

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 5

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Case Comment on Samar Ghosh V. Jaya Ghosh (2007) 4 SCC 51

ASHWIN SINGH¹ AND DHARANI MADDULA²

I. NAME OF THE CASE

(2007) 4 Supreme Court Cases 51

(Before B.N. Agrawal, P.P. Naolekar, Dalveer Bhandari, JJ.)

Samar GhoshAppellant

vs

Jaya Ghosh Respondent

Civil Appeal No. 151 of 2004, decided on March 26, 2007.

II. FACTS & ISSUES OF THE CASE

The Appellant and the Respondent, in this case, were Officials of the Indian Administrative Service (“IAS”). Both the appellant and Respondent for this situation were married on 13/12/1984 at Calcutta under Special Marriage Act, 1954. The Respondent (the spouse for this situation) was a divorced person and right now had a female youngster at the hour of her second marriage from her first marriage. The guardianship of this female kid was in the possession of the Respondent given by the District Court of Patna when the respondent has gotten a separation order against her first spouse, Mr. Debashish Gupta, who was likewise an IAS official. Both the parties in the current case had known each other since 1983. The respondent used to meet with the appealing party between November 1983 and June 1984. They in this way developed a dear fellowship which later formed into romance and along these lines into a marriage.

The respondent's first spouse, Debashish Gupta filed a belated appeal against the pronouncement of separation procured by her from the District Court of Patna. In like manner, during the pendency of the appeal, she persuaded the Appellant to agree to the marriage quickly so the appeal of Debashish Gupta may become infructuous. The marriage between the parties was solemnized on 13.12.1984. According to the litigant, not long after the marriage, the

¹ Author is a student at Symbiosis Law School, Pune, India.

² Author is a student at Symbiosis Law School, Pune, India.

respondent asked the appellant not to interfere with her professional life. She had moreover unilaterally made a decision not to have a kid for quite a while and the appellant should not be interested in her child and he should endeavor to keep himself reserved from her very far. As shown by the appealing party, there was the inconvenience of proportioning in feeling in the field of affection, affection, future organizing, and standard human relations anyway he made a not too bad endeavor to become acclimated to the situation made by the respondent. The appealing party has affirmed that this ill-advised conduct of the respondent before long turned into a typical thing for both the parties in a matter of moments. The Appellant additionally referenced various rates where the respondent's inappropriate conduct arrived at its pinnacle and thus likewise hurt the appealing party both intellectually and truly. Which incorporated the disregard of taking minding of everyday marriage schedules by the respondent towards the Appellant. The most significant decision is the one-sided choice of the Respondent to not tolerate any offspring of the appealing party.

In 1985 when both the parties were living in the same house alongside a worker cum-cook which was dispensed to the Appellant, the respondent claimed that the girl of the respondent may be in peril because of the cook and hence the respondent accepting these charges as premise moved to another house, subsequently from September 1985 both the parties were living independently. After several transfers of his job, the Appellant at long last got back to Calcutta in 1988 and began living with the respondent once more (as of now the mother of the respondent additionally used to live with the respondent).

The Appellant attempted to overlook all the previous agonies and attempted to begin another life any way he kept on enduring mental injury because of the respondent and her mom. The respondent at no-specific occasions used to tell the appealing party that the little girl of the respondent isn't the Appellant's little girl and accordingly the litigant ought not to love or care for the girl. The equivalent was likewise being incited to the little girl by the respondent and respondent's mom, because of which the girl began keeping away from the appealing party which has made mental mischief the litigant.

As indicated by the appealing party, the worker cum-cook came to the flat on 24/08/1990 and remained there the night. The following two days were holidays. The respondent and her dad were additionally there. On observing the worker, the respondent began yelling on both the worker and the appealing party, alongside the respondent, the respondent's dad additionally began yelling in a pre-considered idea. The Appellant was approached to leave the level by the respondent. The Appellant felt very offended and mortified and this left the level. Along these lines, again the couple began living in various pads once more. The appealing party has

additionally expressed that the respondent has declined to dwell together with the Appellant and doesn't give him the marriage joy and has made the girl of the respondent act in a terrible way to the Appellant, even after the Appellant being a decent dad. Appropriately, both the parties have been living in various houses since 27/8/1990. Following similar conduct of the respondent, the Appellant has filed a divorce order which was conceded by the Trial Court to him on 19/12/1996. The respondent however expresses that they have been living joyfully in any case, the family members of the appealing party are not content with the respondent and hence they have constrained the Appellant to file the divorce order and that the appealing party chips away at the guidelines of similar family members as it were. The division seat of the High court vide judgment dated 20/05/2003 has turned around the choice of the trial court because the Appellant couldn't demonstrate mental mercilessness by the respondent. In this manner, the Appellant has recorded an appeal under the watchful eye of the high court by Special leave request.

