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## Cruelty - A Ground for Divorce and What It Means

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'Cruelty' is one of the common grounds in all the personal laws on which a decree for judicial separation or divorce can be obtained. It is also a ground for separate residence and maintenance for the wife. It is a valid defense for defeating a claim for restitution of conjugal rights.

'Cruelty' under section 498-A of Indian Penal Code is "Any willful 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 harassment of the woman, whether 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".

The concept of cruelty is subjective, which is different from person to person, man to man, judge to judge and society to society.

There are different acts which will amount to cruelty towards the husband or the wife.

Some acts which will amount to cruelty towards the husband by the wife are:-

- \* Humiliating the husband in the presence of family members and friends.
- \* Denying the husband access to physical relationships.
- \* Wife making scandalous allegations against the husband.
- \* Wife leaving husband's home, leaving behind a child.
- \* Wife threatening to commit suicide.
- \* Quarrelsome wife beating the husband and thereby causing mental agony and cruelty to her husband.

Some of the acts which amount to cruelty towards the wife by husband are:-

- \* Humiliating and ill-treating the wife.
- \* Drunkenness.
- \* Turning the wife out from the house.
- \* Impotency of the husband.
- \* Having a love affair after marriage.
- \* Taunting her for not having any child or giving birth to female children/ child.
- \* Demanding dowry.

To find out whether a particular act is cruel or not, one has to look upon the effect which is caused by that act. If the effect is that by a particular act harm has been caused to the body or mind of the other, the said act is an act of cruelty. Mental cruelty has to be considered in the light of the social status of parties, their education, physical and mental condition, customs, and traditions. Cruelty can be established easily if the conduct proved or admitted is bad enough and per se unlawful or illegal.

To constitute cruelty the conduct explained of should be 'grave and weighty', where it can be concluded that the petitioner, spouse cannot be reasonably expected to something more serious than 'ordinary wear and tear' of life. It is true that the legal concept of cruelty creates confusion in the minds of judges because of lack of definition of the term. Therefore, it is important to put some criteria or standard of norms to consider a conduct as cruel and to provide the remedy for divorce on the basis of it. In order to find out the element of cruelty the Court should not only weigh the defendant's conduct but at the same time must weigh it from the victim's point of view.

Physical pain caused, can amount to cruelty when it is of such nature that it would be injurious and harmful for the petitioner to live with his/her spouse.

Mental pain can amount to cruelty, when it is of such nature that no reasonable person of that class could tolerate. Any conduct which is 'grave and weighty' that would cause any type of pain on the complainant can amount to cruelty. If the frequency of a trivial act is accelerated to several times it may constitute cruelty. [AIR 2006 (October) Journal 153].

In *P. B. Biksadhpathi v. State of A.P.*, it is said that 'drinking and late coming habits of the husband coupled with beating and demanding dowry amount to cruelty'. But if a husband which merely drinks as a matter of routine and comes home late does not amount to cruelty (*Jagdish Chander v. State of Haryana*).

In *Nikunja Das v Smt. Ranju Pathak* (AIR 2006 Gau 175) the High Court of Gauhati held, the following acts of wife do not amount to cruelty towards her husband:

1. Within one month of the marriage the opposite party discloses her mind that she is not willing to live in a joint family.
2. During the visit of the husband's brother the wife insulted him and misbehaved with him.
3. The wife had invited some friends of the husband for partition of the family property.
4. The wife after having altercations with the appellant forcibly left her husband's shelter in spite of objections by the husband.

In *Sushil Kumar Sharma v. Union of India and Others*, it is said that the object of the provisions 498A is the prevention of the dowry menace. Merely because the provision is constitutional and *intra vires*, it does not give a licence to unscrupulous person to wreck personal vendetta or unleash harassment.

## DOMESTIC VIOLENCE ACT

### Kerala nurse gets justice

The New legislation, Protection of Women from Domestic Violence Act, is a blessing for harassed women. A former military nurse Valsala Chandran, who was hounded out from her husband's house, has become the first woman in the state to win a case under the new Act. Kottayam first class judicial magistrate N.K. Prasannakumari has granted her permission to occupy the palatial house built by her husband, who married another woman without divorcing her. The court has also ordered the Thiruvananthapuram city police commissioner to provide Valsala and her two sons enough protection to stay in the house.

A Dubai-based businessman, P. Chandrasekharan Pillai (57), had married Valsala (51) in the early eighties. She had to resign from her job to accompany her husband to the Gulf. The couple has two sons, aged 23 and 20. But their marriage of 17 years hit the rocks and Valsala was forced to return to Kerala in 1998. Once she returned, her husband married another woman in the Gulf without legally terminating his first marriage. Much to her shock, he did not even allow her to enter the newly-constructed house in Sasthamangalam, the heart of the capital.

"His main grouse was that I was turning more spiritual, but it was not true. Later he married a woman from Kollam," Valsala narrated. Once the options failed, she moved the family court at Kottayam for permanent alimony.- After calculating her salary (had she been in the service she would have been in the rank of a colonel now), the court had issued an attachment notice worth Rs 1 crore.

Even after obtaining the attachment notice, she was denied entry to the house forcing her to seek refuge under the new Act. "I had to really toil to make ends meet. I am happy that I finally got justice from the court of law," Valsala said. "Perhaps this is the first such verdict in the country under the new law. 'Right to secure house' is an important provision in the Act, which will help others, facing similar plight, in getting speedy justice," Valsala's counsel Ramachandran Kunnapally, said. [*The Hindustan Times*, 27/12/06]