CASE NO.:
Appeal (civil) 151 of 2004

PETITIONER:
Samar Ghosh

RESPONDENT:
Jaya Ghosh

DATE OF JUDGMENT: 26/03/2007

BENCH:
B.N. Agrawal, P.P. Naolekar & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

Dalveer Bhandari, J.

This is yet another unfortunate matrimonial dispute which has shattered the twenty two year old matrimonial bond between the parties. The appellant and the respondent are senior officials of the Indian Administrative Service, for short 'IAS'. The appellant and the respondent were married on 13.12.1984 at Calcutta under the Special Marriage Act, 1954. The respondent was a divorcee and had a female child from her first marriage. The custody of the said child was given to her by the District Court of Patna where the respondent had obtained a decree of divorce against her first husband, Debashish Gupta, who was also an I.A.S. officer.

The appellant and the respondent knew each other since 1983. The respondent, when she was serving as the Deputy Secretary in the Department of Finance, Government of West Bengal, used to meet the appellant between November 1983 and June 1984. They cultivated close friendship which later developed into courtship.

The respondent's first husband, Debashish Gupta filed a belated appeal against the decree of divorce obtained by her from the District Court of Patna. Therefore, during the pendency of the appeal, she literally persuaded the appellant to agree to the marriage immediately so that the appeal of Debashish Gupta may become infructuous. The marriage between the parties was solemnized on 13.12.1984. According to the appellant, soon after the marriage, the respondent asked the appellant not to interfere with her career. She had also unilaterally declared her decision not to give birth to a child for two years and the appellant should not be inquisitive about her child and he should try to keep himself aloof from her as far as possible. According to the appellant, there was imposition of rationing in emotions in the arena of love, affection, future planning and normal human relations though he tried hard to reconcile himself to the situation created by the respondent.

The appellant asserted that the apathy of the respondent and her inhuman conduct towards him became apparent in no time. In February 1985, the appellant suffered prolonged illness. The respondent's brother was working in Bareilly. Her parents along with her daughter went there for sojourn. The appellant could

not go because of high temperature and indifferent health. She left him and went to Bareilly even when there was no one to look after him during his illness. On her return, the respondent remained in Calcutta for about four days, but she did not care to meet the appellant or enquire about his health. According to the appellant, he made all efforts to make adjustments and to build a normal family life. He even used to go to Chinsurah every weekend where the respondent was posted but she showed no interest and was overtly indifferent to him. The appellant usually returned from Chinsurah totally dejected. According to the appellant, he felt like a stranger in his own family. The respondent unilaterally declared that she would not have any child and it was her firm decision. The appellant felt that his marriage with the respondent was merely an eye-wash because immediately after the marriage, serious matrimonial problems developed between them which kept growing.

The respondent was transferred to Calcutta in May 1985. Their residential flat at the Minto Park Housing Estate stood allotted to the appellant. The respondent used to come to their flat intermittently. One Prabir Malik, a domestic servant-cum-cook also used to live in the said flat. He used to cook food and carry out household work for the appellant. According to the appellant, the respondent used to say that her daughter was being neglected and that she might even be harmed. The indication was towards Prabir Malik. The appellant and the respondent virtually began to live separately from September, 1985.

The appellant was transferred to Murshidabad in May 1986 but the respondent continued to stay in Calcutta. The appellant stayed in Murshidabad up to April 1988 and thereafter he went on deputation on an assignment of the Government of India but there he developed some health problem and, therefore, he sought a transfer to Calcutta and came back there in September 1988. On transfer of the appellant to Murshidabad, the flat in which they were staying in Minto Park was allotted to the respondent as per the standard convention. The appellant and the respondent again began living together in Calcutta from September 1988. The appellant again tried to establish his home with the respondent after forgetting the entire past.

According to the appellant, the respondent never treated the house to be her family home. The respondent and her mother taught respondent’s daughter that the appellant was not her father. The child, because of instigation of the respondent and her mother, gradually began to avoid the appellant. The respondent in no uncertain terms used to tell the appellant that he was not her father and that he should not talk to the child or love her. The appellant obviously used to feel very offended.

The appellant also learnt that the respondent used to tell her mother that she was contemplating divorce to the appellant. The respondent’s daughter had also disclosed to the appellant that her mother had decided to divorce him. According to the appellant, though they lived under the same roof for some time but the

respondent virtually began to live separately from April, 1989 at her parent's house. In April 1990 the appellant's servant Prabir Malik had left for Burdwan on getting a job. The respondent used to come from her parents house to drop her daughter to her school La Martinere. She used to come to the flat at Minto Park from the school to cook food only for herself and leave for the office. The appellant began to take his meals outside as he had no other alternative.

According to the appellant, the said Prabir Malik came to the flat on 24th August, 1990 and stayed there at the night. The next two days were holidays. The respondent and her father also came there on 27th August, 1990. On seeing Prabir, the respondent lost her mental equanimity. She took strong exception to Prabir's presence in her flat and started shouting that the appellant had no self-respect and as such was staying in her flat without any right. According to the appellant, he was literally asked to get out of that flat. The respondent's father was also there and it appeared that the act was pre-conceived. The appellant felt extremely insulted and humiliated and immediately thereafter he left the flat and approached his friend to find a temporary shelter and stayed with him till he got a government flat allotted in his name on 13.9.1990.

