

ON BEING A CRUEL SPOUSE

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"I believe the marriage to be best and most important relation that can exist between two human beings. The essence of a good marriage is respect for each other's personality combined with that deep Intimacy, physical, mental and spiritual which makes serious love between men and women most fructifying of all human experiences." Bertrend Russell.

Marriage Is the last of the ten sacraments enjoined by Hindu Religion for purifying the body from inherited taint, obligatory in case of every Hindu except a Sanyasi. In the Shastrik Hindu Law marriage was considered as in dissolvable tie and divorce for any reason was unknown.

Courts in British India did not allow divorce except in certain communities in which it was permitted by custom. Before Hindu Law Committee (Rao Committee) considerable evidence was adduced to this effect that there were thousands of cases of desertions where re-marriage was desired but was not permissible. Hindu Marriage Act came into force on 18th May 1955 wherein divorce was not favoured yet it was permitted only to mitigate greater hardship for grave reasons.

In the original Hindu Marriage Act 'cruelty' to such extent as to cause reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with other party, could only provide a ground for judicial sepearation. For quite some time matrimonial cruelty of a serious nature causing danger to life, limb or health or its reasonable apprehension alone could afford parties a ground for judicial separation only. Wt\en notion of matrimonial obligation developed, it was considered later that there is no use maintaining a marriage in the absence of emotional bonds between the parties.

After experience of a decade vide Act 44 of 1964 an amendment was introduced therein permitting parties to obtain decree for divorce just two years after passing of the decree for judicial separation on ground of cruelty, provided the parties do not resume co-habitation in the meantime. However It was only after a lapse of two decades vide Act 68 of 1976, parties were permitted to seek divorce on the ground of 'cruelty' being practised by other spouse.

CRUELTY SIMPLICITOR as a matrimonial offence has now no specified reservation tagged to it.

Accepted legal meaning of the word 'cruelty' varied widely. House of Lords at the fag end of Nineteenth Century in its famous decision reported in

1897 (A.C.) 395, Russel v. Russel, fixed high standard of cruelty being "conduct of such a character as to have caused danger to life, limb or health (body c mental) or as to give rise to reasonable, apprehension of such danger"

Later when a most eminent film star was divorced by his wife for cruelty one of the counts in the proof of cruelty was that he used to bring home friend who talked about Kant.

A brief survey of precedents In Our Country shows an identical change in trend of thoughts.

Even prior to commencement of Hindu Marriage Act and while considering right to separate residence and maintenance under Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, it was held that evidence of physical violence alone were not essential to warrant a finding of cruelty. Courts were held bound to take into consideration general conduct of husband and if it was to degrade wife or to Subject her to Intense Indignity, continuous indifference, cessation of marital inter-course, It was also held to be cruelty sufficient for granting separate residence and maintenance (1954 Orissa, 117 D. B. Anjani Dei v. Krishna Chandra,)

The standard of cruelty fixed by House of Lords In the aforementioned case was not followed after passing of the Hindu Marriage Act. In a case reported in AIR 1965 Allahabad 280, Kusum Lata v. Kamta Prasad it was held that reasonable apprehension need not necessarily be physical Injury. A Psychological injury was held good ground for judicial separation. One of the major instances of Psychological injury was described as allegation of unchastity, It was observed that concept of cruelty was based on mutual regard and consideration of each spouse for other, it excludes selfish, brutality or disregard for health, needs, desires or feeling of others. Persistent inordinate sexual demands or malpractices by either spouse were held to be cruelty if these

practices tend to injure other spouse.

Courts, have also taken judicial notice of the fact that women in Our society normally submit to fate and bear ill treatment unless a climax is reached. In the opinion of Punjab High Court reported in AIR 1961 Punjab 521 (Kaushalya v. Wisakhi Ram) where a wife lodged report at Police station regarding beating by husband, cruelty was held to be established without any proof of Injury by medical certificate.

