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PROVING CRUELTY: WHY IT'S SO HARD TO WIN A DIVORCE CASE BASED ON MENTAL CRUELTY

~ Archi Ojha

ABSTRACT

*Section 13(1)(ia) of the Hindu Marriage Act, 1955 allows either spouse to seek divorce on the ground of cruelty, but the statute does not define the term, leaving Indian courts to construct, judgment by judgment, what mental cruelty means. Over five decades of Indian jurisprudence — from *N.G. Dastane v. S. Dastane* through *Samar Ghosh v. Jaya Ghosh*, and, most recently, *Sonal Talpada v. Veerbhan Singh* (2026) — the Supreme Court has built an expansive and deliberately open-ended doctrine, illustrative rather than exhaustive, that insists on examining the cumulative effect of a marriage rather than isolated incidents. This paper argues that the very generosity of that substantive doctrine has not been matched by an equally workable evidentiary framework. Because mental cruelty typically occurs without witnesses, without documentation, and within a private domestic space, and because trial courts, despite the civil standard of proof fixed in *Dastane*, continue in practice to demand a degree of corroboration that resembles a higher standard, petitioners find it disproportionately difficult to convert a legally sufficient account of their marriage into a judicially credited one. Drawing on the statutory framework, a chronological table of eleven landmark Indian authorities, and the procedural realities of matrimonial litigation in India, the paper identifies four structural evidentiary obstacles, examines the Supreme Court's 2026 turn toward prolonged separation as an evidentiary proxy for cruelty, and proposes five concrete reforms — better use of Section 14 of the Family Courts Act, 1984, structured judicial guidance, greater receptivity to authenticated electronic and expert evidence, standardised pleading practice, and continued attention to the Law Commission's recommendation on irretrievable breakdown of marriage — to narrow the gap between what the law now permits and what litigants can actually prove.*

Keywords: mental cruelty, Hindu Marriage Act 1955, matrimonial evidence, standard of proof, Samar Ghosh, irretrievable breakdown, Indian divorce law.

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I. INTRODUCTION

When a marriage is fought over in an Indian family court, the two words that recur most often after “cruelty” are “prove it.” Section 13(1)(ia) of the Hindu Marriage Act, 1955 permits either spouse to seek divorce on the ground that the other has, after the solemnisation of the marriage, treated the petitioner with cruelty.¹ Parallel provisions exist under the Special Marriage Act, 1954,² the Parsi Marriage and Divorce Act, 1936,³ and the Indian Divorce Act, 1869, as amended for Christians in 2001.⁴ Yet none of these statutes defines cruelty. The word is left, deliberately, to the courts to fill in case by case. Physical cruelty was never difficult to demonstrate: a medical certificate, a first information report, a visible injury spoke for itself. Mental cruelty is a different animal altogether. It leaves no scar a doctor can photograph and no wound a forensic report can measure. It lives in tone of voice, in silence, in years of accumulated humiliation that only the two people inside a marriage ever fully witness.

This paper examines why, despite decades of expansive judicial articulation of what mental cruelty means, actually proving it in a contested divorce petition remains one of the hardest

¹Hindu Marriage Act, No. 25 of 1955, § 13(1)(ia).

²Special Marriage Act, No. 43 of 1954, § 27(1)(d).

³Parsi Marriage and Divorce Act, No. 3 of 1936, § 32.

⁴Indian Divorce Act, No. 4 of 1869, § 10(1)(x) (as amended by the Indian Divorce (Amendment) Act, No. 51 of 2001).

evidentiary tasks in Indian family law. It argues that the difficulty is not incidental but structural. It flows from the deliberately open-ended definition of cruelty, from a civil standard of proof that nonetheless functions like a higher one in practice, from the absence of independent evidence for conduct that occurs almost exclusively within the four walls of a matrimonial home, and from a judicial vocabulary of “ordinary wear and tear” and “reasonable apprehension” that quietly shifts the practical burden onto the petitioner to show that what happened to them was exceptional rather than merely unhappy. A further, more recent development is examined as well: the Supreme Court’s 2026 decision treating prolonged separation itself as an indicator of mental cruelty, which this paper reads as a doctrinal workaround for the very evidentiary difficulty it identifies, rather than a solution to it. The paper proceeds in seven parts: the statutory silence on cruelty; the judicial trajectory from physical to mental cruelty, tabulated for ease of reference; the structural reasons the doctrine itself resists proof; the evidentiary problem proper; the emerging use of separation as an evidentiary proxy; the procedural factors that compound the difficulty; and, finally, a set of concrete suggestions for reform.

