

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

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He Said, She Said: Analysing Cruelty as a Ground for Matrimonial Relief

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ABSTRACT

This paper examines the evolution of cruelty as grounds for divorce under Hindu Marriage Act, 1955 in India. It traces how the Hindu Marriage Act 1955 initially only recognized cruelty for judicial separation, not divorce. The Act left defining cruelty to the judiciary, which expanded it through case law to include psychological harm. It elucidates the different aspects of cruelty- physical and mental harm through various judgements. This paper explicates the multifarious aspects of cruelty under Hindu law like physical and mental cruelty; and provides an analysis of the same under other laws like the Indian Penal Code of 1860 and Protection of Women from Domestic Violence Act, 2005. While this paper aims to provide a birds eye view of cruelty in matrimonial relations, it finally concludes that gender inequality persists with provisions like IPC 498A and it is occasionally misused against men. The analysis shows while the scope of cruelty has widened over time, the law retains patriarchal biases. As women gain rights, legal reform should protect husbands from misuse and wives from marital rape, to uphold gender equality.

Keywords: Cruelty, Hindu Marriage Act 1955, Indian Penal Code of 1860, mental cruelty.

I. INTRODUCTION

Marriage has been a social institution since time immemorial. For Hindus marriage is a sacrosanct union. Marriages in India have been known to be a holy union between two families, instead of a union between only two individuals. Marriage, like a contract, creates reciprocal rights and duties. This means that the duty to carry on the marriage is on both spouses. In case of breakdown of marriage due to different factors, the aggrieved party has been given rights under the various personal laws and statutory laws to prevent their rights from being violated. Pre- 1955 era, divorce as a concept was mostly redundant in Hindu Law as marriage was considered to be a pious and holy knot made by God.² The Hindu Marriage Act of 1955 initially codified cruelty solely as grounds for judicial separation, not divorce. The Act did not elucidate a definition of cruelty, thereby delegating the determinations of its precise contours to judicial discretion and jurisprudence. Cruelty, therefore, developed as a concept by interpretation of

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² <https://tripakshalitigation.com/cruelty-as-a-ground-for-divorce/>.

English common law precedents. Through doctrine of precedent, the judiciary has construed cruelty as encompassing of both physical and mental harm.³

In this paper, a systematic study is conducted into the provisions available for cruelty in the Hindu Marriage Act, 1955 and other criminal laws. The evolution of cruelty as a concept has been analysed and reforms have been suggested in the conclusion. This paper, through a systematic study, analyses the evolution of cruelty in matrimonial relations and its development in Hindu Law. Furthermore, cruelty is explicated in other laws in order to understand the gendered nuances behind such provisions. While Indian laws have gradually expanded the definition of cruelty as grounds for divorce under Hindu marriage laws, they remain gender unequal and are open to misuse without sufficient safeguards for men.

II. PROVISIONS FOR CRUELTY UNDER HINDU MARRIAGE ACT, 1955

i. As ground for judicial separation

According to **S. 10 (1) (b)**, Of a marriage that was solemnised before or will be solemnised after the commencement of this Act, either party to such marriage can present a petition for a decree of judicial separation, on the ground that the other party has treated the petitioner with cruelty so as to cause a reasonable apprehension in the mind of the petitioner that it could become injurious or harmful to live with such other party.⁴

ii. As ground for divorce

According to **S. 13 (1) (a)** of the Hindu Marriage Act 1955, either party to a marriage, after solemnization of such marriage, may file a petition for divorce on the ground that the other party has treated the petitioner with cruelty.⁵

iii. Effect of Condonation of Cruelty

According to **S. 23 (1) (b)**, if the court is satisfied that the petition is on grounds of cruelty, and the petitioner did not collude or condone in the act, then the court shall grant such relief.⁶

III. MEANING OF CRUELTY

S. 2 of the Hindu Marriage Act, 1955 is the interpretation clause. However, it has not defined cruelty. Courts abstain from providing a definition for cruelty, as setting up parameters for cruelty would lead to exclusion of unmentioned offences thereby, hampering rights of the

³ R Monica & J. Lalith Kumar, *Cruelty- A Ground for Matrimonial Relief*, 3 International Journal of Advance Research and Innovative Ideas in Education 683 (2017).

