

CASE LAW DIGEST ON REGARDING DOMESTIC VIOLENCE & MATRIMONIAL AFFAIRS

Page | 1

GOLDEN WORDS OF JUSTICE SHIV NARAYAN DHINGRA OF DELHI HIGH COURT

PARTIES: Razia Begum vs State Nct Of Delhi & Ors, **CrI.MC-** 4246/09 & 4375/09, **COURT:** DELHI HIGH COURT, **Date of Order:** 4th October, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/1404656/> , <http://lobis.nic.in/dhc/> :- It has to be noticed that although Domestic Violence Act is not a penal law but it is a peculiar Act where non-compliance of the order passed under the Act has been made as an offence under Section 31 of the Act and an FIR can be registered against the person who does not comply with the order and this offence is triable by the same Magistrate who passed the interim order for protection or maintenance. In view of this provision under Section 31, it becomes incumbent and responsibility of the Magistrate to be careful in passing order and to specify as to whether there was domestic relationship between the aggrieved person and the respondent and who was the person responsible for compliance of the order.

PARTIES: VIJAY VERMA VS STATE N.C.T. OF DELHI & ANR., **CrI. M.C. No.3878/2009**, **COURT:** DELHI HIGH COURT, **Date of Order:** 13th August, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://lobis.nic.in/dhc/SND/judgement/16-08-2010/SND13082010CRLMM38782009.pdf> :-

Filing of a petition under Protection of Women from Domestic Violence Act by the petitioner taking shelter of domestic relationship and domestic violence needs to be considered so that this Act is not misused to settle property disputes. Domestic relationship is defined under the Act in Section 2(f) as under: "(f) 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family." A perusal of this provision makes it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can be either soon before filing of petition or 'at any point of time'. The problem arises with the meaning of phrase "at any point of time". Does that mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship? I consider that "at any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, "at any point of time" cannot be defined as "at any point of time in the past" whether the right to live survives or not. For example if there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separately with their own families and they establish separate household and start living with their respective families separately at different places; can it be said that wife of each of the sons can claim a right to live in the house of father-in-law because at one point of time she along with her husband had lived in the shared household. If this meaning is given to the shared household then the whole purpose of Domestic Violence Act shall stand defeated. Where a family member leaves the shared household to establish his own household, and actually establishes his own household, he cannot claim to have a right to move an application under Section 12 of Protection of Women from Domestic Violence Act on the basis of domestic relationship. Domestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband. Such son, daughter, daughter-in-law, son-in-law, if they have any right in the property say because of coparcenary or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from

Domestic Violence Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. Only a compelled or temporarily going out by aggrieved person shall fall in phrase 'at any point of time', say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc survives but the domestic relationship of living in a joint household would not survive & comes to an end.

PARTIES: VIJAY VERMA VS STATE N.C.T. OF DELHI & ANR., Crl. M.C. No.3878/2009, COURT: DELHI HIGH COURT, Date of Order: 13th August, 2010, BENCH: JUSTICE SHIV NARAYAN DHINGRA, AVAILABLE SOURCE:- <http://lobis.nic.in/dhc/SND/judgement/16-08-2010/SND13082010CRLMM38782009.pdf> :-

This meaning of domestic relationship has sense when we come to definition of domestic violence and the purpose of the Act. The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitute domestic violence. However, such acts of violence can be committed even otherwise also when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but, they cannot be covered under Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household. Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person 100 miles away on telephone or by messages etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living miles away. Such abuses are not covered under Domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence.

PARTIES: Nagesh Malik vs Payal Malik, Crl. Rev. P. No. 252/2010, 253/2010 & 338/2010, COURT: DELHI HIGH COURT, Date of Order: 29th July, 2010, BENCH: JUSTICE SHIV NARAYAN DHINGRA, AVAILABLE SOURCE:- <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there.

PARTIES: Nagesh Malik vs Payal Malik, Crl. Rev. P. No. 252/2010, 253/2010 & 338/2010, COURT: DELHI HIGH COURT, Date of Order: 29th July, 2010, BENCH: JUSTICE SHIV NARAYAN DHINGRA, AVAILABLE SOURCE:- <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- The girl and the parents of the girl knew it very well that they had selected a person for marriage with whom the girl

was going to live abroad and the matrimonial home and the shared household was going to be outside India. This act of marrying a person settled abroad is a voluntary act of the girl. If she had not intended to enjoy the fat salary which boys working abroad get and the material facilities available abroad, she could have refused to marry him and settled for a boy having moderate salary within India. After having chosen a person living abroad, putting the responsibility, after failure of marriage, on the shoulders on his parents and making them criminals in the eyes of law because matrimonial ties between the two could not last for long, does not sound either legally correct or morally correct. How can the parents of a boy who is working abroad, living abroad, an adult, free to take his own decisions, be arrayed as criminals or respondents if the marriage between him and his wife failed due to any reason whatsoever after few years of marriage. If the sin committed by such parents of boy is that they facilitated the marriage, then this sin is equally committed by parents of the girl. If such marriage fails then parents of both bride and groom would have to share equal responsibility. The responsibility of parents of the groom cannot be more. Shelter of Indian culture and joint family cannot be taken to book only relatives of boy. A woman's shared household in India in such cases is also her parents house where she lived before marriage and not her in-laws house where she did not live after marriage.

