
CRUELTY: MUST IT BE BOXED? A CURIOUS ANALYSIS OF CRUELTY AS INTERPRETED FROM THE HINDU MARRIAGE ACT

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ABSTRACT

Cruelty under the Hindu Marriage act as a means of dissolution has had a very peculiar journey. This paper will be divided into three sections and tracks that peculiar journey while discussing the interpretive problems that arise in the Supreme Court. The first part consists of the introduction of the concept and its statutory standing. In the second part, I will give my response as to how this concept has been interpreted through various case laws and my opinions on if I believe these interpretations are a what we as a society require. In the final part of the paper, I will provide my concluding remarks.

Section I - Introduction:

Within tort law, there is a concept known as the pigeonhole theory which states that a plaintiff, will be successful in placing their suit if it falls within a set of characteristics of Torts.¹ Its diametrically opposing view is that one only has to sue in tort and justification to mitigate liability has to be provided by the individual against whom the suit is filed. Why I bring this up is to elucidate what I believe the Supreme Court is attempting to achieve through its various interpretations of cruelty under the Hindu Marriage Act 1955 (HMA). Under Section 13 (i-a) ‘cruelty’ is laid down as a ground for dissolving any marriage solemnized under this act.² We see from the outset that the statute has provided the judiciary with full liberty in interpreting this section. Thus, in my mind, the section in a sense is giving cruelty the space to be expressed in terms of the second view in Tort. However, through case laws that I will describe we also

¹ See Salmond, Torts, 14th ed., p. 15.

² Hindu Marriage Act 1955, (i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

see that there is a very fine line the court is walking in creating certain definitions of cruelty and thus these pigeonholes. This begs the question. In its interpretation of this section, is the court correct in coming to a definition of cruelty and can we come to a reasonable definition as to what cruelty entails?

Before 1975 cruelty only remained a ground for judicial separation under Indian Law. This however changed with *Dastane v Dastane*³ where it was upheld within the identified ratio of the case by Y.V Chandrachud and later brought into the HMA through an amendment in 1976. I have my own opinions on this case that I will return to later in this paper, however, this does remain a landmark case as it propelled cruelty to the forefront of the dissolution of Hindu Marriages.

Section II

Apropos my introduction, I see it only fit to first depict the major case laws that have set out to try and build definitions of the term ‘cruelty’. Before I begin, I believe my contentions with these judgements are not with their content but rather the context for which they have been established. Upon an analysis of these judgements, it is my interpretation that contextually they set out to build a framework for cruelty which under the garb of judicial interpretation is pushing us towards a direction of the ‘pigeonholes’.

Generally, cruelty has been set out to be defined by numerous judgements providing for their own guidelines. In *Naveen Kohli Vs. Neelu Kohli*,⁴ it was written that for cruelty to be constituted the complaint in question must be "grave and weighty" and must not be "ordinary wear and tear of married life". My contention with this judgement starts here as in the subsequent paragraph, the court begins to reiterate that “It is for the Court to weigh the gravity.” Thus, providing guidelines and within those guidelines still allowing for interpretation. My point in this instance is that the court seems to ironically leave in the blind the fact that Section 13 carries out the same function. It is not for the court to use its interpretation in this instance to incept⁵ definitions when a section is seemingly written to be one that should not be boxed in.

³ *Dastane v Dastane* 1975 SCR (3) 967

⁴ *Naveen Kohli Vs. Neelu Kohli* (2006) 4SCC 558

⁵ A reference to the motion film INCEPTION, wherein there is exploration of a dream within a dream concept. The idea for my reasoning here to show if pursued analytically, how confounded this whole chain of events seems.

Once again, it is not relevant whether or not I believe in these judgements, it is the context and subsequent precedent that they may set.

