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Certain Case Laws Of Supreme Court Of India On Divorce Relating To Cruelty

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Abstract

The Hindu Marriage Act, 1955 allows either the husband or wife to seek “Divorce” on the ground of “Cruelty”. This Act has introduced the grounds for divorce under Section 13, which allows the parties to petition in a competent court for a divorce decree. Dissolution of a marriage required one spouse to be found guilty of behaviour that fundamentally undermined the marriage. However, cruelty refers to any conduct which may cause reasonable apprehension in the mind of the petitioner (appellant) that cruelty is harmful or injurious to live with the respondent. Cruelty may be physical or mental, intentional or unintentional, and is a subjective concept which differs in each case depending on the facts and circumstances. The Hon’ble Supreme Court explained and decided the various aspects of divorce, cruelty, marriage and Hindu Marriage Act through its various Case Laws. In this paper, besides cruelty and related issues, certain important Case Laws have been put forth, so as to overcome the grievance and solution of divorce.

Keywords: Divorce, Cruelty, Marriage, Hindu Marriage Act, Case Laws, Hon’ble Supreme Court.

(1) Introduction-

Marriage is considered a sacred bond or ceremony in the Hindu culture or religion. Before the “Hindu Marriage Act, 1955”, there was no allowance for “Divorce”, as it was deemed too extreme for Indian society of that era. Women were the unseen sufferers under this stringent system. The notion of divorce was not acknowledged, and it was expected that a woman would adapt and compromise. However, with the introduction of the Hindu Marriage Act in 1955, the concept of divorce and corresponding provisions began to evolve to meet the needs of an ever-changing society. Therefore, the Hindu Marriage Act, 1955 generated the concept of divorce that helped the sufferers in the marriage to get the proper treatment with satisfaction. Literary, the “Divorce” means the legal dissolution of a marriage between two individuals. Historically, within “Hindu Dharma Shastra”, the marriage was seen as a sacred and indissoluble bond, with no provisions for divorce until the enactment of the “Hindu Marriage Act” in 1955. This development gave rise to the fault-based theory of divorce. Despite the traditional view of marriage as an eternal union, it became evident that even such unions were not entirely beyond dissolution. However, prior to this codification, there was no comprehensive legal framework specifically describing the divorce. The statement of Justice H.R. Khanna given in the year 1978 is highly notable that: “After the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce” and this has been utilized by the Supreme Court while declaring that divorce should be seen as solution and an escape route out of a difficult situation.

The concept of cruelty includes both physical and mental cruelty or abuse. The acts of cruelty are behavioural exemplifications influenced by different factors in the lives of spouses and their environments, necessitating a case-by-case assessment based on the specific details. Physical cruelty is usually more straightforward to identify, however, the mental cruelty is more complex in view. Mental cruelty is a lack of conjugal kindness of marital relations, which adversely affects the mental health of the spouse. Some examples of cruelty are: demand for dowry, false accusations of adultery, refusal to have marital

intercourse or children, impotency, incompatibility of temperament, drunkenness, threat to commit suicide, etc. In *Pravin Mehta v. Indrajeet Mehta*, the court has defined the cause of mental cruelty as the “State of Mind”.

(2) Cruelty-

“Cruelty” is a conduct which causes such mental suffering or physical pain that it endangers the life, limb, or health of petitioner or makes it impossible for the petitioner to carry on living with the respondent. The cruelty is of two types as described below:

(a) Physical Cruelty: It denotes for any act or conduct which causes bodily harm or poses a threat to the life, limb, or health of one spouse by the other spouse. It includes physical violence, assault or any other form of harmful behaviour which endangers the physical well-being of the victim. In this type of cruelty, a spouse can file for divorce or seek legal protection.