II. THE STATUTORY SILENCE

Parliament’s refusal to define cruelty was a considered choice, not an oversight. The Hindu Marriage Act, as originally enacted in 1955, treated cruelty only as a ground for judicial separation, and required conduct causing a reasonable apprehension that it would be harmful or injurious to live with the respondent.⁵ The Marriage Laws (Amendment) Act, 1976 elevated cruelty into an independent ground for divorce and dropped the qualifying phrase, leaving the bare word “cruelty” to stand on its own.⁶ The Supreme Court has repeatedly declined invitations to reduce the term to a closed formula. In *Shobha Rani v. Madhukar Reddi*, the Court held that cruelty could be physical or mental, and refused to lay down a fixed definition, holding instead that the inquiry must focus on the impact of the respondent’s conduct on the particular petitioner rather than on a hypothetical reasonable spouse.⁷

That refusal to define is defensible as doctrine: a rigid definition would exclude future and unforeseen forms of marital cruelty, and Indian courts have always preferred flexible standards to brittle rules in matters of family life. But the choice has a direct and largely unremarked evidentiary consequence. A party pleading adultery or desertion knows, in advance, the discrete facts a court will look for. A party pleading mental cruelty does not know, until judgment,

⁵Hindu Marriage Act, No. 25 of 1955, § 10 (as originally enacted, prior to the 1976 amendment).

⁶Marriage Laws (Amendment) Act, No. 68 of 1976, § 2.

⁷*Shobha Rani v. Madhukar Reddi*, (1988) 1 S.C.C. 105 (India).

whether the particular pattern of conduct they lived through — nagging, coldness, humiliation before relatives, threats of suicide, refusal of intimacy, persistent false accusations — will be found to cross a threshold that is defined only in hindsight, one judgment at a time. Open texture in substantive law is, from the standpoint of the litigant carrying the burden of proof, indistinguishable from a moving target. Counsel drafting a petition for mental cruelty must therefore plead facts, not a legal conclusion, and must plead enough discrete, particularised incidents that a court can perform the “cumulative effect” exercise described below; a petition that merely asserts unhappiness in general terms is dismissed for want of particulars long before the evidentiary stage is reached. This has a practical drafting consequence that is rarely discussed in academic commentary: pleadings in mental cruelty cases tend, of necessity, to be long, diary-like, and heavily particularised, which itself increases the risk of minor inconsistencies that opposing counsel can exploit during cross-examination to attack the petitioner’s overall credibility.

III. FROM PHYSICAL ACTS TO A STATE OF MIND: THE JUDICIAL TRAJECTORY

Indian courts began giving substantive content to the word “cruelty” well before the Marriage Laws (Amendment) Act, 1976 made it a direct, independent ground for divorce. Under the Hindu Marriage Act as originally enacted, cruelty was available only as a ground for judicial separation under Section 10, and it was in that setting that the Supreme Court decided the foundational judgment on the subject. In *N.G. Dastane v. S. Dastane*, the Court held that cruelty exists where conduct creates a reasonable apprehension in the petitioner’s mind that continued cohabitation would be harmful, and, critically for present purposes, that this had to be proved not beyond reasonable doubt but on a preponderance of probabilities, the ordinary civil standard applicable to matrimonial proceedings generally.⁸ Once the 1976 amendment made cruelty an independent ground for divorce in its own right, the Supreme Court steadily widened what the word could mean.