The main issues before the Supreme Court are:

1. Is the Suit filed by the Appellant Maintainable before the Supreme Court or not?
2. Is the Respondent being guilty of Mental Cruelty as Alleged by the Appellant?
3. Is the Appellant entitled to a decree of Divorce as requested by him?
4. To what other relief/reliefs the Appellant is entitled to?

III. ANALYSIS OF THE DECISION OF THE COURT

The current Decision of the Supreme Court is largely based upon the decisions of the Trial Court which found the Respondent guilty and the High Court which was reversing the decision of the Trial Court found the husband guilty.

The Trial Court after a complete hearing of all the material evidence and the witnesses presented by both the party came to the following facts which the Trail Court in their judgment stated that amount to Mental Cruelty:

1. The respondent was the one who refused to Live/Cohabit with the appellant.
2. It was the Respondent's unilateral decision not to have children after marriage with the appellant.
3. The Act of humiliation was done by the Respondent in which she outed the appellant and the servant-cum-cook from her house. This forced the appellant to take shelter at his friend's house until the official house was allotted to the appellant.

4. The respondent going to the flat and cooking only for herself and the appellant was forced to either eat at an outside place or cook his meals.
5. The respondent did not take care of the appellant during his prolonged illness in 1985 and never enquired about the health situation of the appellant even when he underwent a by-pass surgery in 1993.

Based on the above points, the Learned Additional District Judge came to the finding that the appellant has successes in proving the case of mental cruelty against the respondents, and thus the judge granted a decree of divorce to the appellant.

The respondent aggrieved by this judgment moved to the High court. The honorable High court reversed the judgment of the District Judge and found that the appellant was unable to prove the allegations of mental cruelty against the respondent. The finding of the High court is as under:

1. The High Court came to the understanding that the respondent being a strong independent woman has a right to make her own choice on whether to have a child or not.
2. The High Court also took into notice the fact that the appellant has failed to take into pleadings the fact that the respondent was the one to have taken a decision not to have a child with him.
3. The High Court held that the appellant also failed to mention the date on which the respondent has told the appellant that she will not bear his child.
4. The High court has held that since the appellant started living with the respondent again the act of cruelty is adorned.
5. The High court held that women of her status and a working woman need not cook.
6. The High court has held that the fact that the respondent has had a husband in the past and also has a daughter, she is not required to sleep next to the appellant.

The Supreme Court after taking all the points mentioned in the previous judgments of the division court and the High Court came to the following conclusion that the actions of the Respondent amount to mental cruelty. The Supreme court also stated several important points in this judgment for a future decision on the Hindu Marriage Act and mental cruelty and how future judgments could be done based on this judgment.

In this judgment, the Supreme Court of India touched and explained several concepts relating to Hindu Marriage Act, mental cruelty, and under what circumstances could mental cruelty

should be held as being done by either side in a court of law. The supreme court also explained about the situation of mental cruelty in a situation of marriage and what are justifiable instances of mental cruelty in a marriage. Although no such guidelines or rules & regulations could be laid down in this matter or in this issue, The Supreme Court has in this case law laid down some basic ideas and concept after application of which, the future courts could easily determine whether in a case in question does Mental Cruelty occurs or not.

In this case, the fact that the parties were living separately from each other for over sixteen years (from 1990) was also taken into account. The behavior of the family of the respondent towards the petitioner and his family also came into consideration. The behavior of the daughter of the respondent towards the petitioner was also taken into note by the Supreme Court.

It has been held by the Supreme Court in this case that, an extensive meaning of the idea of mental cruelty can't be given, taking into account that the human psyche is amazingly perplexing, and human conduct is similarly convoluted. Yet, certain parts of the idea of mental cruelty can be recognized. On account of *Samar Ghosh v. Jaya Ghosh*, the Supreme Court has held that psychological cruelty is a perspective. The sentiment of profound pain, dissatisfaction, disappointment in one mate brought about by the direction of others for quite a while may prompt mental remorselessness. A continued course of injurious and embarrassing treatment determined to torment, inconvenience, or render the hopeless existence of the mate. The treatment grumbled of and the resultant threat or misgiving must be exceptionally grave, considerable, and profound. Simple insignificant disturbances, fights, ordinary mileage of the wedded life which occurs in everyday life would not be satisfactory for the award of separation on the ground of mental pitilessness. The wedded life ought to be explored overall and a couple of detached occasions over a time of years won't add up to cold-bloodedness. The evil lead must be tenacious for a genuinely protracted period, where the relationship has decayed to a degree that on account of the demonstrations and conduct of a life partner, the violated party discovers it very hard to live with the other party any more, may add up to mental brutality.