PARTIES: Nagesh Malik vs Payal Malik, **Crl. Rev. P. No.** 252/2010, 253/2010 & 338/2010, **COURT:** DELHI HIGH COURT, **Date of Order:** 29th July, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- It is important to consider as to what "family" is and what "joint family" is. As per Blacks Law Dictionary (VI Edition) "family" means a collective body of persons who live in one house under one head or management. Dictionary states that the meaning of word "family" necessarily depends on field of law in which word is used, but this is the most common meaning. "Family" also means a group of blood relatives and all the relations who descend from a common ancestor or who spring from a common root. However, for the purpose of domestic violence act where the object is to protect a woman from domestic violence, "family" has to be defined as a collective body of persons who live in one house under one head or management. In Chambers Dictionary (1994-95) again the "family" is defined as all those who live in one house i.e. parents, children servants; parents and their children. In Shorter Oxford English Dictionary (1993 ed.) "family" is defined as a group of persons living in one household including parents and their children, boarders, servants and such a group is a organizational unit of society.

PARTIES: Nagesh Malik vs Payal Malik, **Crl. Rev. P. No.** 252/2010, 253/2010 & 338/2010, **COURT:** DELHI HIGH COURT, **Date of Order:** 29th July, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- It is apparent that in order to make a person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act. Domestic relationship is defined under Section 2 (f) of the Act and is as under: "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

PARTIES: Nagesh Malik vs Payal Malik, **Crl. Rev. P. No.** 252/2010, 253/2010 & 338/2010, **COURT:** DELHI HIGH COURT, **Date of Order:** 29th July, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there.

PARTIES: Nagesh Malik vs Payal Malik, **Crl. Rev. P. No.** 252/2010, 253/2010 & 338/2010, **COURT:** DELHI HIGH COURT, **Date of Order:** 29th July, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- Under no circumstances it can be said that brother of husband, who was a major and independent, living separately from this husband and wife, had any kind of domestic relationship or moral or legal responsibility/obligations towards his brothers wife. He had not lived in domestic relationship with Payal Malik at any point of time. Merely because a person is brother of the husband he cannot be arrayed as a respondent, nor does an MM gets authority over each and every relative of the husband, without going into the fact whether a domestic relationship or shared household was there between the aggrieved person and the respondent.

Page | 4

PARTIES: Nagesh Malik vs Payal Malik, **Crl. Rev. P. No.** 252/2010, 253/2010 & 338/2010, **COURT:** DELHI HIGH COURT, **Date of Order:** 29th July, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- The purpose and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as per law. She has a right to claim custody of children as per law but denial of these rights do not amount to domestic violence. Domestic Violence is not perceived in this manner.

PARTIES: Nagesh Malik vs Payal Malik, **Crl. Rev. P. No.** 252/2010, 253/2010 & 338/2010, **COURT:** DELHI HIGH COURT, **Date of Order:** 29th July, 2010, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/234540/> , <http://lobis.nic.in/dhc/> :- There was no justification for directing brother of the husband to pay this amount. Once a son grows and he starts earning, marries, makes his separate home, and sires children the burden of his wife cannot be put on the shoulders of his father or brother on an estrangement between husband and wife. This burden has to be borne by the husband alone and not by the parents or brothers or sister of the husband, unless and until the husband had been contributing to the joint family as a member of HUF and has a right of deriving benefits from the joint family. If the husband had not been contributing or deriving benefits from the joint family, had not been member of the joint family and the parents had been treated like any other relative, how can the parents be burdened with the responsibility of his wife.

