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Cruelty against husband: Indian scenario

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Abstract

With social transformation, the concept of cruelty has undergone a phenomenal change. In the era of women empowerment legislations are being made and affective steps are being taken for protection of women who are considered as the weaker sections of the society. But this shield has become a sword, which is used by women against their husbands and relatives of husbands. As a result of this, cases of cruelty against husbands by their wives are increasing drastically, which is a threat to main object of gender justice and is a debated topic now-a-days. This research brings attention on concept, various aspects of cruelty and relief available to husband on ground of cruelty with some remedial measures. It is the high time to prevent misuses of legal provisions by wives and to bring balance in gender justice.

Keywords: Cruelty, Gender Justice, Women Empowerment, Social Transformation

Introduction

Gone are the days, where there was only presumption that women were subjected to cruelty. According to Indian concept, marriage is a social institution and a union between a man and a woman where they get the social status of husband and wife. It is a divine concept. In the wake of liberalization, modernisation and women empowerment some privileges are provided to them in order to bring them in to equal footing with male. Keeping in view the male dominated society and marital offences being committed in isolated places, the concept of cruelty has been introduced which is treated as a serious offence under Indian Penal Code, 1860 and The Protection of Women From Domestic Violence Act, 2005 for protection of women. But it is a misfortune that, women are misusing that law to achieve their personal interest unlawfully. According to National Crime Record Bureau, the rate of conviction in cases filed under section 498A of IPC, 1860 were 21.9% and 14.2% in the year 2006 and 2015 respectively. Now-a-days it is seen that many cases were filed by women under Domestic Violence Act and under Indian Penal Code on ground of cruelty, most of which are false. It is also evident that due to freedom of education and economic independence, women are harassing their husband. Husbands and their relatives are being subjected to cruelty by their wives.

What is Cruelty?

In general, Cruelty is an inhuman attitude or treatment of one spouse or relative of one spouse against another spouse or relative of another spouse. It may be either physical or mental. When there is danger to life, limb, health and property of a person and cohabitation between spouses, it is said to be physical. And when it causes mental pain, agony and sufferings in any manner and is of such a magnitude that it severs the bond between the husband and wife, it amounts to mental cruelty^[1]. Cruelty is such an act as a result of which it becomes impossible on part of the victim to live with the offender ordinarily. It may be either an act or omission.

What amounts to Cruelty against husband?

Cruelty is a social evil. Whether one spouse is guilty of cruelty is essentially a question of fact. The concept of cruelty differs according to facts and circumstances of a particular case. There is neither comprehensive and definite definition nor straight jacket formula to decide, what amounts to cruelty.

The concept of cruelty is variable in nature with respect to time, place manner of act and individual. It depends upon the life style, social and economic status of the parties and their

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culture and human value ^[2]. It also depends upon the physical and mental condition of the parties. Plethora of judicial pronouncements has covered various aspects and conduct of wife which are treated as cruelty against husband.

Followings are the certain instances or conduct by wife which are treated as cruelty against husband:-

(i) Misuse of provisions exclusively made for protection of wife

Misuse of provisions relating to Dowry Demands and Cruelty under Domestic Violence Act, Dowry Prohibition Act, 1961, Sec: 304B and Sec: 498-A of IPC by wife against husband and relatives of husband through lodging false complaints amounts to cruelty ^[3].

(ii) Desertion by wife

Where wife deliberately intends to live separately and to bring cohabitation permanently to an end without any just cause and excuse, it amounts to cruelty.

(iii) Adultery by the wife

It means extra-marital affairs of wife or wife voluntarily having sexual or illicit relationship with some other person other than her husband during the existence of marriage. Though the wife commits adultery for once, it amounts to cruelty.

(iv) Bigamy

Where, wife enters in to second marriage during existence of valid marriage, it is a ground of cruelty.

(v) Threats given by wife

Where wife gives threats to leave husband's home or to commit suicide in order to fulfil some unlawful demands and personal interest, it amounts to cruelty.

