

**CRUELTY AS A GROUND FOR DIVORCE OR FOR JUDICIAL
SEPARATION UNDER
THE HINDU MARRIAGE ACT, 1955**

**Justice A. K. Srivastava,
Judge,
Delhi High Court**

Under the Hindu Marriage Act, 1955, as enacted originally, though cruel was one of the grounds for obtaining judicial separation but it was not a ground for obtaining divorce. The word cruelty was not defined in the Act but in Section 10 which dealt with judicial separation the word cruelty was used in a restricting sense because it was provided that either party to a marriage may present petition praying for a decree for judicial separation on the ground that the other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.

Section 13 of the Act deals with divorce. As enacted originally it did not have cruelty as one of the grounds for seeking divorce. The Legislature of Uttar Pradesh wished to include cruelty also as a ground for divorce and with that view in mind by its Act No.13 of 1962, Section 13 of the Hindu Marriage Act was amended to Include cruelty as a ground for divorce. The amendment was to the effect that in sub-section (1) of Section 13, after clause (a), clause (i-a) was inserted as under:

"(i-a)- has persistently or repeatedly treated the petitioner with such cruelty as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party, or"

This ground was 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 cruelty as a ground for divorce was made more strict than what it was for judicial separation.

It appears that except Uttar Pradesh, no other State made any amendment In Section 13 of the Hindu Marriage Act so as to have cruelty as a ground for divorce. It was only in the year 1976 that the Parliament by its Marriage Laws (Amendment) Act amended Section 13 of the Hindu Marriage Act, to make cruelty also a ground for divorce. This amendment extended to the whole of India except the State of Jammu and Kashmir. By this very Amendment Act, Section 10 of the Hindu Marriage Act was also amended in a manner that instead of giving distinct grounds for judicial separation in Section 10 itself, the scheme formulated was that a petition for judicial separation could be made on any of the grounds for divorce specified in sub-

section (1) of Section 13. The result is that now same grounds are there for judicial separation as well as for divorce.

After the aforesaid amendment in 1976, now the ground of cruelty for judicial separation as well as for divorce became as under:

"(i) has, after the solemnization of the marriage, treated the petitioner with cruelty;"

It may be seen that by the said amendment the Parliament, in fact, has deleted the words "as to cause a reasonable apprehension in the mind of the petitioner that It will be harmful or injurious for the petitioner to live with the other party". In doing so the intention of the Parliament appears to be that it did not wish to define the legal conception of cruelty and the kind and degree of cruelty necessary to amount to a matrimonial misconduct giving a right to the other spouse to bring a petition for judicial separation or for divorce. Parliament appears to have avoided the danger of any attempt at giving a comprehensive or inclusive or exclusive definition of 'cruelty' and left it for the Judge- made-Laws. As such the matter is now left to the courts to determine on the facts and circumstances of the case whether the conduct amounts to cruelty or not.

Cruelty contemplated by the aforesaid clause may be both physical and mental. If it is physical the court should have no problem to determine it because it is a question of fact and degree. It is the mental cruelty which may pose a problem and may present difficulty with the courts.

Prior to the amendment made in Section 10 of the Hindu Marriage Act, , the concept of cruelty, as it was stated in the old Section 10 (I) (b), was critically examined by the Supreme Court in *Dastane v. Dastane*, A.I.R. 1975 SC 1534. It was therein observed that the enquiry in any case covered by that provision had to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for the petitioner to live with the respondent. It was also pointed out that it was not necessary, as under the English Law, that the cruelty must be of such a character as to cause danger to life, limb or health or to give rise to the reasonable apprehension of such a danger, though, of course its being harmful or Injurious to health, reputation, working character or the like, would be an important consideration in determining whether the conduct of the respondent amounted to cruelty. What was required was that the petitioner must prove that the respondent has treated the petitioner with such cruelty as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the respondent.

Now after the amendment in Sections 10 and 13 made by the Parliament in the year 1976, cruelty simpliciter has been made a ground for judicial separation and for divorce without putting any statutory rider. There is now no requirement of law that the party seeking divorce on the ground of cruelty must prove that the respondent had persistently and repeatedly treated the petitioner with cruelty. Further, the petitioner has also not to prove that he/she was treated with such cruelty as to cause a reasonable

apprehension in his/her mind that it II be harmful or injurious to him/her to live with the other party. Now the scheme appears to be to liberalise the provisions relating to judicial separation and divorce. In the statement of Objects and Reasons of the Marriage Laws (Amendment) Act, 1976 also, the object was stated to be so.

It may not be possible for the courts to define mental cruelty exhaustively can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put in with such conduct and continue to live with the other party. Now mental cruelty need not be proved to be such as to cause danger to the health, limb or life of the petitioner. Cruelty should be of the type which will satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it has become impossible for them to live together without mental agony, torture or distress.

