

# MARRIAGE, MENTAL HEALTH AND INDIAN LEGISLATION

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Marriage is one of the most important events of life affecting social status as well as the psyche of an individual. It not only serves to satisfy the fundamental biological need of sexual gratification through a socially acceptable way but also helps the individual to achieve a higher level of personality maturation. Historically marriage existed in one form or another in every culture, ensuring social sanction to a physical union between man and woman and laying the foundation for building up of family. Nambi (2005)<sup>1</sup> has reviewed it extensively.

There are a variety of marital patterns such as (i) monogamy, (ii) bigamy, (iii) polygamy, (iv) stable marital arrangements/companionship, and (v) same-sex marriage. In most cultures monogamy is held as ideal. Same-sex marriage has been much talked about in recent times. Many countries abhor the basic concept of same-sex marriage; some countries have legalized it. Whether or not same-sex union should be recognized has been discussed in many state legislatures in the West.

In India, homosexuality and lesbianism are not only considered taboo, but also an offence. That does not mean that this practice is uncommon here. It should be noted that gay and lesbian psychiatry is one of the specialty sections of the American Psychiatric Association.

The increasing acceptance of divorce has dramatically altered the marriage situation. While couples still marry at the same constant rate, more than half of all couples married in the USA are now divorced. In India, even though the rate of divorce is not alarming, it is rapidly increasing-presently it is 5%-7%. There are many in our society who believe that easy marriage and divorce cheapen the institution of marriage and threaten the structure of the family. This may or may not be true, but either way, laws in reality have very little impact on the rates of marriage and divorce. Laws are a reflection of people's needs; they make it easier for people to live with each other and try to ensure that everyone gets fair treatment. Society cannot dictate social and moral behavior through its laws. If laws do not fit, people will tend to disregard them. This is why so many people choose to live together in the West instead of marrying, as marriage does not fit their situation. Perhaps we would do better to make marriage fit the people, rather than trying to make people fit the institution.

Urban society is highly heterogeneous as well as individualistic. The urban attitude is one of noninterference in the affairs of other people. Thus, the social life of urban people also exposes them to a variety of situations that can retract from the bond of attachment to the family. These situations therefore make divorce much easier.

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The status of women in the family and society is another factor to be considered. The modern woman, because of her opportunities for education, training and employment, and creative activity, has developed into a self dependent and self- confident individual. This can lead to difficulties in adjustment in marriages, especially for women who have lived an independent and creative life before marriage.

Some countries have legalized same sex marriages, In India, homosexuality and lesbianism are not only considered taboo, but also an offence. That does not mean that this practice is uncommon here. It should be noted that gay and lesbian psychiatry is one of the specialty sections of the American Psychiatric Association. The increasing acceptance of divorce has dramatically altered the marriage situation. Society cannot dictate social and moral behavior through its laws. If laws do not fit, people will tend to disregard them.

### **MARRIAGE AND MENTAL HEALTH PROBLEMS**

Marriage may be stressful for vulnerable people, which may lead to the development of mental health problems. The interplay between marriage and mental health problems has been dealt with in detail by Indian and international authors. Major mental health disorders may be the cause or Effect of marital disharmony. Divorce-seeking couples have a high psychiatric morbidity in comparison to well-adjusted couples with more neurotic traits, the personality factors of divorce-seeking couples also differ from those of couples in stable marriages.(ref)

An ICMR and DST study (1987) on severe mental distress found the highest common distress among housewives in both their urban as well as rural samples. All workers opine that those who were ever married, that is, married/widowed/widower or separated, suffered more than those who never married.

Complaints of lifelong anorgasmia or impotence by marital partners usually indicate intra psychic problems. Other problems that may induce a marital crisis also trigger off psychological disturbances. They include the discovery of an extramarital affair, onset of serious illness, announcement of intent to divorce, or problems with children or work, one or both members of the couple may be in therapy or may be psychiatrically ill, and one spouse may be seeking hospitalization for the other.

- Marriage may be stressful for vulnerable people, which may lead to the development of mental health problems.
- Severe mental illness found the highest common distress among housewives in both urban as well as rural samples.
- Complaints of lifelong anorgasmia or impotence by marital partners usually indicate intra-psychic problems.

