

CONCEPTUALIZING CRUELTY AS A GROUND FOR DIVORCE IN INDIA

By Aniket Kumar Singh

Introduction

The term 'cruelty' was not comprehensively elaborated nor was it given an exhaustive definition. It is this void in the realm of family law which the judiciary has been interpreting. The Special Marriage Act and the Hindu Marriage Act allows either of the spouses, the decree of cruelty as a ground for divorce. None of these legislations provide a comprehensive definition of 'cruelty'. They just allow either of the spouses to file for a divorce if it is proved that the other party has treated the petitioner with cruelty. The Dissolutions of Muslim Marriage Act, 1939 still gives us some clarity about the word cruelty. According to Section 2 of this Act, a women can obtain a decree of cruelty for dissolution of the marriage if the husband treats her with cruelty which is further defined under the Act as habitually assaulting the wife and treating her miserably even if doesn't lead to physical ill-treatment, associating her with women of evil repute, forcing her to live an immoral life, disposing the wife of her property or preventing her from exercising her legal right over that property, obstructing her to practice her religion and not treating the wife equitably according the injunctions of the Quran if the husband has more than one wife.¹ Though the act takes a step further to give a domain to the word cruelty but it still leaves out a much wider scope for interpretation to the judiciary. It leaves out to further explain the terms infamous life and immoral life which has a much wider scope of interpretation under the Indian jurisprudence. In furtherance to the above issue the act only allows the wife to file for a divorce, making it gender biased. The Hindu Marriage Act, 1955 didn't have the term 'cruelty' as a ground for divorce. It was after the amendment in 1976 that 'cruelty' was recognized as a valid ground for seeking divorce or judicial separation.²

In the Supreme Court decision of *N.G. Dastane v S. Dastane*³ enlarged the ambit of 'cruelty' in nuptial relationships including threat of suicide by spouses, non-harmonious togetherness and intermittent living away from each other in order to deny each other the conjugal pleasure. Before this case cruelty was limited to just physical cruelty but in this case the court held that cruelty is a matrimonial offense, and it can be **either mental or physical**. Under the Hindu Marriage Act the concept of cruelty as a ground for divorce can be placed by either of the spouses, but the burden

¹ The Dissolution of Muslim Marriage Act, 1939, s 2

² *ibid*

³ *Narayan Ganesh Dastane v Sucheta Narayan* (1975) AIR 1534: 1975 SCR (3) 967

of proof lies on the spouse subjected to cruelty. Acts of cruelty in a matrimonial alliance don't come under the realms of criminal statutes, and it's rather a civil wrong, hence, the standard of proof doesn't have to be beyond reasonable doubt and is through the preponderance of evidence. The court held that it would not ask if a reasonable man would interpret the action as cruelty, realized the diversity in humans and held to judge cruelty on an individual standard. The court clarifies that a marriage will face some wear and tear, and which should not be treated as cruelty and further elaborates that cruelty is something which is **graver and more than usual fiction in a relationship**. The court further held that educational and socio-economic standard of the people have to be taken into account while deciding cruelty and Lastly that having normal sexual intimacy with your spouse does not amount to condonation of cruelty. Condonation means forgiveness of the matrimonial offence and the restoration of the offending spouse to the same position as he or she occupied before the offence was committed. It's also subject to the offence not being repeated. However, sex would not amount to condonation because cruelty isn't an isolated affair to which you react and leave the household. It is an ongoing affair, and sex being an integral part of marriage, would not amount to condonation. Cruelty in each individual case has to be decided by considering the facts and circumstances of each case. The courts are expected to apply the canons of cruelty by understanding it in-depth, the cause behind existence of cruelty and whether the ground for seeking separation on the basis of cruelty is bona-fide and real. This research aims to show the wider domain of cruelty and analyses the fact that how cruelty creeps into these subsections explained as we proceed with the paper.

Forced Family Separation

One of the common grounds to impute cruelty is forced family separation. The courts have been cautioned by the Supreme Court, to list out and factor in the series of circumstances and facts (*res gestae*) leading to the forced family separation.

One of the key identities of India is associated with the concept of living in a joint family. A joint family is an extended group formed by persons who are lineally descended from a common ancestor. Women who are married get inducted into their husband's joint families. The *Mitakshara* school of Hindu law has its own concept of Joint family based on the doctrine of right by birth which is called *Janmswatavada*. In Hindu view caste, ashramas, and family are inseparable, while

it remains a 'pious' duty of the son to take care of his parents during their old age. The courts have stuck to these values and uphold them with the utmost respect.

Forced family separation, relatively a new concept is a social phenomenon caused by the rapid urbanization and industrialization these two things have in some way adversely impacted the family togetherness in myriad ways. Individuals' relation with the community have changed with taking up jobs in urban industrial setups. Making it very difficult to adjust. This has created a strange room for awkwardness and suspicion at the same time. We can witness this in the case of *Narendra v K. Meena*⁴, where the nature of job of the appellant compelled him to work late hours, while wife became suspicious, she blatantly leveled frivolous charges on the Appellant with regards to his character and forced to move out of his parental home. The Hon'ble court held the ratio which were inclined to hold that the unsubstantiated allegations levelled by the Respondent wife and the threats and attempt to commit suicide by her amounted to mental cruelty and therefore, the marriage deserves to be dissolved by a decree of divorce on the ground stated in Section 13(1)(ia)⁵ of the Act. Further, the Hon'ble court stated "behavior of the Respondent wife appears to be terrifying and horrible. One would find it difficult to live with such a person with tranquility and peace of mind. Such torture would adversely affect the life of the husband. It is also not in dispute that the Respondent wife had left the matrimonial house on 12th July 1995 i.e., more than 20 years back".