PARTIES: SMT NEERA SINGH VS STATE OF DELHI, DELHI HC, **COURT:** DELHI HIGH COURT, **Date of Order:** on 23 February, 2007, **BENCH:** JUSTICE SHIV NARAYAN DHINGRA, **AVAILABLE SOURCE:-** <http://indiankanoon.org/doc/1061764/> , <http://lobis.nic.in/dhc/> :- Had given a landmark judgment that deals with the issue of Dowry allegations: "Now-a-days, exorbitant claims are made about the amount spent on marriage and other ceremonies and on dowry and gifts. In some cases claim is made of spending crores of rupees on dowry without disclosing the source of income and how funds flowed. I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rules under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with. If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in." The Metropolitan Magistrates should take cognizance of the offence under the Act in respect of the offence of giving dowry whenever allegations are made that dowry was given as a consideration of marriage, after demand. Courts should also insist upon compliance with the rules framed under the Act and if rules are not complied with, an adverse inference should be drawn. If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that

source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in. I consider that the kinds of vague allegations as made in the complaint by the petitioner against every member of the family of husband cannot be accepted by any court at their face value and the allegations have to be scrutinized carefully by the Court before framing charge. A perusal of the complaint of the petitioner would show that she made all kinds of allegations against her husband regarding beating, that her husband was having illicit relationship with 35 girls; he forced her to write suicide note, abused her, taunted her, threatened and told her that he was getting another bride of more richer family while she was in Rewari with her husband and she made telephone call to her parents who came to Rewari and took her to parental home. She had also given phone to one of her friends Jigyasa. A perusal of the statement of Jigyasa would show that she told Jigyasa that it was her husband who was torturing her and behaving with cruelty. However, in her complaint, she made vague and omnibus allegations against every other family members. The statement made by her and other witnesses have been scrutinized by me, except vague allegations and allegations of taunting, there are no allegations of perpetuating cruelty on her by any of the four respondents in order to compel her to bring more dowry or any particular items.

ABOUT JUSTICE SHIV NARAYAN DHINGRA



Born on March 2, 1949 at Delhi. Did Higher Secondary from Delhi, Diploma in Mechanical Engineering from Pusa Polytechnic, New Delhi and B.Sc. from Delhi University. Did LL.B. from Delhi University, Law Centre-II, LL.M. from Delhi University Law Centre-I and Company Secretary from Institute of Company Secretaries. Joined as an Advocate in February, 1976. Practiced in lower Courts and Delhi High Court in Company Matters, Criminal Matters, Labour And Civil Matters. Edited Matrimonial Law Reporter from 1977 to 1987. Became Advocate on record in 1984. Worked as part time Lecturer in Law Centre II, Delhi University from 1985 to 1987. Joined as Additional District & Sessions Judge on January 6, 1988. Worked in Matrimonial Court, Designated TADA Court, Special 1984 Riots Court, Appellate Court of MCD, Rent Control Tribunal and Special Court under POTA. Worked as District & Sessions Judge, Delhi from February 24, 2005 to February 27, 2006. Elevated to the Bench of Delhi High Court on 28th February, 2006.

SUPREME COURT ON MATRIMONIAL AFFAIRS

IN DR. BUDDHI KOTA SUBBARAO V. K. PARASARAN & ORS. AIR 1996 SC 2687, Court has observed as under:- "No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."

IN TERI OAT ESTATES (P) LTD. V. UT. CHANDIGARH (2004) 2 SCC 130, Court held as under: "36..... sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. ... despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."

Page | 6

IN DR. N.G. DASTANE V. MRS. S. DASTANE AIR 1975 SC 1534, **Supreme** Court observed that normally the burden lies on the petitioner to establish his or her plea that the respondent had meted out cruelty to the petitioner and that the standard of proof required in matrimonial cases under the Act is not to establish the charge of cruelty beyond reasonable doubt but merely one of weighing the various probabilities to find out whether the preponderance is in favour of the existence of the said fact alleged. As to what is the nature of cruelty that is necessary to be substantiated also, it has been pointed out that unlike the requirement under English law which must be of such a character as to cause danger to life, limb or health so as to give rise to a reasonable apprehension of such a danger, the courts under the Act in question has to only see whether the petitioner proved that the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in mind that it will be harmful or injurious to live together, keeping into consideration the resultant possibilities of harm or injury to health, reputation, the working-career or the like.

IN V. BHAGAT V. D. BHAGAT (MRS.) AIR 1994 SC 710, 1994 SCC (1) 337, That was a case wherein the husband filed a petition against the wife for divorce on the ground of adultery. In the written statement filed by the wife in the said proceedings, she alleged that the husband was "suffering from mental hallucination", that his was a "morbid mind for which he needs expert psychiatric treatment", and that he was "suffering from paranoid disorder" etc., and that during cross-examination several questions were put to him that the petitioner and several members of his family including his grandfather were lunatics and that the streak of insanity was running in the entire family. It is in the said context this Court though held the allegations leveled against the wife were not proved the counter allegations made by the wife against the husband certainly constituted mental cruelty of such a nature that the husband cannot reasonably be asked to live with the wife thereafter. The husband, it was also held, would be justified to say that it is not possible for him to live with the wife. In rejecting the stand of the wife that she wants to live with her husband, this Court observed that she was deliberately feigning a posture, wholly unnatural and beyond comprehension of a reasonable person and held that in such circumstances the obvious conclusion has to be that she has resolved to live in agony only to make life a miserable hell for the husband, as well.