Shobha Rani v. Madhukar Reddi confirmed that dowry demands and related harassment could themselves amount to cruelty even without accompanying violence, and that courts need not search for intention on the part of the respondent.⁹ *V. Bhagat v. D. Bhagat* went further still, holding that levelling reckless and defamatory allegations of adultery or mental disorder against a spouse in court pleadings could itself constitute mental cruelty sufficient to dissolve

⁸*N.G. Dastane v. S. Dastane*, A.I.R. 1975 S.C. 1534 (India).

⁹*Shobha Rani v. Madhukar Reddi*, (1988) 1 S.C.C. 105, ¶¶ 4–6 (India).

the marriage — cruelty inflicted through litigation rather than through the marriage's private life.¹⁰ *A. Jayachandra v. Aneel Kaur* emphasised that cruelty must be assessed with reference to the status, education, and living conditions of the particular parties, entrenching a contextual rather than a categorical test.¹¹ *Naveen Kohli v. Neelu Kohli* treated a sustained campaign of complaints, criminal cases, and public humiliation as cruelty grave enough to justify divorce, and used the occasion to urge Parliament to introduce irretrievable breakdown of marriage as an independent statutory ground.¹²

The high-water mark remains *Samar Ghosh v. Jaya Ghosh*, where a three-judge bench, expressly declining to reduce mental cruelty to a formula, instead offered an illustrative and non-exhaustive list of circumstances capable of amounting to mental cruelty — ranging from sustained, unjustifiable conduct causing agony, to indifference created by an adulterous relationship, to a unilateral and unreasonable refusal to have children.¹³ The Court insisted that the cumulative effect of conduct, not any single incident viewed in isolation, must be examined. *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* reinforced the contextual approach, holding that cruelty has an inseparable nexus with human conduct and is always dependent on the social strata, lifestyle, temperament, and emotional conditioning of the particular parties, so that what amounts to cruelty in one household may not in another.¹⁴ *K. Srinivas Rao v. D.A. Deepa* extended the doctrine to hold that filing false criminal complaints against a spouse, and the accompanying reputational and social harm, is itself an independent species of mental cruelty — meaning that the conduct of a related legal proceeding can become the cause of action for divorce in another.¹⁵ *Joydeep Majumdar v. Bharti Jaiswal Majumdar* carried this reasoning further still, holding that where a spouse's complaints irreparably damage the other's reputation and mental peace, the wronged party cannot be expected to condone such conduct, and that the degree of tolerance expected of a spouse will vary from couple to couple depending on their background, education, and status.¹⁶

Read together, these decisions represent one of the most generous bodies of pro-petitioner doctrine in Indian family law. Table 1 below places the principal Indian authorities in chronological sequence, from the earliest interpretation of cruelty under the unamended Act to

¹⁰*V. Bhagat v. D. Bhagat*, (1994) 1 S.C.C. 337 (India).

¹¹*A. Jayachandra v. Aneel Kaur*, (2005) 2 S.C.C. 22 (India).

¹²*Naveen Kohli v. Neelu Kohli*, (2006) 4 S.C.C. 558 (India).

¹³*Samar Ghosh v. Jaya Ghosh*, (2007) 4 S.C.C. 511 (India).

¹⁴*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 S.C.C. 288 (India).

¹⁵*K. Srinivas Rao v. D.A. Deepa*, (2013) 5 S.C.C. 226 (India).

¹⁶*Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 S.C.C. 742 (India).

the most recent Supreme Court intervention discussed in Part VI, to illustrate how steadily the doctrine has expanded outward from physical injury toward psychological and reputational harm. And that steady expansion is precisely what makes the persistent difficulty of actually winning such cases worth examining: the substantive law has grown more generous for over five decades, yet outcomes at the trial court level remain unpredictable and the burden borne by the pleading spouse has not correspondingly lightened.