### **SCHIZOPHRENIA AND MARRIAGE**

There is evidence that marital status is significantly associated with first admission rates, age of onset, course and outcome of schizophrenia. Single males appear to be over represented in schizophrenia samples. Statistical analysis of the WHO data, in which confounding factors such as age, premorbid personality traits, and family history were controlled, found that married men experienced a statistically significant delay (1-2 years) in the onset of psychotic symptoms compared with single men<sup>2</sup>.

Often, mental health professionals are faced with having to give advice regarding the marriage of a

person suffering from schizophrenia. The answers to many of the questions posed by families are unclear, as there are little research data on which to base counselling on this important issue.

In a 10-year follow up study, Thara and Srinivasan<sup>3</sup> found that 'marital outcome in Indian patients is good with no significant gender differences'. The high marital rate (about 70% being married before the onset of the illness), presence of children, a shorter duration of illness at inclusion and the presence of auditory hallucinations at intake were all associated with a good marital outcome. Being unemployed, experiencing a drop in socioeconomic level and the presence of flat affect and self-neglect for 10 years were all associated with a poor marital outcome.

For most women in India, marriage is a onetime event in life, which is glorified and sanctified and is associated with much social approval. It is also the ultimate fulfilment for most women. If this is endangered or broken by mental illness such as schizophrenia, the lives of these women are shattered beyond repair. After separation, almost all these women live with their parents, many of whom are aged. Social isolation and stigma is caused by this double disorganization, of chronic illness and a personal tragedy, stigmatized even now by society. It has brought to the fore the plight of women who, in addition to being affected by a serious mental illness, have also been abandoned by their spouses and left to fend for themselves in a world where few options are open to them. The social, psychological and cultural concomitance of being mentally ill and divorced separated are particularly severe in the Indian culture. In addition to the stress of mental illness, hostility from family members and rejection from society in general, these women are ridiculed and ostracized for their divorced/separated status. Furthermore, for the families (primarily ageing parents), the emotional, financial and physical burden of caring for a severely mentally ill woman is extremely high. Many relatives view that severe oddity of behaviour is something that would be set right by marriage with the mistaken belief that marriage brings the answer to all the ills. In the study of women with schizophrenia and broken marriages. Thara et al found the "stigma of being separated/divorced in turn was more acutely felt by families and patients than that of mental illness per se. Caregiver of these separated/divorced/deserted women suffer much more than the patients themselves. In most arranged marriages, the fact of mental illness is often not disclosed or discussed with the family of the spouse. This is largely due to the fear that disclosure will lead to rejection of the woman, After marriage, in the case of an early relapse, an atmosphere of mistrust and suspicion is created in the family of the spouse that augurs poorly for the outcome of the illness. On the other hand, a psychotic episode after childbirth or after several years of marriage is considered more favorably and does not always result in separation/divorce<sup>4,5</sup>

Patients with schizophrenia are more likely to remain single and unmarried than patients in other diagnostic groups. This is particularly true of male patients and can probably be explained by the fact that women tend to be younger than men when first married and are less likely to have experienced an initial psychotic episode. From a cultural perspective

Some researchers found low rates of fertility and reproduction among patients with Schizophrenia. This finding can probably be explained by several factors including lack of interest in social relations, general apathy, loss of sex drive, and lack of opportunity for a sexual relationship due to hospitalization and institutionalization. Rates of reproduction in schizophrenic patients have probably increased since deinstitutionalization, although they are likely to remain lower than those found in the general population.

### **SCHIZOPHRENIA AND MARRIAGE**

- Often, mental health professionals are faced with having to give advice regarding the marriage of a person suffering from schizophrenia.
- Patients with schizophrenia are more likely to remain single and unmarried than patients in other diagnostic groups, this is particularly true of male patients.
- For most women in India, marriage is a one-time event in life, which is glorified and sanctified and is associated with much social approval. It is also the ultimate fulfillment for most women. If this is endangered or broken by mental illness such as schizophrenia, the lives of these women are shattered beyond repair. Caregivers of these separated/divorced/deserted women suffer much more than the patients themselves.

### **MARRIAGE AND DEPRESSION**

There has been considerable interest in the role of the marital status as a risk factor for depression. For men, it appears clear that those married have the lowest rate of depression, while separated or divorced men have the highest rate of major depression. In women, the association is slightly less clear, but in the Epidemiologic Catchment Area (ECA) study, the same findings applied to women as well as men<sup>6</sup>.