(b) Mental Cruelty: This cruelty denotes as the infliction of emotional or psychological distress on one spouse by the other spouse. It includes behaviour or conduct which is of such a nature that may be impossible for the victim spouse to live with the other spouse. The mental cruelty can take various forms, for example, constant humiliation, verbal abuse, harassment, neglect, threats or persistent indifference towards the well-being of the other spouse. The concept of mental cruelty is subjective and depends on the facts and circumstances of each case. There is no exhaustive list of acts or behaviours which generate the mental cruelty, because it may differ based on the individual experiences and cultural contexts. It should be noted that the courts consider cumulative effect of different acts and behaviours when determining the mental cruelty. These verity, frequency and duration of the conduct are also assessed and considered. The spouse seeking divorce on grounds of mental cruelty must provide evidence and demonstrate that the cruelty has reached a level where it has made the continuation of marriage intolerable. Certain important examples of mental cruelty that are happening generally in the Hindu matrimonial law include-

1. **Threats and intimidation:** Regularly subjecting the spouse to threats of physical harm, emotional blackmail or other forms of intimidation.
2. **Verbal abuse and humiliation:** Persistent use of derogatory language, insults or constant berating of spouse.
3. **Harassment and stalking:** Stalking, monitoring or excessive surveillance of spouse, causing fear and distress.
4. **Emotional abandonment:** Neglecting the emotional needs of spouse, showing complete indifference or engaging in emotional detachment.
5. **Constant criticism and ridicule:** Regularly belittling or mocking the abilities of spouse, appearance or character.
6. **Denial of basic rights and amenities:** Withholding financial support, denying access to basic amenities, or intentionally causing living conditions which are detrimental to the well-being of spouse.
7. **Unreasonable demands and control:** Exerting the excessive control over the actions of spouse, decisions or freedom, leading to a loss of individuality and autonomy.
8. **Social isolation:** Deliberately isolating the spouse from family, friends or social support networks, leading to feelings of exclusion and loneliness.

(3) Certain Case Laws of Supreme Court of India on Divorce Relating to Cruelty-

1. N.G. Dastanev v. S. Dastane, AIR (1975) SC 1534: The Hon'ble Supreme Court (SC) held that, the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental condition of the parties, their character and social status. A too technical and hypersensitive approach would be counter-productive to the institution of marriage. The Court has to deal with particular man and woman before it. Ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. The fact of this case is that, the respondent, Sucheta from Nagpur, spent her formative years in Delhi. She did M.A. in Social Work, specializing in marriage conciliation and juvenile delinquency. She worked in the Commerce and Industry Ministry, Delhi. Before marriage, her father disclosed her history of mental illness due to sun-stroke and

cerebral malaria to the appellant's family. The couple N.G. Dastanev and S. Dastane had three daughters. Marital discord intensified, leading to accusations of cruelty from both sides. Later on, the appellant sought judicial separation alleging cruelty, but the Trial Court dismissed the claims of respondent's mental illness. The appellant made repeated claims about respondent's mental state to authorities, claiming at divorce or annulment. However, High Court (HC) dismissed his plea. Then he appealed to the SC. In this, one issue was also involved that whether the act of sexual intercourse amounts to treat as cruelty. The SC said that the lower courts, albeit dismissing the appellant's appeal, and allowing the respondent's, failed to adequately assess the evidence, particularly concerning allegations of cruelty. The evidence revealed a pattern of conduct by the respondent, indicative of cruelty, as defined under Section 10(1)(b) of the Hindu Marriage Act (HMA); however, the appellant condoned it. The SC held that, "It is difficult in these circumstances to accept the appellant's argument either that the respondent deserted him or that she treated him with cruelty after her earlier conduct was condoned by him". Therefore, the SC dismissed the appeal with costs.

2. Shobha Rani v. Madhukar Reddi (1988) 1 SCC 105: The Hon'ble Supreme Court (SC) held that, the test for cruelty is whether the conduct of respondent is of such a nature that the petitioner cannot reasonably be expected to live with the respondent. It noted that the concept of cruelty is ever-changing and cannot be defined with precision. This is a pivotal case in Indian matrimonial jurisprudence. It underscores the judiciary's role in addressing and curbing the entrenched practice of dowry demands by recognizing them as acts of cruelty warranting divorce. By distinguishing between criminal intent and civil evidence of cruelty, the court provided a balanced approach that protects spouses from abusive practices while ensuring fairness in legal proceedings. This case not only empowered women to seek legal remedy against dowry harassment, but also signaled a broader commitment to social justice and gender equality within the Indian legal system. The SC, upon reviewing the appeals against the decisions of lower courts, overturned the High Court's dismissal of Shobha Rani's divorce petition. The High Court (HC) had previously rejected her case, suggesting a lack of substantial evidence of harassment. The SC, however, found sufficient evidence to deem the dowry demands as constituting cruelty, thereby entitling the wife to a decree for dissolution of marriage. The court emphasized that the absence of intent does not negate the presence of cruelty in matrimonial contexts.

