



A Critical Analysis of Marital Concerns and its Challenges

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Abstract

The family is the most significant social unit in society. It serves as a bridge between continuity and change. The way families are structured and run has changed dramatically. The operation of external agencies has diminished the significance of the family. The "achieved status" is prioritised over the "ascribed status" Professional organisations have taken over the welfare functions. The family has been substantially diminished by the living arrangements. The establishment of nuclear families in society as a whole has resulted in a significant divide of the joint family system. This has a significant impact on the matrimonial concerns of the present, and it is vital to restore the institution of marriage's sanctity and institution in society.

Keywords: Relationships, cruelty, matrimonial issues, legal process

Introduction

There is a grey area between the legal laws and the remedies offered for marriage problems, which is the biggest issue affecting people in society today. Restitution of Conjugal Rights, Judicial Separation, and Divorce are the only problems it addresses. When problems can be resolved amicably, relieving both parties, and allowing them to join together in a married bond with a primitive atmosphere in the relationship, the law doesn't focus on those alternative remedial sources or on other corrective measures in the due process of law.

Over the course of human civilization's long history, the phrase "Matrimonial offence" acquired a new connotation. In the patriarchal society, domestic abuse is never conceived of in the same way that it is today in legalese. The relationships between men and women were governed by unwritten rules and modern moral norms throughout the earliest stages of human civilization in Vedic India. In Vedic Hindu society, husband-and-wife relationships were known to be peaceful rather than contentious.

In pre-Islamic nations, wives' status and condition were not cheerful, and they were unable to complain about any wrongdoing. Husbands took pleasure in submitting to their spouses. The fathers of innocent female babies slaughtered them, leaving the moms powerless to intervene. The status of women has drastically changed thanks to the prophet Mohammed. Women now have access to schooling.

Cruelty Conceptualization

Since the beginning of time, society has been dominated by

the idea of cruelty. The concept became dynamic as a result of the shift in thoughts and ideas. For the first time, the idea of cruelty as a basis for judicial separation was adopted in the case of moonshee Buzloor Rehlemn v. Shumroonia Begum. The Privy Council saw the importance of cruelty in marriage and made it a rule that judges had to abide by.

Before the HMA, 1955, was enacted, the meaning of the word "cruelty" was established by Smritikars, commentators, as well as by traditions and usages. Cruelty was defined as instilling dread in a person's mind by making claims that it will lead to harm or injury and make it difficult to coexist with a spouse.

Cruelty's Definition and Significance in Marriage

It is challenging to provide an exact definition, as was noted in the section before this one. However, it would be worthwhile to examine cruelty's definitions and discuss some of them.

a) Harshness in its Original Language

Cruelty is defined as behaviour that causes harm to another person or instils fear of doing so.

Cruelty, according to the Webster dictionary, is any behaviour that puts another person's life or health in jeopardy or that instils fear or mental anguish in them.

The term "cruelty," in the opinion of Venkataramaiya, refers to any action or inaction that causes harm to a person and causes them to experience mental suffering.

When used in this context, the word "cruelty" refers to behaviour that one spouse may divulge to the other.

Cruelty as Conceived by Smritikars in Philosophy

Prior to the passage of HMA, 1955, there was no specific legislation governing matrimonial cruelty; rather, commentators and smritikars established the law. Using their observations as a guide, they established the norms and principles. Several of the guidelines are as follows:

b) As said by Manu Smriti (200 BC)

It specifies that the wife must revere her husband as God even if he lacks virtues. If a wife ignores or rejects her husband, she will be excommunicated for three months and must give up clothes and jewellery. In order to achieve salvation, a woman was not permitted to participate in any rituals or feasts alone. In order to have a better life, she should serve her spouse. While widow remarriage was common throughout the Vedic era, it was forbidden during the Smriti era, with Saptapadi only permitted once in a woman's lifetime. She won't be remarried.

In Line with Yagnavalkya

In addition to what a decent family is, Yagnavalkya added that the bride must be intellectual, young, popular with others, and properly screened for virality. In addition, he spoke about the bride's best traits while remaining silent regarding the groom. It explains the status or position of the bride in her new home and the great expectations that are placed on her. In this way, it was made quite evident that her husband tortured and mistreated women.

Perspective of Historians

Some historians supported the idea that wife beating was a significant type of matrimonial cruelty. Wife was disciplined by her husband without being charged with battery or assault. In this context, Ganley presented proposals in 1981, claiming that husbands who abuse their wives learned cultural and social norms and their place in families to justify their anger and violence.

Categories of Cruelty

Due to its dynamic nature, the term "cruelty" is exceedingly difficult to categorise. Lord Denning expressed the same thing in *Sheldon v. Sheldon*. He claimed that there are still open categories of cruelty. Each situation might be unique. Every new instance of cruelty will have a different dimension because of how people are by nature.

a) Physical Abuse

The definition of cruelty is any human action or conduct that has a negative impact on a partner. It can be either physical or mental. Physical cruelty is when one partner physically harms the other, either by injuring their health, limbs, or bodies or even by inciting fear of the same. Depending on the individual's susceptibility and sensibility, different physical acts that qualify as cruelty can be committed under different circumstances. It will be simple to assess physical cruelty in circumstances when it occurs and to understand the cases containing it. What could constitute cruelty in terms of severity and type of hurt or harm is the key question.

The two aspects mentioned—the level of cruelty and the form of physical violence—depend on a variety of elements, including the parties' social backgrounds, familial environments, educational levels, and social standing. Therefore, there is no formula for calculating the force used and the level of physical suffering.

b) Mental Malice

It is the state of mind that can be inferred from the circumstances of the situation when regarded as a whole, the court observed in *Praveen Mehta v. Inderjeet Mehta*.

Child Abuse

One form of abuse that children commit against their parents is known as child cruelty. In general, mistreating a spouse's children from a marriage would not be considered legal cruelty; nevertheless, it may be stressed that mistreating a spouse's children in response to mistreatment of another spouse could qualify as cruelty in some circumstances. His position is supported by historical evidence.

Conclusion

The Central Government, in consultation with the State Government, needs to focus on this issue and take appropriate measures to create a separate wing under the supervision of the District Collector, with the panel of intellectuals to handle the issues properly before heading to the steps of Court of Law and get the amicable solution in a win-win manner, is the suggestion the researcher would like to make based on the aforementioned facts of the research.

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