Children separated from parents and children of divorced parents have more psychological problems, even though the cause-effect relationship is still uncertain

### **ALCOHOL AND MARRIAGE**

Excessive drinking is liable to cause profound social disruption, particularly in the family. Marital and family tensions are virtually inevitable. The divorce rate among heavy drinkers is high and the wives of such men are likely to be anxious, depressed and socially isolated. Western studies have shown that almost 80% of domestic violence is due to alcoholism. Indian studies also corroborate this. Addiction seems to be the predominant cause in 50% - 60% of cases of domestic violence that have been reported. Marital relationships suffer most from the ravages of addiction. It destroys all that is dear to the spouse, including family life, sexual relationship, economic resources, well-being of the children and status within the community.

### **ALCOHOL AND MARRIAGE**

- ? Marital and family tension is virtually inevitable in families with heavy drinkers.
- ? 50-60% of domestic violence is due to alcoholism.
- ? Alcohol addiction destroys all that is dear to the spouse, including family life, sexual relationship, economic resources, well-being of the children and status within the community.

### **MARRIAGE AND SUICIDE**

Compared with the general population, people who have died of suicide are more likely to have been divorced, unemployed or living alone. Social isolation is a common factor among these associations.

Marriages reinforced by children seem to lessen the risk of suicide significantly. The suicide rate is 11 per 100,000 for married persons, double this rate is registered for those never married/ single. Previously married persons, however, showed sharply higher rates than those never married, i.e. 24 per 100,000 among widowed and 40 per 100,000 among those who are divorced, with divorced men registering 69 suicides per 100,000 compared to 18 per 100,000 among divorced women.

Suicide research in India shows that one-fourth of the persons committing suicide are unmarried and the suicide rate is highest in the first year of marriage. Marital and family problems, which constitute around 50%, are more important than mere cruelty. The higher rate of married women committing suicide may probably be due to marital disharmony, dowry or ill-treatment by the in-laws.

### **ANXIETY DISORDERS AND MARRIAGE**

Batra and Gautam<sup>7</sup> found a high prevalence of neurotic disorders among divorce- seeking couples. The neurotic problems are encountered either as antecedents or consequences of marital disharmony.

Some couples ask for help with sexual problems, which are the result and not the cause of marital conflicts. The sexual dysfunction may most probably be due to psychological disturbances such as anxiety and depression, or due to abuse of alcohol and drugs apart from other physical illness.

- ? Social isolation is a common factor among suicide and depression.
- ? There is high prevalence of neurotic disorders among divorce seeking couples.
- ? The neurotic problems are encountered either as antecedents or consequences of marital disharmony.
- Sexual problems commonly are the result and not the cause of marital conflicts.

### **MARRIAGE, MENTAL ILLNESS AND LEGISLATION**

Every country and every religion has its own personal law. In India, under Article 44 of the Constitution, the state is bound by a constitutional mandate to secularize and homogenize family laws. The enactment of a uniform civil code was a goal to be achieved through a gradual process. The admixture of religion and ethics with legal precepts was naturally congruent. The practice of applying matrimonial law according to religious faith and beliefs has led to the prevalence of diverse matrimonial laws, besides one statutory law.

As per Rule no. 3 of Order 32A of the Civil Procedure Code, it is the duty of the court to make efforts for settlement in matters concerning the family. As per Rule no. 4 of the same order, a person, preferably a woman, who may or may not be related to the parties including a person professionally engaged in promoting the welfare of the family, may be utilized for the purpose of the settlement mentioned above. According to the Family Court Act, 1984, the Family Court was established with the view to promote conciliation in disputes concerning marriage and related matters. The Family Court may utilize the services of medical and welfare experts for conciliation. This Act reads that persons committed to the need to protect and preserve the institution of marriage shall be selected for appointment as judges and that woman shall be preferred for such appointments. It is clear that the intention of law-makers is to prevent the fracture of a family. If a hard decision is inevitable it will be on a specific ground.

In a compilation of 61 cases of divorce, Dhanda<sup>8</sup> found that divorce/nullity had been filed on the following facts: Hindu Marriage Act: 49, IDA: 11 and Parsi Act: 1. Out of 34 cases filed for divorce only 10 cases were granted divorce, and out of 30 cases for nullity of marriage, 12 cases were granted the same. In her compilation of 61 cases, Amita Dhanda found that schizophrenia forms nearly one-third of the diagnostic pattern of causes followed by mild mental disorder/insanity/unsoundness of mind.