In another case of *Lalit Joshi v Smt. Girja*⁶, the Respondent had forced the Appellant to live away from his parents due to the constant dowry demanded by the Appellants family. To force her wishes she threatened the Appellant with writing letters of complaints against the MP and his superiors to tarnish his reputation in the public eye. The Hon'ble High Court of Rajasthan was of the view "*that the Respondent's repeated attempts to malign and injure the reputation, as well as creating deleterious effects in the Appellant's mind; therefore he, not unreasonably complains having remained apprehensive: in the shadow of fear of losing his employment. Such complaints and public inquiries resulted not only in humiliation but lowering the respect of the Appellant had*

⁴ (2016) 9 SCC 455

⁵ The Hindu Marriage Act 1955, s 1(1)(ia)

⁶ (2020) AIR CC 522; (2020) 1 RLW 43

with others in the community. These acts cannot but be characterized as cruelty. Forcing the Appellant to live with the Respondent leaving behind his aged parents and other family members would, in these circumstances, amount to cruelty”⁷.

Although there have been cases where either of the parties don't have any family to rely upon and are subjected to intense pressure and subversion like in the case of *Monika Gupta v Jitendra Gandhi*⁸, wherein the Appellant, was pushed as far as that she was pressurized by Defendant/Respondent to share bed with friends and colleagues. It was contended by the Appellant that the court below should have visualized that the Appellant whose parents had passed away in her childhood and was brought up by her maternal uncle and aunt and she had no source of livelihood wouldn't make such allegations against her husband which could land her in a dangerous zone unless the circumstances compelled her to do so and the Family Court should not have taken her allegations made in the complaint so lightly. Further the allegations made by the Respondent was that she forced the husband to stay away from his aged parent and give up on his family and settle along with her in another city, in the additional pleas of the written statement filed in proceedings under Section 13, as well as in petition under Section 9 of the Hindu Marriage Act that Appellant was having an illicit relationship with her brother-in-law also amounted to mental as well as legal cruelty. While the Defendant sought to Section 9 of the HMA, it was futile in this matter as the counsel for the Respondent-husband, that subsection (1) (i-b) of Section 13 of the Act debar the parties from presenting petition within two years in case of desertion, but in the present case, the Appellant had moved the petition seeking annulment of marriage on the ground of mental cruelty. The argument made has no force and the said provision is not applicable in the present case. In the present case where the marriage was broken beyond any repairs and the plight of the Appellant was far greater than what the Defendant might had suffered, the Hon'ble court, sought to give her relief through granting the annulment of her marriage and entitling her to alimony.

⁷ (2020) AIR CC 522; (2020) 1 RLW 43, paras 35 and 36 (Justice S. Ravindra Bhat and Justice Dinesh Mehta)

⁸ AIR 2020 All 13; (2020) 140 ALR 145

The consequence of forced family separation is obvious, they include refusal to co-habituate, no conjugal bliss and continuation of the same over elongated period would validate it as a ground for divorce as well as judicial separation. In certain jobs, where nuptial discord arises it creates a room of distance and discord, this excuse is rather justified if it continues over a period of time.

Now Section 9, 13(1-A) and 13(iii) envisage the same pattern of living husband and wife living together, husband behaving as husband and the wife behaving as a wife, doing housewifely duties. Cohabitation is the common denominator of these provisions. This is their first relief. Section 9 tries to bring them together. Sections 13 (1-A) and (iii) dissolve -the union when there has been no resumption of cohabitation for the space of one year and upwards. Section 9, the restitution of conjugal rights is a section which is unconstitutional as it goes against the right of freedom of life, liberty and dignity and privacy. The Court held that the company of a person includes right to the society of the spouse, and martial sexual relations. By passing a decree under Section 9, the State seems to be forcing an unwilling spouse to have sexual relations with their partner. This says the right to consent to sex passes from the individual to the state.

The right to privacy belongs to each person individually, and it doesn't get dissolved on the grounds of marriage. Though the state can put reasonable restrictions on the fundamental rights, it is only when there is a greater state interest in doing so, and there is no such reason in restitution of conjugal rights. Section 9 doesn't even satisfy the traditional classification test because it has come from the English society and isn't inherited to the Indian culture. It even fails the equality test because though this remedy is available to both spouses, a woman, who is inherently unequal to a man, rarely uses it, hence making the law partial and one-sided. Secondly it fails to pass the test of minimum rationality required of any state law. Hence the Courts often hold Section 9 to be unconstitutional. Also, the Court hold that 'resided' as mentioned in HMA refers mainly to the matrimonial home and where both the parties have stayed together for a long period of time. Temporary and casual places of residence are not accounted for in the HMA.

Domestic Violence

Domestic violence is not only an issue in the realm of family law, but it is also a human rights issue. Globally, almost 30 percent of all women who have been in a relationship have experienced

physical and/or sexual violence by their intimate partner. Most of the cases of such violence are reported from Asian continent, especially South-East Asian region.⁹ In the case of India, there is conundrum of massive under-reporting with respect to domestic violence. It is estimated that around 86 percent of women who are subjected to domestic violence have never sought any help, although there has been rise in number of complaints of domestic violence during the COVID-19 lockdown period.¹⁰

The recognition of domestic violence as a human rights issue was ascertained by the Vienna Accord of 1994 and the Beijing Declaration & the Platform for Action of 1995. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendations has put forward that State parties should act to protect women against violence of any kind, typically the violence occurring within the family. The phenomenon of domestic violence in India is ubiquitous but has remained imperceptible in the public domain.¹¹ The international community through its multiple fora endeavors towards the reduction in the instances of cruelty, both physical and mental, which are generally perpetrated against women.

