

CRUELTY AS A GROUND FOR DIVORCE

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INTRODUCTION

Matrimonial affairs are matters of delicate human nature and emotional relationship as they demand mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse, while conforming to the social norms as well. With consideration to the contemporary norms and changed social order, the matrimonial conduct has been governed by various statutes.¹

Cruelty is ground for matrimonial relief under all the matrimonial law statutes in India. It is not possible for the legislature to enumerate all acts amounting to cruelty or to put cruel conduct into any strait jacket formula.² Cruelty has not been defined and that explains the general legislative policy, to avoid such definition and leave it to the courts to interpret, analyse and define what would constitute cruelty in a given case depending upon many factors such as social status, background, custom, traditions, caste, community, upbringing, public opinion prevailing in the locality, etc. This enables the courts to adapt such a meaning of cruelty that it suits the changing societal values and more.³ What is considered as cruelty today was not construed as cruelty a few decades back, and acts which may not constitute cruelty today might be construed as cruelty after a few years. The cruelty must be such that spouse cannot reasonably be expected to live with the other or living together of the spouses has become incompatible.⁴

The apex court in *Ravi Kumar v. Julmi Devi*⁵ aptly remarked that cruelty has no definition; in fact such definition is not possible because cruelty in matrimonial cases can be of infinite

¹ V.K. Dewan, *Cruelty and Offences Against Husbands*, Asia Law House, Hyderabad, 2013, p. 95.

² P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p.559.

³ Prof Kusum, *Family Law I*, Lexis Nexis, Gurgaon, 2015, p.62.

⁴ V.K. Dewan, *Cruelty and Offences Against Husbands*, Asia Law House, Hyderabad, 2013, p. 96.

⁵ *Ravi Kumar v. Julmi Devi*, (2010) 1 DMC 411 SC.

variety so it defies any definition and its categories can never be closed. In other words, the concept of cruelty is very subjective, varying with time, place and persons.

There has been a sea change in the attitude of the courts, as acts of physical violence by the husbands against their wives are highly disapproved. Grover J. in *Gurudev Kaur v. Sarwan Singh*⁶ aptly pointed that cruelty has to be defined with regard to social conditions as they exist in the present day, and not according to the rigid tenets of Manu and not according to the rigid tenets of Manu and other law givers of by gone ages.

CONCEPT OF CRUELTY

The expression "cruelty" has been used in relation to human conduct in respect of matrimonial duties and obligations. Cruelty is the course of intentional or unintentional conduct of one spouse, adversely affecting the other spouse. Cruelty may be physical, corporal or mental. In physical cruelty there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. Courts are required to probe into the mental process and mental effect of such incidents that are brought out in evidence.⁷

'Cruelty' includes both mental and physical cruelty.⁸ Contours and effects of cruelty depend upon a number of factors such as sensitivity of the individual victim concerned, the social background, the environment, education, etc.⁹ Cruelty postulates such a treatment that causes reasonable apprehension in the mind of the spouse that it is harmful and injurious for his/her life to live with another spouse.¹⁰ Whether certain complaints, taunts, or accusations on a person amount to cruelty or not depends on the sensitivity of the individual victim concerned, the social background and education. Mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage and endurance to withstand such mental cruelty.¹¹

In the case of *Samar Ghosh v. Jaya Ghosh*¹², it was held that there cannot be any comprehensive definition of the concept of mental cruelty within which all kinds of mental cruelty can be

⁶ *Gurudev Kaur v. Sarwan Singh*, AIR 1959 Punjab 1962.

⁷ Prof Kusum, *Family Law I*, Lexis Nexis, Gurgaon, 2015, p.62.

⁸ *Pawan Kumar v. State of Haryana*, AIR 1998 SC 958.

⁹ *Mohd Hoshan v. State of Andhra Pradesh*, (2002) 7SCC 414.

¹⁰ *Sarojakshan v. State of Maharashtra*, (1995) Cr LJ 340 (Bom).

