



## AN ANALYSIS OF THE CONCEPT OF MENTAL CRUELTY IN INDIA

## Law

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## ABSTRACT

Violence Against women is a matter of serious concern all over the world and India has also witnessed subjection of women to different kinds of violence. India has a rich heritage of respecting women and placing women to a high position in Indian society but in reality Indian women are subjected to violence such as dowry death, domestic violence, sexual exploitation, treating the women with cruelty and so on. One of the most serious victimization of Indian women is domestic violence or subjecting the women to cruelty. This cruelty to the wife is of two kinds which are subjecting the women to physical cruelty and subjecting the women to mental cruelty. This paper is an attempt to explore the meaning of mental cruelty and to highlight the circumstances where the meaning of mental cruelty changes with reference to a statute for which the concept of mental cruelty is interpreted and the judicial interpretations which from time to time has added new dimensions to the concept of cruelty.

## KEYWORDS

## INTRODUCTION:

Violence against women is a matter of serious concern all over the world and our country has also witnessed subjecting women to different types of crime or violence. There are different reasons for exploitation of women by means of committing crimes against them but the major problem lies in the mindset of the people for not treating women equally or not giving them the equal status. Many a times it could be noticed that the victims are not taking legal course and this happens because most of them do not have a fair idea that they are subjected to violence. This is a serious problem and any such problem can be properly addressed only when the people have conceptually a very clear idea about the scope of the problem. Violence against women is a vague term with many facets involved in it. Violence against women includes crime committed against women such as, sexual harassment, rape, subjecting the women to cruelty within her domestic relationship and so on. This study has been undertaken with a view to make a detailed analysis of mental cruelty which is a significant aspect of the offence of cruelty to the wife under Section 498A of the Indian Penal Code, 186. As violence is the genesis and mental cruelty is the species, let us go for an analysis of the meaning of the term violence in details. Women are subjected to violence from an age old time in the name of many concepts which was prevalent be it religion, social custom or rituals. Violence against women introduces itself in many forms as mentioned above. On many occasions this violence took place because of disobedience of the typecast role model of daughter, sister, wife, and mother and of course daughter-in-laws. In a common parlance the term violence may be defined as any physical or emotional pain inflicted on a person. Violence against women is a technical term used to collectively refer to violent acts in which women are primarily or exclusively targeted. Now, So far as mental cruelty is concerned it means harassment of women where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for property or valuable security.

## Concept of Cruelty under the Indian Penal Code, 1860:

Section 498A of the Indian Penal Code, 1860 defines the offence of cruelty to the wife as well as provides punishment for committing this offence. Explanation to this Section defines Cruelty as-

- a. Any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical of the woman; or
- b. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

## Cruelty and Its Nature and Scope:

The term 'cruelty' was defined under Section 498A of the Indian Penal Code and thereafter, an extensive definition of the term is given in the Protection of Women from Domestic Violence Act, 2005. But before the introduction of the Act for the purposes of other legislations various questions have been raised and discussed before the courts relating to the nature and scope of the term cruelty from time to time which are as under:

In Parveen Mehta vs. Inderjeet Mehta the Supreme Court while

discussing the extent of the definition of cruelty as given in the legislation has observed as under:

Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the act probably, the legislature has advisedly refrained from making any attempt at giving any comprehensive definition of the expression that cover all cases, realizing the danger in making such attempt. The accepted legal meaning in England as well as in India of this expression, which is rather difficult to define, had been conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to an apprehension of such danger.

In the case of Savitri Pandey vs. Prem Chandra Pandey the Apex Court while construing the question of 'cruelty' as ground for divorce under Section 13(I) (i-a) of the Hindu Marriage Act, observed the following:

Threatening the petitioner with cruelty is a ground for divorce under Section 13(I) (i-a) of the Hindu Marriage Act. Cruelty has not been defined under this Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which endangers life, limb or health. Cruelty for the purpose of this Act means where one spouse has not treated the other and manifested such feelings toward her or him as to have inflicted bodily injury or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which caused mental suffering or fair in the matrimonial life of the other. Cruelty therefore, envisages a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