Domestic violence can be conceptualized in both legal as well as social terms as, “any abuse—including physical, emotional, sexual, or financial—between intimate partners, often living in the same household.” Domestic violence is gender neutral offence.¹² Both physical as well as mental cruelty can be broadly construed as being elements of domestic violence and it can certainly be a reasonable ground for divorce. Domestic violence consists of acts of “pushing, shoving, striking, thrusting, sexual assault and similar forms of physical attacks. Also, stalking, intimidation,

⁹ World Health Organization, ‘Violence against women’ (World Health Organization, 29 November 2017) <<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>> accessed 19 November 2020

¹⁰ Vignesh Radhakrishnan, Sumant Sen, and Naresh Singaravelu, ‘Domestic violence complaints at a 10-year high during COVID-19 lockdown’ *The Hindu* (Chennai, 22 June 2020) <<https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>> accessed 16 November 2020

¹¹ The Protection of Women from Domestic Violence Act 2005, Statement of Objects and Reasons; *S v J* [2018] LNIND DEL 1634

¹² Nolen JL, ‘Domestic Violence’, *Britannica Academic*, Encyclopedia Britannica (January 27, 2012) <<https://jguelibrary.informaticsglobal.com:2299/levels/collegiate/article/domestic-violence/124958>> accessed October 15, 2020

isolating a partner from others, withholding money, and emotional abuse of all kinds amounts to domestic violence as well.”¹³

The Civil law or specifically the Family law in general does not address the phenomenon of domestic violence in its entirety. There is a common intersection between the family law and the criminal law in the realm of Domestic Violence.¹⁴ Presently, in India, where a woman is subjected to cruelty by the husband or his relatives, it is an offence under the Indian Penal Code.¹⁵ In order to provide a remedy in the civil law for the protection of women from any act of domestic violence and to prevent the occurrence of domestic violence in the society at large, the Protection of Women from Domestic Violence Bill was introduced in the Parliament.¹⁶

“The Protection of Women from Domestic Violence Act, 2005” (for short, D.V. Act) is the statute which deals with the offence of domestic violence in India. An aggrieved person within the meaning of this Act can only be a woman who has been, or is, in a domestic relationship with her husband/respondent and she alleges that she was subjected to any act of domestic violence by the respondent.¹⁷ Here, domestic relationship has been given a wider meaning to include relationships outside marriage as well.¹⁸

The Division Bench of Delhi High Court in *Shambhu Prasad Singh v Manjari*¹⁹, observed that the woman exposed to domestic violence is entitled to move to the Court in pending proceedings such as divorce and maintenance etc. The basic objective in enacting the D.V. Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship. An aggrieved woman who is subjected to any act of domestic violence is entitled with the right to approach the relevant Court of law for accessing justice through the reliefs that are outlined in the D.V. Act (includes comprehensive proceeding, claim for maintenance, right to

¹³ Key AP, “Divorce and Domestic Violence: When Family Law Meets Criminal Law” (2015) 32 American Bar Association 30 <<https://www.jstor.org/stable/24634257>> accessed October 21, 2020

¹⁴ *ibid*

¹⁵ The Indian Penal Code 1860, s 498A

¹⁶ *S v J* [2018] LNIND DEL 1634

¹⁷ The Protection of Women from Domestic Violence Act 2005, s 2(a)

¹⁸ The Protection of Women from Domestic Violence Act 2005, s 2(f)

¹⁹ [2012] LNIND DEL 1044

residence and so on). The Court is empowered to grant ex-parte relief and ensure its compliance which can be done by directing the police authorities to implement the order, particularly those relating to residence. If such an order is violated by the respondent/husband, then it would be a punishable offence which can be tried in a summary manner under Section 31 of the D.V. Act.²⁰ The High Court was of the opinion that in order to protect the women, in domestic relationships, from acts of physical and mental cruelty, provisions of the D.V. Act should be interpreted in manner which advances the intention of Parliament further rather than restricting it.²¹

The Bombay High Court in the year 2017, considered the question of whether the application made under Section 26 of the D.V. Act is maintainable in the divorce proceedings which is purely a civil proceeding.²² It considered the Division Bench judgment of this Court in *Nidhi Kaushik v Union of India*²³ and held the application under section 26 of the D.V. Act to be maintainable in the divorce proceedings.²⁴ In this case, the husband/respondent's contention on the jurisdiction of Family Court in hearing the applications made under this section were also rejected by the court.²⁵ Although, normally the procedure prescribed in this Act for obtaining reliefs is to institute proceedings before a Magistrate.²⁶ Also, with respect to section 28 of the D.V. Act, the proceedings under some sections of this Act are governed in accordance with the provisions of the Code of Criminal Procedure, 1973.²⁷ However, the court clarified that these proceedings, even though, they are governed by Cr.P.C., are essentially Civil in nature.²⁸

The Delhi High court has also held in 2018 that the Civil Court or a Family Court, while entertaining an application under Section 26 of the D.V. Act, will have to consider whether the case of domestic violence, prima facie or otherwise, has been made out before any reliefs in terms

²⁰ The Protection of Women from Domestic Violence Act 2005, s 31

²¹ *Shambhu Prasad Singh v Manjari* [2012] LNIND DEL 1044

²² *Narayan Babi Salgaonkar v Jayshree* (2017) SCC OnLine Bom 723: (2018) 2 AIR Bom R (Cri) 791

²³ (2014) 2 AIR Del R 574

²⁴ *Narayan Babi Salgaonkar* (n 22)

²⁵ *Narayan Babi Salgaonkar v Jayshree* (2017) SCC OnLine Bom 723: (2018) 2 AIR Bom R (Cri) 791; *MS Nidhi Kaushik v Union of India & others* (2014) 2 AIR Del R 574; *S v J* [2018] LNIND DEL 1634

²⁶ The Protection of Women from Domestic Violence Act 2005, s 2(i) (definition of 'Magistrate')

²⁷ The Protection of Women from Domestic Violence Act 2005, s 12 and 18-23

²⁸ *MS Nidhi Kaushik v Union of India & others* (2014) 2 AIR Del R 574; *S v J* [2018] LNIND DEL 1634

of Sections 18 to 22 of the D.V. Act, is actually granted to the aggrieved person. If it is proposed to grant interim relief or ad interim relief, then, a prima facie case may suffice.²⁹

The concept of domestic violence is very broad, and it also includes within its ambit economic abuse. Economic abuse of the aggrieved person within the meaning of the D.V. Act and this could also entitle the aggrieved person to file a suit for divorce. In *Prabir Kumar Ghosh & others v Jharna Ghosh & another*³⁰, the Calcutta High Court held that denial of economic support/sustenance to even a divorced wife living penury would amount to economic abuse constituting domestic violence under the Act. A divorce woman also falls within the ambit of the aggrieved party in the D.V. Act.³¹ This act includes economic abuse in the definition of domestic violence along with physical abuse, sexual abuse, and verbal and emotional abuse. Such economic abuse is perpetrated in form of depriving the aggrieved woman from economic/financial resources, alienating her from the assets, prohibiting her access to any facility, etc., which she is entitled to by virtue of being in the domestic relationship.³²