The following Acts<sup>9</sup> have a bearing on the legal aspects of marriage:

1. The Special Marriage Act, 1954
2. The Hindu Marriage Act, 1955 with amendment in 1976

3. The Dissolution of Muslim Marriage Act, 1939; The Muslim Women Protection Of Rights on Divorce, 1986
4. The Parsi Marriage and Divorce Act, 1936
5. The Christian Marriage Act, 1872
6. The Indian Divorce Act, 1869
7. The Family Courts Act, 1984
8. Domestic violence Act, 2005

#### **THE MATRIMONIAL RELIEF THAT ONE CAN SEEK INCLUDES:**

1. Decree for nullity
2. Restitution of conjugal rights
3. Judicial separation
4. Divorce

Divorce or nullity is granted in cases where a socially accepted marriage is not legally accepted as a marriage, e.g. bigamy. There are two questions with reference to the marriage. Is the marriage a valid one? Is it possible for the relationship to continue? The conditions prevailing at the time of marriage decide its validity. An individual who is not capable of comprehending what is happening to him or her cannot give consent for marriage. The individual may not have the capacity for procreation. The relationship between the parties may be one that prohibited by religious codes. Such situations lay open to question the validity of marriage. Nullity of marriage means that the marriage is held null or void. In other words, a valid marriage did not take place at all. Conditions prevailing in the course of marital life determine the continuation of the relationship between the partners. For example, desertion, cruelty, adultery and mental illness may interfere with marital life and it may not be possible for the relationship to continue. Divorce means that the marriage was a valid one, but the relationship cannot be continued. Following the decree of divorce, the individual becomes eligible for remarriage.

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#### **THE SPECIAL MARRIAGE ACT, 1954**

The Special Marriage Act is meant for any person in India and Indian nationals abroad, irrespective of the faith that the individual may profess. A marriage solemnized in any other form can be registered under this Act. The enactment of 1954 has been subsequently amended. The Marriage Laws (Amendment) Act, 1976 has brought about considerable changes in the grounds for divorce, judicial separation and nullity.

#### **CONDITIONS OF SPECIAL MARRIAGES**

The section lays down five conditions of marriage:

1. Monogamy
2. Mental soundness (Clause b)
3. Marital age
4. Relationship (Clause d)
5. Conditions of marriage in J&K (Clause)

### **MENTAL SOUNDNESS:**

Marriage is tagged with lifelong responsibilities. The Special Marriage Act, therefore, provides that neither party: i) is incapable of giving a valid consent to it as a consequence of unsoundness of mind; or (ii) though capable of giving valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children, or (iii) has been subject to recurrent attacks of insanity.

The condition of mental soundness for marriage does not mean that the person to be married must possess a high intelligence quotient. It only requires that he should understand the special nature of the relationship that marriage creates.

The present provisions of Section 4(b) are substituted by the Marriage Laws Amendment Act, 1976. The original provision was 'neither party is an idiot or a lunatic'. According to the Marriage Laws (Amendment) Act, 1976, recurrent epilepsy was also a disqualification for marriage. Now that has been removed by the Marriage Laws (Amendment) Act (No. 39 of 1999) with effect from December 1999. Marriage in violation of this condition is void U/S 24(1)(1).

### **GROUND FOR JUDICIAL SEPARATION:**

Section 23 provides for judicial separation on any of the grounds for divorce specified in Section 27, sub-Sections I and IA. Of Unsound mind: That the respondent has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

### **GROUND FOR DIVORCE:**

**Section 27(1)** A petition for divorce may be presented to the District Court either by the husband or the wife on the ground that the respondent, as per Clause(e), has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. In this clause;

(a) The expression of mental disorder means mental illness, arrested or incomplete development of the mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia.

(b) The expression 'psychopathic disorder' means a persistent disorder or disability of the mind (whether or not including sub normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent and whether or not it requires or is susceptible to medical treatment.