IN CHANDERKALA TRIVEDI V. DR S.P. TRIVEDI (1993) 4 SCC 232, the husband sued for divorce on the ground of cruelty by wife. The wife filed a written statement wherein she attributed adultery to the husband. In reply thereto the husband put forward another allegation against the wife that she was having undesirable association with young boys. Considering the mutual allegations, R.M. Sahai, J. speaking for Division Bench, observed: "Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband and wife as have, been made in this case then it is obvious that the marriage of the two cannot in any circumstance be continued any further. The marriage appears to be practically dead as from cruelty alleged by the husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu wife."

DEB NARAYAN HALDER VS SMT. ANUSHREE HALDER : AIR 2003 SC 3174, Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveals the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to

the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case.

It is relevant to notice the provisions of Section 32 of the THE INDIAN DIVORCE ACT, 1869 which reads as follows : "When either the husband or wife was without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court of the High Court for restitution of conjugal rights and the Court on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

Page | 7

It is relevant to notice the provisions of Section 36 of the THE INDIAN DIVORCE ACT, 1869 Alimony pendente lite.-- In any suit under this Act, whether it be instituted by a husband of a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit. Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just: Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

NARAYAN GANESH DASTANE VS SUCHETA NARAYAN DASTANE AIR 1975 SC 1534:- The burden of proof in a matrimonial petition-must lie on the petitioner because ordinarily the burden lies on the party which affirms a fact, not on the party which denied it. This principle accords with commonsense, as it is much easier to prove a positive than a negative. The petitioner must, therefore, prove that the respondents had treated him with cruelty within; the meaning of r. 10(1)(b) of the Act..... The normal rule which governs civil proceedings is that a fact is said to be established if it is proved by preponderance of probabilities. Under s. 3 of the Evidence Act a fact is said to be proved when the court either believes it to exist or if considers its existence so probable that a prudent man ought, in the circumstances, to act upon the supposition that it exists. The first step in this process to fix the probabilities. the second to weigh them. The impossible is weeded out in the first stage, the improbable in the second. Within the wide range, of probabilities the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like the status of parties demand closer scrutiny than those like the loan on a promissory note. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving enquiries into issues of quasi-criminal nature. The enquiry, therefore, has to be whether the conduct charged 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 apprehension of the petitioner that it will be harmful or injurious to live with the other party has to be reasonable. It is, however, wrong to import the concept of a reasonable man as known to the law of negligence for judging matrimonial relations. 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 on 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. The Court has to deal not with an ideal husband and an ideal wife but with the particular man and woman before it. Acts like the tearing of the Mangal Sutra, locking out the husband when he is due to arrive from the office, rubbing of chilly powder on the tongue of an infant child, beating a child mercilessly while in high fever and switching on the light at night and sitting by the bedside of the husband merely to nag him are acts which tend to destroy the legitimate ends and objects of matrimony. The conduct of wife amounts to cruelty..... The threat that she would put an end to her own life or that she will set the house on fire, the threat that she will make the husband lose his job and have the matter published in newspapers and the persistent abuses and insults hurled at the husband and his parents are all of so grave an order as to 'imperil the appellant's sense of personal safety, mental happiness, job satisfaction and reputation.

SUMAN KAPUR VS SUDHIR KAPUR 2008(14) SCALE 404 Now, it is well-settled that the expression 'cruelty' includes both (i) physical cruelty; and (ii) mental cruelty. The parties in this connection, invited our attention to English as well as Indian authorities. We will refer to some of them.

MENTAL CRUELTY :- The concept of cruelty has been dealt with in Halsbury's Laws of England [Vol.13, 4th Edition Para 1269] as under; "The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse".

IN SIRAJMOHMEDKHAN JANMOHAMADKHAN V. HAIZUNNISA YASINKHAN & ANR., (1981) 4 SCC 250, Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. It was further stated that to establish legal cruelty, it is not necessary that physical violence should be used. Continuous cessation of marital intercourse or total indifference on the part of the husband towards marital obligations would lead to legal cruelty.

IN SHOBHA RANI V. MADHUKAR REDDI, (1988) 1 SCC 105,- The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the other spouse. Whether it 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 the conduct and its effect on the complaining spouse. There may, however, 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. 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. Mens rea is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

CHETAN DASS V. KAMLA DEVI, (2001) 4 SCC 250, stated; "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case".

IN SAMAR GHOSH V. JAYA GHOSH, (2007) 4 SCC 511, SUPREME Court held; 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.