Admittedly, the appellant and the respondent have been living separately since 27th August, 1990. The appellant further stated that the respondent refused cohabitation and also stopped sharing bed with him without any justification. Her unilateral decision not to have any child also caused mental cruelty on the appellant. The appellant was not permitted to even show his normal affection to the daughter of the respondent although he was a loving father to the child. The appellant also asserted that the respondent desired sadistic pleasure at the discomfiture and plight of the appellant which eventually affected his health and mental peace. In these circumstances, the appellant has prayed that it would not be possible to continue the marriage with the respondent and he eventually filed a suit for the grant of divorce.

In the suit for divorce filed by the appellant in Alipur, Calcutta, the respondent filed her written statement and denied the averments. According to the version of the respondent, Prabir Malik, the domestic servant did not look after the welfare and well-being of the child. The respondent was apprehensive that Prabir Malik may not develop any affection towards the respondent's daughter.

According to the version of the respondent, the appellant used to work under the instructions and guidance of his relations, who were not very happy with the respondent and they were interfering with their family affairs. The respondent stated that the appellant has filed the suit for divorce at the behest of his brothers and sisters. The respondent has not denied this fact that from 27th August, 1990 they have been continuously living separately and thereafter there has been no interaction whatsoever between them.

The appellant, in support of his case, has examined

himself as witness no.1. He has also examined Debabrata Ghosh as witness no.2, N. K. Raghupatty as witness no.3, Prabir Malik as witness no.4 and Sikhabilas Barman as witness no.5.

Debabrata Ghosh, witness no.2 is the younger brother of the appellant. He has stated that he did not attend the marriage ceremony of the appellant and the respondent. He seldom visited his brother and sister-in-law at their Minto Park flat and he did not take any financial assistance from his brother to maintain his family. He mentioned that he noticed some rift between the appellant and the respondent.

The appellant also examined N. K. Raghupatty, witness no.3, who was working as the General Secretary at that time. He stated that he knew both the appellant and the respondent because both of them were his colleagues. He was occupying a suite in the Circuit House at Calcutta. He stated that two weeks before the Puja vacation in 1990, the appellant wanted permission to stay with him because he had some altercation with the respondent. According to this witness, the appellant was his close friend, therefore, he permitted him to stay with him. He further stated that the appellant after a few days moved to the official flat allotted to him.

Prabir Malik was examined as witness no.4. He narrated that he had known the appellant for the last 8/9 years. He was working as his servant-cum-cook. He also stated that since April 1990 he was serving at the Burdwan Collectorate. He stated that after getting the job at Burdwan Collectorate, he used to visit the Minto Park flat of the appellant on 2nd and 4th Saturdays. He stated that the relationship between the appellant and the respondent was not cordial. He also stated that the appellant told him that the respondent cooks only for herself but does not cook for the appellant and he used to eat out and sometimes cooked food for himself. He stated that the brothers and sisters of the appellant did not visit Minto Park flat. He also stated that the daughter of the respondent at times used to say that the appellant was not her father and that she had no blood relationship with him. He stated that on 4th Saturday, in the month of August, 1990, he came to the flat of the appellant. On seeing him the respondent got furious and asked him for what purpose he had come to the flat? She further stated that the appellant had no residence, therefore, she had allowed him to stay in her flat. She also said that it was her flat and she was paying rent for it. According to the witness, she further stated that even the people living on streets and street beggars have some prestige, but these people had no prestige at all. At that time, the father of the respondent was also present. According to Prabir Malik, immediately after the incident, the appellant left the flat.

The appellant also examined Sikhabilas Barman as witness no.5, who was also an IAS Officer. He stated that he had known the appellant and his wife and that they did not have cordial relations. He further stated that the appellant told him that the respondent cooks for herself and leaves for office and that she does not cook for the appellant and he had to take meals outside and sometimes cooked food for himself. He also stated that the respondent had driven the appellant out of the said

flat.

The respondent has examined herself. According to her statement, she indicated that she and the appellant were staying together as normal husband and wife. She denied that she ill-treated Prabir Malik. She further stated that the brothers and sisters of the appellant used to stay at Minto Park flat whenever they used to visit Calcutta. She stated that they were interfering in the private affairs, which was the cause of annoyance of the respondent. She denied the incident which took place after 24.8. 1990. However, she stated that the appellant had left the apartment on 27.8.1990. In the cross-examination, she stated that the appellant appeared to be a fine gentleman. She admitted that the relations between the appellant and the respondent were not so cordial. She denied that she ever mentioned to the appellant that she did not want a child for two years and refused cohabitation.

The respondent also examined R. M. Jamir as witness no. 2. He stated that he had known both of them and in the years 1989-90 he visited their residence and he found them quite happy. He stated that in 1993 the respondent enquired about the heart problem of the appellant.

