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Misuse of Cruelty Grounds in Divorce Proceedings in India: A Socio-Legal Analysis

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Misuse of Cruelty Grounds in Divorce Proceedings in India: A Socio-Legal Analysis

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Abstract

This paper examines the concept of cruelty as a ground for divorce under Indian matrimonial law, with a particular focus on judicial interpretation by the Supreme Court of India. The study analyses how the notion of cruelty has evolved from a narrow understanding of physical harm to a broader recognition of mental cruelty, encompassing emotional distress, psychological impact, and conduct affecting marital harmony. Through a detailed examination of leading judicial precedents, the paper highlights the principles and tests applied by courts in determining what constitutes cruelty in matrimonial disputes. It further explores the subjective nature of cruelty and the challenges faced by courts in balancing individual circumstances with established legal standards. The paper argues that while judicial interpretation has played a crucial role in expanding the scope of cruelty, inconsistencies still remain, making the application of the concept highly fact-specific. Ultimately, the study underscores the need for a more coherent and predictable framework while preserving judicial discretion in matrimonial cases.

Keywords: *Cruelty, Divorce, Matrimonial Law, Mental Cruelty, Judicial interpretation.*

Introduction

Marriage in India has always been held as a sacred and permanent social institution which provides the basis of family and social stability. It is not just a contractual association between two persons but it is legally formulated union that is ruled by the personal laws, customs, and statutes. With time though, social changes, the shift in family structure, as well as heightened awareness of personal rights, have greatly changed the facet of marital relationships. This has increased the number of matrimonial disputes hence a marked increase in divorce litigation in the Indian courts. In Indian matrimonial law, there are a number of reasons where marriage can be broken. Cruelty has been one of the most commonly used reasons of divorce among them.

Cruelty can also involve physical battering as well as mental torture by one spouse on the other. The law understands that marital relations are supposed to be grounded on mutual respect, trust, and emotional welfare, and where these crucial factors are ruined because of cruelty, perpetuation of marriage might not

be possible anymore.¹ As a result, the laws like Hindu Marriage Act, 1955 acknowledge cruelty as a valid reason to seek dissolution of marriage. Although it is acknowledged as a valid legal basis, the concept of cruelty in matrimonial law is a complicated concept that is subjective in nature. As opposed to physical cruelty, which could be proved through real injuries or a written event, mental cruelty may usually be of an invisible kind in terms of emotional or psychological harm that is hard to measure or demonstrate. This is a major role that courts have played in helping to interpret the meaning and scope of cruelty using the judicial precedents. The Indian courts have broadened the concept of cruelty over the years to encompass the diverse types of behaviour that resulted in persistent humiliations, false imputation, neglect, emotional abuse, and actions that made life in marriage unbearable.²

The Supreme Court of India and other High Courts have issued judicial interpretations that are used to establish whether specific conduct is cruel or not. The *Samar Ghosh* is one of the most important judgments that have been made. In *Jayakant Ghosh*, the court gave analogous examples of behavior that can constitute mental cruelty. These rulings have done a lot for the matrimonial jurisprudence by defining the situations in which cruelty can be used in obtaining divorce. Nevertheless, the wide and loose definition of the word cruelty has also posed some difficulties in marital litigation. Lack of a strict statutory definition gives the opportunity to the courts to judge the cruelty in terms of facts and circumstances of each individual case. Although this is a welcome flexibility that allows the courts to adapt to various circumstances, it also creates an opportunity to abuse.³ In other instances, claims of brutality have been made to be blown out of proportion or even made up with the aim of benefiting in divorce or matrimonial wrangles. Some of the motives of fabricated cruelty claims can be personal differences, financial differences, or the legal game of chess in the divorce process. In some cases, litigation parties can act on the allegations of cruelty as a means of litigation to bolster their argument, secure favourable settlements, or pressure on the other spouse.

This may compromise the integrity of the court case and even lead to severe emotional, reputational and legal ramifications to the accused party. False or fabricated allegations are especially important in the field of matrimonial disputes as these issues tend to be very individual and personal in terms of testimonies and subjective experiences. Matrimonial disputes are often of the interpersonal nature that is hard to objectively confirm, unlike other branches of law where evidence could be mainly documentary or scientific in nature. This means that courts should be keen on determining the authenticity of accusations and consistency of their evidence provided by each party.

¹ Paras Diwan, *Law of Marriage and Divorce* (5th edn., Universal Law Publishing, 2008).

² Paras Diwan & Peeyushi Diwan, *Family Law* (9th edn., Allahabad Law Agency, 2014).