The Allahabad High Court in the case of *Itwari v Smt. Asghari*³³, in which the petitioner was the first wife of a Muslim husband, where the husband inflicted both physical and mental cruelty on the wife after he married another woman. This case tries to explore the aspect of cruelty in the line of Muslim jurisprudence. In the opinion of the judges in this case, “*the test of cruelty is based on universal and humanitarian standards that is to say, conduct of the husband which would cause such bodily or mental pain as to endanger the wife's safety or health.*”³⁴ There is no distinct laws for different religions in the matters of cruelty. The court iterated that the definition of cruelty would evolve with changing times and prevailing social conditions. In such cases, the burden lies on the husband who marries a second wife to prove that such a marriage has not caused any insult or cruelty to the first wife.³⁵

²⁹ *S v J* [2018] LNIND DEL 1634

³⁰ (2015) LNIND CAL 1241: (2015) 154 AIC 658 : (2015) 4 Cal LT 664 : (2016) 2 Cal LJ 154

³¹ *Prabir Kumar Ghosh & others v Jharna Ghosh & another* (2015) LNIND CAL 1241: (2015) 154 AIC 658: (2015) 4 Cal LT 664: (2016) 2 Cal LJ 154

³² The Protection of Women from Domestic Violence Act 2005, s 3(d) Explanation I

³³ AIR (1960) All 684: (1960) All LJ 523

³⁴ *Itwari v Smt. Asghari* AIR (1960) All 684: (1960) All LJ 523 para 11 (Justice S Dhavan)

³⁵ *ibid* para 14

It has been found that the education levels in a society also influence the instances of domestic violence in the society. Educated women are in a better position to seek redressal the issue of domestic violence which is inflicted on them by their partners. They are more likely to report the instances of cruelty inflicted upon them by their partners. The Bowker reports findings indicate that some abused women identify the threat of divorce as one of the most effective factors preventing further violence against them by the male partners with whom they were living. Abused women who are educated are more likely to take divorce. Also, increase in Education rates of women leads to decrease in instances of domestic violence.³⁶

In a nutshell, it can be said that as domestic violence in its literal sense connotes a kind of violence which essentially is nothing but cruelty in a domestic environment.

Abortion

It is estimated that 15.6 million³⁷ abortions take place in India every year. Globally, 56 million abortions take place every year.³⁸ In South and Central Asia, an estimated 16 million abortions took place between 2010 and 2014, while 13 million abortions occurred in Eastern Asia alone.³⁹ There have been instances where it has been observed that abortions have two side. One where husbands force their will upon their wife's for choosing to abort their child, another , where wives have resorted to abortion without so much so putting it across their husband. The later type of incidents is barely reported but there can be seen a plethora of cases against forced abortions. Unsafe abortion is the third largest cause of maternal mortality leading to death of 10 women each day and thousands more facing morbidities.⁴⁰ We come across news articles everyday where husbands sends divorce papers to wife for rejecting abortion⁴¹ , or where desertion takes place

³⁶ Kreager DA and others, 'Women's Education, Marital Violence, and Divorce: A Social Exchange Perspective' (2013) 75 Journal of Marriage and Family 565 <<https://www.jstor.org/stable/23440901>> accessed October 22, 2020

³⁷ Singh S and others, 'The Incidence of Abortion and Unintended Pregnancy in India, 2015' (*The Lancet. Global Health* January 2018) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5953198/>> accessed November 29, 2020

³⁸ World Health Organization, 'Preventing unsafe abortion' (World Health Organization, 25 September 2020) <<https://www.who.int/news-room/fact-sheets/detail/preventing-unsafe-abortion>> accessed 18 November 2020

³⁹ Guttmacher Institute, 'Abortion in Asia' (Guttmacher Institute, 10 May 2016) <https://www.guttmacher.org/sites/default/files/factsheet/ib_aww-asia_0.pdf> accessed 19 November 2020

⁴⁰ Singh S (n 37)

⁴¹ The Hindu, 'Man sends divorce papers to wife for rejecting abortion proposal' *The Hindu* (Chennai, 11 August 2019) <<https://www.thehindu.com/news/national/andhra-pradesh/man-sends-divorce-papers-to-wife-for-rejecting-abortion-proposal/article28984960.ece>> accessed 19 November 2020

because wife rejected the idea of abortion put forth by husband and the family.⁴² Abortion having multiple effects of the wellbeing of the mother there is a growing body of evidence that has suggested that women may be at an increased risk of mental disorders (notably major depression, substance misuse and suicidality) following an abortion.

Other than the physical and mental agony, a person who is forced to undergo abortion faces multiple marital issues such can be seen in the case of *Anjali Ghosh v Subodh Kumar*⁴³ where husband alleged baseless allegations of pre- marital sexual affairs which had led to issues in conceiving a child and subsequently his desire of being a father was not fulfilled as the wife had to undergo multiple miscarriages. In this case cruelty was established and the husband was unable to prove the allegation culminating into mental cruelty for the wife, on grounds of which she was allowed to seek divorce. Abortion being a painful experience physically, the person undergoing it has to face multiple backlashes in their personal lives as well. Birth of a child is a fulfilling experience for both mother and the father but the loss of not being able to conceive a child should not be projected towards a woman and there should be absolutely no need of putting across false allegations.

There have been instances where the wife had kept the news of pregnancy from the husband as in the case of *Suman Kapur v Sudhir Kapur*⁴⁴ where the husband alleged that the wife was only interested and was extremely focused on her career and neglected her husband, she got her pregnancy terminated 3 times without the knowledge of the husband, leading to mental suffering and increases level of stress at home. The court held cruelty on the part of the wife and the appeal for divorce was allowed. When there is a talk of pregnancy the first thought is of the birth giver, the mother, but most often than not people don't realize or often ignore that contribution of a father and taking his feeling into consideration are equally important. such instances where the wife terminates pregnancy without the knowledge of husband are mostly underreported due to social stigma attached to it, but this doesn't spare the person suffering to suffer any less agony or stress when losing a child.