## Mental Cruelty: An Aspect of the Offence of Cruelty to the Wife:

In order to understand the meaning, nature and scope of the term 'mental cruelty' we must consider 'mental cruelty' in the light of various judicial decisions and interpretations with reference to different legislations. The Apex court of the country while determining the meaning and scope of the term 'mental cruelty' under Section 13 (1)(ia) of the Hindu Marriage Act in the case of G.V Kameswara Rao vs. G Jabilli has observed the following:

The court has to come to the conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life. Their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriage in a community life, the court should consider whether the conduct counter-petitioner such that it has become impossible for the petitioner to suffer any longer. This is to be judged not from a solitary incident but on an overall consideration of all circumstances.

The hon'ble Supreme Court in Vinit Saxena vs. Pankaj Pandit has observed that cruelty has not been defined and it has been used in relation to human conduct or human behaviour. Again the Apex court in Samar Ghosh vs. Jaya Ghosh on the question of mental cruelty the has observed 'no uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with cases of mental cruelty'. Certain instances were indicated with a remark that they are onlu illustrative and not exhaustive.

The meaning of cruelty is different from what a person understand in general sense. In A. Jayachandra vs. Aneel kaur The hon'ble Supreme court held that the expression 'cruelty' has been used in relation to human conduct of human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one which is adversely affecting the other. Cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem in determining it. It is a question of fact and degree. If it is mental the problem presents difficulties. First, the enquiry must begin as to the nature of the cruel treatment, secondly, the impact of such treatment in the mind of the spouse, whether it causes reasonable apprehension in the mind of the spouse that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

In Balwinder Kaur vs. Bhajan Singh the court observed that when the family members of the wife are insulted on small matters in her presence it is an act of cruelty. Under the matrimonial relation a wife can always visit reasonably her parental home even if she is married and she sacrifices for the sake of her husband. It does not mean she ceases her relationship with her parents permanently. If she makes reasonable demand for visiting her parent's house rarely, it is not a bad demand, nor should it be held to be unreasonable demand. The females are very sensitive in nature. They can tolerate any insult committed by husband but it is very difficult to tolerate the insult of her parents, brothers and sisters.

#### **Mental Cruelty under Section 498A of the Indian Penal Code:**

In Savitri Devi vs. Ramesh Chand and ors The court observed that explanation to Section 498A of the Indian Penal Code, 1860, provides that any willful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such willful conduct which is likely to cause grave injury or danger to life, limb or health whether mental or physical of the woman would also constitute to cruelty. Harassment of the woman where she is subjected to harassment with the intention to coerce her or any person related to her to meet any unlawful demand for any property or valuable security would also fall under cruelty. A stripped scrutiny shows that the word 'cruelty' envisages any of the following acts:

- a. Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide; or
- b. Any willful conduct which is likely to cause grave injury to the woman; or
- c. Any willful conduct which is likely to cause danger to life, limb or health whether physical or mental of the woman.

#### **Mental Cruelty with Reference to Different Legislations:**

##### **Mental Cruelty with Reference to Section 113A of the Indian Evidence Act:**

In K. Prema S. Rao vs. Vadla Srinivasa Rao and ors. The court observed that under the explanation to Section 113A of the Indian Evidence Act, for the purpose of Section 113A cruelty shall have the same meaning as in Section 498A of the Indian Penal Code. In Jagdish Chander vs. State of Haryana the court observed that in a nut shell, the first requisite for attracting the presumption under Section 113A of the Indian Evidence Act is it must be proved that the wife is subjected to 'cruelty' as defined under Section 498A of the Indian Penal Code, 1860.

##### **Cruelty with Reference to Sections 498A, 304B, 306 of the Indian Penal Code:**

A single act of cruelty of a person may fall within the ambit of different offences. One can be held guilty under Section 498A of the Indian Penal Code; under Section 306 of the Indian Penal Code and that very act can further bring within the mischief of Section 304B of the same code.

A conjoint reading of Section 113A of the Evidence Act and Section 304B of the Indian Penal Code reveals that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to make it fall within the scope of death occurring otherwise than in normal circumstances. In cases of dowry death the presumption is that there is no requirement of direct evidence.