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- ? The condition of mental soundness for marriage does not mean that the person to be married must possess a high intelligence quotient. It only requires that he should understand the special nature of the relationship that marriage creates.
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## **HINDU MARRIAGE ACT, 1955**

This is an Act to amend and codify the law relating to marriage among Hindus. This enactment of 1955 has been subsequently amended eight times from 1956 to 2003. The Marriage Laws (Amendment) Act, 1976 has brought about considerable changes in the original Act. The Hindu Marriage Act applies to Hindus, Buddhists, Jains and Sikhs.

The Act of 1955 provided for four types of matrimonial relief:

- (i) restitution of conjugal rights,
- (ii) judicial separation,
- (iii) declaration of nullity and annulment, and
- (iv) divorce.

Adultery, desertion and cruelty were looked upon as 'matrimonial offences' which needed to be punished and divorce was used as an instrument for punishing people guilty of such offence. This was initially called the 'offence theory' of divorce. Later, insanity was added as a ground for divorce and came to be regarded as a 'matrimonial offence', though insanity or unsoundness of mind is a misfortune, not a cause for guilt. Since diseases like insanity could not be categorized as an offence, the 'offence theory' was renamed as the 'fault theory'. That is, if the respondent had 'some fault', which made continuance of cohabitation at most impossible, the petitioner was entitled to divorce.

### **CONDITION FOR A HINDU MARRIAGE SECTION 5:**

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled:

- (i) neither party has a spouse living at the time of marriage;
- (ii) at the time of marriage neither party
  - (a) is incapable of giving valid consent in consequence of unsoundness of mind, or
  - (b) though capable of giving valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children, or
  - (c) has been subject to recurrent attacks of insanity (the words 'or epilepsy' were omitted by act 39 of 1999, section 2);
- (iii) the bridegroom has completed 21 years and the bride has completed 18 years at the time of marriage;
- (iv) the parties are not within the degree of prohibited relationships;
- (v) the parties are not sapindas of each other unless the custom or usage governing each of them permits of a marriage between the two. Section 5, Clause (ii): Mental health. This clause requires that neither party to the marriage must be incapable of giving valid consent because of unsoundness of mind. The expression 'unsoundness~ of mind' has to be understood as lack of a state of mind or capacity to understand one's affairs or marital obligations.

### **GROUND FOR JUDICIAL SEPARATION**

On reading Section 10 and Section 13 together, relief of judicial separation would be available on the following grounds:

- (i) that the respondent has been incurably of unsound mind, or
- (ii) has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the Respondent. Section 13(1)(iii).

## NULLITY

Unsoundness of mind or mental disorder or insanity- contravention of conditions specified in Clause (ii) of Section 5-Section 12(1) (b). A marriage becomes voidable if the respondent was incapable of giving consent as a consequence of unsoundness of mind or, though the respondent was capable of giving valid consent, the respondent was suffering from mental disorder of such a kind or extent as to be unfit for marriage and the procreation of children; or the respondent has been subject to recurrent attacks of insanity.

The Supreme Court held in *R. Lakshmi Narayan versus Santhi* that to brand a wife as unfit for marriage and procreation of children on account of a mental disorder, it needs to be established that the ailment suffered by her is of such a kind or to such an extent that it is impossible for her to lead a normal married life. The unfitness for marriage and procreation of children contemplated here is one arising from mental disorder only, and not on account of any other disorder. Infertility or sterility as such is not a ground for annulment of marriage under Section 12 or for divorce under Section 13. In this case, the respondent was at the time of marriage suffering from schizophrenia. This disease of the mind affects normal behavior. A person having this illness can be termed 'not sane'. Therefore, it was held that the case was covered by Section 12(1) (b) read with Section 5(ii) (c) of the Act. Section 13(1) any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the ground that the other party: Section (iii) has been incurably of unsound mind, or has been suffering continuously or Intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

- (a) The expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- (b) The expression 'psychopathic disorder' means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; Section 13(1)(iii): Incurably of unsound mind or suffering from mental disorder. The expression 'incurably' of unsound mind cannot be so widely interpreted as to cover feeble minded persons or persons of dull intellect who understand the nature and consequences of the act and are therefore able to control them and their affairs, and their reaction in the normal way (*A.S. Mehta versus Vasumathi* (A.I.R. 1969) Guj -48; *Parvathi Mishra versus Jagadhanantha Mishra* (1994) 78 CLT 561. When there was sufficient evidence for the court to conclude that the slight mental disorder of the wife was not of such a kind and to such an extent that the husband could not reasonably be expected to live with her, divorce could not be granted (*Rita Roy versus Sitiesh Chandra*, A.I.R. 1982) CAL 138; 86 CWL 167. Each case of schizophrenia has to be considered on its own merits.

