

Concept of Cruelty under the Hindu Marriage Act

· Krishna Bahadur*

CRUELTY IS a ground for matrimonial relief under various personal laws. Under the Indian Divorce Act a wife is entitled to present a petition to the district court or to the High Court for the dissolution of her marriage on the ground that, since the solemnisation of her marriage her husband has been guilty of adultery coupled with cruelty, as without adultery she would have been entitled to a divorce *a mensa et thoro*. As is clear, cruelty under the above provision, by itself, is no ground for dissolution of marriage and the wife can sue for the relief only when there is adultery coupled with cruelty on the part of the husband.¹ The husband shall be competent and compellable to give evidence of or relating to such cruelty.²

Under the Indian Divorce Act, 1869 cruelty as a ground for divorce is available to a wife only, but, under the Special Marriage Act, 1954 it is available to the husband as well as to the wife who may present a petition on the ground that the respondent has, since the solemnisation of marriage, treated the petitioner with cruelty.³ The Dissolution of Muslim Marriage Act, 1939 enables a woman married under Muslim law to obtain a decree for the dissolution of her marriage on the ground that the husband treats her with cruelty.⁴ The right under the Act is unilateral and is available to the wife only.

Under the Hindu Marriage Act, 1955 cruelty is a ground for claiming judicial separation and is available both to husband and wife who were married either before the Act came into operation or thereafter. The Act provides that either party to a marriage, whether solemnised before or after the commencement of the Act, may present a petition for judicial separation on the ground that the other party has treated the petitioner with such cruelty as to cause a

*M.A., LL.D., Professor of Law, Allahabad University, Allahabad.

1. See s. 10, the Indian Divorce Act, 1869.
2. S. 52, the Indian Divorce Act, 1869.
3. S. 27(1)(f), the Special Marriage Act, 1954.
4. See s. 2(viii), the Dissolution of Muslim Marriage Act, 1939.

reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party.⁵

Cruelty has not been defined in the matrimonial laws. It has been the policy of legislation to avoid such a definition. The Dissolution of Muslim Marriage Act, however, mentions, by way of example six situations when an act may amount to cruelty. These six situations, available to the wife only are : (i) that the husband assau'ts her habitually and makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment; (ii) that the husband associates with women of ill-repute or leads an infamous life; (iii) that the husband attempts to force her to lead an immoral life; (iv) that the husband disposes of her property or prevents her from exercising her legal rights over it; (v) that the husband obstructs her in the observance of her religious profession or practice; and (vi) that the husband has more than one wives and does not treat her equitably in accordance with the injunctions of the Qur'an.⁶ The wisdom of these six grounds may be criticised but it would be out of context here to do so.

II

The legislature has, in almost all the matrimonial laws, left it to the judiciary to interpret, analyse and define what cruelty is. The judiciary has crossed lengths and breadths in discharging its burden and has declared every human activity creating physical or mental hardship as amounting to cruelty. Physical force which causes bodily injury,⁸ conduct of the other party which puts the health of the petitioner in jeopardy, systematic neglect and abuse, drunkenness,⁹ refusal to co-operate in family affairs, false charge of adultery,¹⁰ cruelty to a child to wound the mother's feelings, insulting conduct resulting in melancholia, installing a woman in the house and threatening to elope with her, association with other women, conviction for a criminal offence in which the other spouse is implicated against his/her will, excessive or revolting sexual demands,¹¹ sodomy, unjustifiable refusal to have sexual intercourse,¹² sterilisation by the husband without the wife's consent,¹³ unreasonable insistence on the use of contraceptives,¹⁴ misconduct in relation to third person, communication of venereal disease, unwarranted imputations of unchastity,¹⁵ insistence to change his or her religion, complete denial of coitus, have all been held to be acts of cruelty.

5. S. 10(J)(b), the Hindu Marriage Act.

6. The words used in s. 2 (viii) of the Act are "that is to say".

7. S. 2(viii)(a) to (f) of the Dissolution of Muslim Marriage Act, 1939 defines cruelty.

8. *Thomas v. Thomas*, (1948) 2 All E.R. 98.

9. *Hall v. Hall*, (1962) 3, All E.R. 518.

10. *Carpenter v. Carpenter*, (1955) 2 All E.R. 449.

11. *Statham v. Statham*, (1928) All E.R. 219.

12. *Sheldon v. Sheldon*, (1966) 2 All E.R. 257.

13. *Bravery v. Bravery*, (1954) 3 All E.R. 59.