⁴ Hindu Marriage Act 1955, § 10 (1) (b), No. 25, Acts of Parliament, 1955 (India).

⁵ Hindu Marriage Act 1955, § 13 (1) (a), No. 25, Acts of Parliament, 1955 (India).

⁶ Hindu Marriage Act 1955, § 23 (1) (b), No. 25, Acts of Parliament, 1955 (India).

parties involved. Indian Courts have often relied on the definition provided by English Courts. **Lord Pearce** once said that, outlining a definition for cruelty is difficult and loosely it can be said that when there is a departure from the regular standards of conjugal kindness which causes an injury or apprehension thereof, to the health of the petitioner then the conduct propagated upon such aggrieved spouse should not be called on or made to endure it.⁷ However, it can be conclusively stated that cruelty includes both physical and mental cruelty.⁸ In the case of *Swati v. Arvind Mudgal*⁹ it was held that “In order to constitute physical cruelty one or two acts are more than sufficient even if the single act may be so grave and weighty that it could be satisfied the test of cruelty amounts to physical cruelty.¹⁰” It is through cruelty, which is the *res gestae* to the adversative changes in the social life, and mental and physical well-being of a party to the marriage.¹¹ In the same spirit, Justice A. Pasayat in *Mayadevi v. Jagdish Prasad*¹² has correctly opined, “Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or nonviolent.¹³”

IV. UNDERSTANDING CRUELTY THROUGH CASELAWS

i. Western Cases

Since, cruelty as a ground for divorce has been adopted in India through western cases, for exploring the meaning of cruelty, it becomes pertinent to study a few momentous cases.

The earliest traces of the definition of cruelty is contained in the in the English case of *Russel v. Russel*¹⁴. In this historic case, Mrs. Russel filed a petition for judicial separation from her husband, Mr. Earl Russel on ground of sodomy but she failed in her attempt. As a result of this, an enraged Mr. Russel filed a petition seeking judicial separation on ground of cruelty for false charges of sodomy. It was propounded by the Appeal Authority,

Cruelty was held to be a conduct of such character as to 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 typical nineteenth century belief that no act can amount to cruelty unless it creates an apprehension or

⁷ 695; All ER p. 992.

⁸ Kamlesh M Pandya, *The Concept of Cruelty in Hindu Marriage Act in India*, 3 Paripex- Indian Journal of Research 96 (2014).

⁹ *Swati v. Arvind Mudgal*, 218 (2015) DLT 729.

¹⁰ *Id.*

¹¹ Kamlesh, *supra* note 6, at 96.

¹² *Mayadevi v. Jagdish Prasad*, A.I.R. (2007) S.C.1426.

¹³ *Id.*

¹⁴ *Russel v. Russel*, 1997 A.C. 303.

actually causes injury to the petitioner.¹⁵

In the case of *Buchler v. Buchler*¹⁶, the husband had formed a very close association with a male friend which caused great distress to the wife as she was burdened by the comments of near and dear ones regarding such a marital arrangement. She approached the courts, for decree of divorce on ground of matrimonial cruelty.

In the landmark case of *Sheldon v. Sheldon*¹⁷, the husband Richard Sheldon, refused to have sexual intercourse with his wife, for a period of one year, on weekends when he returned to England from his work in Scotland. Upon the completion of the job in Scotland after having spent one year working, when he returned to England, he refused sexual intercourse to his wife despite sleeping in the same bed with her. This caused the wife immense distress and she filed for decree of divorce on ground of cruelty. Honourable Judge, **Lord Denning** has said,

The categories of cruelty are not closed. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity, or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.¹⁸

ii. Indian Cases

The first Indian case where cruelty in matrimony was expressed was the landmark case of *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*¹⁹. This case is earmarked as distinct for two reasons: Firstly, it is one of the primal cases in Indian judicial history which have led to the evolution of the principle of cruelty in matrimonial law, and secondly, in this case cruelty was inflicted on husband by wife which is contrary to popular notion of the wife usually being the victim and husband being the perpetrator. It was in this case that the court held, “cruelty is an act which causes in the mind of the individual a reasonable apprehension that it will be harmful or injurious to live with the spouse.”²⁰

In *Shobha Rani v. Madhukar Reddi*²¹ the wife filed a petition in Court for divorce on ground of cruelty. This complicated case involved accusations from both parties, and it was a classic case of cruelty due to demand for dowry. It was opined in this case,

¹⁵ *Id.*

¹⁶ *Buchler v. Buchler*: (1947) 1 ALL.E.R. 319.