Table 1: Chronological Development of the Mental Cruelty Doctrine under Indian Law (1975–2026)

Year	Case	Court	Principle Established
1975	N.G. Dastane v. S. Dastane	Supreme Court of India	Standard of proof is preponderance of probabilities, not beyond reasonable doubt.
1988	Shobha Rani v. Madhukar Reddi	Supreme Court of India	Cruelty may be physical or mental; no fixed definition; focus on impact on petitioner.
1994	V. Bhagat v. D. Bhagat	Supreme Court of India	Reckless, defamatory pleadings in litigation can themselves amount to mental cruelty.
2005	A. Jayachandra v. Aneel Kaur	Supreme Court of India	Cruelty assessed with reference to status, education and living conditions of parties.
2006	Naveen Kohli v. Neelu Kohli	Supreme Court of India	Sustained litigation and public humiliation amount to cruelty; urged irretrievable breakdown as a ground.
2007	Samar Ghosh v. Jaya Ghosh	Supreme Court of India	Illustrative, non-exhaustive list of mental cruelty; cumulative-effect test.
2012	Vishwanath Agrawal v. Sarla Vishwanath Agrawal	Supreme Court of India	Cruelty tied to social strata, lifestyle and temperament of the specific parties.
2013	K. Srinivas Rao v. D.A. Deepa	Supreme Court of India	Unsubstantiated criminal complaints against a spouse can constitute mental cruelty.
2021	Joydeep Majumdar v. Bharti Jaiswal Majumdar	Supreme Court of India	Complaints causing irreparable reputational and mental harm cannot be expected to be condoned.
2026	Sonal Talpada v. Veerbhan Singh	Supreme Court of India	Prolonged separation and denial of conjugal relations treated as an indicator of mental cruelty.

IV. WHY THE DOCTRINE ITSELF MAKES PROOF HARDER

Four structural features of the mental cruelty doctrine, each individually defensible, combine to make it unusually difficult to satisfy in practice.

First is what might be called the cumulative-effect trap. Samar Ghosh instructs courts not to examine an isolated instance of misbehaviour and ask whether that instance alone amounts to cruelty, but to consider the entire course of conduct and draw a fair inference from its cumulative weight.¹⁷ This is sound psychology — mental cruelty is rarely a single event — but it is demanding evidentiary law. It requires a petitioner to plead and prove not one incident but a pattern: dates, contexts, witnesses, and consistency across years, often reconstructed from memory long after the events occurred and frequently without contemporaneous documentation. A single dramatic incident, however serious, risks being characterised by the respondent's counsel as an aberration rather than a pattern, while a long list of relatively minor incidents risks being dismissed collectively as the ordinary wear and tear of married life. The petitioner is asked, in effect, to thread a needle between triviality and isolation.

Second is the ordinary-wear-and-tear qualification. Indian courts have consistently held that mere trivial irritations, quarrels, or normal wear and tear of married life which happens in day-to-day life will not amount to mental cruelty; the conduct complained of must be grave and weighty, and must be such that the petitioner cannot reasonably be expected to live with the respondent.¹⁸ This qualification is necessary to prevent the ground from becoming a route to divorce on demand, but it also builds a presumption of tolerability into every fact pattern a petitioner brings to court. Judges must decide, marriage by marriage, where irritation ends and cruelty begins, and that line is drawn differently by different benches, on similar facts, with no meaningful way for a litigant to predict it in advance.

Third, and least remarked upon, is the doctrine's own contextual relativism. A. Jayachandra, Vishwanath Agrawal, and Samar Ghosh all direct courts to weigh the status, education, temperament, and living conditions of the specific parties before them.¹⁹ This individualisation is meant to protect against a one-size-fits-all reasonable-spouse standard that might be insensitive to real differences between marriages. But it also means precedent travels poorly from one case to the next. A pattern of conduct found to be cruelty in one reported judgment offers only persuasive, not binding, guidance on materially similar facts in another, because the

¹⁷Samar Ghosh v. Jaya Ghosh, (2007) 4 S.C.C. 511, ¶ 101 (India).

¹⁸N.G. Dastane v. S. Dastane, A.I.R. 1975 S.C. 1534; Samar Ghosh v. Jaya Ghosh, (2007) 4 S.C.C. 511 (India).