The respondent also examined her father A. K. Dasgupta as witness no. 3. He stated that his daughter neither insulted nor humiliated her husband in presence of Prabir Malik nor asked him to leave the apartment. He stated that the appellant and the respondent were living separately since 1990 and he never enquired in detail about this matter. He stated that the appellant had a lot of affection for the respondent's daughter. He stated that he did not know about the heart trouble of the appellant. He stated that he was also unaware of appellant's bye-pass surgery.

The learned Additional District Judge, 4th Court, Alipur, after examining the plaint, written statements and evidence on record, framed the follows issues:

"1. Is the suit maintainable?

2. Is the respondent guilty of cruelty as alleged?

3. Is the petitioner entitled to decree of divorce as claimed?

4. To what other relief or reliefs the petitioner is entitled?"

Issue no. 1 regarding maintainability of the suit was not pressed, so this issue was decided in favour of the appellant.

The trial court, after analyzing the entire pleadings and evidence on record, came to the conclusion that the following facts led to mental cruelty:

1. Respondent's refusal to cohabit with the appellant.

2. Respondent's unilateral decision not to have children after the marriage.

3. Respondent's act of humiliating the appellant and virtually turning him out of the Minto Park apartment. The appellant in fact had taken shelter with his friend and he stayed there till official accommodation was allotted to him.

4. Respondent's going to the flat and cooking only for herself and the appellant was forced to either eat out or cook his own meals.

5. The respondent did not take care of the appellant during his prolonged illness in 1985 and never enquired about his health even when he underwent the bye-pass surgery in 1993.

6. The respondent also humiliated and had driven out the loyal servant-cum-cook of the appellant, Prabir Malik.

The learned Additional District Judge came to the finding that the appellant has succeeded in proving the case of mental cruelty against the respondent, therefore, the decree was granted by the order dated 19.12.1996 and the marriage between the parties was dissolved.

The respondent, aggrieved by the said judgment of the learned Additional District Judge, filed an appeal before the High Court. The Division Bench of the High Court vide judgment dated 20.5.2003 reversed the judgment of the Additional District Judge on the ground that the appellant has not been able to prove the allegation of mental cruelty. The findings of the High Court, in brief, are recapitulated as under:

I. The High Court arrived at the finding that it was certainly within the right of the respondent-wife having such a high status in life to decide when she would like to have a child after marriage.

II. The High Court also held that the appellant has failed to disclose in the pleadings when the respondent took the final decision of not having a child.

III. The High Court held that the appellant also failed to give the approximate date when the respondent conveyed this decision to the appellant.

IV. The High Court held that the appellant started living with the respondent, therefore, that amounted to condonation of the acts of cruelty.

V. The High Court disbelieved the appellant on the issue of respondent's refusing to cohabit with him, because he failed to give the date, month or the year when the respondent conveyed this decision to him.

VI. The High Court held that the appellant's and the respondent's sleeping in separate rooms did not lead to the conclusion that they did not cohabit.

VII. The High Court also observed that it was quite proper for the respondent with such high status

and having one daughter by her previous husband, not to sleep in the same bed with the appellant.

VIII. The High Court observed that refusal to cook in such a context when the parties belonged to high strata of society and the wife also has to go to office, cannot amount to mental cruelty.

IX. The High Court's findings that during illness of the husband, wife's not meeting the husband to know about his health did not amount to mental cruelty.

The High Court was unnecessarily obsessed by the fact that the respondent was also an IAS Officer. Even if the appellant had married an IAS Officer that does not mean that the normal human emotions and feelings would be entirely different.

The finding of the Division Bench of the High Court that, considering the position and status of the respondent, it was within the right of the respondent to decide when she would have the child after the marriage. Such a vital decision cannot be taken unilaterally after marriage by the respondent and if taken unilaterally, it may amount to mental cruelty to the appellant.

The finding of the High Court that the appellant started living with the respondent amounted to condonation of the act of cruelty is unsustainable in law.

The finding of the High Court that the respondent's refusal to cook food for the appellant could not amount to mental cruelty as she had to go to office, is not sustainable. The High Court did not appreciate the evidence and findings of the learned Additional District Judge in the correct perspective. The question was not of cooking food, but wife's cooking food only for herself and not for the husband would be a clear instance of causing annoyance which may lead to mental cruelty.

The High Court has seriously erred in not appreciating the evidence on record in a proper perspective. The respondent's refusal to cohabit has been proved beyond doubt. The High Court's finding that the husband and wife might be sleeping in separate rooms did not lead to a conclusion that they did not cohabit and to justify this by saying that the respondent was highly educated and holding a high post was entirely unsustainable. Once the respondent accepted to become the wife of the appellant, she had to respect the marital bond and discharge obligations of marital life.

The finding of the High Court that if the ailment of the husband was not very serious and he was not even confined to bed for his illness and even assuming the wife under such circumstances did not meet the husband, such behaviour can hardly amount to cruelty, cannot be sustained. During illness, particularly in a nuclear family, the husband normally looks after and supports his wife and similarly, he would expect the same from her. The respondent's total indifference and neglect of the appellant during his illness would certainly lead to great annoyance leading to mental cruelty.

