

Sample Chapter from

Guide for Men on Divorce Cruelty Desertion Annulment

VIVEK DEVESHWAR

[Guide for men on divorce, cruelty, desertion, annulment - by Vivek Deveshwar](#)

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Note: This chapter introduces important concepts about what constitutes mental cruelty under Hindu Marriage Act. After going through it, reader is cautioned from forming an impression that filing and getting a divorce is an easy and painless process. For more information, one can read the [full book on Amazon.in, in Kindle edition only](#) which contains more than 70 judgments including many on topic of cruelty

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Ch 6. What constitutes mental cruelty under Hindu Marriage Act

What is Cruelty under 13(1)(ia) of Hindu Marriage Act?

Cruelty as defined in Hindu Marriage Act

13 Divorce. (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party ... (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

Note that in above section 13 of Hindu Marriage Act(HMA), the word cruelty has been used but there is no definition or detailed explanation of the word cruelty within HMA. So to understand what constitutes cruelty under HMA, one has to read important judgments on the subject. That is what we will attempt now by referring to extracts from important judgments on cruelty.

A brief about how grounds of cruelty can be decided is given in this judgment of Himachal Pradesh HC. Basically this judgment collects all the required clauses from Hindu Marriage Act required to give a divorce decree based on cruelty, and presents them in one place:

[Meenakshi Mehta vs Major Atul Mehta - HP HC 1999](#)

8. To succeed in a petition under Section 13 of the Act on the ground of cruelty, the party seeking dissolution of marriage on such ground, has to prove:

- (i) that there is a subsisting relationship of husband and wife between the parties;
- (ii) that the spouse against whom the relief is claimed has treated the petitioner with cruelty, mental and/or physical;
- (iii) that there is no collusion between the parties in presenting the petition;
- (iv) that the respondent has not condoned the acts and omissions constituting such cruelty; and
- (v) that the petitioner is not taking advantage of his/her own wrong or disability.

Cruelty defined in Dastane vs Dastane and the newer definition

The judgment of [Narayan Ganesh Dastane vs Sucheta Narayan Dastane - SC 1975](#) is a popular one and much cited in many other judgments about cruelty, including those of SC and HC. There is an important point in that judgment which was used as a yardstick to arrive at what kind of behaviour could be termed as cruelty.

“The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent....”

The above standard of “harmful or injurious” has now been superseded by a newer and more relaxed standard as given below. Note that many judgments may still refer to above Dastane vs Dastane judgment, but one should keep it in mind that under the the newer standard of cruelty one doesn't need one to prove about “harmful or injurious” criterion.

[Manisha Tyagi vs Deepak Kumar](#)

23. The classic example of the definition of cruelty in the pre-1976 era is given in the well known decision of this Court in the case of N.G. Dastane vs. S. Dastane (1975) 2 SCC 326, wherein it is observed as follows:

“The enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner as reasonable apprehension that it would be harmful or injurious for him to live with the respondent”. 24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce.

**Standard of proof in matrimonial cases -
preponderance of probabilities**

In any petition filed in court, one makes statements in petition, which need to be proven by way of evidence. Evidence may be documentary, photos, videos, witness' statement etc. When sufficient evidence is given in support of a statement, it is said that the stated fact is proven. How much standard or level of a proof is required is clarified in following two judgments.

Extracts from these two judgments clearly says that the standard of proof required in matrimonial cases is *preponderance of probabilities*, which is a relaxed and easier standard compared to the higher standard used in criminal trials to hold an accused guilty of a crime, which is *beyond reasonable doubt*.

Preponderance of probabilities is a standard applied mostly in civil (and family court) trials, and it simply means which of the two sets of evidences/statements by the two parties is more likely to be true. The standard is met if one of the propositions is deemed more likely to be true than not true. In numerical terms, it may be said that the standard is satisfied if there is greater than fifty percent chance that the proposition is true.

[Narayan Ganesh Dastane vs Sucheta Narayan Dastane - SC 1975](#)

"Neither section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor section 23 which governs the jurisdiction of the Court to pass a decree in any proceedings under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied" on a preponderance of "probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases."

[Shobha Rani vs Madhukar Reddi](#)

A new dimension has been given to the concept of cruelty. Explanation to Sec. 498 A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where 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 would also constitute cruelty.

We are, however, not concerned with criminal offence either under the Dowry Prohibition Act or under the Indian Penal Code. We are concerned with a matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage. Such cruelty if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal

cases. This Court has not accepted the test of proof beyond a reasonable doubt. As said by Chandrachud, J. in Dastane case (Ibid at p. 976):

“Neither section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor section 23 which governs the jurisdiction of the Court to pass a decree in any proceedings under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is “satisfied” on matters mentioned in clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word “satisfied” must mean “satisfied” on a preponderance of “probabilities” and not “satisfied beyond a reasonable doubt”. Section 23 does not alter the standard of proof in civil cases.”

