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**THE CONCEPT OF MENTAL CRUELTY AS A GROUND OF DIVORCE**

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**ABSTRACT**

In ancient history of Hindu, women's place was miserable where women were considered only as a purchased item for their men. As many jurist also used to believe in that myth. Cruelty, violence and misbehavior these all were the normal part of a woman's life. Having said that one's thinking must be change with coming generation however time went on changing but people and their thinking did not change their place. They still behave same with the women and we are the witness for this. We even can't deny with the truth that this is very normal in every family where our women have ever gone with this kind of situation however, Now we have legal provisions in "The Hindu marriage act 1955", which deals with many aspects of situation happens in a married life. In After the amendment in 1976, cruelty is considered as a ground of divorce and Mental cruelty is also recognized as cruelty in law. By this anyone can approach to the court on the being wrong to them and ask for their rights.

**INTRODUCTION**

We live in a country where women have been told that "you have to tolerate, you can't ruin your married life, forget it and let it be go". These lines are as true as we see in movies or in our own house. Women always has been taught to treat your husband like lord "Ram" but it never being told that not all husbands are Ram some are "Ravan" too and at last, they settle themselves by suffering violence because of family pressure or that so called social stigma. In India women plays a passive role where as husband as an active dominating role and the relationship between these spouses has to conform to the social norms as well. In matrimonial life its normal when ones opinion doesn't match with others with creates estrangement which is fine unless it turns into any cruelty. It is difficult to lay down the exact definition of cruelty but either it is physical or mental it would create disturbance of mental peace of the other party to live together. As

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mental cruelty has the same weightage compared with physical cruelty. Both women and men must take steps on being done wrong with them. There is no use in living in such a married life which is not less than hell, so better end it.

## **HISTORY**

<sup>2</sup>In earlier years of 1955, it was so arduous to get a divorce, it was not easy as it today. As we know in Hindu religion marriage is term as a most pious knot where not just two people but two family get joint. It was called that the word "Divorce" is never be a part of Hindu community. As we never found any provisions of divorce in Shashtras, Puranas, Ved and other pious or holly books related with Hindu Religion. Of all matrimonial offences cruelty is the most difficult to define. The concept of cruelty is wide in ambit. For understanding this term, our laws also took years. In the history of the Hindu Marriage Act, 1955, cruelty was considered as a ground for claiming only in cases of judicial separation.<sup>3</sup> As in Section 10 which dealt with judicial separation the word cruelty was used in a restricting sense. But it all get ratify in a landmark case of Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane in 1975 by supreme court. In which both the parties were well educated and from reputed families, though the circumstances made the husband to file a petition of Divorce against his wife on the ground of cruelty.

This landmark case led to an amendment in 1976 that this cruelty became available for seeking both divorce and judicial separation. Petition for Decree of Divorce under <sup>4</sup>Section 13(1)(ia) of Hindu Marriage Act in case of the Petitioner was treated with Cruelty although, it was held that the courts should decide the case on grounds of cruelty only based upon the subject matter of the case. Now after the amendment in Sections 10 and 13 made by the Parliament by amendment of 1976, cruelty eventually has been made a ground for judicial separation and for divorce.

## **Grounds of divorces under Hindu law(Fault Ground )**

The Hindu Marriage Act, 1955, Section 13(1) provides various provision regarding divorce. Basically There are eight grounds for divorce:- Adultery, Insanity, Desertion, Conversion, Renunciation, Cruelty, Venereal disease and Presumption of death while by the recent

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<sup>2</sup> <http://www.legalservicesindia.com/article/1900/Cruelty---as-a-ground-for-Divorce.html>.

<sup>3</sup>Dr. Narayan Ganesh Dastane v. Sucheta Narayan Dastane(AIR 1975 SC 1534)

<https://indianlawportal.co.in/case-analysis-dastane-vs-dastane/>

<sup>4</sup>Section 13(1) of The Hindu Marriage Act, 1955

amendment in<sup>5</sup> Personal law(Amendment) Bill,2018 one ground was removed. The bill was seeking for removing leprosy as a ground for divorce.