"No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior 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.

Page | 9

(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 behavior 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 behavior 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".

IN SAVITRI PANDEY V. PREM CHANDRA PANDEY REPORTED IN (2002) 2 SCC 73, the Court stated as under: "Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

Page | 10

GANANATH PATTHAIK V. STATE OF ORISSA REPORTED IN (2002) 2 SCC 619 observed as under: "The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case."

IN A. JAYACHANDRA V. ANEEL KAUR REPORTED IN (2005) 2 SCC 22, the Court observed as under: "The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

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 background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background 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 had deteriorated to such 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 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.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant

should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

VINITA SAXENA V. PANKAJ PANDIT REPORTED IN (2006) 3 SCC 778 aptly observed as under: "As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer."

Page | 11

IN THE CASE OF SHOBHA RANI V. MADHUKAR REDDI REPORTED IN (1988) 1 SCC 105, "5. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty."

NAVEEN KOHLI V. NEELU KOHLI REPORTED IN (2006) 4 SCC 558 " We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

SUPREME COURT: PREETI GUPTA & ANOTHER VS STATE OF JHARKHAND & ANOTHER CRIMINAL APPEAL NO. 1512 OF 2010 (AUGUST 13, 2010) DALVEER BHANDARI, J. & K.S. RADHAKRISHNAN, J. We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.They have never visited the place where the alleged incident had taken place. They had never lived with respondent no.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.....It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.....The allegations of the complaint are required to be scrutinized with great care and circumspection.....It is also a

matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

In Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238, 250-51, Explaining what is the difference between material facts and particulars, Supreme court has observed': "The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words 'material facts' will be lost....."

Page | 12

SUSHIL KUMAR SHARMA VS UNION OF INDIA & ORS. ARIJIT PASAYAT J & H.K. SEMA J AIR 2005 SC 3100 "Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent."

G.V.N.KAMESWARA RAO V. G.JABILLI, REPORTED IN (2002)2 SCC 296, AIR 2002 SC 576, had clearly held that filing of the false police complaint results in loss of reputation and standing in society at the instance of one's spouse, and that amount to mental cruelty and the traumatic experience which the husband had to undergo on account of the allegations which could not be proved certainly results in mental cruelty to the husband by the wife.

The Indian Divorce Act, 1869 was enacted to amend the law relating to persons professing the Christian religion and confer upon certain courts the jurisdiction on matrimonial matters. Even prior to the enactment of the Indian Divorce Act, 1869, the High Courts in India exercised jurisdiction in matrimonial matters under the enabling provisions of the High Courts Act and the provisions of the Letters Patent establishing the High Court. Under the Act, jurisdiction was concurrently conferred on the High Court as well as the District Court in matrimonial matters. The Act also contained certain provisions which restricted the grounds on which a Christian woman could seek dissolution of marriage. Some of the High Courts struck down these restrictive provisions as discriminative and hit by Article 14 of the Constitution of India. The Law Commission of India in its 164th Report inter alia recommended that Parliament may enact a comprehensive law governing marriage and divorce and other allied aspects applicable to Christians in India. The Commission also highlighted the difficulties faced and inadequacies in the Indian Divorce Act as brought to light by several judgments of the High Courts. Since there was no consensus amongst the members of the Christian community on the proposal for unified law on marriage and divorce, Parliament thought it fit to make certain amendments in the Indian Divorce Act to remove the glaring features of discrimination brought to light. The Indian Divorce (Amendment) Act, 2001, (Act No. 51 of 2001) was enacted by Parliament for this purpose and brought into force from 3rd October, 2001.

The amending Act of 2001 has changed the title of the Act from 'Indian Divorce Act' to 'Divorce Act'. Prior to the coming into force of this amending Act, the High Court and the District Court had concurrent

jurisdiction to entertain petitions for dissolution of marriage under Section 10 on the grounds specified therein, for pronouncing a decree of nullity under Section 18 on the grounds specified in Section 19, for making a decree for judicial separation under Section 23, for ordering permanent alimony after making the decree absolute declaring a marriage to be dissolved under Section 37, to enquire into antenuptial and post-nuptial settlement under Section 40, to make orders to the custody of children after a decree for dissolution or nullity under Section 43, to make orders with regard to the custody, maintenance and education of minor children under Section 44 after a decree of dissolution or nullity of marriage has been passed. Section 4 of the amended Act declares that the jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro and in all other causes, suits and matrimonial matters can be exercised by such Courts and by the District Courts subject to the provisions of the Act. Section 6 of the Act provides that all suits and proceedings in cases and matters matrimonial when the Act came into operation would have to be dealt with and decided by the High Court, so far as may be, as if they had been originally instituted under this Act. Section 8 gave the High Court extra ordinary jurisdiction in appropriate cases to remove and try and determine originally any suit or proceeding instituted under the Act in the District Court within the limits of the jurisdiction of the High Court. It also had the power to transfer such suits or proceedings from one District Court to another. Section 9 empowers the High Court upon a reference to decide a question of law.