⁴² Latest Laws, 'Man abandons wife for saying 'No' to her abortion proposal, sends divorce notice' (Lexidem Veritas Pvt Ltd, 13 August 2019) <<https://www.latestlaws.com/latest-news/man-seeks-divorce-from-wife-for-not-following-his-abortion-instructions/>> accessed 14 November 2020

⁴³ (2005) 4 ICC 156

⁴⁴ AIR (2009) 1 SCC 589; (2009) 73 AIC 247 (SC)

Getting aborted is not the question, abortion without equal consent or forced abortion leads to mental hardship and a ground for divorce as can be seen in the above two cases under the Hindu Marriage act, 1955.

There are times when cruelty cannot get established due to lesser evidence than required as in the case of *Jayanta Kumar Laha v Kabita Laha*⁴⁵ where wife was being forced into getting the child aborted and on denial, the parentage of the child was brought in question , although in such a case cruelty was not established which is why appeal for divorce was dismissed but what the point to be noted here is ,the extent to which people are willing to stoop to for getting the child aborted , common case is when the family wants a boy but the mother is unable to provide one . Selective sex problem is the most common ground for abortion in India and a mother in majority of the cases is looked down or is subjected to cruelty but due to improper access of law these cases mostly go unreported in rural areas, where they are a common occurrence. The Court recognized that there is a plethora of reasons for which states implementation of the Act has not been successful by solely raising awareness of the legal requirements. The Parliament has taken steps to prevent sex selective abortion by enacting a series of legislative measures, with the primary one being the Preconception and Prenatal Diagnostic Techniques (Prohibition on Sex selection) Act, 1994. While these legislative steps had been taken, statistics demonstrated a lack of effectiveness of prevention of sex selective abortion and that often society at large did not perceive the gravity of the crime.⁴⁶ The crime is not only restricted to abortion but the other crimes which are covered under garb of abortion mainly the domestic violence. The idea of abortion is so well fabricated in the day to day lives and the desire of a male child that domestic violence has become normal, people have normalized woman being subjected to torture. The idea of violence should be broadened so that male section of the society who face the brunt of lack of knowledge about their child being aborted should also be included. Laws should include both men and women subjected to torture due to abortion and should be considered enough for ground of divorce.

⁴⁵ SCC OnLine Cal 510: (1991) AIR DMC 174

⁴⁶ *Voluntary Health Association of Punjab v Union of India* (2012) SCC OnLine P&H 11938: (2012) 4 RCR (Cri) 29 (2)

Dowry Demand

Dowry has been conceived as a silent killer of women in India. Dowry is defined under Section 2 of the Dowry Prohibition Act, 1961 of the Indian Penal Code. It defines dowry as any valuable security given to the other party to the marriage indirectly or directly.⁴⁷ Dowry is often referred to as “*Dahej*” in India. The dowry system can place a great financial burden on the affected family mainly the bride’s family in India and affects the mental health of the family. In some cases, the dowry system leads to crimes against women, vastly ranging from emotional abuse, injury and even death in certain cases. The exchange of dowry has long been curtailed by the introduction of Dowry Prohibition Act, 1961 and the grave crimes subsequently under Section 304B⁴⁸ and 498A⁴⁹ of the Indian Penal Code which talks about dowry deaths and Husband or relatives of husband of the women subjecting her to cruelty. Subsequently, Section 113A of the Indian Evidence Act, 1872 states that when the question arises that whether or not the commission of suicide by a wife was abetted by her husband or the relatives of the husband and that the woman has been treated with cruelty, the courts should presume that the suicide has been abetted by the husband or by his relatives. The above stated section was included as the number of dowry deaths were increasing and becoming a huge matter in terms of public policy. Although, dowry eradication has been futile in its efforts because of being too deeply rooted in the Indian society.

The landmark case of *Shobha Rani v Madhurkar Reddy*⁵⁰ gave a new dimension to the concept of cruelty. In the following case the trial court and high court viewed harassment because of dowry demand from a different perspective. The court held that making demand for money cannot be justified but it has to be viewed from a different angle in every case. In the following case they stated that there is no problem for a rich wife to spare some money to her husband when he is in need. Further quashing the petition and rejecting the complaint of harassment due to continuous dowry demand. However, the Honorable Supreme Court held dowry demand as cruelty. It stated when cruelty is mental, the courts should see the nature of the cruel behavior with which the other party was treated and whether that cruel behavior was enough to create reasonable apprehension that it would be harmful for the petitioner to live with the other party. Hence, making dowry

⁴⁷ Dowry Prohibition Act 1961, s 2

⁴⁸ The Indian Penal Code, 1860, s 304B (“*Dowry Death*”)

⁴⁹ The Indian Penal Code, 1860, s 498A (“Cruelty by husband or his relatives on the wife”)

⁵⁰ AIR (1988) SC 121

demand and harassing the spouse for the same leads to mental cruelty and in many cases physical cruelty.

Many times, nonfulfillment of dowry demands and harassment for fulfillment of demands leads to death of the victim. The victim treated with physical cruelty in most of the cases leads to mental cruelty as well because of the trauma which the victim faces. In the case of *Kamesh Panjiyar v State of Bihar*⁵¹ the accused was paid dowry at the time of the marriage and after the marriage the accused demanded for a more dowry which was not fulfilled by the wife's family. The accused and his family started torturing and beating his wife and later the wife was found dead with multiple injuries on the body at her marital house. The court found the husband guilty and held that the fact the wife was treated with cruelty was enough and no direct evidence was required. Hence, physical cruelty as a result of non fulfilment of dowry demands.