3. V. Bhagat v. D. Bhagat (1994) 1 SCC 337: The Hon'ble Supreme Court (SC) held that, the mental cruelty may be caused by a number of factors, including false accusations of adultery or unchastity, unjustified denial of sexual intercourse, unjustified refusal to have children, and excessive demands for dowry. The SC stated that the respondent wife in formal pleading alleged that the petitioner is a mental patient and not a normal person, that he requires psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations and that he and all the members of his family are a bunch of lunatics. These assertions constitute mental cruelty of such a nature that the petitioner, with reference to several relevant circumstances, cannot reasonably be asked to live with the respondent thereafter. The husband is an Advocate practicing in this Court as well as in Delhi High Court (HC). The divorce petition is being tried in the Delhi HC itself. Making such allegations in the pleadings and putting such questions to the husband while he is in the witness-box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects. The respondent has been called as an incorrigible adulteress. She is fully aware that the marriage is long perished and over. She contends that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she wants to make life miserable for the petitioner as well as herself. This type of callous attitude in the context of the facts of this case, leaves no manner of doubt that the respondent is bent upon treating the petitioner with mental cruelty. The marriage has been broken down and there is no chance for the petitioner and the respondent to come back to the matrimonial house and live together. Therefore, the petition for divorce was allowed and the marriage between the parties is dissolved. The allegations made by the petitioner against the wife are held 'not proved'. The honour and character of the respondent wife stands vindicated.

4. Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate (2003) 6 SCC 334: The Hon'ble Supreme Court (SC) held that, the question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by appellant husband in the written constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard is well settled and declared that leveling disgusting accusations of unchastity

and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of wife being allowed. Such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid by this court. The court found that no exception could be taken to the findings recorded by the Family Court as well as the High Court (HC). It has been found that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible. Therefore, the appeal was dismissed.

5. Jayachandra v. Aneel Kaur (2005) SCC 22: The Hon'ble Supreme Court (SC) held that, to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and back ground has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in matrimonial law. Conduct has to be considered in the back ground of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty, and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute the cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language, leading to constant disturbance of mental peace of the other party.

6. Naveen Kohli v. Neelu Kohli (Judgment on 21.3.2006) AIR (2006) SCC 1675: The Hon'ble Supreme Court (SC) held that, false allegations of adultery, mental illness and impotence can amount to mental cruelty. In case of mental cruelty, it's not necessary to prove physical injury or danger to life. The SC granted special leave to the appellant. The fact of the case is that, the appellant and respondent are husband and wife. The appellant filed a petition under the Hindu Marriage Act (HMA) for divorce. The Family Court after comprehensively dealing with the matter ordered the cancellation of marriage between the parties under Section 13 of the HMA, which was solemnized. The respondent aggrieved by the judgment preferred First Appeal before the Division Bench of the Allahabad High Court (HC), which was allowed and the decree passed by the Family Court, Kanpur City seeking divorce and annulment of the marriage was dismissed. The appellant aggrieved by the said judgment, and preferred SLP under Article 136 of the Constitution of India. The appellant, Naveen Kohli got married to Neelu Kohli. Three sons were born out of their wedlock. According to appellant, the respondent is bad tempered and a woman of rude behaviour. After marriage, she started quarrelling and misbehaving with the appellant and his parents and ultimately, the appellant was compelled to leave the parental residence and started to reside in a rented premise. According to the appellant, the respondent in collusion with her parents got sufficient business and property transferred in her name. Later on, the appellant started living separately from the respondent. The appellant suffered intense physical and mental torture. The SC finds that the HC was not justified in setting aside the order of Trial Court. The wisdom lies in accepting pragmatic reality of life and the court took a decision which would ultimately be conducive in the interest of both the parties. Consequently, the impugned judgment of HC was set aside, and directed that the marriage between the parties should be dissolved according to the provisions of the HMA. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving marriage between the parties, the Court directed the appellant to pay Rs. 25,00,000/- (Rupees Twenty five lacs) to respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs. 5,00,000/- (Rupees five lacs with interest) deposited by appellant on the direction of Trial Court. In case the appellant fails to

pay the amount within the stipulated period, the direction given by the SC would be of no avail and the appeal shall stand dismissed.

7. Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511: The Hon'ble Supreme Court (SC) held that, cruelty can be both physical and mental. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of cruelty and then as to the impact of cruelty on the mind of spouse. Whether caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of conduct and its effect on the complaining spouse. In SC's view, the High Court (HC) seriously erred in reversing the judgment of learned Additional District Judge which is based on carefully watching the demeanour of parties and their respective witnesses and the ratio and spirit of judgments of this court and other courts. The HC erred in setting aside a well-reasoned judgment of the trial court based on the correct analysis of the concept of mental cruelty. Consequently, the impugned judgment of the HC is set aside and the judgment of the learned Additional District Judge granting the decree of divorce is restored.

8. Shri Rakesh Raman v. Smt. Kavita Civil Appeal No. 2012 of 2013: The Hon'ble Supreme Court (SC) held that, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the facade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is, therefore, a ground for dissolution of marriage under Section 13(1)(ia) of the Act. In this case, the court of Additional District Judge (North), Tis Hazari Courts, Delhi provided the decree of divorce to the appellant, and the marriage was dissolved. The respondent/wife then filed an appeal before the Delhi High Court (HC), which was set aside the order of Trial Court and dismissed the petition of husband. Aggrieved by the said order, the appellant/husband filed a Special Leave Petition (SLP) before this Court, in which leave was granted. The married couple had barely stayed together as a couple for four years and has now been living separately for the last 25 years. There is no child out of the wedlock. No doubt that this relationship must end as its continuation is causing cruelty on both the sides. Therefore, the SC uphold the decision of the Trial Court. The SC granted a decree of divorce to the appellant/husband, and marriage was dissolved. The appellant/husband was directed to give Rs. 30,00,000/ (Thirty lakh rupees) to the respondent/wife as permanent alimony within a period of four weeks from today with the Registry of this Court. The decree of divorce had been made effective only from the date of such money deposit. With the aforesaid directions, the appeal was allowed.

9. K. Srinivas Rao v. D.A. Deepa (Civil Appeal No. 1794 of 2013, arising out of SLP (C) No. 4782/2007; Judgment on 22 February, 2013) (2013) 5 SCC 226: The Hon'ble Supreme Court (SC) held that, the petitioner must show a consistent pattern of behaviour by the respondent to prove cruelty. It noted that occasional out bursts of anger or quarrels do not necessarily amount to cruelty. This special leave petition (SLP) was filed by the appellant- husband, being aggrieved by the judgment of the Andhra Pradesh High Court (HC) in Civil Miscellaneous Appeal No. 797/2003, setting aside the decree of divorce granted in his favour. The appellant is working as Assistant Registrar in the Andhra Pradesh HC. The marriage between the appellant and respondent was solemnized as per the Hindu rites and customs. Unfortunately, on the very next day disputes arose between the elders on both sides which resulted in their abusing each other and hurling chappals at each other. As a consequence, the newly married couple got separated without consummation of the marriage and started living separately. Then the respondent lodged a criminal complaint against the appellant before the Women Protection Cell alleging *inter alia* that the appellant is harassing her for more dowry. Escalated acrimony led to complaints and counter complaints. The respondent filed a petition under Section 9 of the HMA for restitution of conjugal rights before the Family Court, Secunderabad. The appellant filed a counter-claim seeking dissolution of marriage on the ground of cruelty and desertion under Section 13(1)(i-a) and (b) of the HMA. The Family Court while dismissing the petition for restitution of conjugal rights and granting decree of divorce *inter alia* held that the respondent stayed in appellant house only for a day, she admitted that she did not have any conversation with anyone and hence any amount of oral evidence adduced by her will not support her plea that she was harassed and driven out of the house; that the appellant made a demand of dowry of Rs. 10,00,000/- is false; that by filing false complaint against the appellant and his family, alleging offence under Section 498-A of the Indian Penal Code (IPC) in the Metropolitan Magistrate Court, Hyderabad and by filing complaints against the appellant (husband) in the HC where he is working, the respondent (wife) caused mental cruelty to the

