SHEFALEE VASUDEV
OPINION

Coldplay Be Damned

Denial of sex equals marital cruelty, says the SC. But can sex be legislated?

IN the US, the hottest, most shocking recent turnaround in the sexual revolution is academic Joan Sewell's book *I'd Rather Eat Chocolate—Learning to Love my Low Libido*. Her husband, Kip Sewell, a willing partner in the lady's confession of coldness in bed, shopped with her for photogenic bedwear for a photo shoot to promote her book. Kip even worked with the photographer of Britain's *Observer* newspaper to build up a prop erection with gaffer tape and scrunched up balls of cellophane and a sock for photographs of the two of them in bed. Joan's denial of sex to her husband, which her book documents in some detail, has clearly not resulted in separating them.

Amusing and slightly far-fetched though it might sound, the story is relevant for us because it runs contrary to the way we in India are currently looking at sexual denial in marriage. No less an institution than the Supreme Court has grappled with words such as coldness, sexual denial and lack of affection in recent divorce rulings.

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Last month's SC ruling in the divorce case of senior IAS officers Samar and Jaya Ghosh has spawned a welcome debate on what constitutes cruelty in marriage. It is a rather insightful and well-argued document of judicial and philosophic wisdom by Justices B.N. Agarwal, P.P. Naolekar and Dalveer Bhandari. Except for the part that refers to "denial of sex" as a form of cruelty in marriage.

Consider what the court says: "Unilateral decision or refusal to have intercourse without physical incapacity or valid reason amounts to mental cruelty." The judgement seems to suggest that anyone who denies sex in marriage can only do so if he or she has a physically valid reason. Sex, the most volatile of exchanges in marriage, and perhaps the most complex, now has a charter to live up to.

What's also surprising about this ruling is that it does not regard "mere coldness, lack of affection, jealousy, selfishness or possessiveness" as cruelty. It adds: "Even less can mere incompatibility or differences in temperament, personality or opinion be elevated to the grounds of divorce."

Now, let's juxtapose these points. Suppose the reason behind sexual denial by one spouse has to do with differences in temperament, coldness, lack of affection, jealousy and possessiveness. Does that mean that the refusing partner now has a "valid reason" to deny sex? What does a person do if he/she is sexually put off by the spouse but has no physical reason—impotence, frigidity or instability of mind—to explain it? Should he or she still "discharge marital obligation" as the court necessitates?

The truth is there is no easy correlation between sex and divorce. Some couples do not have sex but do not divorce. They accept the snuffing out of sexual desire in marriage rather than harp on its waning sexual quotient. Others have sex and still divorce. There are those who divorce but continue having sex with each other even after. And finally, the best kept secret of Indian marriages—those who divorce because one has been forcing sex on the other. The same law that regards denial of sex as cruelty also recently accepted forced sex as marital rape.

Ultimately, the true nature of marital sexuality cannot be categorised by any court in the world as cruel vs kind. And if the courts decide to enter this intimate domain, they will need the services, not just of a "medical man" and a smart lawyer, but also a shrink and a sexologist, to decide a divorce case.

To the layman, these recent judgements come across as a case of a step forward, and a step backward. On the one hand, there is a clearly growing sensitivity on the part of the courts—"irretrievable breakdown of marriage" is now accepted as a ground for divorce. This makes it possible for an increasing number of couples to opt for divorce by mutual consent—the sanest way to end it on paper. And, rather unexpectedly, the Rajasthan High Court ruled last week that a married woman can live with her lover against her husband's wishes. Blasphemous surely according to our moral police, but it shows respect for personal freedom.

But then, on the other side of the swinging judicial pendulum, is the labelling of "denial of sex" as cruelty. However hard the courts try, bringing desire, fantasy and sexual exploration into definitions or rulings may just be impossible. Differentiating between sexual, asexual and platonic marriages is really an out-of-court settlement with life.

At the end of the day, while ostensibly and evidentially many marriages may go to dust because the sex is bad, or non-existent, taking sexual denial to the courts may not be the best idea. Eating chocolate is easier. ◘

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