Refusal to Cohabitate

Legal cohabitation is an arrangement where two people who are married live together. The Supreme Court of India has been evolving the spectrum of mental cruelty over the years. This concept has not remained static but has experienced constant change. In the recent times we have observed how modern society has operated, a couple is not bound to their gender roles both can pursue their individual careers, while this is welcoming, it does create a gap which can't be fulfilled. In the case of *S Hanumanta Rao v S Ramani*⁵², the wife was forced into the marriage by her parents, it was alleged by the husband that the wife was more interested in her pursuance of a career rather than martial affairs and the household in general, she left the husbands house after a quarrel, and didn't want to come back. She returned after reconciliation but was taken back by her parents. They put up a condition that their daughter must be home with them every week from Thursday to Saturday for a puja, which was deemed unreasonable by the husband-Appellant, while the wife-Respondent expressed her wishes to continuance of stay with her parents and took out her manglasutra and threw at the Appellant. The court ruled that the taking off manglasutra and going off to her parents clearly showed her disinterest in the marriage would amount to mental cruelty within the meaning of section 13(1)(i-a) of the Hindu Marriage Act.

⁵¹ (2005) 2 SCC 388

⁵² (1999) 3 SCC 620

Another case of *Kalpana v Surendranath*⁵³ it was seen that wife's refusal to prepare tea was declared by the court as a ground for cruelty. There have been cases where abuse of law by wives for personal vendetta against husband or relatives have come into light. The case was filed under section 13 (1) of the Hindu Marriage Act, establishing sufficient grounds of cruelty. The parties had only lived together for a month and a half and it was on the wife's desire that the husband, for her further studies admitted her in a college. The wife later on filed a report against the husband and his relatives and even got rid of her pregnancy. It was held by the court that (i) wife's refusal to prepare tea not only hurt the husband's ego but also created a humiliating situation for him in front of the guests. (ii) filing of a false report against the husband and his relatives had caused disgrace and humility for the family not to mention the anguish faced due to running to the court multiple times to obtain bail in order to avoid arrest has been a harassing incident entirely. (iii) On top of it getting rid of pregnancy without informing or obtain consent of the husband had deprived him the joy of being a father and caused mental torture.

In the case of *Mayadevi v Jagdish Prasad*⁵⁴, it was alleged by the husband that the wife did not provide food to him and his children. She also threatened the husband to falsely implicate him in a case of dowry demand and to kill the children and to put the blame on the husband and his family members. The Respondent (husband) was under apprehension that it was not desirable and safe to stay with the appellant and to continue their marital relationships. He filed an application of divorce after repeated course of cruelty inflicted by his wife. In this case the Supreme Court held that any kind of mental cruelty faced by either of the spouses not just the woman, but man as well can apply for divorce on grounds of cruelty. When the cruelty inflicted is physical it is easier to determine but when the cruelty inflicted is mental it is difficult to determine where to draw the line to establish proper grounds.

⁵³ AIR (1985) All 253

⁵⁴ AIR (2007) SC 1426; (2007) 3 SCC 136

Conclusion

The ambit of cruelty has been under constant evolution. As mentioned earlier that there is no comprehensive and all-encompassing definition of cruelty, it becomes demarcate what exactly should fall under cruelty. There have been some instances as trivial as refusing to prepare tea was considered a ground for cruelty and also some cases where despite of existence of actual cruelty, it was not established due to lack of admissible evidence. The expression 'cruelty' has an inseparable nexus with human conduct. It is always dependent upon the social construct to which the couple belongs, their way of life, relationship, temperament and emotions. Cruelty can't be judged by an isolated incident; social status of the parties is always taken into account depending upon their values.

Mental cruelty is always in parallel with Physical cruelty. Although mental cruelty is no less severe ground for divorce than physical cruelty, due to lack of an exhaustive definition it becomes difficult to pinpoint what constitutes as Mental cruelty as the word is open to interpretation by the judiciary. Though physical cruelty is easy to establish due to the nature of the act, there is no one particular way to establish mental cruelty by direct evidence as only a part of interpretation can be observed from the facts and circumstances. Every human has different threshold and tolerance power, what might be acute cruelty for someone, might be sever for someone else, this is where the problem of what qualifies as cruelty arises.

One of the other major problems in cases of cruelty is its acceptance by the society as a normal phenomenon in matrimonial relationships. This evil of cruelty which generally takes the form of domestic violence has been accepted as being banal by the society and it's not discussed much in the mainstream. The concept of cruelty in a domestic setting is a complex phenomenon in the context of India and it is deeply embedded. In the Indian society, the women are generally the lesser privileged class, and this has led to the entrenchment of patriarchal views into the psychology of the people. Also, the prevalence of dowry system despite the existence of the Dowry Prohibition Act complicates the concept of cruelty in India.

The concept of cruelty cannot be restricted within the limits of physical harm only, rather it has to inculcate the potent field of mental cruelty as well. The court has still preferred women getting

more benefits and the male as the aggressor, but there needs to be a balanced approach so that no one is treated unequally. The courts need to develop a more humanitarian way to deal with cases of cruelty rather than implementation of strict laws. The law should be limited in every way possible as matters can be settled outside of the courtroom. Obtaining divorce through the ambit of cruelty through Section 13 is now easier than ever, but cases should be decided, prima facie on facts and the court through its own nobility can interpret the case within the workings of the law.

Appendix-I

ABBREVIATION

Sl. No.	Abbreviations	Full Form
1.	AIR	All India Reporter
2.	Cr.P.C.	The Code of Criminal Procedure
3.	Edn.	Edition
4.	Del/DEL	Delhi
5.	HMA	The Hindu Marriage Act
6.	D.V.	The Protection of Women from Domestic Violence Act/ Domestic Violence Act
7.	ors.	Others
8.	SC	Supreme Court
9.	SCC	Supreme Court Cases
10.	v	Versus
11.	Vol.	Volume
12.	s	Section
13.	SCR	Supreme Court Reporter
14.	RLW	Rajasthan Law Weekly
15.	ALR	Allahabad Law Reports
16.	All	Allahabad
17.	Cri	Criminal
18.	Bom/BOM	Bombay
19.	CC	Company Cases (Report of the Company Cases)
20.	All LJ	Allahabad Law Journal
21.	Cal LJ	Calcutta Law Journal

Appendix-II

- Can Dowry Demand could be referred to as cruelty?