¹¹ *Mohd Hoshan v. State of Andhra Pradesh*, AIR 2002 SC 3270

¹² *Samar Ghosh v. Jaya Ghosh*, 2007 (4) SCC 511

covered and no uniform standard can ever be laid down for guidance. Yet some instances of human behaviour which may be relevant in dealing with the cases of mental cruelty were enumerated by the Honourable Court.. The following instances were indicated by the Apex Court, which are only illustrative 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; and render miserable life to the spouse.
- vi. Sustained unjustifiable conduct and behaviour 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 and substantial in nature.
- 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 such as is much more than jealousy, selfishness, possessiveness which causes unhappiness, 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. Where a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife, and similar if the wife undergoes vasectomy or abortion without medical reasons 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 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 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 its shows scant regard for the feelings and emotions of the parties. In such like situation it may lead to mental cruelty.

In *Madhuri Mukund Chittins v. Mukund Martand Chitnis*¹³, court stated that a series of malicious and vexatious legislations in which extremely hurtful and offensive accusations are levelled against a married woman and wherein she, with sense of vindictiveness, is humiliated and tortured through the execution of search warrants and seizure of personal property, will amount to cruelty.

¹³ *Madhuri Mukund Chitins v. Mukund Martand Chitnis*, (1992) Cr LJ 111 (Bom).

MATRIMONIAL LEGISLATION AND STATUTORY PROVISIONS

To be construed consistent with the changing social attitudes, the intention of the legislation and the policy underlying it must be understood and kept in mind. The court is expected to make sincere efforts to preserve the marriage because the same appears to be the policy behind the various matrimonial legislations, as reconciliation is given the due importance, unless it becomes impossible. The jurisdiction of matrimonial court is remedial and not punitive, while making efforts for settlement. The court dealing with matrimonial matters is expected to remedy a matrimonial wrong. It is left to the conscience of the court as to whether a particular act or conduct amounts to cruelty.¹⁴ The statutory position of cruelty, as a ground of divorce, under various personal laws is discussed below:

Hindu Marriage Act, 1955

Prior to 1976, under the Hindu Marriage Act, 1955 cruelty was only a ground for judicial separation under section 10(b). However, with the Marriage Laws (Amendment) Act, 1976, cruelty became a ground for divorce as well as judicial separation. Section 13(1)(i)(a) of the Hindu Marriage Act, 1955 states that a marriage may be dissolved on the ground that a spouse treated the complainant with cruelty, after the solemnisation of the marriage.¹⁵

Another significant change brought by the 1976 Amendment is that the concept of cruelty has been enlarged. Earlier it was confined to cruelty causing reasonable apprehension in the mind of the complainant that it be harmful or injurious for the petitioner to live with the other party. However, now the petitioner has to simply establish that the respondent has treated the petitioner with cruelty and there are no conditions with regard to the nature of fear, injury or harm. In the case of *V. Bhagat v. D. Bhagat*¹⁶ it was held that even the allegations made by the respondent in the written statements, can be construed as mental cruelty on the petitioner so as to entitle him/her to a decree on this ground.

Special Marriage Act, 1954

The position under the Special Marriage Act, 1954 is similar to the stance taken by the Hindu Marriage Act, 1955 on cruelty as the ground of divorce. The Special Marriage Act was enacted in 1954 as part of a series of reforms to personal laws in India that Jawaharlal Nehru had made

¹⁴ Prof Kusum, *Family Law I*, Lexis Nexis, Gurgaon, 2015, p.63..

¹⁵ *The Hindu Marriage Act, 1955*, ss 10(b) and 13(1)(i)(a).

¹⁶ *V. Bhagat v. D. Bhagat*, AIR 1994 SC 710.

a priority. The Special Marriage Act was meant to be a legislation to govern marriages that could not be solemnized according to religious customs, which essentially meant interfaith or inter caste marriages. However, it can also be used by couples from the same community who don't want their marriage (and ancillary issues like divorce) governed by relevant personal laws. A marriage performed in accordance with religious rites can also be registered under the Special Marriage Act afterwards.