As a result of the coming into force of the Family Courts Act, 1984, the jurisdiction of the District Court to entertain the matrimonial causes has been taken away. Section 20 of the Family Court Act, 1984 provides that the provisions of the said Act would have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the said Act. Section 7 of the Family Courts Act vests exclusive jurisdiction in the Family Court, wherever it has been established, and declares it to be a District Court for the purpose of exercising matrimonial jurisdiction. The jurisdiction of the Family Court is delineated in Section 7 of the Family Court Act, 1984 in respect of suits and proceedings of the type specified in Clauses (a) to (g) of the Explanation to Section 7(1).

Section 8 of the Family Courts Act, 1984 provides that where a Family Court has been established in any area, no District Court or any subordinate civil court in relation to such area shall have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to Section 7(1). Sub-section (c) of Section 8 provides that every suit or proceeding of the nature referred to in the Explanation to Section 7(1), which is pending before the District Court or Courts subordinate thereto, shall stand transferred to the Family Court on the day on which it is established.

The combined effect of the Act No. 51 of 2001 read with the provisions of Ss. 20, 7 and 8 of the Family Courts Act, 1984, is that, in the areas in which Family Courts have been established, the original jurisdiction in matters arising under the Divorce Act, 2001, would vest exclusively with the Family Courts. In areas where no Family Courts have been established, such jurisdiction would lie with the District Court.

In Shobha Rani v. Madhukar Reddi, [1988 (1)S.C.C. 105], it is held that the word cruelty has not been defined. Indeed it could not have been defined. 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 which is adversely affecting the other.

The Apex Court in the case of **S. Hanumantha Rao v. S. Ramani, AIR 1999 SC 1318** laid down what would constitute cruelty. The Apex Court again in the case of **G. V. N. Kameswara Rao v. G. Jabilli, 2002 AIR SCW 162** held that to constitute cruelty it need not be of such nature as causing reasonable apprehension that it would be harmful to the party to live with other party. The Apex Court held that having regard to the sanctity and importance of marriage in a community life, the Court should consider whether the conduct of the counter petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the Court can find that there is a cruelty of the counter petitioner.

The Apex Court in another judgment in Chetan Das v. Kamala Devi, AIR 2001 SC 1709 has taken a view that to constitute cruelty there must be evidence in support of the averments made in the petition.

Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by Statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well knit, healthy and not a disturbed and porous society. Institution of marriage occupies an important place and role to play in the society, in general.

Page | 14

G.V.N.Kameswara Rao v. G.Jabilli (2002) 2 SCC 296 observed: "12. The Court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the Court should consider whether the conduct of the counter-petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the Court can find that there is cruelty on the part of the counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances."

OTHER HIGH COURTS ON MATRIMONIAL AFFAIRS

SMT. JAYANTI MUNJET VS ASIT KUMAR MOHANTY AIR 1988 ORI 195 Under Section 36 wife alone has the right to file an application. Principle of natural justice has been reflected in the section itself which requires the copy of the application to be served on the husband. Trial Court is required to consider the truth of the statements made in the application and thereafter, on its findings shall make such order on the husband as it may deem just for payment of alimony to the wife, pending disposal of the suit. In the proviso clear restriction has been made that such pendente lite alimony shall not exceed one-fifth of the husband's average net income for the three years next preceding the date of the order. Thus, the Court considering such application is to determine the net income for three years and on the facts and circumstances of each case shall determine the quantum of alimony which shall not exceed one-fifth of the average thereof.