Even one single act of violence has been treated to be cruelty provided violence was grave. Assault made by husband to wife by Iron-rod resulting in fracture of right fibula bone was held to be a cruelty of such nature which cannot be excused or condoned (Smt. A.P. Mary v. K.G. Raghwan) 1979 M.P.40 (44)

Another example of masculine cruelty is when on the day of marriage wife having reached husband's house and complained pain in abdomen, instead of giving medical aid, she was asked to go back along with her family members, it was observed by the Hon'ble High Court of Punjab and Haryana In a case reported in AIR 1979 Punjab and Haryana page 162(165) that behaviour of the husband was Inhuman. It was observed that in modern times even illiterate rustic girl do not tolerate false allegations against their parents.

Husband indulging in love affairs and making overtures on other ladies, was held guilty of practising mental cruelty against his wife, by Rajasthan High Court In a case reported In AIR 1976 Rajasthan, page 1.

In the opinion of Mysore High Court wilful unjustifiable interference by one spouse in the sphere of life of the other, is one of the species of cruelty, in the same way as rough or domineering conduct or un-natural sexual practices or disgusting accusation of unchastity (AIR 1968 Mysore-115).

It was held that cruelty was not only restricted to physical violence but also extend to behaviour which may cause pain and injury.

Almost all the High Courts in India have held false accusation of unchastity by one spouse against the other as mental cruelty of highest order (Madan Mohan Kohli v. Sarla Kohli, AIR 1967 Punjab, 397, N.K. Ghosh v. Mita Ghosh, AIR 1986 Calcutta 150, AIR 1976 Bombay 212, AIR 1976 M.P. 207)

In the Court of appeal In Sheldon Vs. Sheldon 1966 (2) All England Law Reports 257 Lord Denning observed that "The categories of cruelty are not closed; the persistent refusal of sexual intercourse is not excluded." A Division Bench of Karnataka High Court in a case reported in AIR 1980 Karnataka page-8 having relied on the aforementioned observation held further 'Marriage without sex is an anathema. Sex is the foundation of marriage and without vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It can not be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body". It has been held that sexual relation when happy and harmonious vivifies woman's brain, develops her character and trebles her vitality.

Coming to feminine cruelty It also had varied forms. Punjab High Court has, in a case reported in AIR 1961 Punjab 125, held. 'Where wife administered to husband 'Love potion' given by some Faqir in belief that it would conduce

happiness to married life but the same resulted husband becoming ill who got nervous break down and developed heart trouble, and although wife was repenting subsequently, yet wife's act was held to be cruelty considering the state of mind, strata of society to which parties belonged, it was observed that there appears to be a reasonable apprehension of similar acts in future as well and even the fact that husband and wife co-habited for three years after administering poison, was held to be not sufficient condonation of the cruelty.

In the opinion of Mysore High Court it is impossible for husband to live with of irritable temper and foul tongue. In a case reported In AIR 1970 Mysore 232 It was observed that where wife used to abuse husband in public, coupled with catching hold of collar in bus making husband cook food and throwing plate on his head on the ground that food was not property cooked, were held to be instances of cruelty.

However, most Illustrative example of feminine cruelty was considered by Hon'ble Supreme Court in a case reported in AIR 1975 S.C. page 1534, *Dastane v. Dastane*. The old English doctrine of physical danger was expressly rejected by the Supreme Court. It was held that cruelty as contemplated by Hindu Marriage Act was to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for one spouse to live with other spouse. It was alleged that wife used to threaten husband to put end to his life, or that she will set the house on fire, she further threatened that she will make him lose his job and have the matter published in newspaper. The conduct of the wife was held to be cruel. The series of allegations levelled against wife were quite long, the wife in question was alleged to be in habit of causing persistent abusive insults at her husband which was a danger to husband's safety and mental happiness. Other allegations of cruelty were tearing of 'Mangal Sutra' leaving the house locked when he was due to return from office, rubbing of chilly powder on the tongue of her infant child, beating of child suffering from high fever switching on the light all night and sitting by the bed side of the husband, hiding keys and shoes of the husband for sheer sake of harassing him. The Hon'ble Supreme Court has finally held that such acts would destroy legitimate objects of matrimonial life. Such conduct of the wife was held to be cruel, under Hindu Marriage Act prior to amendment by Amending Act 1976.