Nehru was embroiled in a bitter struggle with Hindu Conservatives both within the Congress and outside, who were not pleased with his proposals for reforming the Hindu personal law, and were also not very on the idea of unrestricted inter-religious and inter caste marriages. As a result, the Special Marriage Act came to include a number of provisions meant to serve as a compromise between Nehru and the conservatives. The most significant provision that was adopted due to the compromise between Nehru and conservatives was that, if a Hindu, Sikh, Jain or Buddhist marries outside of these communities, they no longer will be considered a part of the Undivided Family, which means they cannot inherit ancestral property if they marry a Muslim or Christian.¹⁷

A similar law existed since 1872, but it included some extremely problematic elements, including renunciation of religion anyone getting married under it, and no provision for dissolution or nullification of marriage. Renunciation of one's religion as a precondition of marriage was removed for marriages among Hindu, Sikhs, Buddhists and Jains in 1922 but this was certainly not enough, necessitating the 1954 Special Marriage Act.

Currently, anyone can get married under the Special Marriage Act without giving up their religion, and there are proper provisions for divorce (including by mutual consent), custody of children and alimony.¹⁸

Section 27(1)(d) of the Special Marriage Act states that a petition for divorce may be presented to the District Court either by the husband or wife on the ground that the respondent has treated the petitioner with cruelty since the solemnisation of the marriage. A petition for judicial separation may also be presented under Section 23 of the Special Marriage Act to the District

¹⁷ Vakasha Sachdev, 'Confused about Special Marriage Act? Inter Faith Couples take heed', the quint, available at <https://www.thequint.com/explainers/special-marriage-act-specifications> (last accessed 10 August, 2018).

¹⁸ Arun Dev, '300% rise in weddings under the Special Marriage Act', The Times of India, available at <https://timesofindia.indiatimes.com/city/bengaluru/300-rise-in-weddings-under-special-marriage-act/articleshow/52826291.cms> (last accessed 11 August, 2018)

Court either by the husband or wife on the grounds specified in sub section (1) of Section 27 that includes cruelty as a ground of divorce.¹⁹

Parsi Marriage and Divorce Act, 1936

Prior to 1988, cruelty was only a ground for judicial separation under section 34 the Parsi Marriage and Divorce Act, 1936. After the amendment of 1988, cruelty has been incorporated as a ground for divorce as well, along with judicial separation under section 32 of the Parsi Marriage and Divorce Act, 1936; provided that in every suit for divorce on ground of cruelty, it would be court's discretion whether to grant divorce or judicial separation. Cruelty under section 34 of the Parsi Marriage and Divorce Act, 1936 is explained as such behaviour that would be rendered improper in the judgement of the court to compel a spouse to live with the respondent. Section 34 of the Parsi Marriage and Divorce Act, 1936 explicitly includes cruelty to children as matrimonial cruelty for the purposes of the relief of judicial separation on the ground of cruelty.²⁰

Christian Law

Prior to the Indian Divorce (Amendment) Act, a wife could seek divorce if the husband had been guilty of cruelty coupled with adultery, under section 10 of the Indian Divorce Act, 1869. However, the husband could not take the plea of wife's cruelty to obtain dissolution of marriage, and the only ground available to him was adultery for the dissolution of marriage. Though, cruelty was available as a ground of judicial separation to both the husband and the wife under section 22 of the Indian Divorce Act, 1869. The original act was completely transformed by the Indian Divorce (Amendment) Act, 2001 and the grounds for matrimonial relief have been brought almost a par with the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955. The statutory position after the Indian Divorce (Amendment) Act, 2001 with regards to cruelty is that a marriage may be dissolved under section 10(x) of the Indian Divorce Act, 1869, if the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.²¹

Muslim Law

¹⁹ *The Special Marriage Act, 1954*, ss. 23 and 27(1)(d)

²⁰ *The Parsi Marriage and Divorce Act, 1936*, ss. 32 and 34

²¹ *The Indian Divorce Act, 1869*, ss. 10 and 22.