14. *Forbes v. Forbes*, (1955) 2 All E.R. 311.

15. *Iqbal Kaur v. Pritam Singh*, A.I.R., 1963 Punj. 242.

Russell v. Russell,¹⁶ the noted and much recognised case, has given 'illustrations' that constitute cruelty but has given no definition of the same.' It lays down:

Cruelty, as in the case of fraud, cannot be defined by exact definition, but statements can be found as to the elements constituting it in a particular case. The Court is to proceed on the principles and rules on which the Ecclesiastical Courts acted before 1857. The cases are not at all in accord, but they establish on the whole that it is not possible to lay down an exhaustive definition, that the decisions should be looked at as illustrations each depending on its own facts. Some negative limitations may be derived from the cases; that danger is the ground upon which the Court has generally acted; that this danger may consist not merely of the apprehension that the accused person may inflict bodily injury, but also that he may provoke the other spouse to commit cruelty....The principle is that cruelty consists of the wilful infliction of bodily or mental pain.¹⁷

The case further illustrates :

There is no legal limitation to the character of the cruelty but the Courts will consider as an important element of the conduct in question whether it is likely to produce injury to health; or whether it is calculated to make the discharge of matrimonial duties practically impossible or unendurable.¹⁸

The court upheld that "the indignity, the contumely, the wounded feelings amount to cruelty".¹⁹ Similarly "the indifference, neglect, aversion, unrestrained violence, irritability on the slightest occasion, burst of uncontrolled temper, force, whether physical or moral, systematically practised for a length of time" have all been held amounting to cruelty.²⁰ Delineating what cruelty may mean, Lord Halsbury, in *Russell v. Russell* observed "... the question is whether against the will of the suffering spouse, matrimonial duties are possible in any intelligible sense when the conduct of either towards the other must excite feelings of horror and even loathing."²¹

In *Jamieson v. Jamieson*,²² it has been observed that there is no hard and fast line between the conduct which is cruel and the conduct which is

16. (1897) A.C. 395.

17. *Id.* at 395, 401.

18. *Id.* at 402.

19. *Id.* at 406.

20. *Id.* at 407.

21. *Supra* note 16 at 421.

22. (1952) A.C. 525, 528.

not, as it cannot be measured by any absolute or objective standard. Lord Normand in this case is very sceptical about the definition when he refers

where the cruelty is of the type conveniently described as 'mental cruelty', the guilty spouse must either intend to hurt the victim or at least be unwarrantably indifferent as to the consequences of the victim. There is room for difference of opinion about what kinds of case may be covered by the words 'unwarrantably indifferent'.²³

The judicial interpretation in India of the term 'cruelty' is largely based on its English counterpart.

It is universally felt and accepted that 'cruelty' should not be defined; as any attempt on it will lead to auto-limitation and restrictive operation of the concept. It is true that, as the modern society becomes more complex, so emerges the techniques and ways of inflicting strains and hardships in matrimonial life; and, therefore, any attempt of putting the concept into a tight compartment would frustrate the matrimonial remedy based on it. The universal thinking is that the concept should be left free and unrestricted so that any act may be interpreted as amounting to cruelty. This has, however, led to unpredictability and speculation. If the established definition is accepted, it will mean that legislative wisdom in our country is either incapable or unimaginative in providing a definition of the term.

III

A workable definition may accordingly be suggested as under.

Cruelty shall mean and include :

(a) any mental pain sufficient to cause or which causes :

- (i) hurt to the sentiments; or
- (ii) fear, agony and harassment; or
- (iii) shock and surprise; or
- (iv) any disease relating to gastro or/and nervous system; or
- (v) depression, listlessness, insomnia or high/low blood pressure; or
- (vi) any disease relating to heart, mind, or skin; or
- (vii) divulging a family or matrimonial secret; or
- (viii) calling names or hurling abuses;

23. *Id* at 535.