¹⁹A. Jayachandra v. Aneel Kaur, (2005) 2 S.C.C. 22; Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 S.C.C. 288; Samar Ghosh v. Jaya Ghosh, (2007) 4 S.C.C. 511 (India).

outcome is explicitly tied to the particular petitioner's own capacity to endure it. The result is that litigants and their lawyers cannot build a case with the confidence that comes from a settled rule; every mental cruelty petition is, in an important sense, argued from first principles.

Fourth, the doctrine asks courts to assess psychological impact — “reasonable apprehension,” “agony,” “mental peace” — using an almost entirely lay evidentiary toolkit. Indian matrimonial trials rarely feature expert psychological or psychiatric testimony on the effect of sustained conduct on a petitioner's mental health; judges are asked to infer psychological injury from oral testimony describing behaviour, without the benefit of the kind of clinical assessment that would be unremarkable in, for instance, a personal injury claim founded on nervous shock. The doctrine speaks the language of mental health while the trial process supplies almost none of its evidentiary apparatus.

V. THE EVIDENTIARY PROBLEM PROPER

Even accepting the doctrine as settled, the practical difficulty of proof rests on four distinct evidentiary obstacles, summarised schematically in Figure 1 and elaborated below.

Figure 1: The Evidentiary Bottleneck in Mental Cruelty Claims

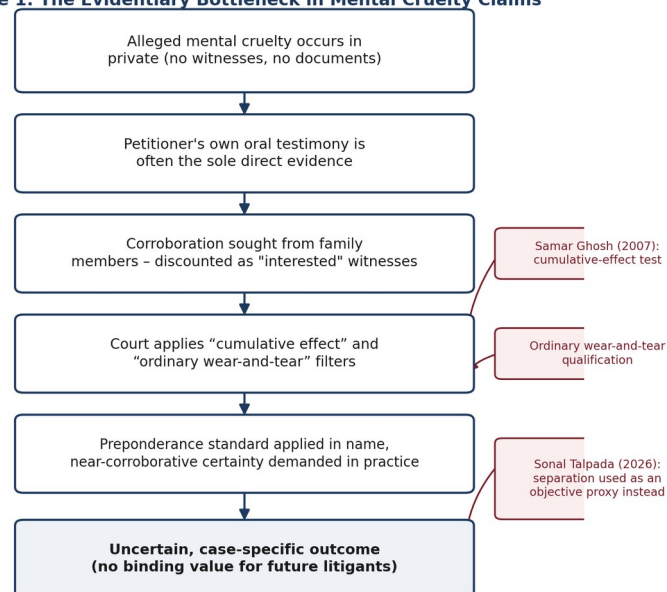


Figure 1: The Evidentiary Bottleneck in Mental Cruelty Claims, showing how the cumulative-effect and ordinary-wear-and-tear doctrines, and more recently the separation-based proxy in Sonal Talpada, structure the path from a private allegation to a judicial outcome.

A. A CIVIL STANDARD THAT BEHAVES LIKE A HIGHER ONE.

Dastane fixed the standard of proof in matrimonial cases at preponderance of probabilities rather than proof beyond reasonable doubt, and that remains the formally correct position under Section 3 of the Indian Evidence Act, 1872, now largely mirrored in Section 2 of the Bharatiya Sakshya Adhiniyam, 2023.²⁰ In principle this should make mental cruelty easier to prove than an offence under the penal law. In practice, because the allegation is serious — it ends a marriage, affects custody, and often runs parallel to criminal complaints under Section 498A of the Indian Penal Code, now Section 85 of the Bharatiya Nyaya Sanhita, 2023,²¹ and under the Protection of Women from Domestic Violence Act, 2005²² — trial judges frequently demand a degree of consistency and corroboration from a petitioner's testimony that functions, in effect, closer to the criminal standard the Supreme Court expressly disclaimed. A single uncorroborated, if credible, account of the petitioner is legally sufficient to found a decree; it is rarely treated by trial courts as practically sufficient.