It may be pertinent to mention that in 1993, the

appellant had a heart problem leading to bye-pass surgery, even at that juncture, the respondent did not bother to enquire about his health even on telephone and when she was confronted in the cross-examination, she falsely stated that she did not know about it.

Mr. A. K. Dasgupta, father of the respondent and father-in-law of the appellant, was examined by the respondent. In the cross-examination, he stated that his daughter and son-in-law were living separately and he never enquired about this. He further said that the appellant left the apartment, but he never enquired from anybody about the cause of leaving the apartment. He also stated that he did not know about the heart trouble and bye-pass surgery of the appellant. In the impugned judgment, the High Court has erroneously placed reliance on the evidence submitted by the respondent and discarded the evidence of the appellant. The evidence of this witness is wholly unbelievable and cannot stand the scrutiny of law.

The High Court did not take into consideration the evidence of Prabir Malik primarily because of his low status in life. The High Court, in the impugned judgment, erroneously observed that the appellant did not hesitate to take help from his servant in the matrimonial dispute though he was highly educated and placed in high position. The credibility of the witness does not depend upon his financial standing or social status only. A witness which is natural and truthful should be accepted irrespective of his/her financial standing or social status. In the impugned judgment, testimony of witness no.4 (Prabir Malik) is extremely important being a natural witness to the incident. He graphically described the incident of 27.8.1990. He also stated that in his presence in the apartment at Minto Park, the respondent stated that the appellant had no place of residence, therefore, she allowed him to stay in her flat, but she did not like any other man of the appellant staying in the flat. According to this witness, she said that the flat was hers and she was paying rent for it. According to this witness, the respondent further said that even people living on streets and street beggars have some prestige, but these people have no prestige at all. This witness also stated that immediately thereafter the appellant had left the flat and admittedly since 27.8.1990, both the appellant and the respondent are living separately. This was a serious incident and the trial court was justified in placing reliance on this evidence and to come to a definite conclusion that this instance coupled with many other instances led to grave mental cruelty to the appellant. The trial Court rightly decreed the suit of the appellant. The High Court was not justified in reversing the judgment of the trial Court.

The High Court also failed to take into consideration the most important aspect of the case that admittedly the appellant and the respondent have been living separately for more than sixteen and half years (since 27.8.1990). The entire substratum of the marriage has already disappeared. During this long period, the parties did not spend a single minute together. The appellant had undergone bye-pass surgery even then the respondent did not bother to enquire about his health even on telephone. Now the parties have no feelings and

emotions towards each other.

The respondent appeared in person. Even before this Court, we had indicated to the parties that irrespective of whatever has happened, even now, if they want to reconcile their differences then the case be deferred and they should talk to each other. The appellant was not even prepared to speak with the respondent despite request from the Court. In this view of the matter, the parties cannot be compelled to live together.

The learned Additional District Judge decreed the appellant's suit on the ground of mental cruelty. We deem it appropriate to analyze whether the High Court was justified in reversing the judgment of the learned Additional District Judge in view of the law declared by a catena of cases. We deem it appropriate to deal with the decided cases.

Before we critically examine both the judgments in the light of settled law, it has become imperative to understand and comprehend the concept of cruelty.

The Shorter Oxford Dictionary defines 'cruelty' as 'the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness'.

The term "mental cruelty" has been defined in the Black's Law Dictionary [8th Edition, 2004] as under:

"Mental Cruelty - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."

The concept of cruelty has been summarized 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. Malevolent intention is not essential to cruelty but it is an important element where it exits."

In 24 American Jurisprudence 2d, the term "mental cruelty" has been defined as under:
"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

In the instant case, our main endeavour would be to define broad parameters of the concept of 'mental cruelty'. Thereafter, we would strive to determine whether the instances of mental cruelty enumerated in this case by the appellant would cumulatively be adequate to grant a decree of divorce on the ground of mental cruelty according to the settled legal position as crystallized by a number of cases of this Court and other Courts.

This Court has had an occasion to examine in detail the position of mental cruelty in N.G. Dastane v. S. Dastane reported in (1975) 2 SCC 326 at page 337, para 30 observed as under :-
"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\005."

In the case of Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan & Anr. reported in (1981) 4 SCC 250, this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

In the case of Shobha Rani v. Madhukar Reddi reported in (1988) 1 SCC 105, this Court had an occasion to examine the concept of cruelty. The word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i)(a) of the Act in the context of human conduct or behaviour in relation to or in respect

of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. 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 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. Intention 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.

In Rajani v. Subramonian AIR 1990 Ker. 1 the Court aptly observed that the concept of cruelty depends upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by standard of modern civilization in the background of the cultural heritage and traditions of our society.

Again, this Court had an occasion to examine in great detail the concept of mental cruelty. In the case of V. Bhagat v. D. Bhagat (Mrs.) reported in (1994) 1 SCC 337, the Court observed, in para 16 at page 347, as under:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

This Court aptly observed in Chetan Dass v. Kamla Devi reported in (2001) 4 SCC 250, para 14 at pp.258-259, as under:

"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 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."