¹⁷ *Sheldon v. Sheldon*, (1966) 2 All E.R. 257.

¹⁸ *Id.*

¹⁹ *Dr. Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, AIR (1975) SC 1534.

²⁰ *Id.*

²¹ *Shobha Rani v. Madhukar Reddi*, AIR (1988) SC 121.

Cruelty is being used in relation to human conduct or human behavior, it is all the more difficult to define it. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other.²²

The Punjab and Haryana High Court in the case of *Karamjit Singh v. Davinder Kaur*²³ stated that a wife who consistently and persistently taunts the polio-stricken husband for his disability, such behaviour will be counted as cruelty. Pushing him on the ground and knowing that he will be unable to overcome the situation because of his disability is a grave conduct of cruelty. It will fall under S.13 of the Hindu Marriage Act, of 1955.

Prior to the Amendment of the Hindu Marriage Act in 1976, cruelty was considered as a valid ground for only judicial separation. The Amendment was a positive step in the right direction taking into account changes in the social morality of Indian society.²⁴ The Bombay High Court in the case of *Bhagwat v. Bhagwat*²⁵ ruled that even if the husband did not have a clear intention to inflict cruel behaviour upon his wife as he suffered from schizophrenia, it cannot be a good defense against the plea of cruelty of a woman.

V. MENTAL CRUELTY

Black's Law Dictionary (8th Edn., 2004) defines the term 'mental cruelty' as "a ground for divorce, where one spouse's course of conduct (not involving actual violence) creates such anguish that it endangers the life, physical health, or mental health of the other spouse."²⁶ Expounding a clear, concise definition of mental cruelty puts at risk the rights of the parties approaching the courts in various cases. A society evolving at a fast pace with expanding horizons in the fields of education, healthcare, occupations, etc, implies the rise of complicated and cumbersome legal scenarios in matrimonial relationships.

Mental cruelty as a form of cruelty has been recognised in multiple cases in Indian judicial history. In *Samar Ghosh v. Jaya Ghosh*²⁷, the Apex Court listed down several broad parameters that constitute mental cruelty.

"Unilateral decision of refusal to have intercourse for a considerable period without any physical incapacity or valid reason may amount to mental cruelty. Unilateral decision of either husband or wife after marriage not to have a child may amount to mental cruelty. Frequent

²² *Id.*

²³ *Karamjit Singh v. Davinder Kaur*, FAO-M-190 of 2010 (O&M) and FAO No. 3554 of 2016.

²⁴ *V. Bhagat v. D. Bhagat*, MANU/SC/0155/1994.

²⁵ *Bhagwat v. Bhagwat*, MANU/MH/0126/1967.

²⁶ *Blacks Law Dictionary* 712 (8th ed. 2004).

²⁷ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

rudeness of language, petulance, and indifference, sustained abusive and humiliating treatment calculated to torture or render miserable the life of the spouse could amount to mental cruelty.”²⁸

The contours of mental cruelty are not clearly defined. In *Sadhana Srivastava v. Arvind Kumar Srivastava*²⁹, the Court granted decree of divorce to husband on ground of mental cruelty due agony caused by false allegations of wife of husband having extramarital affairs and illicit relationships.

The Court opined in the case of *Neelu Kohli v. Naveen Kohli*³⁰ that, cruelty under S. 13 of Hindu Marriage Act, 1955 also includes in its scope and ambit of application, those acts that cause mental agony to the aggrieved party. Intention is not necessary to prove cruelty and inability of the parties to live together is sufficient basis in itself.³¹

Removal of mangalsutra by wife at the instance of her husband does not amount to mental cruelty.³² Threats issued by wife to commit suicide can be considered as mental cruelty, however these threats cannot be given during the course of fight.³³ The threat of taking his/her own life issued by one spouse during a tiff or series of tiff cannot be considered in isolation to constitute mental cruelty.³⁴

VI. CRUELTY UNDER THE INDIAN PENAL CODE, 1860

The Criminal Law Amendment Act, 1983 introduced **S. 498A (Chapter XX- A)** in order to codify a law for the protection of women against heinous cruelty, dowry deaths and other offences committed by the husband or his family. Cruelty under S. 498A is a cognizable, non-bailable and non-compoundable in nature.³⁵ According to S. 498A, “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”³⁶

Under the ambit of S. 498A, the following constitutes cruelty:

- a) Intentionally provoking a lady up to a stage where she commits suicide.
- b) Any intentional act committed by the man or his relatives which cause harm to

²⁸ Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.