Key illustrative examples of mental cruelty

This judgment of Supreme Court from year 2007 by a three judges bench is one of the most important in defining what kind of behaviour by a spouse can constitute cruelty. It is probably the only judgment which defines various concrete examples of behaviour which if proven can pass the test of cruelty. E.g. it says that *“Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.”* Given that this is a SC judgment and by a three judge bench of Supreme Court, it will have overriding character and should be used as a go to reference to ascertain whether one can apply for divorce on any grounds of cruelty mentioned in this judgment.

[Samar Ghosh vs Jaya Ghosh - SC 2007](#)

Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

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 the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) 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 could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) 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 can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent 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 live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or

knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

Making indecent, false, defamatory, scandalous allegations against spouse or relatives is mental cruelty

The judgment below adds more points to above Samar Ghosh judgment regarding cruelty, saying that *“Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse”*

[K Srinivas Rao vs D A Deepa - SC 2013](#)

11. In Samar Ghosh this Court set out illustrative cases where inference of ‘mental cruelty’ can be drawn. This list is obviously not exhaustive because each case presents it’s own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh. We have reproduced only the instances which are relevant to the present case.

...

14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

...

24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

Another similar judgment is given below:

[Surabhi Agarwal vs Sanjay Agarwal - MP HC 1999](#)

40. There is a long line of decisions holding that false, scandalous, malicious, baseless and unproved allegations made by one spouse whether in letters or other writings or plaint or a written statement or even in appeal or by any other mode amounts to cruelty. Such allegations may result in maligning either of the spouses or his/her near relations. Such allegations do cause great mental agony either to the husband or the wife as the case may be. False complaint to police or other authorities have also the same result. The Court has ample jurisdiction to take into consideration even the subsequent events. Such scandalous and false matters, even if, it is brought on record subsequent to the filing of the petition or written statement can be taken into consideration. It is the cumulative effect of all the acts and conduct which has to be taken into consideration for finding out whether the behaviour of the erring spouse falls within the ambit of cruelty as envisaged under Section 13(1)(i) of the Hindu Marriage Act. What may amount to cruelty in one case may not amount to cruelty in another case. The Court has to consider the social status, the environment, the education, the mental and physical conditions and the susceptibilities of the innocent spouse as also the custom and the manners of the parties. Cruelty may consist of a single act or conduct of the respondent or it may consist of a series of acts, none of which by itself can be said to constitute cruelty but in their totality they may amount to cruelty.

Another judgment below holds the same principle that *"false allegation against the character of any spouse made by the other spouse constitutes mental cruelty"*.

[Amarendranath Sanyal vs Krishna Sanyal - Kolkata HC 1992](#)

It is now well settled that such false allegation against the character of any spouse made by the other spouse constitutes mental cruelty and that such mental cruelty will be valid ground for passing a decree of divorce under the provision of Section 13(1) (ia) of the Hindu Marriage Act. In the case of Nimai Kumar Ghosh v. Smt. Mita

Ghosh, reported in 89 C.W.N. 904 a Division Bench of this Court has held that any imputation against the character of any spouse made either by the wife or by the husband on mere suspicion and without any foundation would amount to mental cruelty and would be a valid ground for passing a decree under the provision of Section 13(l)(ia) of the Hindu Marriage Act. A Division Bench of this Court presided over by my learned brother, A.M. Bhattacharjee, J. in the case of Harendranath Burman v. Suprova Burman, has held that unfounded or baseless allegation of adultery by one spouse against the other constitutes mental cruelty of the gravest character to warrant divorce. In the case of Smt. Santana Banerjee v. Sachindra Nath Banerjee, the wife alleged illicit sexual relation of her husband with an office colleague and also indulged in making reckless, false and motivated allegation against her husband and his close relation not only in her written statement but also in her deposition. Another Division Bench of this Court presided over by G.N. Ray, J. (as he then was) has held in that case that such allegations constitute cruelty of a very grave nature.

Cruelty if over a period of time, not just few incidents

[Gurbux Singh vs Harminder Kaur - SC 2010](#)

“12. The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty.”

What constitutes cruelty can vary from couple to couple

[Narayan Ganesh Dastane vs Sucheta Narayan Dastane - SC 1975](#)

“The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to

a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse,. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances.”(1) The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures. As said by Lord Reid in his speech in *Gollins v. Gollins* (2).

“In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people.”