In Ratan Lal Singh vs. State of Jharkhand it was observed that the expression 'soon before death' used in Section 304B of the Indian Penal Code is an elastic term. It can either refer to a period immediately before the death of the deceased or within a few days or few week before death. What is relevant is there should be a perceptible nexus between the death of the deceased and dowry related harassment or cruelty inflicted on the woman concerned.

In the case of Majommel and ors. Vs. State of West Bengal the Calcutta High Court observed that conviction of the accused under Section 304B of the Penal Code is not proper and justified the same by saying that the deceased woman committed suicide at her matrimonial house within three years from the date of her marriage. Evidence of the witnesses against the accused are general in nature. De facto complainant in his evidence did not mention any date as to when alleged claim has been made and did not name any specific person who made the alleged claim for dowry. No Evidence was produced to show that soon before her death she was subject to cruelty or harassment by her husband or in laws,

In another case of Sailesh Pal Alias Sailesh Kumar pal vs. State of West Bengal the Court observed that the order of acquittal of the accused was proper as there was no evidence to show that soon before her death the prosecutrix was subject to torture by the accused persons on demand of dowry. Deceased alleged to have commit suicide but there was nothing on record to show that torture followed by demand of dowry is the proximate cause of her death. At the time of inquest conducted in presence of witnesses no complaint was made against the accused persons. Statement made by the deceased to a witness nearly 6 months before her death about torture for demand of dowry, does not have any direct bearing on her committing suicide and same cannot be accepted as proximate cause of her death.

Section 306 of the Indian Penal Code, 1860 provides that if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may be extended up to 10 years and shall also be liable to fine. In Arvind Kumar vs. State of West Bengal the court observed that there was consistent and trust worth evidence to prove that the accused husband constantly harassed, humiliated and tortured his wife for bringing insufficient dowry articles. Consequently, wife poured kerosene oil and set her body on fire and sustained hundred per cent burn injuries. Husband though present at home at the time of incident made no attempt to save his deceased wife. Therefore, presumption contemplated under Section 113A of the Indian Evidence Act, would be attracted in all facts and circumstances of the case.

##### **Mental Cruelty with reference to Protection of Women from Domestic Violence Act, 2005:**

One of the most comprehensive meaning has been given to the term 'cruelty' under this Act. But the Act has used the term 'domestic violence' in place of cruelty as has been mentioned under Section 498A of the Indian Penal Code. The Act has defined domestic violence to include actual subjection to abuse or threat of subjection to abuse-

Physical, sexual, verbal, emotional or economic violence would constitute domestic violence. Under Section 3 of the Act, on the part of the respondent any act, omission or conduct might constitute domestic violence in case it:-

- a. Harms, injures or endangers the health, safety of life, limb or well being whether mental or physical of the victim or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b. Harasses, harms or injures or endangers the aggrieved person with a view to coerce her or any person related to her to meet any unlawful demand for dowry or other property or valuable security; or
- c. Has the effect of threatening the aggrieved person or any person related to her by conduct as mentioned in clauses (a) or (b); or

d. Otherwise inures or cause harm, whether physical or mental, of the aggrieved person.

In Parveen Mehta vs. Inderjeet Mehta the Apex court while discussing the extent of the definition of cruelty as given in the Protection of Women from Domestic Violence Act, 2005 has observed as under:-

Under the Statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to matrimonial offence has not been defined under the Act. Probably, the legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all the cases, realizing the danger in making such attempt. The accepted legal meaning in England as also in India of the expression, which is rather difficult to define, had been, conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.

## CONCLUSION:

While concluding it can be said the concept and meaning of mental cruelty has many dimensions and connected to different laws in India. However, the meaning would differ from case to case, person to person and from place to place. In fact it is very difficult to define the term in a straight way. While considering the meaning and scope of the term mental cruelty the courts on many occasions have refer to the objective of legislation and the particular instances where even less serious matters are also claimed to be cruel act. This problem is always having two aspects. On one hand harassment and abuse on the other innocent victimization in the name of harassment and abuse. Therefore, the judicial approach is this regard is always very crucial.

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