or

- (b) any physical pain or infliction sufficient to cause or which causes :
- (i) grievous hurt; or
 - (ii) beating or use of force of any kind; or
 - (iii) restrictions on movements sufficient to cause wrongful restraint or wrongful confinement; or
 - (iv) restrictions on association amounting to denial of fundamental rights; or
 - (v) denial of food, shelter or other physical facilities; or
 - (vi) beating or causing physical pain or denial of food, shelter and other physical facilities to the near and dear ones;

or

- (c) moral injury sufficient to cause or which causes :
- (i) attack and/or loss of reputation; or
 - (ii) denigration or scandal; or
 - (iii) suspicion against character; or
 - (iv) false charge of habitual drinking or use of any intoxicant sufficient to cause annoyance or danger to the petitioner; or
 - (v) false charge of keeping concubine or paramour or moving or associating with women or men of ill-repute and bad character without reasonable excuse thereof; or
 - (vi) aspersions on or the unwarranted accusations of the personality and achievements; or
 - (vii) tarnishing of the image; or
 - (viii) false allegations against the virtues, acts and conduct; or
 - (ix) false accusation of leading an immoral life;

or

- (d) social harm and/or degradation by—
- (i) creating or propagating contempt in the society; or
 - (ii) making false accusations to the master, the employer, or the guardian with intention to harm the petitioner; or
 - (iii) defamation; or

- (iv) encouraging or inciting people for the social boycott of the petitioner; or
 - (v) calling the petitioner names in the public; or
 - (vi) obstructing or attempting to obstruct either himself/herself or in association with others the petitioner from the use of family, community or public home, eating houses, parks, wells, places of worship and entertainment; or
 - (vii) encouraging, propagating or inciting casteism, regionalism, linguism, clannishness and untouchability;
- or
- (e) ignoring, obstructing or attempting to obstruct family traditions, practices and culture;
- or
- (f) causing annoyance, irritation and pin-pricks by words, acts or conduct sufficient to call upon the mental and physical health;
- or
- (g) insults in private or in public by words, acts or conduct;
- or
- (h) unreasonable or excessive demands on the economy of the family or misuse or abuse of the family income or property;
- or
- (i) refusal to normal intercourse;
- or
- (j) nagging ;
- or
- (k) political incompatibility;
- or
- (l) indifference to nationalism and/or apathy towards the national good;
- or
- (m) making the marriage impossible to be endured and rendering life almost unbearable.

These grounds should be available to the petitioner for seeking divorce if matrimonial relief has at all to be made meaningful.

The above is a tentative break-up of what cruelty should mean. The reasons for providing a workable definition of the term is to avoid 'speculation' and 'beating about the bush' methods in defining the term. It would, if not abolish, minimise the operation of what is generally known as 'judicial

hunch'. A definition would ensure 'predictability' which is the most important quality of justice and law. In the absence of any definition, the scope for judicial speculation is high, so much so, that sometimes it crosses all limits of human imagination. For example, where cruelty means "an absolute impossibility that the duties of married life can be discharged."²⁴ To quote Lord Halsbury, "the phrase 'impossibility' may...be criticised and it may be suggested that in no conceivable set of circumstances could such a phrase be justified."²⁵ Similarly, difficulties may arise to interpret the term 'violence' if used without predicate and epithets. To quote Lord Brougham in *Patterson v. Patterson*,²⁶ violence means "not merely violence but things far short of violence." Likewise "withdrawing from her society" may mean "coldness towards her; leaving her apartment; telling her father that he will, on no account ever renew his cohabitation with her; stating that he is wretched in consequence of his marriage."²⁷

According to judicial stretch of the term, therefore, 'cruelty' may mean '*anything and everything*'. No human wisdom and prudence will admit '*anything and everything*' to mean 'cruelty' howsoever diverse and changing the social, economic, moral and cultural conditions of the society may be. The fear that a definition of the term will circumscribe the scope of judicial interpretation may be baseless as the 'circumstances' that would constitute cruelty would still be open and subject to judicial interpretation, acceptance and verdict. Such 'circumstances' would always elude *a priori* definition and hence the judiciary would always be free to define such 'circumstances' within the definition given above. It is apt to refer to a note of caution by Lord Tucker wherein he admits: "It is in my view equally undesirable if not impossible by judicial pronouncement to create certain categories of acts or conduct as having or lacking the nature or quality which render them capable or incapable in all circumstances of amounting to cruelty."²⁸

It is not the purpose of this paper to discuss what has already been said by the courts about the interpretation of the term 'cruelty' or its analysis. Nor does this paper intend to reproduce what learned men have said and opined about 'cruelty'. The approach of this paper is exclusively pragmatic and it tries to make a suggestion to the Law Commission and the government to provide the 'term' a ground to stand upon rather than keeping it hanging.

24. *Russell v. Russell*, (1897) A.C. 395, 421.

25. *Ibid.*

26. 3 H.L.C. 308, 328, 333.

27. *Supra* note 24 at 422.

28. *Jamieson v. Jamieson*, (1922) A.C. 525-550.