SI. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Monika Gandhi v. Jitendra Gupta, AIR (2020) All 13	Hindu Marriage Act, 1955	Constant demand of dowry by the in-laws, the wife claimed that she was not treated well. Husband claimed that there was constant pressure of separating from the family, also alleged that the wife demanded a share in property and apparently had extra marital relations with her brother-in law.	Cruelty Established Appeal Approved	Dowry Forced Family Separation
2.	Savitri Pandey vs. Prem Chandra Pandey, AIR (2002) SC 591	Hindu Marriage Act, 1955	Respondent and his family members were alleged to have started torturing the appellants on false pretexts...Cruelty in form of Dowry demands	Cruelty not established	Dowry
3.	Shobha Rani v. Madhukar Reddy, AIR (1988) SC 121	Hindu Marriage Act, 1955	In the case of Shobha Rani vs. Madhukar Reddy, the Hon'ble Apex Court has while dealing with a petition under Section 13(1)(i-a) of the HMA on grounds of cruelty, has held that repeated and continuous demands of dowry made from the wife in the matrimonial home, with the connivance of the husband constitutes cruelty.	Cruelty Established	Dowry

- **Can Bigamy Under HMA and Second Marriage Under the Muslim Law amount to Cruelty?**

Sl. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Suneer Sharma v. Madhurlata, AIR (2000) MP 26	Hindu Marriage Act, 1955	It was alleged by the plaintiff-respondent that because of the cruelty both mental and physical meted out to her by the appellant and his mother and sister and also because the appellant had contracted a second marriage and lastly because she had been deserted for a continuous period of more than two years, it was not possible for her to continue her matrimonial relationship with the appellant and wanted her marriage to be dissolved by a decree of divorce.	Cruelty Established	Bigamy Physical Cruelty Mental Cruelty
2.	Sri. Yusufpatel v. Smt. Rajmabai, MFA No. 201154/2018 (FC)	Hindu Marriage Act, 1955	The wife alleged that she and her parents were manhandled by the appellant and his parents without any justification whatsoever; the appellant also contracted a second marriage with another lady. Court held that though contracting a second marriage by a Muslim may be lawful, but it often causes enormous cruelty on the first wife justifying her claim for divorce.	Mental Cruelty Established	Bigamy Domestic Violence Conversion

• **Can Desertion amount to Cruelty?**

Sl. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Rashmi Singh v. Arun Kumar Singh, AIR (2019) Jhar 85: (2018) SCC OnLine Jhar 2707	Hindu Marriage Act, 1955	Respondent-wife deserted the petitioner-husband permanently and started living with her parents desertion as cruelty	Divorce granted-cruelty established	Desertion
2.	Itwari v. Asghari, AIR (1960) All 684: (1960) All LJ 523	Muslim Marriage Act	The wife left the home of the husband, after which he had remarried another wife. She alleged that he had beaten her, did not give her dower and caused mental pain. Believed the wife's allegation of specific acts of cruelty committed by the husband and held that she had been deserted and neglected by the husband for so many years.	Cruelty Established and Husband was asked to maintain the wife, Divorce Allowed.	Desertion Domestic Violence
3.	Lalit Joshi v. Smt. Girja, (2020) AIR CC 522: (2020) 1 RLW 43	Hindu Marriage Act, 1955	The marriage of the appellant and the respondent/wife was not successful and hence, the appellant filed for divorce on two counts, i.e. cruelty and that the wife had deserted him.	Mental cruelty	Desertion Forced Family Separation
4.	Laxmi Narayan Patwal v. Renu Patwal, (2017) UHC: MANU/UC/0755/2017	Hindu Marriage Act, 1955	Husband sought dissolution of marriage with his wife on grounds of desertion beyond the statutory period, the husband shifted to Chandigarh and back to his village but the wife was still residing at Satpuli (native Village) and voluntarily withdrew from the society of	Cruelty Established Appeal Approved	Desertion Domestic violence

			her husband as she left after quarrelling, later argued that the wife was harassing the husband with threats of Domestic Violence		
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- **Can Forcing your Partner for Abortion lead to cruelty?**

Sl. No	Citation	Law	Brief Facts	Was Cruelty Established
1.	Jayanta Kumar Laha v. Kabita Laha (1991) SCC OnLine Cal 510: (1991) 2 DMC 174	Hindu Marriage Act, 1955	Wife wanted abortion, husband and his family denied later complained doubted her parentage of child-- among other allegation	Cruelty not established/ Appeal dismissed
2.	Anjali Ghosh v. Subodh Kumar Ghosh (2005) 4 ICC 156	Hindu Marriage Act, 1955	Husband alleged baseless allegations of pre-marital sexual affairs which had led to abortion of child, consequently, his desire of being a father wasn't fulfilled as wife experienced miscarriages. Was not able to prove these allegations, culminated into mental cruelty on both wife and husband. Wife sought divorce	Cruelty Established/ Appeal Allowed
3.	Suman Kapur v. Sudhir Kapur AIR (2009) 1 SCC 589: (2009) 73 AIC 247	Hindu Marriage Act, 1955	Husband alleged that wife was only interested in her career and neglected her husband, got her pregnancy terminated 3 times without consent and knowledge of the husband, led to mental suffering and increased levels of stress	Cruelty established/ Appeal Allowed

• **Allegations Against Spouse, Cruelty?**

SI. No	Citation	Law	Brief Facts	Was Cruelty Established
1.	V. Bhagat v. D. Bhagat, (1994) 1 SCC 337	Hindu Marriage Act, 1955	It was pleaded on behalf of the husband that the wife was involved in adultery, which led to mental stress. Wife pleaded that husband was a pathologically suspicious character. Later he Amended his Allegations	Cruelty Established Appeal Approved