D. THANKARAJ VS SMT. M.C. PUSHPA ROSE AIR 1986 KER 23 Grant of alimony pendente lite is within the judicial discretion of the matrimonial Court. Question of ordering such payment depends on consideration of all the relevant circumstances including the status and mode of life of the parties, their means and the surrounding circumstances. Where it is shown that the wife has no means at all or that her income is not sufficient for her sustenance, it is open to the Court to award alimony pendente lite. Ordinarily, where it is shown that the wife has no means of her own or that her means are inadequate to meet her needs and where the husband has the capacity and ability to provide maintenance, the matrimonial Court will pass. an order in favour of the wife, In fixing the quantum of maintenance, the Court will have to give due weight to all the facts and circumstances, the means of both parties or the lack of it, past life of the parties and their families their mode of living and the needs of the wife..... What Section 36 of the Act contemplates is payment of alimony to the wife. Naturally, this must depend on the needs of the wife, the extent to which she is able to meet the needs out of her own resources and the means of the husband. Law, however, prescribes a ceiling for the quantum. Ceiling is one-fifth of the husband's average net income for three years next preceding the date of the order. Naturally, an assessment of net income is necessary for determining the quantum of alimony. But it is more relevant in seeing that the quantum does not exceed the ceiling..... "Net income" would normally mean total income derived less the cost of collection and other compulsory payments such as Income-tax etc. It does not mean net income after giving deduction for all the expenses incurred by the husband. Expenses which are to be deducted must have some relation or connection with the source of income. In the case of a salaried employee, he may be legally compelled to pay tax or contribution to Provident Fund etc. In such a case, there is a legal obligation to make this payment in relation to the income he derives from the job which secures him the salary. Naturally, deductions have to be given for these outgoing in assessing the net income. At the same time, it is open to a salaried employee to contribute more to the Provident Fund than what he is required to do. That is purely a matter of option for him. He may contribute more by way of saving. He might have borrowed moneys for his own purposes and may have to make repayments in

lump or instalments. It is only for the purpose of easy collection that arrangements are made for deduction at the source. They cannot be equated with compulsory deductions like Income-tax or contribution to compulsory Provident Fund. They must be treated as voluntary payments made in discharge of voluntary loans. They cannot be treated as deductions over which he has no control of any kind. It is only such deductions which can be taken note of. Otherwise, it would be easy for any husband to opt to allow more deductions than warranted and thereby defeat the claim of his wife. In these circumstances, it is clear that deduction can be made only in regard to compulsory outgoings such as Income-tax or compulsory Provident Fund. Optional deductions cannot be taken into consideration in assessing the net income.

IN SUSHAMA V. SURESH AIR 1982 DELHI 176, a case arising under the provisions of the Hindu Marriage Act, it was held that in arriving at the disposable income, optional deductions may be taken into consideration if they were made bona fide. The Court also observed that there is no hard and fast rule that contributions to Provident Fund and payment of LIC premia should not be taken into consideration. LIC premium being paid before the dispute started, can be taken into consideration unless lack of bona fides is alleged.

IN PREETI V. RAVIND KR. SHARMA AIR 1979 ALL 29, also a case arising under the provisions of the Hindu Marriage Act, it was held that necessary expenses connected with the job or business which have to be made so that the job or business may continue, have to be given deduction to. If a party has to pay Insurance, Provident Fund or Income-tax, they are necessary expenses which must be deducted.

M.R.G.L.J. VAILSHER VS SMT. RAMOLA VAILSHERY AND OTHERS AIR 1997 KANT 341, ILR 1998 KAR 1874, It is not necessary to prove adultery by direct evidence. Such evidence cannot be given credit even if produced. Adultery has to be inferred from circumstances which exclude any presumption of innocence in favour of the person against whom it is alleged. In matrimonial proceedings the Court has to be vigilant that the burden of proof is satisfactorily established and properly discharged. Adultery, from its nature, is a secret act. The Court must have due regard to the social conditions and the manner in which the parties are accustomed to live. Adultery can generally be proved by presumptive proof passed upon circumstantial evidence such as non-access and the birth of the children. When a man and a woman otherwise not related are found to be living together under suspicious circumstances secretly. It cannot be said that they had met to say prayers and that they were not guilty of matrimonial offence..... The respondent wife in the instant case had alleged that the appellant husband had solemnized his marriage with respondent No. 2 and was also guilty of cruelty. Cruelty though not defined in the Act, means conduct of such type under which the petitioner cannot reasonably be expected to live with the respondent. It consists of acts which are dangerous to life, limb or health. It can cause injury to person or to health. Cruelty for the purpose of matrimonial relationship means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily suffering or to have injured. Cruelty may be physical, mental or legal. In matrimonial laws it may be of infinite variety. It can be subtle or brutal. It may be by words, gestures or by mere silence, violence or non-violence. It is understood as a behaviour by which pain is caused to another. Wilful and unjustifiable interference by one spouse in sphere of life of another may, in special circumstances, amount to cruelty for the purpose or determination of a matrimonial dispute..... While appreciating the evidence regarding cruelty, the whole conduct of the parties is required to be taken into account. No hard and fast standard of proof can be prescribed for proof of cruelty. Certain act or behaviour may be cruel to a particular person and the same may not be so so far as the other is concerned. In cases of physical cruelty it is expected that the petitioner proves the attributed act of the respondent by medical evidence. But, for mental or legal cruelty, parties may adduce evidence leading to the inference that he or she was subjected to a treatment which amounted to cruelty.....