²⁹ Sadhana Srivastava v. Arvind Kumar Srivastava, AIR 2006 All 7.

³⁰ Neelu Kohli v. Naveen Kohli, AIR 2004 All 1.

³¹ *Id.*

³² S. Hanumantha Rao v. S. Ramani, AIR 1999 SC 1318.

³³ Pushpa Rani v. Vijay Pal Singh, AIR 1994 All 220.

³⁴ Nalini Sunder v. G.V. Sundar, AIR 2003 Kar 86.

³⁵ Riya Jaitly, *Mental Cruelty – Ground for Divorce*, 2 Jus Corpus Law Journal 150-156 (2020).

³⁶ Indian Penal Code 1860, s 498A, No. 45, 1860 (India).

the mental or physical health or her life.

- c) Harassment of the lady with the intent of compelling her or her family members to comply with an unlawful demand for any property or valued security,
- d) Abusive behaviour against the woman if she does not comply with the demand for dowry.³⁷

There are several provisions in the Indian Penal Code that deal with matrimonial offenses. Apart from S. 498A, another provision states the unnatural death of the woman within seven years of marriage due to demand of dowry by husband or relative under **S. 304B**³⁸ or causing a woman's death amounting to murder under **S. 302** of IPC, 1860.³⁹

VII. CRUELTY UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Domestic violence for the first time had been defined in the Protection of Women from Domestic Violence Act, 2005. It provides a comprehensive and broad definition of domestic violence under Section 3, which states that any act, commission, omission or conduct of a person harms or injures or endangers the health or safety of an individual whether mentally or physically it amounts to domestic violence. It further includes any harm, harassment or injury caused to an individual or any person related to that individual to meet any unlawful demand would also amount to domestic violence.⁴⁰ It includes physical, emotional, verbal, sexual, economic and other kinds of abuse under its ambit. This law has its roots in international law and human rights concepts such as the United Nations Resolution on Violence Against Women and the Model Code.⁴¹ This act does not contravene any provisions of existing laws and makes no changes in the current system of personal law dealing with domestic matters. It is merely as an added safeguard to protect the rights of women who face domestic violence perpetrated husband or husband's relatives.⁴² In *Lalita Toppo v. The State of Jharkhand*⁴³, the Hon. Supreme Court held that a live in partner is entitled to even more maintenance under the Protection of Women from Domestic Violence Act, 2005 than what is envisaged by S.125 of the Criminal Procedure Code.

³⁷ Rachit Garg, *Section 498A IPC - iPleaders*, IPleaders (Dec. 13, 2022), <https://blog.ipleaders.in/section-498a-ipc/>.

³⁸ Indian Penal Code 1860, § 304B, No. 45, 1860 (India).

³⁹ Indian Penal Code 1860, § 302, No. 45, 1860 (India).

⁴⁰ Protection of Women from Domestic Violence Act 2005, § 3, No. 43, Acts of Parliament, 2005 (India).

⁴¹ Riya Jaitly, *Mental Cruelty – Ground for Divorce*, 2 Jus Corpus Law Journal 150-156 (2020).

⁴² *Id.*

⁴³ *Lalita Toppo v. State of Jharkhand*, (2019) 13 SCC 796.

In *Rajesh Sharma v. State of U.P.*⁴⁴, in this case the Supreme Court directed the formation of a 'Family Welfare Committee' to protect the misuse of S. 498A of the IPC and to distinguish fraudulent cases from real ones. The Court in this case struck a fine balance between protection of rights and women and misuse of law.