• **Can Forced Family Separation amount to cruelty?**

SI. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Monika Gandhi v. Jitendra Gupta, AIR (2020) All 13	Hindu Marriage Act, 1955	Constant demand of dowry by the in-laws, the wife claimed that she was not treated well. Husband claimed that there was constant pressure of separating from the family, also alleged that the wife demanded a share in property and apparently had extra marital relations with her brother-in law.	Cruelty Established Appeal Approved	Dowry Forced Family Separation
2.	Lalit Joshi v. Smt. Girja, (2020) AIR CC 522: (2020) 1 RLW 43	Hindu Marriage Act, 1955	The marriage of the appellant and the respondent/wife was not successful and hence, the appellant filed for divorce on two counts, i.e., cruelty and that the wife had deserted him.	Mental cruelty	Desertion Forced Family Separation
3.	Narendra v. K. Meena, (2016) 9 SCC 455	Hindu Marriage Act, 1955	The reason for filing the divorce petition was that the wife had become cruel because of her highly suspicious nature and she used to level absolutely frivolous but serious allegations against him regarding his character and more particularly about his extra-marital relationship. Behavior of the Respondent made life of the Appellant miserable and it became impossible for the Appellant	Mental cruelty	Forced Family Separation

			to stay with the Respondent for the foretasted reasons. Moreover, the Respondent wanted the Appellant to leave his parents and other family members and to get separated from them so that the Respondent can live independently with appellant. The main ground was cruelty.		
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• **Refusal to Cohabitate, Cruelty?**

Sl. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	S. Hanumantha Rao v. S. Ramani, (1999) 3 SCC 620	Hindu Marriage Act, 1955	Husband filed a petition for dissolution of marriage on grounds of mental cruelty contending that the wife was never interested in a married life.	Cruelty Established	Mental Cruelty Refusal to Cohabitate
2.	Kalpna v. Surendranath, AIR (1985) All 253	Hindu Marriage Act, 1955	According to this case it has been observed that where a wife who refuses to prepare tea for the husband's friends was declared by the court as cruelty to husband. Also, in Supreme Court's verdict in the case of Narendra vs. K. Meena, wherein the Supreme Court has held that "if the wife forces and exerts pressure on the husband to live separate from his old aged parents or from the joint family without any reasonable excuse/ground, the same would amount to cruelty".	Cruelty Established	Mental Cruelty Refusal to Cohabitate
3.	Mayadevi v. Jagdish Prasad, AIR (2007) SC 1426: (2007) 3 SCC 136	Hindu Marriage Act, 1955	In this case, the respondent filed an application of divorce after a repeated course of cruelty inflicted by his wife and as alleged by the husband (respondent) that the wife did not provide food to him and his children and blamed the husband and his family members instead.	The Supreme Court held that any kind of mental cruelty faced by either of the spouses not	Mental Cruelty Refusal to Cohabitate

				just the woman, but men as well can apply for a divorce on grounds of cruelty.	
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• **Does Unsoundness of Mind Amount to Cruelty?**

SI. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Pankaj Mahajan v. Dimple (2011) 12 SCC 1	Hindu Marriage Act, 1955	Wife was suffering from Schizophrenia, All 4 Doctor expressed the view “incurable”. It was alleged that wife didn’t look after the house, gave threats of committing suicide	Cruelty Established Appeal Approved	Unsoundness of Mind
2.	Manisha Tyagi v. Deepak Kumar AIR (2001) 129 PLR 3 464	Hindu Marriage Act, 1955	Husband and wife were separated rather than divorced, even though the couple made serious allegations, the court established cruelty on part of the wife through engaging in self harm	Cruelty Established Appeal Approved	Unsoundness of Mind
3.	Darshan Gupta v. Radhika Gupta, (2013) 9 SCC 1	Hindu Marriage Act, 1955	Wife of unsound mind and husband cannot reasonably be expected to live with her and living with her would be subjecting himself to cruelty due to the wife's intemperate behavior.	Cruelty Established	Unsoundness of Mind Mental Cruelty
4.	Narayan Ganesh Dastane v. Sucheta Narayan Dastane (1975) AIR 1534: (1975) SCR (3) 967	Hindu Marriage Act, 1955	Wife threatening to end her life, and verbally abusing the husband, among other acts, amounted to mental cruelty .	Respondent (wife)- Guilty of cruelty	

• **Domestic Violence, Cruelty?**

SI. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Smt. Salma v. Mr. Aizazul Hasan, 2020 CS No.10248/2016	Muslim Marriage Act	Defendant has been mentally and physically torturing the plaintiff and has not performed the marital obligations towards the plaintiff since 12.12.2007 and there are no chances of living together between them. That the defendant has performed second marriage with another girl.	Cruelty established and Divorce granted	Domestic Violence, Refusal to Cohabitate
2.	Aminesh Trivedi v. Kiran Bagai, (2012) 3 AIR Jhar R 468: (2012) 116 AIC 831	Hindu Marriage Act, 1955	She was forced to leave the matrimonial home on a said date, and it was alleged that the husband merely tolerated her presence. It was proved that filthy words were being used against the wife by the husband and all this amounts to cruelty enough. The court granted divorce on the basis of cruelty and held that enough substantiations to claim danger of life for the party is proof for cruelty.	Cruelty Established and Granted Divorce	Mental Cruelty Verbal Abuse
3.	Naveen Kohli v. Neelu Kohli, AIR (2004) All 1: (2003) 52 ALR 485 (All)	Hindu Marriage Act, 1955	After marriage, respondent wife started quarrelling and misbehaving with the appellant husband and his parents. The allegations of the husband are that the wife is a bad tempered and rude woman. The Honorable SC lists the acts of the wife and concludes that their life has become a living hell	Mental Cruelty Established and Marriage Dissolved	Mental Cruelty Physical Cruelty

4.	Manisha Tyagi v. Deepak Kumar, (2010) 4 SCC 339	Hindu Marriage Act, 1955	Husband filed for divorce on grounds of cruelty which could not be proved but the counter allegations made by wife were proved.	Cruelty Established	Domestic Violence
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• Conversion, Cruelty?

SI. No	Citation	Law	Brief Facts	Was Cruelty Established	
1.	Madanam Seetha Ramulu v. Madanam Vimala, (2014) (3) ALD 468	HMA, 1955	He pleaded that the marriage between himself and the respondent took place in or around the year 1995, according to Hindu customs and rites. It was stated that four children were born out of their wedlock, and that after the birth of the fourth child, the respondent got herself converted into Christianity. He further alleged that the respondent deserted him and has resorted to various acts of cruelty. He stated that the respondent used to quarrel with him openly, without any provocation, and subjected him to mental agony.	YES, both Desertion and Cruelty were established.	CONVERSION MENTAL CRUELTY DESERTION