Further, the court has set up that "Parties living independently of each other for an adequate period and filing of the petition for divorce from conveys the assumption that marriage has broken down. This is a clear irretrievable breakdown of marriage as seen by the court however there is no legal law for perceiving an unrecoverable breakdown of marriage as a ground for separate in India. Yet, Supreme Court can conjure its intrinsic forces under Article 142 to concede a separation on the ground of an unrecoverable breakdown of the marriage. Therefore, the court has properly seen that "It is the all-around perceived recommendation that neither comprehensive nor select meaning of Mental Cruelty can be given, and even the courts have

not endeavored to do as such, yet by and large substance themselves with deciding if the realities in the specific case being referred to comprise cruelty or not".

IV. JUDICIAL APPROACH ON THE GIVEN ISSUE IN PREVIOUS JUDGMENTS OF COURTS

The Judicial Approach on the given issue of Mental Cruelty is deeply studied by the Supreme court of India in this case before giving the judgment. The Supreme Court for a complete explanation and understandings of all the elements of this case even refer to the Oxford dictionary to understand and explain the basic idea and concept of several issues. The Supreme court referred to several Indian and Foreign judgments while deciding this matter. Some of the important Judicial approach on the given issue as also studied by the Supreme Court whilst making their judgment are as follows:

1. N.G. Dastane v. S. Dastane reported in (1975) 2 SCC 326 on page 337, para 30 observed as under:
“The inquiry, 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.”
2. In the case of Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan & Anr. reported in (1981) 4 SCC 250, the Supreme Court has observed that the Concept of Mental and Legal Cruelty changes according to the changes and advancements in social concepts and the standards of living. With Advancements in our society, our understanding and meaning of several legal elements also change.
3. In the case of Shobha Rani v. Madhukar Reddi reported in (1988) 1 SCC 105, The Supreme Court has held that the word “cruelty” has not been defined in the Hindu Marriage Act. The meaning of this word is limited to the normal understanding of a reasonable person and that it is bound to change from time to time. The court has also held that cruelty may be mental or physical, intentional, or unintentional.
4. In Rajani v. Subramonian AIR 1990 Ker. 1, The Court has held that the concept and definition of cruelty depend upon the type of life the parties are accustomed to or on their economic and social conditions, the culture of the parties in question, and their human values which they are attached with or give importance to.
5. The Honorable Supreme Court in Vinita Saxena v. Pankaj Pandit reported in (2006) 3 SCC 778 has stated that what constitutes the required mental cruelty for the said

provisions, will not only depend or rely upon the numerical counts of such violent incidents happening but would also reply upon intensity, gravity and stigmatic impact of it when meted out even once.

6. In England, the Divorce Reform Act, 1969 came into action on January 1, 1971. From that point, the differentiation between the genders is nullified, and there is just one ground of separation, specifically that the marriage has separated hopelessly. The Divorce Reform Act, 1969 was revoked by the Matrimonial Causes Act, 1973, which came into power on January 1, 1974. The sole ground on which a request for separation might be introduced to the court by either gathering to marriage is that the marriage has separated hopelessly.
7. In *Le Brocq v. Le Brocq* [1964] 3 All E.R. 464, at p. 465, the court held as under: "I think. 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 ... would describe as 'cruel' if the story were fully told."

To Conclude, The Supreme Court came to the understanding that the word and concept of "Mental Cruelty" are much larger and more comprehensive than one can understand at the first glance. The Supreme Court also took to the conclusion that the particular meaning of this depends varies from time to time, from standard of living to standard of living. In the end, the Supreme Court finally solved the Issue at hand along with a definition of the word mental cruelty by giving several guidelines and explanations relating to all the major issues involved at hand. The Supreme Court also explained in the same guidelines the meaning and understanding of the duties in a marriage and how a good marriage should be in legal terms. The Supreme Court also explained a bit about the duties and privileges partners owe and give to each other in a marriage and that the violation of any such duties and/or Privileges could be constituted in a case of Mental Cruelty by one partner to another.

The view and explanation provided by the Supreme Court, in this case, has also been affirmed by the Supreme Court in *Suman Kapur vs. Sudhir Kapur* (07.11.2008 - SC): MANU/SC/4705/2008. This particular case also had similar facts and the Supreme Court held that the Decision taken in *Samar Ghosh vs Jaya Ghosh* (This case) Is correct and on the basis, on this precedent, the Supreme Court gave its decision.