This Court in the case of Gananath Pattnaik 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."

The mental cruelty has also been examined by this Court in Parveen Mehta v. Inderjit Mehta reported in (2002) 5 SCC 706 at pp.716-17 [para 21] which reads as under:

"Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

In this case the Court also stated that so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably.

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."

This Court in 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."

In Shobha Rani's case (supra) at pp.108-09, para 5, the Court observed as under:

"5. Each case may be different. We deal with the conduct of human beings who are no 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."

In this case, the Court cautioned the lawyers and judges not to import their own notions of life in dealing with matrimonial problems. The judges should not evaluate the case from their own standards. There may be a generation gap between the judges and the parties. It is always prudent if the judges keep aside their customs and manners in deciding matrimonial cases in particular.

In a recent decision of this Court in the case of Rishikesh Sharma v. Saroj Sharma reported in 2006 (12) Scale 282, this Court observed that the respondent

wife was living separately from the year 1981 and the marriage has broken down irretrievably with no possibility of the parties living together again. The Court further observed that it will not be possible for the parties to live together and therefore there was no purpose in compelling both the parties to live together. Therefore the best course was to dissolve the marriage by passing a decree of divorce so that the parties who were litigating since 1981 and had lost valuable part of life could live peacefully in remaining part of their life. The Court further observed that her desire to live with her husband at that stage and at that distance of time was not genuine.

This Court observed that under such circumstances, the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant who sought divorce from the Court.

"Mental cruelty" is a problem of human behaviour. This human problem unfortunately exists all over the world. Existence of similar problem and its adjudication by different courts of other countries would be of great relevance, therefore, we deem it appropriate to examine similar cases decided by the Courts of other jurisdictions. We must try to derive benefit of wisdom and light received from any quarter.

ENGLISH CASES:

William Latey, in his celebrated book 'The Law and Practice in Divorce and Matrimonial Causes' (15th Edition) has stated that there is no essential difference between the definitions of the ecclesiastical courts and the post-1857 matrimonial courts of legal cruelty in the marital sense. The authorities were fully considered by the Court of Appeal and the House of Lords in Russell v. Russell (1897) AC 395 and the principle prevailing in the Divorce Court (until the Divorce Reform Act, 1969 came in force), was as follows:

Conduct of such a character as to have caused danger to life, limb, or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger. {see: Russell v. Russell (1895) P. 315 (CA)}.

In England, the Divorce Reform Act, 1969 came into operation on January 1, 1971. Thereafter the distinction between the sexes is abolished, and there is only one ground of divorce, namely that the marriage has broken down irretrievably. The Divorce Reform Act, 1969 was repealed by the Matrimonial Causes Act, 1973, which came into force on January 1, 1974. The sole ground on which a petition for divorce may be presented to the court by either party to a marriage is that the marriage has broken down irretrievably.

Lord Stowell's proposition in Evans v. Evans (1790) 1 Hagg Con 35 was approved by the House of Lords and may be put thus: before the court can find a husband guilty of legal cruelty towards his wife, it is necessary to show that he has either inflicted bodily injury upon her, or has so conducted himself towards her as to render future cohabitation more or less dangerous to life, or limb, or mental or bodily health. He was careful to avoid any definition of cruelty, but he did add: 'The causes must be grave and weighty, and such as to show an absolute impossibility that the duties of married life can be discharged'. But the majority of their Lordships in Russell v. Russell (1897) (supra) declined to go beyond

the definition set out above. In this case, Lord Herschell observed as under:

"It was conceded by the learned counsel for the appellant, and is, indeed, beyond controversy, that it is not every act of cruelty in the ordinary and popular sense of that word which amounted to saevitia, entitling the party aggrieved to a divorce; that there might be many wilful and unjustifiable acts inflicting pain and misery in respect of which that relief could not be obtained."

Lord Merriman, in Waters v. Waters (1956) 1 All. E.R. 432 observed that intention to injure was not necessary ingredient of cruelty.

Sherman, J. in Hadden v. Hadden, The Times, December 5, 1919, (also reported in Modern Law Review Vol.12, 1949 at p.332) very aptly mentioned that he had no intention of being cruel but his intentional acts amounted to cruelty. In this case, it was observed as under:

'It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called upon to endure it.'

Lord Simon in Watt (or Thomas) v. Thomas [(1947) 1 All E.R. 582 at p. 585] observed as under:

"\005 the leading judicial authorities in both countries who have dealt with this subject are careful not to speak in too precise and absolute terms, for the circumstances which might conceivably arise in an unhappy married life are infinitely various.

Lord Stowell in Evans v. Evans 1790 (1) Hagg Con 35 avoids giving a "direct definition". While insisting that "mere austerity of temper, petulance of manners, rudeness of language, want of civil attention and accommodation, even occasional sallies of passion, if they do not threaten bodily harm, do not amount to legal cruelty."

In Simpson v. Simpson (1951) 1 All E.R. 955, the Court observed that:

"When the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus, it is inaccurate, and liable to lead to confusion, if the word "cruelty" is used as descriptive only of the conduct complained of, apart from its effect on the victim.