The following are some of the conducts which have been held to constitute mental cruelty-demand of dowry by the husband's parents with the support of the husband, wife abusing the husband and his parents in foul language and picking up quarrels, heavy drunkenness or addiction to drugs resulting in intemperate and violent behaviour and acts tending to Injure the health, wife not coming to see her husband in the hospital who was seriously injured husband having a love affair with another woman and keeping her in the same house, husband impotent qua his wife, wife stating that her husband may be killed in an accident so that she may *get insurance money* constant insults abuses and accusations of adulterous character which make married life impossible.

Recently the Supreme Court has given new angle to the concept of mental cruelty in matrimonial matters. The following two cases need to be looked into.

1. Smt. Chanderkala Trivedi v. Dr. S.P. Trivedi, JT 1993 (4) SC 644.
2. V. Bhagat v. Mrs.D. Bhagat, AIR 1994 SC 710.

In these cases mere allegations and counter allegations without proof thereof have been held to have constituted cruelty, as it was found that the marriage after such allegations could not in any circumstance be continued any further. In Chanderkala's case, in a petition filed by the husband for divorce on the ground of cruelty when the wife filed a written statement alleging intimacy of the husband with another lady doctor, the husband came out with a case of undesirable association of the wife with young boys. The divorce petition was tried by the lower court and was dismissed. The High Court granted divorce on the ground of cruelty. The wife filed the appeal. The Supreme Court maintained the decree for divorce on certain conditions that the husband would provide a flat and Rs. 2 lacs for the welfare of the wife and the findings of fact recorded by the lower courts were

deleted. Justice A.M. Sahai, speaking for the Bench observed, "Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband against wife as have been made in this case, then it is obvious that the marriage of the two cannot in any circumstance be continued any further. The marriage appears to be practically dead."

The case of V. Bhagat v. D. Bhagat is an unusual case. The husband, an Advocate practising in the Supreme Court and Delhi High Court, sued for divorce on the ground that the wife, Vice- President of ITDC, a Public Sector Corporation, is guilty of adulterous course of life. The wife in her defence not only denied the allegations made against her but attributed mental disequilibrium on the part of the husband by saying that the husband suffers from mental hallucination, that he has a morbid mind for which he needs expert psychiatric treatment, that he is suffering from paranoid disorder and needs expert psychological treatment and that he is mental patient and needs to be treated by a psychiatrist. Upon such stand taken by the wife in her written statement, the husband amended his petition and added the ground of cruelty as well for seeking divorce and prayed that a decree for divorce be granted to him on the basis of the averments alone made by the wife in her written statement/counter. According to him those allegations amounted to cruelty against him and furnished adequate grounds for passing a decree for divorce. During trial the Senior Advocate appearing for the wife put several questions while cross-examining the husband suggesting that the husband and the several members of his family including grandfather are lunatics and that a streak of insanity is running in the entire family. It may be mentioned that the family of V. Bhagat and D. Bhagat was quite a well-off family. Both husband and wife occupy high status in the society and also having two issues who are doing well in life as the son is a doctor and the daughter holding an MBA Degree is working with an American company in California.

In this case the Supreme Court, in the interests of both parties and to clear up an Insoluble mess, resorted to an unusual step by granting divorce on the basis of pleadings and admitted material without waiting for the full trial wherein the allegations and the counter allegations could be proved or disproved. The Court found that the allegations and the counter allegations were indicative of the intense hatred and rancour between the parties and any reconciliation was out of question. The averments made in the counter affidavit filed by the wife and the questions put by her counsel in the cross-examination of the petitioner were found to constitute clear acts of cruelty. It was also observed that in view of the said averments/questions no further material was necessary to establish the said additional ground of cruelty.

However, Justice B.P. Jeevan Aeddy, speaking for the Bench, has at the end of the judgment appended a clarification saying that "Merely because there are allegations and counter allegations, a decree for divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings a ground. There must be really some extra-ordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a

full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground alleged is made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess, when the Court finds it in the interest of both the parties."

The signal of the Supreme Court appears to be that while dealing with allegation of cruelty as a ground for divorce the courts should have in their mind that the petitioner has to prove that the respondent had behaved in such a way that the petitioner cannot reasonably be expected to live with the other. In construing such behaviour to be cruelty within the meaning of Section 13 of the Hindu Marriage Act, the courts will have to look into each and every case having regard to the facts and circumstances of that case. Social status and educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together and all other relevant facts and circumstances will also have to be seen. In very exceptional cases divorce may be granted on mere accusations and allegations but regard must be had to the context in which they have been made. Absence of Intention should not make any difference in the case, If by ordinary sense In human affairs, the act complained of, could otherwise be regarded as cruelty.

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