On a personal basis, I strongly believe that the decision of the Court in this particular case is correct, However, even after the understandable and comprehensive guidelines given by the Supreme Court, there is an urgent need for legislative action on this issue, only after which can

this issue be fully solved.

V. THE APPROACH OF THE LEGISLATURE ON THE ISSUE

This issue is very wide and important in the Indian world. The judiciary alone cannot effectively solve this issue, as this is simply not an issue where some guidelines given by the Court would stop arguments about this issue to stop arising instead this issue is one which needs to be properly discussed by the people's representatives and new laws should be made to this regard. The current situation of the legislature in India and some other parts around the world varies. To give a brief and detailed explanation of the view of the Indian authorities in this issue, we can refer to The 71st Report of the Law Commission of India which has in its tenure briefly dealt with the idea and concept of "Irretrievable breakdown of marriage". This report was submitted to the government on 7th April 1978. This report mentioned that during the last 50-60 years or so, a very important question has come to the attention and engaged various lawyers, social scientists, and men of important affairs, that should the grant of decree of divorce be based on the fault of the party, or should it be based upon the complete breakdown of the marriage. The former is referred to as the Matrimonial Offence theory or fault theory, whereas the latter one has come to be known as the breakdown theory.

In the Report, it is also mentioned that the breakdown theory, so as far as the Commonwealth is concerned, may be found in the legislative and judicial developments during a much earlier period. The Government of New Zealand in its activities in 1920 has allowed the first provision for a separation agreement for three years or more was a ground for making a petition to the court for divorce and the court was at discretion without any rules or guidelines whether to grant a divorce or not. In the case of *Lodder V. Lodder* 1921 New Zealand Law Reports, this discretion was exercised by the court.

After this report, the Executive branch of the Government of India has not focused much on this issue or problem. However, with the rise of the population of India, the standard of living, new norms of society the time has come for the government to act and successfully amend the Hindu Marriage Act. Some possible suggestions for the legislature for improvements in the Hindu marriage act and areas relating to this issue are listed below.

VI. SUGGESTIONS FOR IMPROVEMENTS IN THE CURRENT SITUATION ON THE ISSUE

Here are some of the possible suggestion and recommendation which if followed and properly done could improve the current situation on this issue:

1. A clear definition of “Mental Cruelty” needs to be introduced in the Hindu Marriage Act itself.
2. A clear definition of all the terms whose definition is not explained in the Hindu marriage act.
3. Improvements in the speed of working of family law courts, as this whole issue started in 1990 and ended in 2007.
4. The Courts should shift focus more towards the facts both accepted by the Appellants and the Respondents with support of the witness’ and evidence.
5. The powers given to power to women for their protection under IPC sec 498(A) should be reduced and a stricter system should be put in place, as nowadays several women are misusing the powers given for their protection, to scare the husband/family of the husband into not going to courts.
6. A Marriage and the duties of both husband and wife along with the privileges to both the parties should be explained in a more detailed manner in the Act or guidelines on the same should be released. As even in this case itself, the main cause of the issue and the main reasons why the High Court reversed the Trial Court’s decision was because of the problem in understanding the duties of both the partners to each other and whether they apply to them or not.

Here are some of the possible ways and methods which if followed and properly done could solve the current situation on this issue:

1. **Judicial Committee:** A special judicial committee should be created for solving this issue. A special Judicial committee which would combine of Judges of the High Court or Supreme Court could prepare a complete list of guild lines and recommendations and ideas as to how this particular issue could be solved. This list of guidelines and explanations of various terms that are not explained in the Hindu marriage act could either be adopted as a temporary guideline or could be taken into consideration when the parliament decides to make a new amendment to the existing legislation.
2. **Parliament Discussion:** Just like any other issue, this issue at hand also needs to be properly examined and then through a proper law or rules & regulations, this issue also needs to be solved. Since this is a public issue it would be best if the highest law-making power in the country, that is the parliament introduces a new bill to change/improve the

existing Hindu Marriage Act. This process would make sure that the Issue is properly discussed by the people's representatives at the proper position.

3. **Open Discussion:** Since this is a public issue that needs to be understood by the public, the government can take inputs from the people of India themselves and what the people want. This would only an asking for what the people want the type of activity and not something on which the government would have to necessarily act upon. This would have the lawmakers understand the ideas and views of the general people on this issue and on the other hand, this would make the people get involved in law-making also, which is a dire need for India right now.
4. **Adaptation from Foreign & Ancient Legislatures:** Since this particular issue is an issue of a single Religion and personal laws of religion, the lawmakers could also refer to ancient texts and Foreign Legislations. The standing of these texts and ideas could potentially help the lawmakers understand the whole idea of this issue and how this issue can be easily solved.