Under the Islamic Law, a husband can divorce his wife without assigning any reason or pleading any ground; and so far as the wife is concerned, apart from the right of *khooda* or *mubarat* divorce, she has a statutory right under the Dissolution of Muslim Marriages Act, 1939, to obtain a divorce on certain grounds. The concept of cruelty under section 2(ix) of the Muslim Marriages Act, 1939 consists of the following acts committed by husband against the wife:

- i. Habitually assaults her or make her life miserable by cruelty of conduct even if such cruelty does not amount to physical ill treatment
- ii. Associates with women of evil repute or leads an infamous life
- iii. Attempts to force her to lead an immoral life
- iv. Disposes of her property or prevents her exercising legal right over her property.
- v. Obstructs her in the observance of her religious profession or practice
- vi. If he has more wives than one and does not treat her equitably in accordance with the injunctions of the Quran.²²

Criminal Law

Section 498 A was added to the Indian Penal Code by the Criminal Laws (Second Amendment) Act, 1983; that provides punishment to a husband or his relatives who subject a woman to cruelty, that includes any wilful conduct which is of such nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical). Harassment of the woman for coercing her or any person related to her to meet any unlawful demand for any property or valuable security, is also construed as cruelty under section 498A of the Indian Penal Code.²³

Section 498A endeavours to prevent torture to married woman by her husband or his relatives by punishing them for harassing or torturing the wife to coerce her or her relatives to concede unlawful demands of dowry.²⁴

Cruelty against the woman within the institution of marriage posed certain difficulties with regards to prosecution of accused and proving their guilt. Obtaining independent witnesses is also very difficult because the violence against the wife is generally inflicted within the

²² *The Muslim Marriages Act, 1939, s. 2.*

²³ *The Indian Penal Code, 1860, s. 498A.*

²⁴ *BS Joshi v State of Haryana, (2003) Cr LJ 2028 (SC)*

confines of the home, away from public gaze. In order to tackle this difficulty, it was felt by the Parliament that comprehensive legislative changes were required at three levels:

- i. To define the substantive offence of cruelty to women by husbands and relatives of husbands. Section 498A and 304B²⁵ were added to the IPC, creating separate offences in respect of acts of cruelty to a woman by a husband and his relatives and dowry death respectively.
- ii. To introduce mandatory procedures that are to be followed in investigation in cases of deaths of women. Section 174 of the CrPC²⁶ was amended making inquests by executive magistrates mandatory in cases of suicide or suspicious deaths of a woman within seven years of her marriage.
- iii. To bring changes in the Evidence Act, which will make prosecution and conviction of accused in cases of violence against women easier. Section 113B²⁷ was added to the Evidence Act, wherein it provided that if it was shown that before the death of a woman she was subjected to cruelty or harassment by a person in connection with demand for dowry, then it shall be presumed that such person who harassed the woman had caused death to the woman.²⁸

Reema Aggarwal v. Anupam²⁹

In this case it was argued that 'husband' of the accused of the second 'wife', who marries her during the subsistence of his earlier marriage, is not the 'husband' within the meaning of section of 498A and the 'second wife', therefore cannot invoke section 498A for cruelty and harassment caused to her by him or his relatives. The appellant Reema Aggarwal, who was harassed by her husband and his relatives for not bringing sufficient dowry, consumed poisonous substance. Bases on these facts her husband with others, was charge sheeted under section 307 and 498A of the IPC. The trial court acquitted the husband accepting the contention that the charge under section 498A was thoroughly misconceived as it presupposes a valid marriage of the alleged victim

²⁵ The *Indian Penal Code*, 1860, ss. 498A and 304B.

²⁶ The *Code of Criminal Procedure*, 1973, s. 174.

²⁷ The *Indian Evidence Act*, 1872, s. 113B.

²⁸ P.S.A. Pillai, *Criminal Law*, Lexis Nexis, Gurgaon, 2016, p.557.

²⁹ *Reema Aggarwal v. State of Punjab*, AIR 2004 SC 1418.

woman with the offender husband. This contention was also accepted by the High Court.

However, the Supreme Court rejected this contention. Comparing the legislative intent and context of sections 494 and 498A, the Supreme Court opined that the concept of marriage to constitute the relationship of husband and might require strict interpretation where claims for civil rights or right of property is concerned. The Supreme Court observed that there could be no impediment in law to liberally construe the words or expressions relating to persons committing the offence so as to rope in not only those validly married but also anyone who has undergone some or other form of marriage and thereby assumed for himself the position of husband to live, cohabit and exercise authority as a husband over another woman.