If I were to bring this back to the Dastane case, the respondent is proven to have been cruel, however, is mitigated of liability due to sexual relations that seemed to have established “condonation” on part of the appellant. This to my interpretation seems like a perverse understanding of the institute of marriage and a terrible precedent that is set up to be used as a test for mitigating liability. This notion of sex being a tenet of marriage is once again affirmed in *Vidhya Vishwanathan v. Kartik Balakrishnan*⁶ wherein once again withholding of sexual intercourse amounted to a definite aspect of mental cruelty. I understand this paper is strictly to deal with the definition of cruelty, but as mentioned earlier, I would also like to engage with this term in the larger framework of things and I believe conviction falls within that purview. In *Chiranjib Bag vs Smt. Suchandra Bag*⁷ the tenets of “ordinary wear and tear of married life” proposed by Naveen Kohli are used to disperse the case at hand. Other cases which dealt with and attempted to define ‘cruelty’ and ‘mental cruelty’ include but are not restricted to; *V Bhagat vs. Mrs D. Bhagat*⁸, the learned judge found that mental cruelty should mean the kind of mental pain inflicted that it makes it impossible for a party to live with another. Ironically, before providing this definition, he quotes and agrees with Lord Reid, stating “As observed by Lord Reid in *Gollins v. Gollins*: “No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so.”⁹

The case which has undoubtedly been used the most as one for citations is that of *Jaya Ghosh Vs Samar Ghosh*¹⁰ in which the court provides us with one of the most detailed lists of illustrations which it believes to amount to cruelty. Yet again, ironically drawing on a vast body of case law, which in itself provides us with many definitions of cruelty, and then stating points regarding the flexible nature of this concept. It seems almost an exercise in futility to me that the court must go through an entire run-around only to state the point which I have attempted to express through this paper. The point in question is how cruelty cannot be brought into closed definitions and must be evaluated on a case-by-case basis. I do understand and acknowledge

⁶ *Vishwanathan v. Kartik Balakrishnan* (2014) 15 SCC 21

⁷ *Chiranjib Bag vs Smt. Suchandra Bag* F.A. No. 134 of 2016 with I.A. No. CAN. 1 of 2017 (OLD CAN. No. 3609 of 2017)

⁸ *V Bhagat vs. Mrs. D. Bhagat* 1994 SCC (1) 337

⁹ *Gollins v Gollins*: HL 27 Jun 1963

¹⁰ *Jaya Ghosh Vs Samar Ghosh* (2007) 4 SCC 511

the importance of the court's illustrations in making proceedings move quicker in the future, however, it is imperative that we not lose legislative intent while chasing this speed.

Section III - Conclusion

To conclude I must reiterate my stance of displeasure with the direction the court seems to be heading in judgement by judgement. A direction toward the pigeonhole and that where cruelty may take a firm definitive form. My fears are slightly more substantiated if we look towards 498A IPC 1860¹¹. In the case of *Rajesh Sharma v. the State of U.P.*,¹² we see that the esteemed court makes a note of

“10. That according to Report of Crime in India, 2012 Statistics, National Crime Records Bureau, Ministry of Home Affairs showed that...most surprisingly the rate of charge-sheet filing for the year 2012, under Section 498A IPC was at an exponential height of 93.6% while the conviction rate was at a staggering low at 14.4% only. The Report stated that as many as 3,72,706 cases were pending trial of which 3,17,000 were projected to be acquitted.”

These from almost a decade ago if followed the same trend I'm sure would have shown a similar number. Regarded that cruelty is not a gender-neutral law, the two cannot be parallelly compared however, I believe it serves my overarching argument against this repeated pigeonholing of cruelty by judgements of the courts under the HMA. Thus, it leaves me still pondering over the following question. Why must the courts attempt to define and illustrate cruelty if it is needed to be observed on a case-by-case basis?

¹¹ Indian Penal Code 1860: “498- A. Husband or relative of husband of a woman subjecting her to cruelty-
(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to 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.”

¹² *Rajesh Sharma v. State of U.P.*, 2017 SCC Online SC 821

REFERENCES

1. See Salmond, Torts, 14th ed., p. 15.
2. Hindu Marriage Act 1955, (i-a)
3. Dastane v Dastane 1975 SCR (3) 967
4. Naveen Kohli Vs. Neelu Kohli (2006) 4SCC 558
5. INCEPTION (2010)
6. Vishwanathan v. Kartik Balakrishnan (2014) 15 SCC 21
7. Chiranjib Bag vs Smt. Suchandra Bag F.A. No. 134 of 2016 with I.A. No. CAN. 1 of 2017 (OLD CAN. No. 3609 of 2017)
8. V Bhagat vs. Mrs. D. Bhagat 1994 SCC (1) 337
9. Gollins v Gollins: HL 27 Jun 1963
10. Jaya Ghosh Vs Samar Ghosh (2007) 4 SCC 511
11. Indian Penal Code 1860: 498-A.
12. Rajesh Sharma v. State of U.P., 2017 SCC Online SC 821