

however, provided that adultery which had been condoned could not be revived. It also provided that a period of cohabitation between the parties for not more than three months, which had as its primary purpose reconciliation, should not be deemed to have condoned an act of adultery or cruelty.

The 1963 Act also attempted to solve the problem arising from agreements made by the parties to a divorce before or during divorce proceedings, such as *bona fide* arrangements to settle questions of maintenance for the wife and children, but there was always the risk that such agreements might be held to be collusive. The 1963 Act, therefore, made collusion a discretionary bar and also made it possible for the court to take any such agreement into consideration and give direction upon it. If the Court approves any such agreement, it is freed from the taint of collusion. If the court does not approve, it can either be rewritten or simply abandoned. This provision has made it possible for sensible arrangements to be reached by the parties without running the risk of losing the divorce action because of collusion. At the same time, the bar of collusion still applies to improper agreements. As the judge in the case of *Nash vs. Nash* (L. R. 1965, p. 266) stated:

“. . . since the enactment of the *Matrimonial Causes Act, 1963*, it is no longer appropriate to treat all collusion as mischievous or all who negotiate collusive bargains as mischief makers. A collusive bargain, which in the ordinary meaning of the word is corrupt, remains an offence legally and morally, e.g. the procurement of a decree upon a false case of improper pressure by financial bribes or threats upon a spouse to bring a suit or abandon a defence; but a collusive bargain, which represents an honest negotiation between the parties which is not intended to deceive the court either by putting forward false evidence or suppressing or withdrawing a good defence and which takes its place in an agreement which is intended to make reasonable provision for the parties, according to its subject matter, is a perfectly reputable transaction. There is no objection to solicitors and counsel negotiating such a bargain. . . the institution of marriage should not be undermined by an unworthy and disreputable market in its dissolution.”

Since the introduction of cruelty, desertion and insanity as grounds for Divorce in England by the 1937 Act, a considerable jurisprudence has grown up on these subjects. Cruelty and desertion were left undefined in the Act and it has been the duty of the courts to evolve practical definitions.

## 6. Cruelty

The legal definition of cruelty in England has stressed that such conduct must have caused danger to life, limb or health, either bodily or mental, or at least given rise to a reasonable apprehension of such danger. Until 1964, it was also assumed that cruelty must have been aimed at, or intended to hurt, the other spouse or the children of the marriage. However, in the cases of *Gollins vs. Gollins* and *Williams vs. Williams*, the House of Lords held that if the conduct complained of was grave and weighty and if the injury or apprehended injury to the petitioner's health was shown, then it was not necessary to prove that there was an intention to injure.

Actual physical violence is not necessary to establish cruelty. The matrimonial relations between the spouses must be considered, particularly in cases where the alleged cruelty consists not of actual physical violence but of persist-