Protection of Women from Domestic Violence Act, 2005 (PVA)

Since the commencement of this act the petitions based on cruelty filed by wives for matrimonial relief have often included the plea of domestic violence as well. "Domestic Violence" under the act includes physical, sexual, verbal and emotional abuse. Various reliefs that are provided under the act to women including wives who are in a domestic relationship who suffer domestic violence.³⁰

JUDICIAL INTERPRETATION OF CRUELTY

Vishwanath Sitaram Agarwal v. Sarla

The Supreme Court in this case observed that the expression 'cruelty' has an inseparable nexus with human conduct or human behaviour, which are always dependent on the social strata or the milieu to which the parties belong. Thus, cruelty should be construed considering number of factors that includes the social and cultural backgrounds of the parties, their mental and physical conditions, the quality and length of their married life; because their ways of life, relationships, temperaments and emotions have been conditioned by their social status.³¹

In this case it was held by the Supreme Court that incorrect and untruthful allegations made by the wife against the husband unhesitatingly amounts to mental trauma in the mind of the

³⁰ *Protection of Women from Domestic Violence Act (PVA), 2005*

³¹ *Vishwanath Sitaram Agarwal v. Sarla, AIR 2012 SC 2586 at 2591.*

husband as no one would like to face a criminal proceeding under section 498A of the Indian Penal Code on baseless and untruthful allegations.

The Supreme Court stated that there was no scintilla of doubt that uncalled allegations of the husband being a drunkard and womanizer by the wife, created mental agony and anguish in the mind of the husband. The wife even published a notice in local newspaper that the husband was having vices of womanizing, drinking liquor and other bad habits. The wife also alleged that she was badly beaten and driven away by the husband, when she tried to make him understand that he should not sell his properties due to insufficiency of funds because she and her children had a share in the property and it could not be disposed off.

The Supreme Court held that the explanation given by the wife that she wanted to protect the interests of the children was absolutely incredible and implausible; and found it to be mala fide that was intended to demolish the reputation of the husband in the society by naming him as womanizer, drunkard and a man of bad habits. It was crystal clear to the Supreme Court from the conduct of the wife and the circumstances that the wife had really humiliated the husband and caused mental cruelty. The Apex Court observed that the feeling of deep anguish, disappointment, agony and frustration in the mind of the husband was obvious from the calculated torture by the wife; which created a dent in his reputation.³²

Srinivasulu v. Veena Kumari³³

In this case a divorce petition was filed by a husband who had been separated from his wife for over thirteen years; alleging mental torture and cruelty by the wife, which were not elaborated except a statement that 'the amount of torture, and harassment that was perpetuated could be too little to be narrated; one has to go through such suffering'. The court interpreted this statement as the modesty and shyness of the husband; and held that even though desertion and cruelty were not elaborated in the petition, the conduct on the part of the wife was such that desertion and cruelty could be attributed to her thereby entitling the husband to the decree.

Shobha Rani v. Madhukar Reddi³⁴

³² *Vishwanth Sitaram Agarwal v. Sarla*, AIR 2012 (4) Supreme 216.

³³ *B. Srinivasulu v. Veena Kumari*, AIR 2008 AP 20.

³⁴ *Shobha Rani v. Madhukar Reddi*, AIR 1988 SC 121

In this case the Supreme Court dealt with the issue of dowry demand qua its impact on matrimonial relations; and observed that demand for dowry by the husband's parents with the support of the husband amounts to mental cruelty by the husband. The Supreme Court held that dowry demand per se constitutes cruelty, creating a ground of divorce for the wife. The wife tried to establish the allegations of dowry demand by the husband and his parents by a letter written by the husband, in which he had conceded that he did not see anything wrong in his parents asking for a few thousand rupees as this was a common practice prevalent in the society, for which his parents were being needlessly blamed.

The Trial Court in its decision supported the opinion and sentiments of the husband; and stated that a husband cannot not justify the demand of dowry in the form of money, though this demand of money cannot be considered as a demand for dowry and has to be viewed with a different perspective that the respondent is a young upcoming doctor, so there is nothing strange if he had asked his wife to give some money.

