelty have been alluded. They are:

1. Habitually assaults or makes her life miserable by cruelty of conduct even if such does not amount to physical ill-treatment; or
2. Associates with women of evil repute or leads an in famous life; or
3. Attempts to force her to lead an immoral life; or
4. Disposes of her property or prevents her from exercising her legal rights over it, or
5. Obstructs her in the observation of her religious profession or practice; or
6. If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran<sup>10</sup>.

It has covered all kinds of misconduct or misbehaviour on the part of the husband. Thus, not only physical, but mental cruelty is also included. In *Abdul Aziz v. Bashiran Bibi*<sup>11</sup> the court laid down that if conduct of the husband is such, that it starts affecting the health of the wife, then, obviously it is a case coming under cruelty. In *Begum Zohra v. Md. Ishaq*<sup>12</sup> the court observed that If the husband uses filthy and abusive language, such harsh and irritating conduct of the husband amounts to cruelty.

**Cruelty as ground of Divorce under Hindu Law**

So far as Hindu Law is concerned, concept of mental cruelty came much later. Cruelty before 1976 was only available as a ground of judicial separation under Hindu Marriage Act, 1955 and basically it was confined only to physical injury. It was only in 1976, that the amendment was made and Sec13 (1) (i-a) was inserted in order to incorporate the concept of mental cruelty in the said Act for dissolution of marriage. The term 'cruelty' has not been defined in the Act but various judicial decisions show that cruelty need not necessarily be physical. It can be mental also<sup>13</sup>. In *Smt. Gurpreet Kaur vs Shri Rajeev Singh*<sup>14</sup> while determining cruelty regard must be given to 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. Under Section 27(1) (d) of the Special Marriage Act, 1975 similar provisions are there. In *A. Jayachandra v. Aneel Kaur*<sup>15</sup> Court held that 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". In *Suman Kapur vs Sudhir Kapur*<sup>16</sup> court held that physical and mental condition of the parties as well as their social status along with the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse".

**Cruelty as Ground of Divorce under Christian law**

The law relating to divorce amongst Christians is contained in the Indian Divorce Act, 1869, and that relating to marriage in the Indian Christian marriage Act, 1872. Both these enactments are based on the law as it then stood in England. Since then considerable changes have taken place in the social conditions both in England and India. With a view to adjust the law to those changes, the British Parliament has enacted a number of statutes on the above topics, culminating in the Marriage Acts, 1949 and 1954, and the Matrimonial Causes Act, 1950.

Section 10 of the Indian Divorce Act, 1869, provides provisions for dissolution of marriage. Prior to the Amendment in 2001 it reads as under:

Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof has been guilty of adultery.

Before amendment in 2001, a Christian husband could dissolve his marriage on the ground of adultery alone but the same provision was not applicable to wife. Apart from this she also had to prove other matrimonial lapses like bigamy, cruelty, desertion. Christian wife could also file petition for divorce if the husband converts to another religion

coupled with marriage with another woman or if he is being guilty of rape, sodomy or bestiality.

Under the Indian Divorce Act 1869, prior to its amendment in 2001, a wife could seek divorce if the husband had been guilty of cruelty coupled with adultery.<sup>17</sup> The husband could not take the plea of the wife's cruelty to obtain dissolution. The only ground available to him was adultery. Cruelty, however, was available as a ground for judicial separation to both the husband and the wife.<sup>18</sup> The Indian Divorce (Amendment) Act 2001 has completely transformed the original Act, and the grounds for matrimonial relief have been brought almost at par with the Special Marriage Act, and Hindu Marriage Act. The statutory position now regards cruelty as a ground of divorce. Marriage may be dissolved if the respondent 'has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.'<sup>19</sup> Cruelty continues to be a ground for judicial separation as well<sup>20</sup>.

**Cruelty as Ground of Divorce under Parsi Law**

In 1865, Parsi Marriage and Divorce Act was enacted. There were lot of defects in this Act which were rectified and the Parsi Marriage and Divorce Act, 1936 was passed. Part IV of the Parsi Marriage and Divorce Act, 1936 deals with nullity and Dissolution of marriages of Parsis. Under the Parsi Marriage and Divorce Act 1936, prior to 1988, cruelty was only a ground for judicial separation, and cruelty was explained as such behaviour 'as to render it in the judgment of the court improper to compel him or her to live with the respondent'. The section also explicitly included cruelty to children as matrimonial cruelty for purposes of relief. After the amendment of 1988, cruelty has been incorporated as a ground for judicial separation<sup>21</sup> as well as for divorce<sup>22</sup>, provided that in every suit for divorce on this ground, it would be the court's discretion whether to grant divorce or judicial separation.

As per Section 32 (dd) of the Act One of the ground of divorce is cruelty. Sec32 (dd) is as follows-

That the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant.

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;

1. That the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venerable disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution;
  - a. Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years
  2. After the infliction of the grievous hurt, or
  3. After the plaintiff came to know of the infection, or After the last act of compulsory prostitution.
- Under the Parsi Marriage and Divorce Act 1936,

prior to 1988, cruelty was only a ground for judicial separation, and cruelty was explained as such behaviour 'as to render it in the judgment of the court improper to compel him or her to live with the respondent'. The section also explicitly included cruelty to children as matrimonial cruelty for purposes of relief. After the amendment of 1988, cruelty has been incorporated as a ground for judicial separation<sup>23</sup> as well as for divorce<sup>24</sup>, provided that in every suit for divorce on this ground, it would be the court's discretion whether to grant divorce or judicial separation<sup>25</sup>.

If one of the spouses have caused grievous hurt to the other spouse or has infected the plaintiff with venereal disease or if the husband has compelled the wife to submit herself to prostitution, then the spouse can move to the Court and ask for divorce but it is a mandatory condition that suit must be filed with a period of two years from the date when grievous hurt was inflicted or after the plaintiff became aware of infection or after the last act of compulsory prostitution.

### Conclusion

No hard and fast rules can be laid down as to what acts or conduct will amount to cruelty in any given case. What may amount to cruelty in one case may not amount to cruelty in another case. In deciding whether or not a particular state of affairs amount to legal cruelty, the court has to consider the social status, environment, the education, the mental and physical condition of the innocent spouse. So manners of the parties, whether acts and conducts complained constitute cruelty have to be construed in reference to whole matrimonial relationship. Cruelty may consist of a single act or conduct of the respondent or, it may consist of a series of acts. It can also happen that the mental cruelty may be coupled with physical cruelty. A course of conduct or treatment which tends to undermine the health of the spouse on that account or affects the reasonable happiness of the life and ill treatment either physical or mental would constitute cruelty.<sup>26</sup>

Cruelty is a changing concept. This has been largely the result of changes in social attitudes, especially with regards to the status of women. Judiciary has itself accepted the changes that are evident and has decided accordingly. The court in the case of Kamla v. Amar<sup>27</sup> had held that due to the changes in social custom and standards of behaviour, cruelty has also undergone a change.

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16. A.I.R 2008 SCC 1562
17. Section 10, IDA
18. Section 22, IDA
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20. 10 Grounds for dissolution of marriage — (1) any marriage solemnized; whether before or after the commencement of the Indian Divorce (Amendment, Act. 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent —  
10(1) (x) *Has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.*  
10(2) *A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality).*
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