The medical evidence regarding the requisite degree of mental disorder is relevant, though not conclusive (*Sharada versus Dharmapaul* (2003) 4 SCC 493). In so far as granting the relief of divorce under Section 13(1) (iii) of the Act is concerned, the nature and degree of mental disorder which meets the requirements has been clearly discussed and spelt out in one of the important cases (*Ramnarayan Gupta versus Sreemathi Rajeshwari Gupta*, Justice Venkatachaliah [Supreme Court 1998]). 'Each case of mental illness or schizophrenia has to be considered on its own merits.' Schizophrenia is what schizophrenia does. The judgment is significant because it gives importance to the effects and the impact rather than to the mere labeling of mental illness.

A Division Bench of the Andhra Pradesh High Court held in Hema Reddy versus Rakesh Reddy (2003) that psychological depression by itself is no ground for divorce under the Hindu Law. Hindu Marriage Act, 1955 before 1976 neither party is an idiot or a lunatic at the time of marriage.

#### **AFTER 1976**

A Hindu marriage is voidable if either party;

- (i) is incapable of giving valid consent as a consequence of unsoundness of mind, or
- (ii) Though capable of giving valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children
- (iii) Has been subject to recurrent attacks of insanity or epilepsy. The Special Marriage Act, 1954 Applicable to persons from any religion undergoing a civil marriage. Have provisions similar to the HMA except that a marriage under the SMA is void.

#### **HINDU MARRIAGE ACT, 1955**

- ? The Hindu Marriage Act applies to Hindus, Buddhists, Jains and Sikhs.
- ? Adultery, desertion and cruelty were looked upon as 'matrimonial offences'
- ? Later, insanity was added as a ground for divorce and came to be regarded as a 'matrimonial offence', though insanity or unsoundness of mind is a misfortune, not a cause for guilt.
- ? The medical evidence regarding the requisite degree of mental disorder is relevant, though not conclusive for divorce.
- Psychological depression by itself is no ground for divorce under the Hindu Law.

#### **MUSLIM LAW OF MARRIAGE AND DIVORCE**

1. Under this section two Acts need to be taken into account: 1. The Dissolution of Muslim Marriage Act VIII of 1839
2. The Muslim Women (Protection of Rights on Divorce) Act, 1986.

A Muslim who is of sound mind and has attained puberty (presumed to have been attained on completion of 13 years, unless the contrary is proved) is qualified to marry. A person of unsound mind cannot contract a marriage and such a marriage, if contracted, is void. However, if the guardian of the person of unsound mind considers such a marriage to be in his interest and in the interest of society and is willing to take up all the monetary obligations of the marriage, then such a marriage can be performed.

A Muslim marriage can be dissolved by divorce by the parties **without recourse to the court** and on certain grounds by recourse to the court. - The law as ordained by the Holy Qumran is that talaq must be for a reasonable cause and that it must be preceded by an attempt at reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other by the husband from his family. If their attempts fail then talaq may be effective.

**Talaq:** When divorce proceeds from a husband to his wife it is known as divorce by talaq. A Muslim husband of sound mind who has attained the age of puberty may divorce his wife whenever he desires without assigning any cause. The dictionary meaning of talaq in the language of law is 'taking off of the marriage tie by appropriate words'.

**Divorce by recourse to court (judicial divorce):** According to the Muslim Marriage Act, 1939, a woman married under the Muslim law shall be entitled to obtain a decree for the dissolution of her marriage (based on mental health issues) on the following grounds:

1. That the husband has been insane for a period of 2 years.
2. That the husband was impotent at the time of marriage and continues to be so. Inability of the husband to consummate the marriage is one pattern of impotence.

#### **MUSLIM LAW OF MARRIAGE AND DIVORCE**

- ? Under the Muslim marriage law, lunatics or persons of unsound mind and minors who have not attained puberty may be validly contracted into marriage by their respective guardians.
- ? A Muslim marriage can be dissolved by divorce by the parties without recourse to the court and on certain grounds by recourse to the court.
- ? The law as ordained by the Holy Quran is that talaq must be for a reasonable cause and that it must be preceded by an attempt at reconciliation between the husband and the wife by two arbiters.
- The Kerala high court has called for legislation to set up bodies at the central and regional levels to regulate, control and supervise polygamous marriages and divorces in the Muslim community.