Lord Reid, concurring, reserved opinion as to cases of alleged cruelty in which the defender had shown deliberate intention, though he did not doubt that there were many cases where cruelty could be established without its being necessary to be satisfied by evidence that the defender had such an intention. Lord Tucker, also concurring, said:

'Every act must be judged in relation to its attendant circumstances, and the physical or mental condition or susceptibilities of the innocent spouse, the intention of the offending spouse and the offender's knowledge of the actual or probable effect of his conduct on the other's health are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies.'

In Prichard v. Pritchard (1864) 3 S&T 523, the Court observed that repeated acts of unprovoked violence by the wife were regarded as cruelty, although they might not inflict serious bodily injury on the husband.

Wilde, J.O. in Power v. Power (1865) 4 SW & Tr. 173 aptly observed that cruelty lies in the cumulative ill conduct which the history of marriage discloses.

In Bravery v. Bravery (1954) 1 WLR 1169, by majority, the Court held as under:

'If a husband submitted himself to an operation for sterilization without a medical reason and without his wife's knowledge or consent it could constitute cruelty to his wife. But where such an operation was performed to the wife's knowledge, though without her consent and she continued to live with him for thirteen years, it was held that the operation did not amount to cruelty.'

Lord Tucker in Jamieson v. Jamieson (1952) I All E.R. 875 aptly observed that "Judges have always carefully refrained from attempting a comprehensive definition of cruelty for the purposes of matrimonial suits, and experience has shown the wisdom of this course".

In Le Brocq v. Le Brockq [1964] 3 All E.R. 464, at p. 465, the court held as under:

"I think \005. that 'cruel' is not used in any esoteric or 'divorce court' sense of that word, but that the conduct complained of must be something which an ordinary man or a jury \005.. would describe as 'cruel' if the story were fully told."

In Ward v. Ward [(1958) 2 All E.R. 217, a refusal to bear children followed by a refusal of intercourse and frigidity, so that the husband's health suffered, was held to be cruelty; so also the practice by the husband of coitus interruptus against the wish of his wife though she desired to have a child. (Also see: White (otherwise Berry) v. White [1948] 2 All E.R. 151; Walsham v. Walsham, [1949] I All E.R. 774; Cackett (otherwise Trice) v. Cackett, [1950] I All E.R. 677; Knott v. Knott [1955] 2 All E.R. 305.

Cases involving the refusal of sexual intercourse may vary considerably and in consequence may or may not amount to cruelty, dependent on the facts and circumstances of the parties. In Sheldon v. Sheldon, [1966] 2 All E.R. 257, Lord Denning, M.R. stated at p.

259:
"The persistent refusal of sexual intercourse may amount to cruelty, at any rate when it extends over a long period and causes grave injury to the health of the other. One must of course, make allowances for any excuses that may account for it, such as ill-health, or time of life, or age, or even psychological infirmity. These excuses may so mitigate the conduct that the other party ought to put up with it. It after making all allowances however, the conduct is such that the other party should not be called upon to endure it, then it is cruelty."

Later, Lord Denning, at p. 261, said that the refusal would usually need to be corroborated by the evidence of a medical man who had seen both parties and could speak to the grave injury to health consequent thereon. In the same case, Salmon, L. J. stated at p. 263:
"For my part, I am quite satisfied that if the husband's failure to have sexual intercourse had been due to impotence, whether from some psychological or physical cause, this petition would be hopeless. No doubt the lack of sexual intercourse might in such a case equally have resulted in a breakdown in his wife's health. I would however regard the husband's impotence as a great misfortune which has befallen both of them."

There can be cruelty without any physical violence, and there is abundant authority for recognizing mental or moral cruelty, and not infrequently the worst cases supply evidence of both. It is for the judges to review the married life of the parties in all its aspects. The several acts of alleged cruelty, physical or mental, should not be taken separately. Several acts considered separately in isolation may be trivial and not hurtful but when considered cumulatively they might well come within the description of cruelty. (see: Jamieson v. Jamieson, [1952] I All E.R. 875; Waters v. Waters, [1956] I All E.R. 432. "The general rule in all questions of cruelty is that the whole matrimonial relations must be considered." (per Lord Normand in King v. King [1952] 2 All E.R. 584).

In Warr v. Warr [1975] I All ER 85), the Court observed that "Section 1(2)(c) of the Matrimonial Causes Act, 1973 provides that irretrievable breakdown may be proved by satisfying the court that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition."

AMERICAN CASES:
In Jem v. Jem [(1937) 34 Haw. 312], the Supreme Court of Hawaii aptly mentioned that cruel treatment not amounting to physical cruelty is mental cruelty.

While dealing with the matter of extreme cruelty, the Supreme Court of South Dakota in the case of Hybertson v. Hybertson (1998) 582 N.W. 2d 402 held as under:
"Any definition of extreme cruelty in a marital setting must necessarily differ according to the

personalities of the parties involved. What might be acceptable and even common place in the relationship between rather stolid individuals could well be extraordinary and highly unacceptable in the lives of more sensitive or high-strung husbands and wives. Family traditions, ethnic and religious backgrounds, local customs and standards and other cultural differences all come into play when trying to determine what should fall within the parameters of a workable marital relationship and what will not."