appellant and that reunion was not possible. The Family Court directed the appellant to repay Rs. 80,000/- given by the respondent's father to him with interest at 8% per annum from the date of the marriage till payment. By the impugned judgment, the HC allowed the appeal carried by the respondent against the said judgment and set aside the decree of divorce granted in favour of the appellant. The Andhra Pradesh HC *inter alia* observed that the finding of the Family Court that lodging a complaint with the police against the appellant amounts to cruelty is perverse, because it is not a ground for divorce under the Hindu Marriage Act (HMA), 1955. The High Court further held that the appellant and the respondent did not live together for a long time and, therefore, the question of their treating each other with cruelty does not arise. The HC concluded that the respondent caused mental cruelty to the appellant is based on presumptions and assumptions. The SC stated that the decree of divorce must be granted. The appellant wife is getting a good salary. The respondent fought the litigation for more than 10 years. She appears to be entirely dependent on her parents and on her brother; therefore, her future must be secured by directing the appellant to give her permanent alimony. The Supreme Court directed that the appellant pay a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) to the respondent as and by way of permanent alimony. In the result, the impugned judgment has been quashed and set aside by the SC, and so the leave was granted. The marriage between the appellant K. Srinivas Rao (husband) and respondent D.A. Deepa (wife) has been dissolved by a decree of divorce. The appellant shall pay to the respondent permanent alimony in the sum of Rs. 15,00,000/- in equal part of three installments.

10. Vidhya Viswanathan v. Kartik Balakrishnan (Civil Appeal No. 9036 of 2014, arising out of SLP (C) No. 25056/2012; Judgment on 22 September, 2014): This appeal has been directed against the judgment and order passed in CMA No. 2862 of 2011 by the High Court (HC) of Judicature at Madras, whereby the HC allowed the appeal filed by the husband under Section 19 of Family Courts Act, 1986, and dissolved the marriage between the parties. The appellant, Vidhya Viswanathan (wife) got married to the respondent, Karthik Balakrishnan (husband) in Chennai following the Hindu rites. After the marriage, the couple went to London, where the respondent was working, and they lived there for some eight months. Thereafter, both of them came back to India. However, the respondent went back to England all alone, and his wife did not go there. Later on, the respondent (husband) filed a petition under Section 13(1)(ia) of the Hindu Marriage Act (HMA), 1955 for dissolution of marriage. It was pleaded by the respondent (husband) that while the appellant was with him in London, she used to insult him. It is alleged by him that at times she used to get violent and hysterical. The respondent further pleaded that even after his best efforts, the appellant did not allow him to consummate the marriage. It was further stated that about seven months after marriage the appellant fell sick, and she was taken to a Medical Specialist who diagnosed that she was suffering from tuberculosis. According to respondent, he provided the best possible treatment to his wife. After the couple came back to India, the wife stayed back in Chennai and continued her treatment. It was also alleged by the respondent that his wife used to send him e-mails which were derogatory and in bad taste. It was further alleged by the respondent that his wife refused to join his company even after his best efforts. Hence, the respondent filed a petition for divorce before the Family Court, Chennai on the ground of cruelty. The appellant (wife) denied the allegations made against her. She stated that she went with her husband to London with great expectations. She alleged that her husband and his mother did not treat her well. She did not deny having sent e-mails, but stated that she only responded to the respondent as he wanted divorce decree based on her consent. She prayed for counter-claim directing the respondent to restore the conjugal rights between the parties. The Supreme Court (SC) stated that the "cruelty has not been defined, and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough, and *per se* unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted". Thus, the SC did not find any ground to interfere with the decree of divorce passed by the HC on the ground of cruelty. However, the SC considered the fact that the appellant was doing a job before her marriage, and she has stated that at present she is not doing any work. Thus, it shall be just and proper to direct the respondent to pay to the appellant (wife) one time lump sum amount of permanent alimony. Therefore, the SC under the Section 25 of the Hindu Marriage Act (HMA), 1955 directed to the respondent to pay Rs. 40 lakhs (Rupees forty lakhs only) as one time alimony to the appellant, within a period of three months from the date of this judgment. Accordingly, the leave was granted and the decree of divorce granted by the HC was affirmed, dissolving the marriage between parties.

