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## **MENTAL CRUELTY UNDER HINDU MARRIAGE ACT, 1955**

**Ashu Dhiman**

**Research Scholar , Department of law , Kurukshetra University ,  
Kurukshetra.**

### **ABSTRACT**

*The sources of Hindu law are Vedas and they are of the view that marriage is an indissoluble union and it is a religious sacrament. It was not possible to separate a wife from husband. Under ancient Hindu law, it is provided that, once a couple has tied a knot of marriage then even death cannot separate them. There was no concept of divorce back then except in some of the communities. But after the change in time and society the Hindu Law also changed the concept of marriage and divorce. The urbanization of society made the women think about their rights. The Hindu law provided for a codified Law of Divorce through Hindu Marriage act, 1955. It contains various grounds for Divorce based on theories of Divorce and also provided for some special grounds for wife. One of those grounds provided by section 13 of Hindu marriage act is Cruelty. The concept of cruelty has been changing from time to time, varies from society to society and individual to individual. What is cruelty to one may not be cruelty to another. Therefore, the Law has not provided for the clear cut definition of cruelty and it has left to the courts to decide for the same looking over the facts and circumstances of each case. This research paper is about the concept of mental cruelty under codified Hindu law. In this paper, the types of cruelty, the circumstances which constitute the mental cruelty are discussed and many important decisions of the Supreme Court regarding the concept have been highlighted. However, the mental cruelty has not been defined by the Hindu Marriage act, but the elaborated study of the concept will help the readers to understand it.*

**KEYWORDS :** *Cruelty, Mental Agony, Moksha, Hindu Marriage Act,*

### **INTRODUCTION**

Marriage under Hindu Law has been considered as a sacrament, a holy tie, an indissoluble union of husband and Wife. The sources of Hindu Marriage Act, 1955 are Vedas and they declare that once two people of opposite sex tie the holy knot of Marriage they cannot be separated. Under the ancient Hindu Law the object of Marriage was sublime. According to *Aspathama*, "The Marriage was meant for doing good deeds and for attainment of *Moksha*."<sup>1</sup> No doubt that Marriage earlier was considered as a sacrament, but, westernization, modernization and urbanization of our Indian society has made enlightenment and Indian



Women come to know about their rights. Women empowerment has brought a remarkable change in our society. Now women are aware that they not only have a right to live but also right to live with dignity. Modern Women cannot take the Manu's declaration of impossible release of wife from husband as it was applied to wife only. With the change in time the society changes and law needs to be changed according to the society. Then the Hindu marriage Act, 1955, came into existence. This work of legislature introduced dynamic changes in the Hindu Law of Marriage. It provided sections. 13, 13-B, 14, 15 dealing with divorce Laws. Under section 13 of Hindu Marriage Act, 1955, all the grounds on

which a decree of divorce can be claimed are provided and they vary from adultery to cruelty and even renouncement from the world by entering into religious order is one of them.<sup>ii</sup> Matrimonial matters are delicate matters of human and emotional relationship. Marriage is an institution which demands respect, love, affection, mutual understanding and mutual trust with reasonable amount of adjustments with the spouse. Social norms are also important in marriage. Cruelty has been considered as a ground for matrimonial relief in India under all matrimonial law statutes. The legal concept of cruelty kept changing from time to time and from society to society according to the change in social and economic circumstances. Under early English law the considerable essential element for cruelty was the Intention but it is not so under Modern law. All the matrimonial statutes in India have given the concept of cruelty a special place as a ground of matrimonial relief. None of these statutes, however, define cruelty. In fact it has not been defined anywhere because it has been noticed that human nature and conduct are different. It is likely to happen that what we consider cruelty today may not have been considered earlier or may not be taken as such in future.