In Rosenbaum v. Rosenbaum [(1976) 38 Ill.App.3d. 1] the Appellate Court of Illinois held as under:
"To prove a case entitling a spouse to divorce on the ground of mental cruelty, the evidence must show that the conduct of the offending spouse is unprovoked and constitutes a course of abusive and humiliating treatment that actually affects the physical or mental health of the other spouse, making the life of the complaining spouse miserable, or endangering his or her life, person or health."

In the case of Fleck v. Fleck 79 N.D. 561, the Supreme Court of North Dakota dealt with the concept of cruelty in the following words:
"The decisions defining mental cruelty employ such a variety of phraseology that it would be next to impossible to reproduce any generally accepted form. Very often, they do not purport to define it as distinct from physical cruelty, but combine both elements in a general definition of 'cruelty,' physical and mental. The generally recognized elements are:

(1) A course of abusive and humiliating treatment;

(2) Calculated or obviously of a nature to torture, discommode, or render miserable the life of the opposite spouse; and

(3) Actually affecting the physical or mental health of such spouse."

In Donaldson v. Donaldson [(1917) 31 Idaho 180, 170 P. 94], the Supreme Court of Idaho also came to the conclusion that no exact and exclusive definition of legal cruelty is possible. The Court referred to 9 RCL p. 335 and quoted as under:
"It is well recognized that no exact inclusive and exclusive definition of legal cruelty can be given, and the courts have not attempted to do so, but generally content themselves with determining whether the facts in the particular case in question constitute cruelty or not. Especially, according to the modern view, is the question whether the defending spouse has been guilty of legal cruelty a pure question of fact to be resolved upon all the circumstances

of the case."

CANADIAN CASES:

In a number of cases, the Canadian Courts had occasions to examine the concept of 'cruelty'. In Chouinard v. Chouinard 10 D.L.R. (3d) 263], the Supreme Court of New Brunswick held as under:

"Cruelty which constitutes a ground for divorce under the Divorce Act, whether it be mental or physical in nature, is a question of fact. Determination of such a fact must depend on the evidence in the individual case being considered by the court. No uniform standard can be laid down for guidance; behaviour which may constitute cruelty in one case may not be cruelty in another. There must be to a large extent a subjective as well as an objective aspect involved; one person may be able to tolerate conduct on the part of his or her spouse which would be intolerable to another. Separation is usually preceded by marital dispute and unpleasantness. The court should not grant a decree of divorce on evidence of merely distasteful or irritating conduct on the part of the offending spouse. The word 'cruelty' denotes excessive suffering, severity of pain, mercilessness; not mere displeasure, irritation, anger or dissatisfaction; furthermore, the Act requires that cruelty must be of such a kind as to render intolerable continued cohabitation."

In Knoll v. Knoll 10 D.L.R. (3d) 199, the Ontario Court of Appeal examined this matter. The relevant portion reads as under:

"Over the years the courts have steadfastly refrained from attempting to formulate a general definition of cruelty. As used in ordinary parlance "cruelty" signifies a disposition to inflict suffering; to delight in or exhibit indifference to the pain or misery of others; mercilessness or hard-heartedness as exhibited in action. If in the marriage relationship one spouse by his conduct causes wanton, malicious or unnecessary infliction of pain or suffering upon the body, the feelings or emotions of the other, his conduct may well constitute cruelty which will entitle a petitioner to dissolution of the marriage if, in the court's opinion, it amounts to physical or mental cruelty "of such a kind as to render intolerable the continued cohabitation of the spouses."

In Luther v. Luther [(1978) 5 R.F.L. (2d) 285, 26 N.S.R. (2d) 232, 40 A.P.R. 232], the Supreme Court of Nova Scotia held as under:

"7. The test of cruelty is in one sense a subjective one, namely, as has been said many times, is this conduct by this man to this woman, or vice versa, cruelty? But that does not mean that what one spouse may consider cruel is necessarily so. Cruelty must involve serious and weighty matters, which,

reasonably considered, may cause physical or mental suffering. It must furthermore -- an important additional requirement -- be of such a nature and kind as to render such conduct intolerable to a reasonable person."

The Supreme Court further held as under:

"9. To constitute mental cruelty, conduct must be much more than jealousy, selfishness or possessiveness which causes unhappiness, dissatisfaction or emotional upset. Even less can mere incompatibility or differences in temperament, personality or opinion be elevated to grounds for divorce."

In another case Zalesky v. Zalesky 1 D.L.R. (3d) 471, the Manitoba Court of Queen's Bench observed that where cohabitation of the spouses become intolerable that would be another ground of divorce. The Court held as under:

"There is now no need to consider whether conduct complained of caused 'danger to life, limb, or health, bodily or mentally, or a reasonable apprehension of it' or any of the variations of that definition to be found in the Russell case.