11. Rani Narasimha Sastry v. Rani Suneela Rani (Civil Appeal No. 8871 of 2019, arising out of SLP (C) No. 1981/2019; Judgment on 19 November, 2019) (2020) 18 SCC 247: The Hon'ble Supreme Court (SC) held that, merely because respondent has sought for maintenance or has filed a complaint against petitioner for the offence punishable under Section 498-A of Indian Penal Code (IPC), 1860, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a First Information Report (FIR) for an offence also and mere lodging of complaint or FIR cannot *ipso facto* be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. The SC stated that a marriage characterized by prolonged hostility towards both partners can be deemed as cruel, thereby qualifying for dissolution as per Section 13(1)(ia) of the relevant legislation. In this case, the appellant appeared in-person and the respondent, despite service did not appear. This Court appointed Mr. Rana Mukherjee, learned senior counsel, as *amicus curiae* on behalf of the respondent. The fact of the case is that, after marriage the appellant and respondent lived together for 18 months only and thereafter they have been living separately for more than 10 years. The appellant filed this appeal, challenging the judgment of the High Court (HC) of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 05.01.2017 in Civil Miscellaneous Appeal No. 1279/2011. Earlier the appellant filed O.P. No.109/2007 in the Court of Principal Senior Civil Judge, R.R. District, L.B. Nagar under Section 13(1)(i-a) and (iii) of Hindu Marriage Act (HMA), 1955 praying for dissolution of the marriage with the respondent. The petition was filed basically on two grounds, namely, cruelty as well as mental illness of the respondent. The SC allowed the appeal (granted leave) of the appellant and granted the decree of divorce. The SC also directed the appellant to make payment of maintenance for daughter of Rs. 2000/- per month. Appellant shall make the payment of Rs. 2000/- per month in the bank account of respondent with whom the minor daughter is living as on date. The SC also granted the liberty to the minor daughter to seek enhancement of the compensation in accordance with law by filing appropriate application before the Magistrate, if so advised.

12. Shilpa Shailesh v. Varun Shrinivasan (Civil Transfer Petition No. 1118 of 2014; Judgment on 1 May, 2023): The Supreme Court (SC) held that, the factors granting for divorce on the grounds of “irretrievable breakdown of marriage” to be examined include the period of cohabitation between the parties, period of separation, attempts made for reconciliation, nature and gravity of allegations made between the parties, and such other similar factors. The SC laid down the clear position that a marriage can be dissolved by this Court on the ground of “irretrievable breakdown” when the relationship is so strained that the marriage has succumbed to the long standing differences between the parties and it has become impossible to save such a relationship. When the Court is convinced that there is no scope for the marriage to survive and no useful purpose, emotional or practical, would be served by continuing the soured relationship, and it finds that the marriage is completely dead, then it can exercise its inherent power under Article 142 of the Constitution of India to dissolve the marriage. This Court held that, exercise of jurisdiction under Article 142 (1) is clearly permissible to do ‘complete justice’ to a ‘cause or matter’ and this Court can pass an order or decree which a Family Court, Trial Court or High Court can pass and when such power is exercised, the question or issue of lack of subject-matter jurisdiction does not arise. In this case, both the plaintiff and defendant filed for divorce under Section 13-B of Hindu Marriage Act (HMA), 1995. The parties were living separately for more than 6 years and tried seeking divorce through legal avenues. First case filed was under the Domestic Violence Act and under Section 125 of the Code of Criminal Procedure, 1973. Trial Court failed to analyze the marital grievances between the parties, so they moved to the High Court (HC) for redress. The HC failed to provide any definite solution and the parties appealed to the SC. In order to grant justice, the SC can use its discretionary power under Article 142 of the Constitution of India with due care and diligence. It has also been held that a mutual divorce can be granted when parties come to a settlement and when the marriage has no scope for reconciliation. Therefore, the SC finally granted the divorce on the grounds of “irretrievable breakdown of marriage”.