<sup>6</sup>The Bill also seeks to remove leprosy as a ground for divorce in five personal laws -- Hindu Marriage Act,1955; Dissolution of Muslim Marriages Act,1939;Divorce Act (for Christians),1869;Special Marriage Act,1954 and the Hindu Adoptions and Maintenance Act,1956.

(1) We know that adultery is no more recognized as a criminal offence In India. however adultery is still a strong ground of divorce. In Hindu shastras, adultery is considered as a serious breach of dharma. Whatever the laws says adultery is still a taboo and never can change the mindset of society for accepting this.

<sup>7</sup>In adultery there must be sexual intercourse between one of the spouse and other person not being his/her spouse during the subsistence of the marriage furthermore a single act of adultery is sufficient for divorce or judicial separation held in a case of Subbramma v.Saraswati court.

(2) Insanity:"Mental illness" can be a strong excuse for seeking divorce. However it must have two basic requirements for considering the ground of divorce as Insanity.

(i)The respondent has been incurably of unsound mind.

(ii)The respondent has been experiencing continuously or intermittently from mental turmoil of such a kind and to such an extent that the Petitioner cannot reasonably be required to live or sustain his/her married life with the respondent any more.

(3) Desertion: The expression "Desertion" means the leaving of one of the spouse by other without any reasonable cause and without the consent. There are some essential factors which have to be concerned by the deserted spouse.

(i) Without the consent,

(ii) The lack of a reasonable cause for leaving permanently,

(iii) Full intention for ending their marriage cohabitation permanently,

(iv) Factum of Separation, which means intention to live separately.

Furthermore the Desertion must be shown that it existed throughout at least the

<sup>5</sup> Personal law(Amendment)Bill,2018

<sup>6</sup> <https://blog.ipleaders.in/grounds-divorce-the-hindu-marriage-act/>

<sup>7</sup> Subbarama Reddiar vs Saraswathi Ammal on 16 March,(1966) 2 MLJ 263

period of two years.

- (4) Conversion: This ground is applicable when one of the spouse converted from hindu to other religion and ceased to be a Hindu. This term is well explained in hindu marriage act, section 13(1) clause(ii).
- (5) Renunciation: This word "Renunciation" is only came under Hindu law. where one of the spouse has renounced the world and ready to enter in the different world or we can say a holy order. This ground is very rare as it has a burden of prove on the plaintiff to prove that the defendant has completely renounced his matrimonial duties and the world. In this case of ground the person who has renounced is considered as a civilly dead person which exempts the other spouse from claiming maintenance so, the spouse can seek divorce by this ground.
- (6) Cruelty: By changing time, the concept of cruelty also has been changed. Now it includes both physical and mental cruelty intentional, or unintentional. As it is easier to determine or see physical cruelty than mental. Mental cruelty has been reached to that peak of inhumanity, which inflicts a direct affects to the health of the spouses. Physical cruelty is relatively easy, partly because of the lack of circumstantial evidence. The main challenge is to prove mental cruelty and that's what this paper is all about.
- (7) Venereal disease: As per Section 13(v) If the spouse is suffering from any venereal disease then other spouse is entitled to get divorce under hindu marriage act. The sexually transmitted diseases like AIDS,HIV are covered under venereal disease which is easily communicable and it is a valid ground for seeking divorce.
- (8) Presumption of death: As per Section 13(1)(vii), This expression "presumption of death" means when a person is not seen or heard from in seven years or more, he is presumed to be dead.

#### **Section 498A of Indian penal code.**

In India women are rarely think to fight for their right as they better believe in baring. Sometimes for family or sometimes for their children but laws are always available for protecting women of India for their rights. Laws make them believe to have faith in legal provisions. For protecting helpless women who are facing a bitter truth of their married life and

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getting beaten and abused by their husband or their husband's family members.<sup>8</sup> In Indian penal code, 1860 under Section 498A cruelty to a woman by her husband or any relative of her husband was made punishable for with an imprisonment for a term of three years and also with fine. Every 9 out of 10 women are harassed with a view to coercing her or any person related to her to meet any unlawful demand for any property or dowry, wherein they are brutally threatened and abused physically as well as mentally for asking for dowry or more money.