DIVISION BENCH OF MYSORE COURT IN THE CASE OF THIMMAPPA V. THIMMAPPA (1972 (1) MYS LJ 251) : (AIR 1972 MYS 234) in which a Division Bench had held that where the husband filed the petition for divorce 4 to 5 years after he came to know that his wife had committed adultery and had not explained the reason for the inordinate delay in filing the petition, a decree for divorce could be refused on the ground of delay alone. That was however distinguished, and actually it was so distinguished in the later decision on the ground that desertion and separation stood on a different footing giving rise to different inferences in regard to the desirability of reconciliation even after a long separation, greater being the desire to come back to live as spouses.

In Yashoda Bai v. K.B. Katavakar, AIR 1982 Karnataka 368, it has been held by a Division Bench of the Karnataka High Court that mere domestic quarrels on account of the presence of the mother-in-law in the family would not constitute mental cruelty and that cruelty must constitute threat of danger to the person or life of the person on whom cruelty is practised and if that element of threat to the life or person is absent, it cannot be the cruelty, much less mental cruelty.

In the case of Rajinder Bhardwaj v. Mrs. Anita, AIR 1993 Delhi 135, it was held that filing of false and scandalous cases by one spouse against other amounts to cruelty.

 Page | 16

In the case of Rama Kant v. Mohinder Laxmidas, AIR 1996 Pb. and Hy. 98: , it was held by Hon'ble High Court that behaviour of wife in matrimonial home not cordial, she was disrespectful towards her in-laws; her threats and attempt to commit suicide, her act of lodging false complaints against husband are incidents of her cruel behaviour towards husband making it impossible for him to live peacefully with her in conjugal home. It was held that grant of divorce on ground of cruelty on part of wife was not illegal.

Manjit Kaur vs Avtar Singh 2000(2) Marriage & Divorce Judicial Reports 351, (Punjab and Haryana HC) 2002(1) Civil Court Cases 268 (P&H) It has been held by repeatedly by the Hon'ble Supreme Court as well as by this Hon'ble High Court that unfounded allegations of adultery consists of cruelty. The marriage is a trust between the male and female partner and if irresponsible allegations are levelled by the spouse against each other, it will cause mental cruelty of the worst kind.

Avinash Eknath Nikalje vs Sou. Leela Avinash Nikalje AIR 2003 Bom 244 (DB) In a case of matrimonial dispute claiming cruelty of wife on husband court observed as follows:- "The standard of proof required is a preponderance of probability and not "beyond all reasonable doubts" as in the criminal proceedings. The first step in this process is to fix the probabilities. The second is to weigh them, though the two may vary often mix up and intermingle. The impossible is, therefore, eliminated at the earliest and Improbable at the next. In this case, wife lodged false report against her husband. He was required to attend police station with his mother and a guest which was at his residence, causing severe harassment. As already found hereinabove, the respondent/ wife attempted to commit suicide by pouring kerosene on her person and tried to strangle herself. All these instances are bound to cause mental agony to the husband." Had it been a bona fide error, we would have overlooked this lapse granting some latitude in favour of the respondent/ wife, but finding no attempt on her part to correct the record of the Court in spite of bringing this fact to her notice leads us to draw an inference that it was a deliberate act on her part to play with the record of the Court, while considering the conduct of the respondent/wife in the above backdrop, we cannot overlook important observations of the Apex Court made in the case of S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 SC 853 reiterated in the case of Chandra Shashi v. Anil Kumar Verma, 1995 SCC (1) 421 . In the said judgment it is observed that: "The stream of administration of justice has to remain unpolluted so that purity of Court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of Court's environment, so also to enable it to administer justice fairly and to the satisfaction of all concerned. Anyone who takes recourse to fraud, deflects the course of judicial proceedings, or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of Justice."

Shivakumar vs Premavathi AIR 2004 Kant 146, 2004 (1) KarLJ 194:- It is a well-established general principle that if any imputation against the character of any spouse is alleged without any foundation such reckless and baseless allegations of illicit relationship amounts to mental cruelty and will constitute a valid and sufficient justification for the spouse to stay away from the other.

D.N. Sharma vs Usha Sharma AIR 2004 Delhi 198 Held "In view of the aforesaid, in my opinion, writing letters to the authorities making slanderous allegations against the appellant, repeating the same not only in her own statement but also suggesting them to the appellant during the course of his cross-examination lends credence to the fact that the wife was persisting them to humiliate and wounding the feelings of the husband which have made impossible for him to live in the matrimonial home with the wife. These allegations are of such quality, magnitude and consequence as to cause mental pain, agony

and suffering amounting to the reformulated concept of cruelty in matrimonial life causing profound and lasting disruption driving the husband to feel deeply hurt and reasonably apprehend that it was impossible for him to live with the respondent.”

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Page | 17

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