13. Prakashchandra Joshi v. Kuntal Prakashchandra Joshi (Civil Appeal 2024, arising out of SLP (C) No. 21139/2021; Judgment on 24.1.2024): The Hon'ble Supreme Court (SC) granted the leave to the petitioner. This appeal was directed against the judgment and order passed by the High Court (HC) of Judicature at Bombay in Family Court Appeal No. 162 of 2019 whereby the HC, while affirming the order of Family Court, dismissed the appeal seeking dissolution of marriage by a decree of divorce. The facts are

that, the marriage between the appellant and respondent was solemnized as per the rituals of Hindu religion after having spent 8 years in courtship. A male child was born from the wedlock of both spouses. The respondent after willfully staying at her matrimonial home, joined her parental house. After some time, when the appellant asked the respondent to resume cohabitation, she did not pay any heed and refused to join the company of appellant. Then the petition was filed by the appellant under Section 9 of the HMA for restitution of conjugal rights which remained uncontested on behalf of respondent. Desperately, the appellant withdrew the petition for restitution of conjugal rights. Since the appellant realized that there would be no hope of any restitution, he filed a divorce petition on the ground of cruelty and desertion. The respondent deserted the appellant about 13 years ago and she refused to cohabit with the appellant. The appellant and respondent had been living apart due to matrimonial discord for the last 13 years and as there are no prospects for reconciliation. The evidence substantially established the fact that the appellant had been treated with mental cruelty by his wife who had left his company despite an objection from the appellant. The conduct of respondent itself indicated that she is not willing to live with the appellant. Subsequently, the appeal has been allowed with dissolving the marriage with a decree of divorce between the parties on the ground of irretrievable breakdown in exercise of powers under Article 142 (1) of the Constitution of India.

14. Parvin Kumar Jain v. Anju Jain (Civil Appeal 2024, arising out of SLP (C) Nos. 21710-21711 of 2024; Judgment on 10.12.2024): The parties were married as per Hindu rites and ceremonies and have one son born from their wedlock. However, the marital relationship soured and the parties began living separately. Since the date of separation, the son has been residing with the respondent- wife. Subsequently, the appellant- husband filed a petition under Section 13(1)(ia) of the HMA, before the Family Court seeking divorce on the ground of cruelty. The Supreme Court (SC) granted the decree of divorce to a couple who had been living separately for two decades in exercise of SC's power under Article 142 of the Constitution of India. In compliance of this Court's order, the appellant has paid Rs. 72 lakhs as arrears of maintenance in addition to the maintenance already paid by him. For the respondent, considering the standard of living enjoyed by her during subsistence of marriage, the prolonged period of separation and appellant's financial capacity, a one-time settlement amount of Rs. 5 crores (Rupees five crores only), appears to be just, fair and reasonable amount to be paid by the appellant towards settlement of all pending claims also. The SC directed that the appellant shall pay the above amount towards permanent alimony to the respondent and his son.

15. Some Other Case Laws: In the case of Mohanlal v. Smt. Pushpaben, the Supreme Court (SC) held that, the irretrievable breakdown of marriage is a ground for divorce in India. In the case of Amardeep Singh v. Harveen Kaur, it was stated by the SC that, the six months waiting period for divorce which is provided under Section 13B(2) of the Hindu Marriage Act, 1955 by mutual consent is not mandatory. The SC in Swapna Ghose v. Sadanand Ghose case held that, the direct proof of adultery is very rare. In Suresh Babu v. Leela case, it was held by the SC that, the husband converted himself to Islam, and wishes to marry another woman, thus wife demanded divorce on the basis of religion conversion without her consent.

(4) Conclusion- Conclusively, the concept of cruelty is ever-changing and varies from case to case. The Hon'ble Supreme Court has laid down guidelines that the petitioner must show a consistent pattern of behaviour by the respondent to prove cruelty. False allegations, denial of sex, unjustified refusal to have children, and excessive demands for dowry are some of the factors the court has taken into consideration while deciding cases of divorce on the ground of cruelty under the Hindu Marriage Act, 1955.

(5) References-

Article 142 (1) of the Constitution of India.

Divorce under Hindu Marriage Act, 1955 (google.com, posted on 27 May, 2024).

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The Hindu Marriage Act, 1955.

The Indian Penal Code (IPC), 1860.

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