In choosing the words 'physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses' Parliament gave its own fresh complete statutory definition of the conduct which is a ground for divorce under s. 3(d) of the Act."

AUSTRALIAN CASES:

In Dunkley v. Dunkley (1938) SASR 325, the Court examined the term "legal cruelty" in the following words:
"'Legal cruelty', means conduct of such a character as to have caused injury or danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of danger. Personal violence, actual or threatened, may alone be sufficient; on the other hand, mere vulgar abuse or false accusations of adultery are ordinarily not enough; but, if the evidence shows that conduct of this nature had been persisted in until the health of the party subjected to it breaks down, or is likely to break down, under the strain, a finding of cruelty is justified."

In La Rovere v. La Rovere [4 FLR 1], the Supreme Court of Tasmania held as under:
"When the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of,

and, secondly, the resultant danger or the apprehension thereof. Thus it is inaccurate and liable to lead to confusion, if the word 'cruelty' is used as descriptive only of the conduct complained of, apart from its effect on the victim."

We have examined and referred to the cases from the various countries. We find strong basic similarity in adjudication of cases relating to mental cruelty in matrimonial matters. Now, we deem it appropriate to deal with the 71st report of the Law Commission of India on "Irretrievable Breakdown of Marriage".

The 71st Report of the Law Commission of India briefly dealt with the concept of irretrievable breakdown of marriage. This Report was submitted to the Government on 7th April, 1978. In this Report, it is mentioned that during last 20 years or so, and now it would be around 50 years, a very important question has engaged the attention of lawyers, social scientists and men of affairs, should the grant of divorce be based on the fault of the party, or should it be based on the breakdown of the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory. It would be relevant to recapitulate recommendation of the said Report.

In the Report, it is mentioned that the germ of the breakdown theory, so far as Commonwealth countries are concerned, may be found in the legislative and judicial developments during a much earlier period. The (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920, included for the first time the provision that a separation agreement for three years or more was a ground for making a petition to the court for divorce and the court was given a discretion (without guidelines) whether to grant the divorce or not. The discretion conferred by this statute was exercised in a case Lodder v. Lodder 1921 New Zealand Law Reports 786. Salmond J., in a passage which has now become classic, enunciated the breakdown principle in these words:

"The Legislature must, I think, be taken to have intended that separation for three years is to be accepted by this court, as prima facie a good ground for divorce. When the matrimonial relation has for that period ceased to exist de facto, it should, unless there are special reasons to the contrary, cease to exist de jure also. In general, it is not in the interests of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law when for a lengthy period they have ceased to be such in fact. In the case of such a separation the essential purposes of marriage have been frustrated, and its further continuance is in general not merely useless but mischievous."

In the said Report, it is mentioned that restricting the ground of divorce to a particular offence or

matrimonial disability, causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not want to divulge it, yet such a situation has arisen in which the marriage cannot survive. The marriage has all the external appearances of marriage, but none in reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a fagade, when the emotional and other bonds which are of the essence of marriage have disappeared.

It is also mentioned in the Report that in case the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce, then the parties alone can decide whether their mutual relationship provides the fulfilment which they seek. Divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances.

Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

Law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute.

This Court in Naveen Kohli v. Neelu Kohli reported in (2006) 4 SCC 558 dealt with the similar issues in detail. Those observations incorporated in paragraphs 74 to 79 are reiterated in the succeeding paragraphs.

"74. 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.

75. 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.

76. 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."

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems then are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory."

On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

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.

When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen and half years (since 27.8.1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent.

The High Court in the impugned judgment seriously erred in reversing the judgment of the learned Additional Sessions Judge. The High Court in the impugned judgment ought to have considered the most important

and vital circumstance of the case in proper perspective that the parties have been living separately since 27th August, 1990 and thereafter, the parties did not have any interaction with each other. When the appellant was seriously ill and the surgical intervention of bye-pass surgery had to be restored to, even on that occasion, neither the respondent nor her father or any member of her family bothered to enquire about the health of the appellant even on telephone. This instance is clearly illustrative of the fact that now the parties have no emotions, sentiments or feelings for each other at least since 27.8.1990. This is a clear case of irretrievable breakdown of marriage. In our considered view, it is impossible to preserve or save the marriage. Any further effort to keep it alive would prove to be totally counter-productive.

In the backdrop of the spirit of a number of decided cases, the learned Additional District Judge was fully justified in decreeing the appellant's suit for divorce. In our view, in a case of this nature, no other logical view is possible.

On proper consideration of cumulative facts and circumstances of this case, in our view, the High Court seriously erred in reversing the judgment of the learned Additional District Judge which is based on carefully watching the demeanour of the parties and their respective witnesses and the ratio and spirit of the judgments of this Court and other Courts. The High Court erred in setting aside a well-reasoned judgment of the trial court based on the correct analysis of the concept of mental cruelty. Consequently, the impugned judgment of the High Court is set aside and the judgment of the learned Additional District Judge granting the decree of divorce is restored.

This appeal is accordingly disposed of but, in the facts and circumstances of the case, we direct the parties to bear their own costs.