The High Court also supported the position taken by the trial court, while stating that the wife appears to be hypersensitive that she imagines unnatural things, as there was nothing wrong or unusual if the respondent has asked his rich wife to spare some money.

However, in appeal the Supreme Court held that the High Court has misunderstood the case and had proceeded on the ground that the husband wanted some money from his wife, which was not the fact, as the husband had himself admitted that his parents demanded dowry, in his letter addressed to the wife. The Supreme Court clarified that intention to harm is not an essential ingredient of matrimonial cruelty; because a wrong act per se constitutes cruelty. It was observed by the Supreme Court that demand of dowry is prohibited under law and amounts to the instance of cruelty that may be caused by the unintentional but inexcusable conduct of any party, so the relief to any party cannot be denied on the ground that there has been no deliberate or wilful ill treatment.

Naveen Kohli v. Neelu Kohli³⁵

In this case the wife has withdrawn Rs.9,50,000 from the bank account of the husband and transferred to her account. Later, she got the business and property of husband transferred in her name, while making false allegations in the affidavit filed before the Company Law Board,

³⁵*Naveen Kohli v. Neelu Kohli, AIR (2006) 2 Supreme 627*

by making the choicest abuses against the husband. A number of police cases along with criminal complaints against the husband was filed by the wife, in which she called him a criminal, infidel and forger. This resulted in the arrest of the husband in non-bail able cases filed against him and the bail of the husband was opposed by the wife at every stage. The wife also published a news article alleging that the husband was only an employee in the company of which the wife is the owner; and he was acting against the spirit of the company causing immense loss of business and goodwill. The article further read that the husband has stealthily removed the produce of the company, besides diverting orders of foreign buyers to his own firm; and opened bank account with forged signature due to which all the business associates were cautioned to avoid dealing with him alone.

The Apex court held that the newspaper article published caused mental cruelty to the husband, while also stating that the marriage between the parties is only in the name and they were living separately because the marriage has been wrecked beyond the hope of salvage; as a result it would be disastrous for the parties if the divorce degree is not granted.

CONCLUSION

There cannot be any comprehensive definition of the concept of cruelty within which all aspects of cruelty is covered, because the human ingenuity has no bound, as the human mind is extremely complex and human behaviour is extremely complicated. Therefore, to assimilate the entire concept of cruelty and its various aspects in one definition is almost impossible; neither there can be any strait jacket formula or fixed parameters to determine cruelty in matrimonial matters. The concept of cruelty is not a static concept since it is bound to change with the passage of time, impact of modern culture through value system; and print and electronic media. The social standing and background of parties, their economic situation and other relevant factors are to be taken into consideration by the courts in each individual case, in order to decide whether an act will amount cruelty or not.

To constitute cruelty the conduct complained must of grave nature, while every matrimonial conduct which may cause annoyance or resentment by the other spouse does not amount to cruelty. Merely, by showing that the parties are unhappy because of unruly temper of a spouse or matrimonial wrangling, fall considerably short of the conduct which can amount to cruel treatment. It would not be sufficient to show that the other spouse is moody, whimsical,

exciting, inconsiderate and irascible defects of temperament must ordinarily be accepted for better or for worse. It is not possible to specify the grounds of treatment and conduct which might constitute cruelty, as it may consist of display of violent temper, unwarranted indifference to other party's health and happiness, deliberate refusal to co-operate etc. In deciding, whether the act, conduct, attitude or behaviour of one spouse towards the other amounts to cruel treatment has to be measured by the resultant danger or the apprehension of the victim. Physical temperament, standard of living, culture of the spouses, social ideas and other relevant circumstances have bearing on the question whether the acts and conduct complained, amount to the matrimonial offence of cruelty. Cruelty must be determined from point of view of victim's capacity or incapacity for endurance in so far as that is or ought to be known to the offending spouse.

Cruelty which is a ground for dissolution of marriage can be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental injury or as to give rise to a reasonable apprehension of such danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. In criminal cases the concept of proof beyond the shadow of doubt is to be applied; however in matters involving the delicate personal relationship of husband and wife, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other.