B. THE PRIVACY OF THE MATRIMONIAL HOME.

Mental cruelty, almost by definition, occurs where no one is watching. Physical violence sometimes leaves neighbours who heard shouting, or a hospital record; adultery sometimes leaves a paper trail. Mental cruelty — cold indifference, verbal humiliation behind closed doors, control over finances or movement, persistent belittlement — leaves nothing but the petitioner's own account, unless it happens to spill into the presence of relatives at a family function or is captured, increasingly, in text messages, call recordings, or social media. Courts are conscious of this evidentiary asymmetry, which is precisely why Dastane and its progeny permit inference from surrounding circumstances rather than demanding direct proof of every incident.²³ But consciousness of the problem does not solve it: a petitioner without preserved messages, without a diary, and without a willing witness is asking a court to accept, largely on her or his own word, that years of a private relationship crossed a legal threshold that even trained judges struggle to define with precision. The growing reliance on electronic evidence has begun to change this picture, but it introduces its own difficulties of authentication under Section 65B of the Indian Evidence Act, 1872, which many family court litigants and even some counsel are not equipped to satisfy at the drafting stage.²⁴

²⁰The Indian Evidence Act, No. 1 of 1872, § 3; Bharatiya Sakshya Adhiniyam, No. 47 of 2023, § 2.

²¹The Indian Penal Code, No. 45 of 1860, § 498A (repealed 2023); Bharatiya Nyaya Sanhita, No. 45 of 2023, § 85.

²²Protection of Women from Domestic Violence Act, No. 43 of 2005.

²³N.G. Dastane v. S. Dastane, A.I.R. 1975 S.C. 1534 (India).

²⁴The Indian Evidence Act, No. 1 of 1872, § 65B.

C. INTERESTED WITNESSES AND THE DISCOUNTING OF FAMILY TESTIMONY.

Because mental cruelty happens at home, the only corroborating witnesses available to a petitioner are typically parents, siblings, or close friends — precisely the category of witness whose testimony courts are trained to view with caution on grounds of interest and partisanship. Respondents' counsel routinely, and often successfully, argue that a petitioner's mother or brother has an obvious stake in the outcome and cannot be treated as an independent witness. This leaves a structural gap: the class of people most likely to have observed a spouse's cruel conduct is simultaneously the class of people least likely to be believed when they describe it, while genuinely independent witnesses — neighbours, domestic staff, colleagues — rarely have sustained exposure to what happens inside a marriage.

D. DELAY, CONDONATION, AND THE CREDIBILITY COST OF ENDURANCE.

Many petitioners tolerate cruelty for years before approaching a court, whether from social pressure, financial dependence, concern for children, or hope that the marriage will improve. Section 23(1)(b) of the Hindu Marriage Act bars relief where the petitioner has condoned the cruelty complained of, and *Dastane* itself held that resumption of cohabitation, including a single instance of it, can amount to condonation reviving only on repetition of the cruelty.²⁵ This creates a perverse evidentiary incentive: a petitioner who endured the marriage longest, and therefore has the most cumulative conduct to point to, is also the petitioner most exposed to an argument that continued cohabitation condoned the very conduct now relied upon, while a petitioner who leaves early has less of a pattern to demonstrate the cumulative effect that *Samar Ghosh* requires.

VI. THE 2026 TURN: PROLONGED SEPARATION AS AN EVIDENTIARY SHORTCUT

A significant recent development illustrates both the persistence of this evidentiary problem and the Supreme Court's own preferred way of managing it. In *Sonal Talpada v. Veerbhan Singh*, decided on 2 June 2026, the Supreme Court upheld a decree of divorce granted after roughly fifteen years of separation between the parties, holding that an appellate court may legitimately treat a prolonged period of separation, complete cessation of cohabitation, and emotional alienation as an indicator of mental cruelty within the meaning of Section 13(1)(ia), and that persistent denial of conjugal relations without reasonable cause independently

²⁵Hindu Marriage Act, No. 25 of 1955, § 23(1)(b); *N.G. Dastane v. S. Dastane*, A.I.R. 1975 S.C. 1534 (India).