<sup>9</sup>Section 304B of ipc is about "dowry death" it is also being considered as both mental and physical cruelty wherein the women's death has been caused by burning or bodily injuries or any thing otherwise related to normal situations, Within a seven year of marriage. It is shown that soon before her death. As like in section 498-A IPC, these sections also include harassment by their husband or husband's family member for so called dowry or demanding for any extra money. Bride burning and dowry demand these two are the essential ingredients for constituting an offence under section 304B.

Both the Sections 304- B and 498-A IPC are different in their perspective. These provisions deal with two distinct offences. The term "cruelty" is a essential ingredient in both the different sections. The meaning of word cruelty is deeply explained in section 498-A while in section 304-B there is no such explanation regarding cruelty but both sections are undoubtedly dealing against the cruelty faced by women.

There are numerous cases in India regarding cruelty but some landmark cases have left a deeply impact on society.

<sup>10</sup>State of Madhya Pradesh & Another v. Ramkishan & Others. In this case the in-laws of deceased were asking for the demand of scooter from her father. As they were not able to fulfill the demand. They started torturing her. They have threatened and abused her that she will be divorced, if the demand is not fulfilled and sadly she was subjected to cruelty and was administered calm pose tablets furthermore she even cut the arteries of both her hands which causes her death also the deceased husband was acquitted for the offence under Sections 304-B and 498-A of IPC.

<sup>11</sup>In the case of Surajmal Banthia & Anr. v. State of West Bengal, 2003. The deceased woman was cruelly treated by their in laws for several days and also not feeding her for many couple of days. This itself enough for constituting a cruelty. Her father- in-law crossed all line of

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<sup>8</sup> Section 498A of The Indian Penal Code, 1860

<sup>9</sup> Section 304B of The Indian Penal Code, 1860

<sup>10</sup> <https://www.legitquest.com/case/state-of-madhya-pradesh-another-v-ramkishan-others/FOB7F>

<sup>11</sup> Surajmal Banthia And Anr. vs State Of West Bengal on 21 March, (2003) 2 CALLT 164 HC, II (2003) DMC 546

humanity by misbehaved with her. This is now very common in today's era where newly brides or any women has been treated like hell by their in laws. This custom won't be extinct by itself .Now It is the duty of the legislature to prevent these kind of sins by wrong-doers. We already have many legal provisions for preventing them but still the numbers of cases are increasing for asking of dowry and mental torture to the women. So, there must be something which is left over that's why these kind of absurd thing is happening here a strong measures for the implementation of this section has to be taken properly.

### **Outbreak of Pandemic on domestic violence**

In the past two years we all have witnessed the most emphatic pandemic but there where some women who were facing a unprecedented and worse situations than before in their own house. One side the world was facing a most prominent threats with a increasing number of cases rapidly and other side all types of violence against women, particularly domestic violence, has been intensified. It is a violation of human rights as well as it affects the mental health consequences for women and children too. A major increase in cruelty cases has been observed during this pandemic as compared to the previous years.<sup>12</sup> By the report of National Commission for women in the crisis of Pandemic last year they received much number of complaints cases from women for asking for their protection from cruelty or domestic violence. These cases were increasing due to the strict lockdown, By which the possibility of raising their voice against the wrong done to them or coming out of their house were nearly impossible for them.

<sup>13</sup>By the recent report published by WHO indicate that about 1 in 3 (30%) of women around the world have been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime globally.

<sup>14</sup>According to the National Family Health Survey-5, The worst situations of this crisis on domestic violence were on five states which are Karnataka, Assam, Telangana, Mizoram and Bihar. Around 44.4 per cent women aged 18-49 years had experienced domestic violence by their spouses in Karnataka, while under NFHS-4 (2015-16), the percentage was quite low than NFHS-5 Report that is 20.6 per cent women were faced violence in Karnataka. Bihar has a percentage of 30, 32 per cent in Assam, 39 percent in Manipur, 36.9 per cent in Telangana. Every year's data is much higher than previous year. These heartbreaking data are of only five

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<sup>12</sup> [https://en.m.wikipedia.org/wiki/Impact\\_of\\_the\\_COVID-19\\_pandemic\\_on\\_domestic\\_violence](https://en.m.wikipedia.org/wiki/Impact_of_the_COVID-19_pandemic_on_domestic_violence)

<sup>13</sup> <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

<sup>14</sup> [http://rchiips.org/nfhs/factsheet\\_NFHS-5.shtml](http://rchiips.org/nfhs/factsheet_NFHS-5.shtml)

states as we have other states along with the union territories so, we can imagine the worst scenario of this situations and what kind of world we are living in.