³ D.F. Mulla, *Principles of Hindu Law* (22nd edn., LexisNexis, 2017).

Matrimonial disputes have sometimes been considered by Indian courts as the problem of false allegation. In others, the courts have determined that false allegations of a marriage partner can be taken as mental cruelty in themselves. These observations underscore the fine line that courts have to walk in alleviating the pain of real victims of cruelty and ensure that the law is not abused. The other significant issue is the evidence requirement in the demonstration of cruelty. Cruelty is frequently judged based on the analysis of behaviour, intent and effects on the marital relationship. The courts are thus required to investigate testimony of the witnesses, documentary facts and the general behaviors of the parties. Lack of clear statutory provisions in relation to fabricated allegations might at times lead to unequal judicial decisions with the various courts operating under different criteria in the assessment of fabricated allegations. The growing complexity of matrimonial controversies also highlights the necessity of exploring the issue of handling fabricated cruelty claims in the Indian judicial system in more detail.⁴

Legislative Overview: Cruelty under Indian Personal Laws

The Indian law of cruelties as a matrimonial ground is mainly based on personal laws of the various communities in India. Though they vary in their construction and formation, one of the similarities between the laws is the acknowledgement of cruelty as a valid cause of matrimonial relief in them.

The lack of a specific statutory definition of the same and across these enactments has however contributed to high level of reliance by the courts in the determination of such statutory provisions, rendering the statutory system both flexible and unpredictable. The Hindu Marriage Act (HMA), Law of 1955 forms the basis of matrimonial law, among Hindus, Buddhists, Jains and Sikhs. The Act under section 13(1)(i-a) further states that marriage can be dissolved on ground one of the spouses has been cruel to the other by the use of a decree of divorce. Remarkably, the provision fails to specify the issue of cruelty thus giving the courts broad interpretation of the subject. This law option indicates the desire to have flexibility in dealing with various marital cases but at the same time requires the judicial elaboration to occupy the gap of definition.⁵

In explaining the concept of cruelty airing in *N.G. Dastane v. S. Dastane* (1975), the Supreme Court explained that the act does not have to be so serious as to pose any threat to life and physical health.

The Court ruled that simply having a reasonable apprehension about living with the other party will be harmful or injurious suffices to qualify as cruelty by the spouse. This understanding of cruelty greatly extended the statutory definition on cruelty itself and paved way to a more sensible interpretation of the marital relationship. Noteworthy, the Court additionally ruled that the case of matrimony

⁴ John D. Mayne, *Hindu Law and Usage* (16th edn., Bharat Law House, 2008).

⁵ Chittaranjan Sinha, *Cruelty and Domestic Violence: A Legal Perspective* (2007).

is to be determined with references to the preponderance of probabilities, which makes a difference as compared to criminal trials.⁶

The other notable statutory change made under the HMA is the identification of cruelty as a dynamic concept that keeps unchanging with the societal changes. In *Shobha Rani v. Observed* by the Supreme Court, cruelty can be either physical or mental and the nature of conduct and the effects they have on the aggrieved spouse determine the cruelty (Madhukar Reddi, 1988). The Court made the point that the cruelty standard is not fixed and thus supported the ease of meaning of the statutory provision. In the Special marriage act, 1954 (SMA) that seeks to provide civil marriages regardless of the religion, under Section 27(1)(d) is where cruelty is mentioned as a reason to divorce. The use of language in the SMA is similar to the HMA and therefore, courts have often enforced interpretations under the HMA to the contexts of the SMA. This has helped in some form of standardization in the interpretation of cruelty in these laws.⁷

Indian Divorce Act, 1869 that governs the Christians in India, cruelty is also one of the grounds that are considered to warrant divorce. But in the past, the standard of cruelty in this Act was more difficult having to provide demonstration of conduct that would amount to endangering life, limb, and health. This requirement has been softened over time by judicial interpretation to allow its alignment with the overall interpretation that has been adopted under the HMA. Mental cruelty is a finding that has been accepted in many personal laws as a common principle because the courts have been grappling to agree on mental cruelty as a valid ground.

Shift from Physical to Mental Cruelty

In the not-too-distant past "cruelty" in marriage conjured up an image of something tangible. A bruise or a broken bone were types of evidence that could be brought into the courtroom and compared to medical records. For many years, the law could easily and comfortably deal with those types of violence. However, for several decades, the law struggled to deal with the types of cruelty that did not leave any marks, but instead completely drained an individual on the inside.