constitutes such cruelty.²⁶ Exercising its power under Article 142 of the Constitution to do complete justice, the Bench dissolved a marriage that, in its own words, survived only as a legal formality.²⁷

The significance of *Sonal Talpada* for the argument of this paper lies less in its outcome — dissolving dead marriages is, on any view, a sensible use of judicial power — than in its evidentiary logic. Faced with the same difficulty traced through Parts IV and V, namely that the underlying conduct said to constitute mental cruelty is subjective, private, and hard to corroborate, the Court effectively substituted an objective, easily verifiable proxy — the duration of separation, which requires no witness credibility assessment at all — for the harder inquiry into what actually happened between the parties during the marriage. Where the separation itself is undisputed, a petitioner no longer needs to relitigate years of private conduct; the fact of estrangement does the evidentiary work that testimony about specific incidents would otherwise have to do. This is doctrinally elegant, and it is likely to relieve a meaningful category of long-pending matrimonial appeals. But it should not be mistaken for a solution to the evidentiary problem identified in this paper. *Sonal Talpada* helps only petitioners who can point to years of undisputed, documented separation; it does nothing for the petitioner who is still cohabiting, or who separated only recently, and who must still prove a pattern of humiliation, coldness, or verbal abuse through the same thin evidentiary means described in Part V. If anything, the judgment confirms the thesis advanced here: even the Supreme Court, when confronted with the practical unworkability of proving subjective cruelty on contested facts, has found it more administrable to look for an objective marker — time apart — than to insist that trial courts get better at assessing the private, uncorroborated conduct that Section 13(1)(ia) was originally meant to address.

VII. PROCEDURAL FACTORS THAT COMPOUND THE DIFFICULTY

The evidentiary problem does not operate in isolation; several features of matrimonial litigation practice in India make it worse. First, cross-litigation is now the norm rather than the exception. It is common for a wife to have filed a complaint under Section 498A and the Domestic Violence Act while the husband simultaneously seeks divorce on the ground of cruelty, each relying substantially on the other's litigation conduct as evidence of cruelty in the parallel proceeding. K. Srinivas Rao recognised this dynamic directly, holding that the filing of a criminal complaint that is ultimately not made out can itself be pleaded as cruelty.²⁸ The

²⁶*Sonal Talpada v. Veerbhan Singh*, 2026 INSC 620 (India).

²⁷INDIA CONST. art. 142; *Sonal Talpada v. Veerbhan Singh*, 2026 INSC 620 (India).

²⁸*K. Srinivas Rao v. D.A. Deepa*, (2013) 5 S.C.C. 226 (India).

consequence is a self-reinforcing cycle in which the very act of seeking a legal remedy for one form of alleged mistreatment becomes, in the opposing proceeding, the mistreatment itself, and courts are left to disentangle which party's litigation conduct is a legitimate assertion of rights and which is vexatious.

Second, the mediation and reconciliation apparatus built into Section 9 of the Family Courts Act, 1984²⁹ and Order XXXIIA of the Code of Civil Procedure, 1908,³⁰ though well intentioned, places pressure on a cruelty petitioner to compromise or soften pleadings during the early stages of litigation, sometimes at the cost of the specificity that Samar Ghosh's cumulative-effect test later demands. Third, delay itself operates against the petitioner: matrimonial trials in Indian district courts frequently run for several years, during which memory fades, witnesses become unavailable, and the psychological injury the petitioner seeks to prove is overtaken, in the eyes of a court seeing the parties years later, by the fact of long separation, which, as Part VI shows, has now itself become a separate and more easily proved route to relief. Where that route is available, courts sometimes prefer to dissolve the marriage on the ground of breakdown rather than adjudicate contested cruelty on the merits, which grants relief to the parties but leaves the underlying evidentiary difficulty of proving mental cruelty entirely unresolved as a matter of doctrine.