(vi) Insulting husband or relatives of husband

If the wife abuses and falsely brings any accusation against her husband or relatives of her husband in presence of others or uses defamatory words and thereby intends to lower the reputation of the husband or their relatives, it is treated as cruelty. Humiliating husband in the presence of family members and friends also amounts to cruelty ^[4]. If wife brings false allegations against husband stating that he has illicit relationship with another woman or he has a girlfriend, it amounts to cruelty against husband ^[5].

(vii) Refusal by wife to perform marital obligations

If wife refuses to have sex with husband ^[6] and to perform other marital obligations (eg. refusing to cook food properly or on time) without any sufficient reasons, it can be considered as cruelty.

(viii) False FIR or Complaint by wife

If wife having mala-fide intention lodges FIR or makes any complaint against husband and relatives of husband knowing to be false in order to harass and humiliate or for any purpose, it amounts to mental cruelty. ^[7] False allegation of cruelty ^[8] and false case of bigamy ^[9] amounts to cruelty.

(ix) Cruel behaviour of wife

Under normal circumstances wife is expected to obey her husband and to live with the family of her husband. But

cruel treatment of wife viz. tearing the shirt of the husband and breaking of 'mangalsutra' in the presence of husband's relatives, unnatural conduct and misbehaviour of the wife against husband and his relatives, pressuring or insisting upon the husband to leave his home or to live separately from parents or family, ^[10] making disrespectful behaviour towards husband and in-laws and disobeying the order or advice of husband or in-laws, neglecting family without any reasonable excuse and doing of any activities which cause mental harassment amount to cruelty. Burning Ph.D. thesis of husband and calling him impotent amount to cruelty. ^[11] Obstructing husband in pursuing his study is also treated as cruelty.

(x) Some other grounds of cruelty

If wife leads an immoral life having negative impact on children or family, it amounts to cruelty. Mental disorder and unsoundness of mind of wife, frigidity of wife, Wife suffering from the filarial, etc.

Remedy available to husband

If husband is subjected to cruelty by wife and the case is proved, then he is entitled to get a decree of divorce. The Apex Court and various High Courts have also held that husband can get a decree of divorce on ground of cruelty by wife. If husband alleges cruelty made against him, the burden lies on him to establish his case for getting a decree of divorce from court of law. ^[12] Cruelty is considered as a ground for divorce in various laws. Some provisions under different laws are:

- Section 13 of The Hindu Marriage Act, 1955
- Section 27 of The Special Marriage Act, 1954
- Section 32 of The Parsi Marriage and Divorce Act, 1936
- Section 10 of The Indian Divorce Act, 1869

Conclusion

In the landmark case of *Sushil Kumar Sharma vs. Union of India* ^[13] while delivering judgment Hon'ble Mr. Justice Arijit Pasayat and Hon'ble Mr. Justice H.K. Sema have indicated sec. 498A as 'Legal Terrorism' and noted, "The provision is intended to be use as a shield and not assassins' weapon. If cry of 'wolf' is made too often as prank, assistance and protection may not be available when the actual 'wolf' appears". Recently the Hon'ble Supreme Court in case of *Rajesh Sharma v. State of UP* ^[14] has Issued directions for constitution of 'family welfare committee' and arrest to prevent misuse of Sec 498A of IPC, 1860. Less than three months after this judgement, the Chief Justice of India has decided to revisit the former judgement and has indicated, "We are not in agreement with the judgement passed in the case. We can't write law. We can only interpret the law". However, the cases of cruelty against husband are increasing day by day with a dynamic approach. Time is ripe, instead of making debates, the issue relating to cruelty by wives against their husband and in-laws is to be taken seriously and effective measures are to be taken by Govt. and Judiciary to combat the present scenario keeping in view the main objectives of legal contexts. Special commission for men should be established. Strong action is to be taken against the women who are misusing the legal provisions. Women Commission and NGOs should focus on prevention on misuse of legal provisions. The present concept of presumption and legal

provisions should be amended suitably to keep harmony and to uphold gender justice.

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