### **Impact on children**

Children are the most innocent creatures but due to the violence environmental of their family they may suffer a range of mental illness and emotional disturbances which is directly affecting their health. They are some cases also were children attempted suicide due to their mental issues as they are not enough grown to survive with this trauma. The parents never though that their married issue can ruin their children's future. Spouses violence has also been associated with higher rates of infant and child mortality and morbidity. Sometimes the abusing language or misbehaviour of such couples blast out on their children too. This is a matter of concern and the parents are need to look on this. Children do best in a safe and healthy loving environment, whether with one parent or two so, it is much better to leave that relationship if you are willing to be a good single parent for them.

### **Suggestions**

We all grew up with the norms that women suffers a lot than men when it comes to cruelty ,which i have also mentioned earlier in this paper. As it so the word "Women Empowerment" always been heard but we can't turn our back with the truth that men too face cruelty.

<sup>15</sup>As the Section 498A in The Indian Penal Code states that Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Some psychotic wife misuse these laws as a weapon for their personal grievance against their husband and these cases are growing day by day.

We can see this in a landmark judgement of <sup>16</sup>Mayadevi v Jagdish Prasad, wherein the Supreme Court held that husbands are also entitled to seek divorce on a ground of cruelty. In this case, husband filed an application for seeking divorce on the ground of cruelty alleging that because of the wife unbearable acts towards him which was affecting his mental health very harsly.so ,the husband was under apprehension that it would not be easy and acceptable as well as safe to stay with the her and to sustain their married life anymore. The wife did not even feed to respondent or the children and also she used to threaten the husband that she would falsely misuse the law and implicate him in a case of dowry demand and to kill the children and to

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<sup>15</sup>The Indian Penal Code, 1860 Act No.45 Of 1860

<sup>16</sup> Smt. Maya Devi v. Jagdish Prasad (AIR 2007 SC 1426)

alleged him and his family members for doing such fabricated things by her. Therefore, the Supreme Court held that, since the expression "Cruelty" has not been expressly defined in the act, it can be physical or mental.<sup>17</sup> We can also define the men cruelty as when wife forces his husband to live separate from their parents or from joint family without any reasonable ground this would be a term as cruelty to men and this happened in the case of Narendra vs. K.Meena. Men also get false alleged of<sup>18</sup> bigamy (section 494 of IPC) which has a severe punishment of seven years. So, this is not justiciable as a law furthermore men are helpless in such matters. Therefore, a strict law should be implemented for those women who play with the laws, who takes wrong advantages for being a women and those who try to misguide the court by their false allegations just to ruin a innocent men's life and no one would get misjudged.

### **Conclusion**

In this paper i tried to conclude all the important aspects of a mental cruelty from both the side's women as well as men however, we couldn't decide cruelty by our personal point of views. The superior court or legislature will decide by the mere facts of those cases. legislature can extend, summarize or interpreted the meaning of cruelty according to their own interpretation but within the boundary of the law. Courts can also apply their discretionary power to decide the case where it fits so. It needs to be changed about the mindset of cruelty in society. The mindset of women in society as it is no longer just a mere part of their matrimonial life; it doesn't have to be tolerated. Marriage is just a ritual to be performed not a duty or livelihood for living. Happy, safe and single live is much better than a toxic one. At last I would conclude it by saying that cruelty is not a tolerable thing whether physical or mental. It is sufficient cause to become impossible for spouses to live together.

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<sup>17</sup> Narendra vs K.Meena, (2016) 9 SCC 455

<sup>18</sup>The Indian Penal Code, 1860 Act No.45 Of 1860