

Cruelty and divorce

Women are subjected to violence in one way or the other and a domestic setup is no exception. Most women are still enduring cruelty even within the four walls of their own residence which is mostly considered *safe*. The bitter truth is most women never open up about such harassment they have been through due to familial or societal pressures.

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a woman, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life” – goes the definition of violence against women as mentioned in the UN special report, 1955.

Cruelty as a ground for divorce

The word cruelty has not been defined in any Matrimonial or Divorce acts. Any violent or demoralising act constituting abuse both physically and mentally on either of the spouse in a matrimonial set up amounts to cruelty. Initially cruelty served as a reason only for judicial separation and not considered as a ground for divorce under Hindu Marriage Act, 1955. But, when such cruelty is enforced on a woman ‘persistently and repeated’ it becomes a ground for divorce which was amended later in the act – it was added under section 13 (1) (ia) of the Hindu Marriage Act, 1955.

Physical cruelty and mental cruelty

Cruelty can be both physical and mental. Causing physical injury to the spouse such as injuries to the body, limbs or health or death will amount to physical cruelty. If a grave injury is caused to a person with one or two acts it will constitute physical cruelty.

Inducing a person to commit suicide, calling names, defaming the person’s reputation, making false allegations, refusal to have conjugal relationship with the spouse, having an unsound mind, threatening the social and economic wellbeing of the person will amount to mental cruelty. While it is relatively easier to prove physical cruelty against a person, mental cruelty is difficult to prove and it differs depending upon the sensitivity and the social status the person lives in.

Factors to be proved for divorce on grounds of cruelty

Every harassment does not amount to cruelty and it is different among people by the way they perceive it. If a spouse is seeking divorce on grounds of cruelty, the court will look into the case whether the person has gone through such act or not and also look into various aspects to determine whether such act would amount to cruelty. Few of them are-

- The aggrieved person/victim should prove the cruel acts they have undergone by their spouse
- When there is apprehension in the minds of the victim about their life, or real injury from the other person's conduct
- Taking the conditions of both the parties, the apprehension should be reasonable
- The aggrieved person should not have taken advantage of their position or inflicted false allegations
- The acts of cruelty should not have been condoned by the aggrieved person

Who can file a complaint and when it should be done?

Apart from Divorce, the woman aggrieved by the offence can file a complaint against the offender under section 498A or her parents or any person related to her. A public servant notified by the state government can also file a complaint of behalf of the aggrieved woman if there is no relative.

A complaint should be filed within three years of the offence under section 498-A. The act of cruelty is a continuing offence and every occurrence has a new starting point of limitation. However, if the matter comes to the court after the limitation period, it may proceed depending on the nature of the case.

Cognizable and non-compoundable offence

An offence charged under cruelty is cognizable which means a police officer doesn't require an arrest warrant to arrest the accused. The person aggrieved or anyone who is related to the victim by blood, marriage or adoption or any public servant of the state government can provide information regarding the committed offence to the officer-in-charge at the police station. Also, it is a non-bailable offence punishable up to three years of imprisonment.

Cruelty is a non-compoundable offence which means if it's committed once it cannot be taken back. The court cannot record compromise from both the parties nor drop the charges of the accused. However, if there is a genuine compromise between the husband and wife, the high court can quash the criminal complaints against the accused, with the powers it possesses. Even after awarding sentence to the accused, if both the parties are interested in peace, the court can reduce the period of the sentence that is already granted.

Can women in live-in relationship file a complaint under section 498-A, Cruelty?

No. The woman must be married or have undergone some form of matrimonial ceremony to file a complaint under section 498-A.

Only women are prone to cruelty?

Although women being victims of cruelty in most cases, sometimes, even men are subjected to cruelty by their spouses. Men can also seek divorce on grounds of cruelty by the hands of their wives.

Exception to cruelty

When the husband/wife applies for divorce petition on grounds of cruelty, and are involved in any act which amounts to **condoning cruelty or behaving in a forgiving way**, then it becomes a ground for the court to cancel petition for divorce.

During the proceeding, if either of the parties **condemns the cruel behaviour**, then the court would cancel the divorce petition.

The court tries its best efforts for **reconciliation of the couple** who seeks a divorce on grounds of cruelty. It will try in every possible way to settle disputes in between the couple before granting the decree of divorce.

Difference between Cruelty (section 498-A) and Domestic violence act, 2005

Cruelty under section 498-A is only applicable to married women and no compensation will be provided to the aggrieved woman whereas Domestic Violence Act is aimed to protect women in general (sister or mother and not just wife) and also provides remedies to the victim, such as shelter, medical facilities, protection order, compensation order, etc. Under Domestic Violence act, only when the perpetrator commits any punishable offence under the penal code or the offence comes under dowry related issues, the court can take appropriate charges against the respondent as the case may be.

A lot of domestic violence cases go unreported. It is either because the woman is not aware of the provisions of law altogether or she just wants to save the name of their family/husband, giving in to the pressures of the society. The provisions envisaged are to safeguard the victims from ill-treatments and to not let them suffer in silence.