A Full Bench of Bombay High Court in a case reported in AIR 1984 Bombay 413 *Kesha Rao v. Nisha* was considering the case of a dogmatic quarrelsome wife with no affection even for children and having obtained complete control over husband's finances and who used to Insult him and behave inhumanly with children. The Full Bench observed: "What is cruelty *Simplicitor*" after passing of Act 68 of 1976 cruelty as contemplated by law is a conduct of such type that a petitioner cannot reasonably be expected to live with

respondent." Husband was granted decree on the ground that wife in question was guilty of practising cruelty.

An interesting situation arose before the Hon'ble Allahabad High Court where an affectionate husband otherwise attached to wife was charged with cruelty on the allegations that mother-in-law used to criticise or rebuke the wife and at the same time husband was mere helpless spectator. In a case reported in AIR 1979 Allahabad 316 Gopal Krishna v. Mithilesh Kumari, the Hon'ble High Court has held that husband's conduct of being a mere helpless spectator could not be characterised as one of the cruelty towards wife. Husband was too weak to stand against his mother yet his omission to control mother was not grave so as to constitute cruelty.

In a yet another extraordinary situation where wife was found with her paramour in a closed cabin of a restaurant with upper garments removed, their Lordships of Bombay High Court observed that Incident may have caused great disturbance to petitioner but cannot be said to have caused damage to his health. The only evidence was of annoyance or mental disturbance that cannot amount to "Illegal cruelty" required to form a ground for divorce (P. v. P., AIR 1982 Bombay 498.)

Refusal by wife to prepare tea not only hurts husband's ego but also causes humiliation before friends. In a case reported In AIR 1985 Allahabad page 253, Kalpana Srivastava v. Surendra Nath Srivastava, the Hon'ble Court held that refusal to prepare tea coupled with lodging of false F.I.R. and termination of pregnancy without consent of the husband were acts constituting mental cruelty by wife to the husband.

Section 23(1) (b) of Hindu Marriage Act provides that if either of the spouse makes condonation, matrimonial offence is erased. The Hon'ble Supreme Court in a case reported in AIR 1975 S.C. 1535 observed that the evidence of condonation consists in the fact that spouses lead normal sexual life despite respondent's acts of cruelty. It was further observed that condonation of matrimonial offences is not to be likened to a full Presidential pardon under Article 72 of the Constitution of India which, once granted, wipes out the guilt beyond possibility of revival.

In its 59th Report, LAW COMMISSION has observed that cruelty Is very antithesis of love and affection, yet it was observed that misconduct described as cruelty should be so grave which may amount to cutting sacred link that parties had when entering into the marriage.

In the opinion of Lord Denning reported In 1950(2) of All England Law Reports 398, Kaslefsky v. Kaslefsky-

“IF THE DOOR OF CRUEL TV ARE OPEN TOO WIDE WE SHOULD FIND OUR SELVES GRANTING DIVORCE FOR INCOMPATABILITY OF TEMPERAMENT. THE TEMPTATION MUST BE RESISTED LEST WE SLIP INTO A STATE OF AFFAIR WHERE THE INSTITUTION OF MARRIAGE ITSELF IS IMPERILLED.”

Similar views were expressed by Hon'ble Allahabad High Court In a case reported in 1975 ALJ-162, S.N. Tripathi v. Smt. Savitri Tripathi. It was observed that lack of warmth and absence of broad or generous outlook was long way off from legal cruelty. Wife creating scene at the office of his husband where she sought to search particular drawer suspected to have contained love letters of husband, the conduct was described to be sensitive yet it was not found to be as legal cruelty.

It is generally felt that It is necessary to be almost a genius to make a good husband or wife. However, Ideal husband or Ideal wife in the opinion of Chief Justice of India, are those who ignore the short comings of the other spouse. In Dastaney v. Dastaney, the aforementioned case, Hon'ble Chief Justice has described the ideal couple as follows:

“The Court has to deal not with an ideal husband or an ideal wife (assuming if such exists) but with particular man and woman before it. The ideal couple or near ideal one will probably have no occasion to go before matrimonial Court, for even if they may not be able to sink their differences, their ideal attitude may help them overlook or gloss over mutual faults and failures”.

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