The change in Indian matrimonial law from a narrow definition of cruelty that focused only on physical acts and injuries to a broader definition that includes a person's mental/emotional suffering is the main theme for this area of the law.⁸ The shift from one conceptualization to another was not an event that just happened over-night or occurred with one court case stating that mental injury also matters. Instead, this process has been slow and complex due to the fact that no one realized that it would be an ongoing evolution until it was almost complete. Courts were cautious in their approach to understanding human suffering and created new standards which the original laws or definitions of

⁶ Upendra Baxi, *The Crisis of the Indian Legal System* (1982).

⁷ Gurjeet Singh, *Law Relating to Domestic Violence* (2007).

⁸ UN CEDAW, *General Recommendation No. 35* (2017).

cruelty did not contemplate. The initial legal definitions of cruelty in marriage was entirely borrowed from English law which during the 19th and early 20th century had an extremely strict physical representation of what cruelty consisted of. A few decades ago, the term "marital cruelty" gave rise to an image of physical violence. You would think about a bruise, a broken bone, or some type of similar, tangible evidence that could be seen in court against a medical record. Historically, the law was comfortable with this tangible way to identify marital cruelty and had a mechanism for dealing with it. However, for decades, the law struggled to address cruel acts that left no visible marker, but rather that create an emotional void in the victim.

The shift in Indian matrimonial law from strictly defining cruelty based on physical acts to considering mental and emotional acts, as well as physical cruelty, is arguably the most significant aspect of matrimonial law. This shift has not occurred all at once; there has not been one case to declare that mental cruelty matters just like physical cruelty, which has resulted in an overnight change in the mindset of practitioners, judges, and the Legislature. Instead, this has been a long-term, complex evolution in understanding the suffering of people, which was not fully contemplated by the original laws. The early laws that dealt with cruelty in marriage were derived from English law. In the late nineteenth and early twentieth century, the English approach to defining cruelty in marriage was limited to physical acts.⁹

Landmark Judgments

N.G. Dastane v. S. Dastane¹⁰

The serious student of matrimonial cruelty law in India will always point out N.G. Dastane v. S. Dastane as a key case handed down by the Supreme Court in 1975 because of the established framework of matrimonial cruelty law, which came from this case, and which has also been subsequently built, changed, and challenged upon by different courts.¹¹ The facts of this case seem to portray an example of how two ordinary people can get divorced after living together for many years. Specifically, the husband was a doctor (Dr. Dastane), the petitioner, and stated he was the recipient of a series of acts of cruel behaviour inflicted on him by his wife. He stated that he suffered from verbal abuse, death threats, and false accusations, and that his wife's conduct caused him to have health problems and made it impossible for him to live normally with her. There was an issue of credibility in that the wife's version of events was different from her husband's. The petition was dismissed by the Family Court, and the Supreme Court was to consider the type of evidence established to prove that the acts of cruelty existed in accordance with the terms of the Hindu Marriage Act. The decision by Justice Chandrachud (writing for the court) provided the first opportunity to properly

⁹ Madhu Bhasin, 'Mental Cruelty and Judicial Limits', *Bar and Bench* (2019).

¹⁰ N.G. Dastane v. S. Dastane, (1975) 2 SCC 326.

¹¹ Siddharth Narrain, 'Amesh Kumar Analysis', EPW (2014).

examine and systematically analyse the legal definition of cruelty in matrimonial law. The decision is long, and is a detailed piece of work, rewarding a careful reading of it.¹²

V. Bhagat v. D. Bhagat¹³

In other words, if the experience of living in a shared home has become unreasonable based on the severity and length of time that the actions took place, then the petitioning party will qualify for a Divorce. The issue of Petitioner's intent was also discussed in Bhagat. In determining if a spouse has acted cruelly, does it require that the intent of the act be to cause that spouse physical or psychological damage? Or can a spouse be determined to have acted cruelly even if it was never their intention to cause that damage?