#### **PARSI LAW: PARSI MARRIAGE AND DIVORCE ACT, 1936, AMENDED IN 1988**

A Parsi means a Zoroastrian and the Act is meant for this community. The Parsi Law does not prescribe any specific form of marriage; however, one essential ceremony must be performed in all Parsi marriages. This is the Ashirvad ceremony. No Parsi marriage shall be valid unless it is solemnized by the Ashirvad ceremony. Under the Parsi Marriage and Divorce Act, unsoundness of mind is not a ground for annulment of marriage.

Grounds for divorce in the Parsi Marriage Act Section 32: Any married person may seek divorce on the following grounds: That the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit; provided that divorce shall not be granted on this ground, unless the plaintiff.

(i) was ignorant of the fact at the time of the marriage, and (ii) has filed the suit within three years from the date of the marriage. Section 32 (b) (Amendment Act, 1988): That the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant. 'Mental disorder' explained in this section is similar to that in the Special Marriage Act and the Hindu Marriage Act.

#### **PARSI MARRIAGE AND DIVORCE ACT, 1936**

- ? No Parsi marriage shall be valid unless it is solemnized by the Ashirvad ceremony.
- ? Unsoundness of mind is not a ground for annulment of marriage.
- ? Divorce shall not be granted on the grounds of unsoundness of mind, unless the plaintiff,
  - (i) was ignorant of the fact at the time of the marriage, and
  - (ii) has filed the suit within three years from the date of the marriage. Section 32 (b) (Amendment Act, 1988):
  - (iii) That the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit.

#### **Christian Law Of Marriage And Divorce And The Indian Divorce Act (the Divorce Act, 1869)**

A Christian marriage is voidable if either party was a lunatic or idiot.

Unsoundness of mind is a ground for divorce on two conditions-that is, it must be incurable and it must be for at least two years immediately before the filing of the petition.

The Christian wife has some exclusive grounds for divorce: Section X (II): The three exclusive grounds for divorce that a wife can file are (i) rape, (ii) sodomy, and (iii) bestiality. Dissolution of marriage by mutual consent is now possible for Christians under Section X A of the IDA (Amendment Act), 2001.

#### **DISSOLUTION OF MARRIAGE:**

The Indian Divorce Act, 1869; amended in 2001. On the demand of several Christian organizations, Section X of the IDA was amended by Act No. 51 of 2001. As per this amendment, the grounds for divorce are very much similar to those under the Special Marriage Act and the Hindu Marriage Act. Section X (I) (II): Unsoundness of mind. This is a ground for divorce on two conditions: (i) The unsoundness of mind must be 'incurable' and medical evidence is required to prove it. (ii) It must be present for at least two years immediately before the filing of the petition. It is submitted that both the conditions must run together. If the respondent's unsoundness of mind was curable in the beginning, but later on became incurable, the period of two years will be counted from the date when the disease became incurable.

Nullity of marriage: The grounds for nullity of marriage as per the IDA Section 19: Impotence, lunacy or idiocy are among the five causes for nullity. Under Section 19 (3), it must be established that the respondent was a lunatic or idiot at the time of marriage.

#### **CHRISTIAN LAW OF MARRIAGE AND DIVORCE AND THE INDIAN DIVORCE ACT (THE DIVORCE ACT, 1869)**

- ? A Christian marriage is voidable if either party was a lunatic or idiot.,
- This is a ground for divorce on two conditions:
  - (i) The unsoundness of mind must be 'incurable' and medical evidence is required to prove it.
  - (ii) It must be present for at least two years immediately before the filing of the petition.