Cruelty need not be intentional

Basically, this judgment lays down an important principle that one need not prove that cruel behaviour of one's spouse had intention of cruelty behind it. If your spouse is making your life hell, then it doesn't matter whether he/she has the intention to make your life hell. Just proving the fact that spouse is making your life hell should be enough for it to be deemed cruelty.

[Shobha Rani vs Madhukar Reddi - SC 1987](#)

It is the requirement of the offence of 'cruelty' defined under sec. 498A of the Indian Penal Code. Sec. 13(1)(i-a) of the Hindu Marriage Act provides that the party has after solemnization of the marriage treated the petitioner with cruelty. What do these words mean? What should be the nature of cruelty? Should it be only intentional, wilful or deliberate? Is it necessary to prove the intention in matrimonial offence? we think not. We have earlier said that cruelty may be of any kind and any variety. It may be different in different cases. It is in relation to the conduct of parties to a marriage. That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. There may be instance of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouses. In such cases, even if the act of cruelty is established, the intention to commit cannot be established. The aggrieved party may not get relief. We do not think that that was the intention with which the Parliament enacted sec. 13(1)(i-a) of the Hindu Marriage Act. The context and the set up in which the word 'cruelty' has been used in the section, seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be

inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

Another judgment below talks about the same principle *“that intention to be cruel is not an essential element of cruelty as envisaged under Section 13(1-A) of the Hindu Marriage Act.”*

[Surabhi Agarwal vs Sanjay Agarwal - MP HC 1999](#)

46. We may notice at this stage that intention to be cruel is not an essential element of cruelty as envisaged under Section 13(1-A) of the Hindu Marriage Act. If bitter waters are flowing it is not necessary to enquire from which source they spring. The intention or motive behind the cruelty has lost significance in the changed society and the social atmosphere of the present day. It is sufficient that if the cruelty is of the type which indicates that the relations between the spouses had deteriorated to such an extent due to the conduct of one or the other that it has become impossible for them to live together without mental agony. In marital matters, the feelings and attitudes of minds are material.

Making spouse unhappy is not cruelty

Making spouse unhappy is not cruelty, every conduct is not cruelty

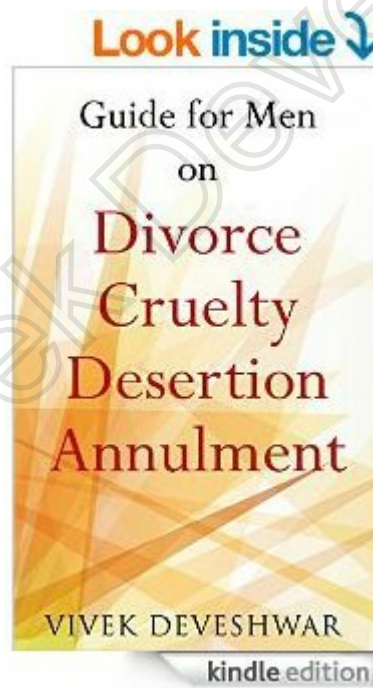
[Surabhi Agarwal vs Sanjay Agarwal - MP HC 1999](#)

41. Even though a very wide meaning has been given to cruelty, yet every act or conduct of one party which makes the other unhappy or miserable cannot amount to cruelty. This could not have been the legislative intent is obvious from the fact that the Hindu Marriage act recognises the institution of marriage as known and understood under the Hindu Law. This is clear from Section 4 of the Act which stipulates that save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act and further that any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is consistent with any of the provisions contained in this Act.

42. The overriding effect of the Act does not militate against the concept of the Hindu marriage being a sacrament. The mere fact therefore that the erring spouse is moody, whimsical, mean, stingy, selfish, boorish, irritable. Inconsiderate, etc., will not be sufficient to amount to cruelty. Similarly, merely neglect or want of affection, expression of hatred will not be a conduct constituting cruelty. The idiosyncracies of

the wife some time may not amount to cruelty, even though they make the husband unhappy. There may be occasions where the conduct of wife may lead to unpleasantness but such unpleasantness alone will not amount to cruelty and this may reasonably fall within the ambit of ordinary wear and tear of matrimonial life which is not sufficient for establishing cruelty as envisaged under the Act. However, in matrimonial life, acts and con-ducts amounting to mental cruelty abound and have some times more devastating effect than the acts of physical violence.

Note: Above chapter introduced important concepts about what constitutes mental cruelty under Hindu Marriage Act. After going through it, reader is cautioned from forming an impression that filing and getting a divorce is an easy and painless process. For more information, one can read the full book available below which contains more than 70 judgments including many on topic of cruelty:



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Also, it is suggested that reader go through this article: [Why Indian men should be very careful in filing divorce](#)