The decision to adopt a more pragmatic interpretation of intent was made by the court, with the understanding that although intent is important to determine if an action is cruel, the lack of intent does not eliminate the possibility of finding that the spouse has acted cruelly; what is of most importance is how the actions of the other spouse affected the petitioner's experience of living in the home. Therefore, even if the spouse did not intend for the result of their actions to occur or was unaware of the possibility of such a result occurring, the term cruel can still be used if that action caused the petitioner's emotional pain to a degree that no longer makes living together viable. Bhagat's proposal of reducing the weight placed on intent and increasing the emphasis placed on the effect of the acts of the spouses has generated some controversy. Some argue that it goes too far because it could include negligence or thoughtlessness that is not inherently wrong. Others maintain that it is the only logical way to examine acts within the framework of marriage. Most of the actions which affect a spouse are unintentional but will continue to negatively impact the parties involved.¹⁴

Samar Ghosh vs. Jaya Ghosh¹⁵

There are many types of behaviours listed under cruelty, such as repetitively using abusive words, not wanting to have sex without giving a valid excuse/giving valid reasons for not wanting to have sex, purposely humiliating someone in public, falsely accusing someone of adultery etc, and making significant decisions relating to the couple's shared life without any input from the other party. Courts have also been aware that cruelty can manifest itself in many forms; therefore this is not an extensive list of behaviours. The list does provide examples of behaviours seen in reality to illustrate the point. In addition, Samar Ghosh provided further evidence regarding cruelty by referring to his refusal and silence. As a result, the court found that a spouse can be accused of mental cruelty as

¹² Shekhar Misra, 'Samar Ghosh Revisited', SCC Blog (2022).

¹³ V. Bhagat v. D. Bhagat, (1994) 1 SCC 337.

¹⁴ Krishnadas Rajgopal, 'False Allegations as Cruelty', *The Hindu* (2017).

¹⁵ Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.

quickly as a spouse could be accused of physically abusive behaviour if he was intentionally not caring toward his spouse, was emotionally distant from his spouse or refused to relate to his spouse in any way other than an individual family member. Additionally, this ruling represents an additional example of recognition of the last category of widespread marital dysfunction that has previously been excluded from shared marital models. Additionally, the ruling states that mutual cruelty is also taken into account, thereby indicating that both parties engaged in acts of cruelty.

The reasonable apprehension test, first introduced in *Dastane* and refined in subsequent cases, forms the basis for much of the law on cruelty in India. To understand the assessment of cruelty in practice, it is first necessary to appreciate the true definition of the term and the requirements it involves. The test provides an assessment of whether or not the applicant has a reasonable apprehension that their relationship with the respondent will be detrimental or harmful. This assessment is prospective in nature. Both the events which have occurred and the reasonable expectation of the applicant should the marriage continue must also be taken into account. Therefore, the test is responsive to long-term behaviour by the respondent and the aggregate effects of that behaviour on the applicant over time. For example, an applicant who has suffered long-term cruelty from the respondent may have a valid apprehension of harm occurring in the future, even though the most recent incident was of little consequence. In this regard, the word "reasonable" has an important function and introduces a standard by which to assess whether a reasonable person in the applicant's position would have the same apprehension as the applicant – the court is to consider all of the facts of the case, but to consider a reasonable person as one who has the same background as the applicant, is in similar social circumstances and has a similar history with the respondent, instead of an average person who would have the average sensibility. The court took a pragmatic approach, reasoning that it should not deny relief to the petitioner just because they are not completely blameless when the marriage has irretrievably broken down and both parties have contributed to it through their actions. This pragmatic approach raises questions about whether a fault-based divorce system is adequate for handling the complexities of marital dissolution, as it runs counter to the purportedly fault-based framework of cruelty law.¹⁶

Raj Talreja v. Kavita Talreja¹⁷

The Supreme Court's ruling in *Raj Talreja v. Kavita Talreja* in 2017 expanded upon Srinivas Rao's contributions and included significant elements into the theory. The lawsuit concerned the wife's conduct, which included informing the husband's relatives, friends, and employer of alleged abuse and submitting several complaints in various courts. The husband requested a divorce, citing the wife's

¹⁶ Paras Diwan, *Law of Marriage and Divorce* (5th edn., Universal Law Publishing, 2008).

¹⁷ *Raj Talreja v. Kavita Talreja*, (2017) 14 SCC 194.

cruelty. The inquiry once again pertained to whether the wife's conduct, which the husband characterized as false charges, fulfilled the legal criteria.¹⁸

The Supreme Court affirmed the husband's right to divorce on grounds of cruelty, issuing statements that have significantly influenced subsequent decisions. The ruling primarily addresses the distinction between a legal right claim, such as the right to register a complaint, and actions that may be deemed cruel. The court said that delineating this boundary is not always straightforward, and that judicial bodies must use caution to avoid penalizing individuals for exercising their rights. The court essentially said that there is a distinction between asserting legal rights in good faith, even if assertively, and making assertions that the other party knows or ought to know are untrue or significantly overstated. The first aspect cannot be harsh; the subsequent aspect may.