### **Cruelty under Hindu Marriage Act, 1955 :**

Section 13(1) about cruelty runs as:

*“Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party (i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty.....”*

Here, the Legislature did not talk about any type of cruelty as such, but the courts interpreted it well and divided the cruelty into two parts. The word “*treated*” as used in Section 13(1)(i-a) denotes a conscious action and includes an omission which has to be cruel in order to call for a decree of divorce. Thus, **a conscious act, cruel in nature is the requirement of the provision.**<sup>iii</sup>

### **Cruelty can be physical or Mental**

Under section 13(1) (a) of Hindu marriage act, only word “cruelty” is mentioned and it does not specify whether it is mental cruelty or physical cruelty. The courts have interpreted it in a broader prospective and concluded that section 13(1) (a) includes both physical and mental cruelty. By word “cruelty” one generally thinks about a conduct, or a behavior, or an act of physical violence by the spouse. A normal man thinks that assaulting somebody is cruelty. However, cruelty, as a ground for Divorce is just not physical violence. Cruelty as a ground for matrimonial relief needs not be physical only. It may be mental too. And it is to be noted that, mental cruelty is of a worse kind than that of physical abuse.

### **There are legally two types of cruelty:**

- (i) Physical cruelty
- (ii) Mental cruelty.

Both mental and physical cruelties are considered as cruelty in modern times. Physical cruelty is easier to determine as compared to mental cruelty. Perhaps, mental cruelty is lack of such conjugal kindness, which inflicts pain of such a degree and duration that it adversely affects the health, mental or bodily, of the spouse on whom it is inflicted. Mental cruelty can be claimed by any of the spouse, just by his or her conduct of saying something or refraining from doing something.

**Physical Cruelty** -All the acts of violence against another spouse resulting in injury to body, limb or health or causing a reasonable apprehension thereto, have been traditionally considered as physical cruelty<sup>iv</sup>. Thus, where bodily injury is inflicted, it is easy to conclude that cruelty has taken place. The Courts do not find any difficulty in determining physical cruelty. A single act of physical violence may amount to cruelty.<sup>v</sup>

**Mental cruelty**-The Hindu marriage act has not exhaustively defined mental cruelty. As enacted originally, Under the Hindu Marriage Act, 1955, cruelty was one of the grounds for obtaining judicial separation, but it was not a ground for obtaining divorce. After the amendment of Hindu Marriage Act, The cruelty was made a ground for both divorce and judicial separation. As discussed earlier it is not easy to determine mental cruelty as compared to physical cruelty. Mental cruelty varies case to case. Under Section 13(i) (a) of the Hindu

Marriage Act, 1955, a mental cruelty has been defined as the moment where either party causes mental pain, mental agony or suffering of such a level that it breaks off the bond between the husband and wife as a result of which it becomes impossible for the sufferer spouse to live with the other spouse. The norms of marital ties of the society, social values and the social status of the parties must be considered before deciding the question of mental cruelty.

In *Ravi Kumar v. Julmidevi*<sup>vi</sup>, this Court while dealing with the definition of cruelty held as follows:

“It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behavior which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence; sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty”. The Supreme Court held that though the acts of the wife in filing false complaints against the husband amounts to cruelty. Here are some conducts by husband and wife which amount to mental cruelty from leading cases which may help one to understand the concept of cruelty. In *N.G. Dastane v. S. Dastane*,<sup>vii</sup> “Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively.” Mental cruelty, therefore, is such a situation between husband and wife where one cannot be a part of other’s company due to his behavior, that may be life threatening or makes the spouse impossible to live with him/her.

### WHAT AMOUNTS TO MENTAL CRUELTY?

Although it has been discussed earlier that it is not easy to give an exhaustive definition of mental cruelty but it can be said that to constitute mental cruelty the petitioner has to prove that the spouse has done a grave and substantial act that is more serious than ordinary wear and tear of life. It may vary depending upon the facts and circumstances of each case that is why, it is impossible to have a uniform standard to go by. The Supreme Court while dealing with mental cruelty in divorce cases has time to time provided for illustrations about what amounts to mental cruelty. Here the examples are divided into two parts. Let us go through them and find out what acts the Supreme Court has laid down as mental cruelty:

#### 1. Acts of wife amounting Mental cruelty:

- humiliating her husband in the presence of family members and friends,
- taunting her husband on his physical incapacities,
- denying him access to physical relationship,
- neglect,
- Wife abusing her husband and using foul language,
- coldness and insult,
- deliberately wearing clothes which her husband dislikes,
- purposely cooking food which her husband is not fond of,
- visiting her parent’s family off and on against her husband’s wishes,
- undergoing an abortion despite her husband asking her not to do so,
- threatening to commit suicide,
- refusing to do household work,
- keeping husband outside the door of house,
- Not visiting husband who was seriously ill,
- the wife cooked food only for herself but not for her husband
- complaining to husband’s employer,
- disobedience,

all these are not acts of physical violence but yet it has an effect on the husband's mind and due to this, the husband's health suffers and therefore these acts can be termed as cruel.