VIII. ANALYSIS

The Hindu Marriage Act, 1955 provides for cruelty as a ground for both judicial separation and divorce. While the Act does not define cruelty, the onus has been put on courts to decide and develop a definition for cruelty on a case-to-case basis in order to ensure that rights of the aggrieved party are protected.⁴⁵ Through multiple cases, with *Dastane v. Dastane*⁴⁶ being the first case, the ambit and applicability of cruelty and its provisions have expanded. Through precedents, cruelty as a ground for judicial separation and divorce has widened, covering acts that depart from standards of marital kindness and cause injury or apprehension of injury. Even single acts of physical violence may constitute cruelty.

Apart from Hindu Personal Law, even the Indian Penal Code criminalizes cruelty against married women under Section 498A, which was introduced to address dowry demands leading to distress and marital abuse. It covers intentional acts by husband/relatives that harm the woman's mental/physical health.⁴⁷ The Domestic Violence Act defines domestic violence comprehensively to include physical, sexual, verbal, emotional and economic abuse. It aims to provide civil remedies while maintaining status quo in personal laws.⁴⁸

It is imperative to note that, the definition and scope of cruelty has expanded over time in Indian law, from emphasis on physical harm to recognizing more subtle psychological harm. Cruelty as a ground for dissolution of marriage has been addressed in Indian personal laws. However, many provisions out of those mentioned above are only available to the wife. This fact is indicative of how society still believes that violence can only be inflicted on women by men. With globalisation, industrialisation, and modernisation, not only have avenues for women increased, but we are also slowly inching towards the feminist utopia of equality of all genders. With increasing rights there also increases the scope for its abuse. After its addition, S.498A of the IPC, 1860 appeared to be deeply compelling and revolutionary in tackling cases demonstrative of cruelty, however, it was noted by the Apex Court in *Preeti Gupta v. State of*

⁴⁴ *Rajesh Sharma v State of UP* is (2017) 3 SCC 821.

⁴⁵ Hindu Marriage Act 1955, § 13 (1) (a), No. 25, Acts of Parliament, 1955 (India).

⁴⁶ *Dr. Narayan Ganesh Dastane v. Sucheta Narayan Dastane*, AIR (1975) SC 1534.

⁴⁷ Indian Penal Code 1860, s 498A, No. 45, 1860 (India).

⁴⁸ Protection of Women from Domestic Violence Act 2005, No. 43, Acts of Parliament, 2005 (India).

Jharkhand⁴⁹, that there is a pressing need to relook into this provision as exaggerated versions of incidents are shown in a large number of complaints. This section is at times also known to be a ‘sexual orientation-based law’ since through close observation of the trends through the years it has been seen that this section has been amply abused in various cases where the wife has documented false evidence, framed stories and defamed her husband and in-laws for the fulfilment of ulterior motives. The Supreme Court has noted in one of its cases, “The arrangement is proposed to be utilized as a shield and not a professional killer's weapon.”⁵⁰

IX. CONCLUSION

The evolution of cruelty as grounds for divorce under Hindu marriage laws in India reveals the tensions between tradition and modernity. Through study, it can be sufficiently concluded that cruelty in the Hindu Marriage Act has evolved from solely a basis for separation to also encompass divorce by the 1960s. The Indian judiciary through doctrine of precedent has progressively broadened cruelty to include psychological harm, not just physical violence.

However, the laws retain a gender imbalance. Provisions meant to protect women like IPC 498A are sometimes misused to harass men and their families with exaggerated or false allegations. Meanwhile, the failure to recognize marital rape as cruelty is a glaring instance of gender inequality in the law. Wives unable to refuse sex cannot find legal relief, despite changing social norms.

Overall, the law is in a state of flux between traditional patriarchal society that viewed cruelty as a husband's right, and modern notions of gender equality. While cruelty has expanded in scope, the law must shed gender biases. As women gain socioeconomic rights, the legal system should protect husbands from misuse and wives from different forms of cruelty like marital rape. Beyond legal reform, changing gender roles require holistic solutions encompassing social change, women's empowerment, family counselling, and support services. Balanced yet proactive reforms, together with evolving socio-cultural attitudes, can create a legal framework upholding the rights of all partners against cruelty in Indian marriages.

⁴⁹ Preeti Gupta v. State of Jharkhand, AIR (2010) SC 3363.

⁵⁰ S.R Subaashini & M Kannappam, *A Study on Cruelty Against Married Women and Legal Framework in India (Section 498(a))*, 119 International Journal of Pure and Applied Mathematics 1391 (2018).

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