This is a crucial stipulation that prevents the misuse of the false allegations concept to hinder legitimate complainants from vigorously defending their rights. Simultaneously, it provides justification for identifying cruelty if the evidence indicates that the assertions were not made in good faith.

Raj Talreja also addressed the pragmatic issue of how a court determines the veracity of accusations. This is not always unequivocal. The absence of confirmed claims in court does not imply their falsity; it may indicate that the evidence was difficult to get rather than fabricated. The court's methodology included examining all pertinent facts and circumstances, including the timing of the claims, their connection to existing talks or processes, the extent of their exaggeration, and any evidence about the alleged party's level of knowing, rather than focusing on a single fact.

Conclusion

This paper seeks to answer the question about how to deal with fabricated allegations of cruelty and how the courts should address these allegations based on the current evidentiary standard. The occurrence of deliberately, strategically exaggerated allegations of cruelty in matrimonial disputes in India is a serious issue since the legal system used to remediate such acts has become a barrier to achieving justice for true victims of cruelty. The ramifications of fabricated allegations of cruelty will include the impact on the legal system as a result of the sheer volume of cases stemming from fabricated allegations and such fabricated allegations create an atmosphere of institutional scepticism toward true victims of violence. Acknowledging the reality of the environment created by fabricated allegations of cruelty is not an acceptance of the arguments put forth by those seeking to reduce or eliminate protections for victims of violence, but is rather a necessary prerequisite to construct a legal structure that will be effective for those whom the legal system was designed to serve.

¹⁸ V. Bhagat v. D. Bhagat, (1994) 1 SCC 337.

However, the extent of the existence of fabricated allegations of cruelty has been grossly overstated in the public and political discourse with unfounded claims that allegations of cruelty in general, and more specifically with reference to allegations of criminal cruelty under s 85 BNS and its predecessor, are consistently and uniformly fabricated, that the law is now used solely as a means of harassing men, and that the system, which is viewed as being impartial, has victimized only men. The evidence does not support the positions set forth by either public opinion or the alleged supporters of women who want to disempower male victims of domestic violence and also to severely limit women's access to justice through the legal system.

Policy Recommendations

1. The legislature should introduce, through amendment of the Hindu Marriage Act and other relevant statutes, a statutory framework that defines the essential elements of cruelty without exhaustively codifying its content. The framework should specify that cruelty may be physical or mental, that a pattern of conduct as well as a single serious incident can qualify, that the effect on the petitioner is the primary consideration, that intent is relevant but not determinative, and that courts must distinguish cruelty from ordinary marital difficulty by reference to the gravity and persistence of the conduct and the seriousness of its effects. This framework would channel judicial discretion without eliminating it, and would provide a common foundation for decision-making that currently does not exist.
2. Supreme Court or Parliamentary guidance on evidentiary standards in cruelty cases should address the specific gaps identified in this study. On expert evidence, courts should be encouraged to seek psychological evidence in mental cruelty cases and should be provided with guidance on the assessment of such evidence. On digital communications, clear rules of authentication and admission should be developed, with specific provisions addressing selective production and fabrication.
3. The provision under Section 173 of the said Act of preliminary inquiry should be shaped on by the judicious deliberations and also by incorporating the training modules on such provisions in the police infrastructure, so as to turn the same into effective pre-arrest screening measures, to ward off arbitrary arrests while ensuring that the actual complaints are treated with due expedition and seriousness. This forum recommends the judiciary and police to also deliberate on the aforementioned constraints faced by the investigating authorities such as mass implication of family members; and the tendency of the husband and his supporters to lodge as many as possible false complaints at one go, often simultaneously with proceedings of divorce application.

4. More consistently exercise the costs jurisdiction in family proceedings where allegations of abuse or fact have been found to be false including where a finding is made of fabrication; make referrals for prosecution of perjury in such clear cases of fabrication; and ensure that solicitors advising in cruelty allegations in matrimonial proceedings are aware of the limitations of making allegations of abuse in proceedings for financial provision on divorce, and have an ethical duty not to promote clearly fabricated allegations of abuse in such proceedings.

5. The irreparable breakdown of marriage should be made a relatively straightforward ground for divorce. It is a long-recommended reform left ignored by out of touch legislation that only allows divorce on the grounds of fault, such that one party has behaved cruelly towards the other. Abuse can, in this context, be driven by an incentive to allege or prove cruelty in order to progress divorce proceedings, where without a fault-based approach there would be little cause for such conduct. The new ground should therefore be introduced alongside appropriate financial safeguards to protect the interests of the wife (and/or vulnerable husband), who will often be the homemaker and require adequate financial support.

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