## 2. Acts of Husband amounting cruelty:

- humiliating his wife,
  - calling her frigid or cold fish, making excessive sexual demands,
  - comparing her with the maid servant,
  - taunting her for not having any child or giving birth to female children,
  - demanding dowry,
  - asking her to bring money or articles from her parents,
  - objecting to her visiting her parents, insulting her relatives when they visit her,
  - deliberately removing all servants and making her do all household work,
  - denying any medical treatment when she is ill,
- are also acts of mental cruelty by the husband upon the wife.

In one of the cases, the conduct of a wife abusing her husband and his family members, in her letters, in defamatory and derogatory language and accusing her husband of infidelity was considered as cruelty afflicted by her upon her husband.

In a decided case a Learned Judge of a High Court held that the accusation made by the husband in his written statement, opposing the petition of his wife and alleging there in, without proving the same, that his wife was leading an adulterous life, was cruelty afflicted by the husband upon the wife. The parameters of cruelty under Hindu law are not fixed and are always changing. In fact, the law is seen to be reflective of the changing times. In order to find out whether a particular act is cruel or not, one has to look upon the effect which is caused by that act. If the effect is that by a particular act harm has been caused to the body or mind of the other, the said act is an act of cruelty.<sup>viii</sup>

While determining mental cruelty in *Savitri Pandey v. Prem Chandra Pandey*,<sup>ix</sup> the court said, "Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other." In *Samar Ghosh v. Jaya Ghosh*,<sup>x</sup> the Supreme Court tried to enumerate instances that constituted mental cruelty. These instances were only illustrated and not exhaustive.

"(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) **Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.**

(iv) **Mental cruelty is a state of mind.** The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty”.

The court indicated that they are just for illustrations, therefore, the courts have to interpret whether there has been any mental cruelty or it is just a part of normal life. Only grave and weighty acts by the respondent constitute mental cruelty.

Forcing husband to leave his parents who are dependent on him amounts to cruelty as quoted by Supreme Court in *Narendra v. k. Meena*<sup>xi</sup>.

In *Smt. Gurpreet kaur v. Sh. Rajiv Singh*<sup>xii</sup>, the honorable court said that, “On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

## CONCLUSION

Cruelty cannot be defined as such, as the concept of mental cruelty is wide so it cannot be kept into a water tight compartment. As remarked by Lord Denning that, “**New type of cruelty may crop up in any case depending upon the human behavior, capacity or incapability to tolerate the conduct complained of**”. After going through the whole concept of the mental cruelty under Hindu law, one can make an inference that Hindu law has not provided for an exhaustive definition of mental cruelty and left it to the judiciary to decide as to what amounts to mental cruelty by going through the facts and circumstances of each case. The judiciary itself is of a view that it is impossible to include each and every case of mental cruelty in a single definition. The court said that it is all about the human behavior and it cannot be determined as such. Whatever is cruelty for one may not be cruelty to other. Therefore, no strict formula and parameters can be drawn to define the

mental cruelty. To decide the matters relating to mental cruelty the court has to examine the facts and circumstances of each case and where it has been proved that the victim of mental cruelty is suffering such amount of mental agony that it is impossible for the victim to live in such a relationship and it must be different from ordinary wear and tear of daily life. The effect of the particular act must be examined.

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## REFERENCES

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<sup>iii</sup> *Gopal Krishan Sharma vs. Dr. Mithilesh Kumari Sharma*, AIR 1979 ALL 316.

<sup>iv</sup> *Russel v. Russel* (1897) AC 305.

<sup>v</sup> *Mary v. Raghvan* AIR 1979 M.P.40.

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<sup>vii</sup> (1975) 2 SCC 326 .

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**Ashu Dhiman**

**Research Scholar , Department of law , Kurukshetra University , Kurukshetra.**