



Cruelty : A Legal base for divorce in India

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Abstract : The sources of Hindu Marriage act are the Vedas and they state that one a couple is tied in this holy institute of marriage, they can't separate. However in the act, there is a decree for divorce in its section 13. In here the grounds for divorce vary from adultery to cruelty and even renouncement from the world by entering into a religious order is one of them.

ISSN 2454-308X



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Hindu Marriage act,1955

Under the Hindu Marriage act,1955 as enacted originally, though cruelty was one of the grounds for obtaining judicial separation, yet it was not a ground for obtaining divorce. After its amendment, cruelty was made a ground for both divorce and judicial separation.

In the clause 13(1)(a) of Hindu marriage act, only cruelty is mentioned and not specified whether it is mental or physical cruelty. The courts have interpreted it in a broader prospective and said that it includes both physical and mental and we are dealing with the latter here.

Under the Hindu Marriage Act, 1955 cruelty was not a ground for divorce but only for judicial separation. This was upheld by the Supreme Court in the case of Narayan Ganesh Dastane v Sucheta Narayan Dastane in 1975. However the amendment of the act in 1976, incorporated cruelty as a ground for divorce. Along with the change in law, the definition of cruelty under this act was changed. Before the amendment, to constitute cruelty, the petitioner should have been treated with such cruelty to cause reasonable apprehension in his/her mind that to continue living with the respondent would be harmful or injurious to health.

This was in accordance with the English law. However, the Supreme Court in Dastane v Dastane held that whether a spouse has suffered cruelty or not is a subjective matter that courts should decide in a case-specific manner. This ground was made almost similar to the ground of cruelty under Section 10(1) (b) for judicial separation but one distinction was made and that was that the



words “persistently or repeatedly” were added. By this addition establishing cruelty as a ground for divorce was made more stringent as compared to establishing the same for judicial separation.

Even mental cruelty was accounted for as “cruelty”. The section now in the Hindu Marriage Act imposes no restrictions. This is in order to enable the courts to interpret it in a wider sense. The basic requirement now is that there must be harsh or painful conduct of certain amount and for a relatively prolonged duration. In all cases of alleged cruelty that come before the courts, a common practise adopted by them is to adjudicate the matter based on all relevant circumstances, not just as a solitary incident.

Sections of Various Acts that bears Cruelty

- Section 13 of The Hindu Marriage Act, 1955, provides for dissolution of a Hindu marriage by a decree of divorce on 13 grounds.
- Section 27 of The Special Marriage Act, 1954, provides for 12 grounds for divorce.
- Section 2 of The Dissolution of Muslim Marriages Act, 1939, provides for 8 grounds on which a woman married under the Muslim law is entitled to obtain a decree for dissolution of her Marriage.
- Section 32 of The Parsi Marriage and Divorce Act, 1936, provides for 11 grounds for divorce.
- Section 10 of The Indian Divorce Act, 1869, provides for 7 grounds of dissolution of marriage of Christians. One of them is adultery coupled with cruelty.

The idea, the meaning and the concept of cruelty changes from time to time, varies from place to place and differs from individual to individual. It is not the same for persons situated in different economic conditions and status.

Perhaps this is the reason why the Legislature has not, in any of the Acts, defined as to what cruelty is and has left it to the best judgment of the Judiciary to decide as to what amounts to cruelty to a particular person in a particular set of circumstances.



Various Judges have, in numerous judgments, defined as to what amounts to cruelty, but once again those definitions are not general but are related to the facts of those particular cases.

The question of cruelty is to be judged on the totality of the circumstances. In order to term a conduct as cruel it should be so grave and weighty that staying together becomes impossible. A conduct to be cruel must be more serious than the ordinary wear and tear of marriage.

It is surprising to know that out of 100 cases of divorces, in 95 cases, the ground for divorce is cruelty and in the majority of them the cruel conduct complained of is physical violence. However, cases of mental cruelty are also not unknown to our Courts and, at times, complaints are made of a spouse afflicting cruelty upon another, without physical violence, just by his or her conduct of saying something or refraining from doing something.

By cruelty one normally think a conduct, a behaviour, an act of physical violence. The normal idea of cruelty in the common man's mind is assaulting somebody. However cruelty as a ground for matrimonial relief is just not physical violence. Cruelty as a ground for divorce need not be physical only. It may be mental. And believe me, mental cruelty is of a worse kind than that of physical violence.

Conclusion :

Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. 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, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong.

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