

Review Article**Mental Cruelty: An Extent of Alchemy of Feelings?****Tulishree Pradhan****Abstract**

Mental Cruelty constitutes threat of danger to the person on whom it is practised. This type of abuse can happen to anyone, yet the problem is often overlooked, excused or denied. Mental cruelty occurs whenever one person in an intimate relationship or marriage tries to dominate and control the other person. Hence when we deal with cases of mental cruelty we should not be biased towards any gender. In traditional Indian culture, males are more valued than females. When more western and Indian women are attaining higher education and securing higher paying careers, the traditional role of a wife as subservient to her husband and as the primary caretaker for the children is still practiced and expected of women. Psychological distress and disorders are often explained in a religious framework, in terms of either spirit possessions or violation of some moral or religious principle. In a case in which, a series of acts have been alleged to amount to cruelty, physical or mental, the cruelty so alleged must be such as to cause mental anguish that would affect the health of the person and life, so that the Court could opinion that cruelty indeed was practiced. In absence of such a plea and evidence that cruelty practiced by wife was such as to cause health problems to husband endangering his life and person it cannot be said that mere series of incidents of quarrel between the husband and wife on account of presence of the mother-in-law or mostly on account of the fact that husband did not set up separate establishment of his own, would amount to mental cruelty. Here particularly the article is addressing the role of judiciary in striking a balance between ethical anxiety and mental cruelty.

Keywords: Mental Cruelty; Mental Pain; Agony and Suffering; Ground for Divorce; Domestic Violence.

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In a popular Hindi T.V serial, a person tells a lady that marriage is only a temporary attachment, to which the lady retorts that she believes in one life and one marriage. In India, marriage and family dominate the life of women. One sociologist Susan Wadley after analysing the identity of women in different

folktale, myths, and legends rooted in our culture, observed that the Indian woman is constantly made to adopt contradictory roles i.e. the nurturing roles as daughters, mothers, wives, and as daughter-in-laws, and in addition stereotyped role of a weak and helpless woman. The latter is fostered to ensure complete dependence on the male sex. Consequently,

the constant movement from strength to passivity leads to enormous stress placing the woman's mental health under constant threat. The primary duty of the woman is to be subservient to the husband/ his relatives and her children. An admirable sentiment from which there has been a gradual shift in perception by individuals of both genders. And what specially worries us is an increasing number of divorce cases are taking place on grounds of 'mental cruelty' and from time to time, some of these divorce cases reach the Supreme Court [1]. Some of the Court's views on this are placed for general information particularly, of Civil Society.

Straightaway, the Court has observed that 'cruelty has not been defined, and it has been used in relation to human conduct or human behaviour' [2]. On the same subject of 'mental cruelty', the Court in another judgement states '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'.

In spite of a particular framework to identify mental cruelty certain instances were indicated with the remark that they are only illustrative and not exhaustive [3]. It appears that the insertion of Sec.113 IEA [4] and Sec. 498A IPC [5] did not seem to have improved the lot of women experiencing domestic violence, battered women, given that the judiciary has such 'stringent' methods to measure cruelty against women [6].

The rate of conviction in cases of domestic violence, and mental cruelty is rarely accepted as legally valid in cases involving domestic violence, unless they are accompanied by physical violence [7]. Clearly, in civil law, where mental cruelty is a ground for divorce, the ambiguity of the term is used to absolve men and to chastise women. *Stringent rules of wifely behaviour as set by the Hon'ble judge's perception of religious law and tradition are used to measure the rightness of women's actions, while neglect and physical violence by men are condoned.*

In fact a joint study by a team of US and Israeli researchers showed women go silent if they feel they are being mentally harassed. Perhaps because there is no excuse available at all for women on the relic of her social training which is set by the society.

The above cases were followed by a Bench of the Supreme Court in Vidhya Viswanathan V. Kartik Balakrishnan (2004 (II) OLR (SC) 907 and an illustrative, not exhaustive list was drawn up to show what does and what doesn't constitute mental cruelty.

This is shown below:

What constitute mental cruelty?

1. On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other.
2. On appraisal of the entire matrimonial life of the parties it becomes abundantly clear that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party.
3. Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time.
4. A sustained course of abusing and humiliating treatment calculated to torture, discommode or render miserable the life of the spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.
5. Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness, causing injury to mental health or deriving sadistic pleasure from the above.
6. Persistent ill conduct for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to life with the other party.
7. Husband submits himself to a sterilization operation without medical reasons and without the consent or knowledge of the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of the husband.
8. Unilateral decision of refusal to have intercourse for a considerable period without there being any physical incapacity or valid reason.
9. Unilateral decision of either husband or wife after marriage not to have a child from the marriage.

What does not amount to mental cruelty?

1. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day-to-day life.
2. Conduct must be more than jealousy, selfishness, possessiveness which causes, unhappiness, dissatisfaction or emotional upset.

3. Mere coldness or lack of affection, frequent rudeness of language, petulance of manner, indifference and neglect unless it reaches such a degree that it makes the married life of spouse absolutely intolerable.

In stating the above illustrative cases, the Supreme Court has emphasized that the whole married life must be considered, every case should be carefully examined because termination of a marriage is a serious irreversible step which should not be lightly dealt with.

References

1. <http://www.hindustantimes.com/sex-and-relationships/how-and-why-number-of-young-indian-couples-getting-divorced-has-risen-sharply/story>
 2. Vinit Saxena V. Pankaj Pandit (2006) 3SCC 778.
 3. Samar Ghosh V. Jaya Ghosh(2007) 4 SCC 511.
 4. Section 113 in The Indian Evidence Act, 1872:113A. Presumption as to abetment of suicide by a married woman, 113B. Presumption as to dowry death
 5. Section 498A of the IPC deals with a non-bailable offence, which applies to a husband, or relative(s) of a husband, of a woman, who is/are subjecting her to cruelty.
 6. Prior to the insertion of S498A, the section often used for wife murders was S300 IPC, 1860, which states that culpable homicide is not murder, 'if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person, who gave the provocation.' The test for provocation was the provocation must have been sufficient to anger 'a reasonable man'.BOOK Indian Feminisms: Law, Patriarchies and Violence in India Geetanjali Gangoli, University of Bristol, UK
 7. In one cases, where the wife had committed suicide since her husband was involved with another woman, the judge ruled that the act of the husband keeping a mistress was not an act that could provoke a woman to commit suicide, see Babu Shankar Jadhav v. State of Maharashtra. SC 172/88 cited in Seshu and Bhonsale nd, 48.
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