VIII. TOWARDS A MORE WORKABLE STANDARD: SUGGESTIONS

None of the foregoing is an argument for narrowing what counts as mental cruelty; the expansion traced in Part III has been, on balance, a necessary corrective to an earlier and narrower physical-injury conception of matrimonial cruelty. The argument, rather, is that the evidentiary architecture around the doctrine has not kept pace with its substantive generosity. Five modest reforms would help close that gap.

First, trial courts hearing matrimonial petitions would benefit from structured judicial guidance — through a Family Courts practice direction rather than fresh legislation — clarifying that the Samar Ghosh illustrative categories are to be treated as genuinely illustrative, so that trial judges do not, in practice, require a petitioner's facts to closely resemble a reported precedent before they will be believed. Second, greater judicial receptivity to modern forms of evidence — properly authenticated electronic communications under Section 65B of the Evidence Act, counselling records where a party consents to their use, and, in appropriate cases, expert psychological assessment of the impact of sustained conduct on a petitioner — would reduce

²⁹Family Courts Act, No. 66 of 1984, § 9.

³⁰Code of Civil Procedure, No. 5 of 1908, Order XXXIIA.

reliance on interested family testimony as the only available corroboration. Third, family courts could draw more consistently on the flexible procedure already available to them under Section 14 of the Family Courts Act, which permits reliance on facts even where they would be inadmissible under the Evidence Act, provided the court considers them relevant and sufficient; this provision exists precisely to address the corroboration deficit described in Part V, yet remains inconsistently invoked across jurisdictions.³¹ Fourth, continued attention to the Law Commission of India's long-standing recommendation, first made in its Seventy-First Report and revisited periodically thereafter, to introduce irretrievable breakdown of marriage as an independent statutory ground would relieve some of the pressure currently placed on cruelty to do work it was never designed to do, and would put the proxy reasoning used in *Sonal Talpada* on an express statutory footing rather than leaving it to case-by-case invocation of Article 142.³² Fifth, law schools and bar associations could usefully develop standard pleading templates and evidence checklists for matrimonial cruelty petitions, reducing the drafting inconsistency identified in Part II and helping first-generation litigants, in particular, present cumulative-effect evidence in the structured form that Samar Ghosh implicitly expects.

IX. CONCLUSION

Indian courts have, over five decades of jurisprudence stretching from *N.G. Dastane v. S. Dastane* to *Sonal Talpada v. Veerbhan Singh*, built one of the most spacious definitions of mental cruelty found in Indian family law, deliberately refusing to freeze the concept into a closed list so that it can respond to forms of marital suffering that earlier generations of judges never anticipated. That generosity of definition is not matched by an equally generous evidentiary practice. A petitioner alleging mental cruelty must reconstruct, often years after the fact and usually without independent witnesses, documentary support, or expert assessment, a sustained pattern of conduct grave enough to be more than ordinary marital friction, credible enough to survive the discounting routinely applied to family testimony, and timely enough to escape the shadow of condonation — all while trial courts, conscious of the seriousness of what is being alleged, quietly hold petitioners to something closer to a criminal standard of proof than the civil one *Dastane* prescribed. The difficulty of winning a mental cruelty case is, in this sense, not a failure of doctrine but an unintended by-product of doctrine's own success: the more expansively courts define what mental cruelty can be, the more exacting they have, in practice, become about how convincingly it must be shown, and even the Supreme Court's own

³¹Family Courts Act, No. 66 of 1984, § 14.

³²Law Commission of India, Seventy-First Report: The Hindu Marriage Act, 1955 — Irretrievable Breakdown of Marriage as a Ground of Divorce (1978).

most recent intervention has responded by looking past contested conduct altogether toward the safer, objective fact of separation. Closing the remaining gap between an expansive substantive standard and a demanding evidentiary practice — through better use of existing procedural flexibility, more receptive treatment of modern and expert evidence, structured pleading practice, and continued attention to structural reforms such as irretrievable breakdown — would do more to make the promise of Section 13(1)(ia) real for ordinary litigants than any further elaboration of what cruelty, in the abstract, means.