#### **OTHER LAWS WHICH ARE APPLICABLE**

##### **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005**

Domestic violence is a common thing seen in the society. It is a serious human right violence against women. According to 498 A of Indian Penal Code if Husband or the relative of the husband if subject a woman to cruelty shall be punished with imprisonment which may extend to 3 years , any will full conduct which is of such nature as is likely to derive the woman danger to life, limb and health of the woman . It defines the expression "Domestic violence" to include actual abuse or threat of abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

It provides for the rights of women to secure housing. It also provides for the right of a women to reside in her matrimonial home or shared household, whether o not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

Mental health professionals may be called to give evidence under provisions of this act

## **IMPOTENCE**

Impotence means the incapacity to perform sexual intercourse which is full and natural. Refusal to have sex is different from impotence. Impotence is different from sterility. Consummation means full penetration, not attempt to penetrate. Based on impotence at the time of marriage as per Section 19(1) of the IDA and as per Section 30 of the parsi Marriage Act, and as per Section 24(ii) of the Special Marriage Act and according to Section 12A of the Hindu Marriage Law, the marriage becomes null and void.

According to Section 2(v) of the Dissolution of Marriage Act, one of the grounds for dissolution of marriage is impotence. The institution of suit should be applied for within one year for nullity and after one year for divorce. A detail review of the laws in the Indian context in relation to sexual issues is available<sup>10</sup>.

## **NAGGING BY SPOUSE: A GROUND FOR DIVORCE**

In a recent judgment (December 2004), the Supreme Court held that a spouse can seek divorce if he or she is subjected to mental agony and cruelty due to constant nagging by his or her partner. This judgment invoked a lot of debate. Regarding this judgment, a magazine conducted a survey in Tamil Nadu: 56.25% supported the judgment and 37.5% opposed it; 65% of those surveyed accepted that they were nagged by their partners.

## **CONCLUSION:**

Mental illness is a question of fact. It has to be proved in court. It is not a matter of Interpretation: The law presumes that sanity and insanity have to be proved. The standard of proof is the preponderance of probabilities. It means that the probability of insanity should be more than the improbability of sanity. The court comes to a conclusion on the basis of not only medical evidence, but also other pieces of evidence. It will be of assistance to the court if the psychiatrist adds a description of the observable behavior in the report. The burden of proving the insanity of the respondent rests on the petitioner. It is the responsibility of the psychiatrist to keep the documents sound. A certificate given by the psychiatrist is only a statement of opinion, and it attains the status of evidence only when its author undergoes cross examination.

The court need not accept the opinion of the psychiatrist and the medical evidence can be rejected. The law should not discourage persons from seeking treatment for Mental disorders, rather it should 'perform a promotive and facilitative role, it is suggested that an express legislative provision should be incorporated, which states that a past history of mental illness will be no bar to marriage; failure to disclose such past history or the fact of treatment would not amount to suppression of a material fact'.<sup>8</sup> The psychiatrist must know that the intention of the court is similar to his/hers. Both do not want to promote the incidence of broken homes. The decision of the court either preserves or breaks a family. The psychiatrist must be aware of the legal provisions, in order to meet the legal requirements.

In conclusion, it is important to recognize that although the legislation provides the constitutional and legal perspectives and sets standards for cases being settled through the process of law, the social problems of this nature have to be also worked through and resolved in many other ways. Legislation is necessary, but the promotive and harmony- seeking approaches are equally important, and indeed are more likely to be useful.

### **WHAT A MENTAL HEALTH PROFESSIONAL SHOULD KNOW**

- ? Existence of diverse matrimonial laws besides statutory law to advice regarding issues of marriage of their clients.
- ? A certificate given by the psychiatrist is only a statement of opinion, and it attains the status of evidence only when its author undergoes cross examination.
- ? That Intention of law is to prevent the fracture of a family.
- ? If a hard decision is inevitable it will be on a specific ground.
- ? Mental disorder is grounds for judicial separation -to be understood as lack of a state of mind or capacity to understand one's affairs or marital obligations.
- ? The expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- ? The medical evidence regarding the requisite degree of mental disorder is relevant, though not conclusive for divorce.
- ? The burden of proving the insanity of the respondent rests on the petitioner.
- ? It is the responsibility of the psychiatrist to keep the documents sound.

### **RECOMMENDATIONS**

1. To bring about uniform personal laws instead of those based on religion.
2. To simplify divorce laws and proceedings.
3. The abolition of section 377 and incorporation of progressive ideas.
4. Educating Psychiatrists of legal issues and educating judicial officers and the political class of psychiatric issues of marriage, sexuality and mental health.
5. Including special syllabus in psychiatric post graduate curriculum and the curriculum of law students.

### **SOME DEFINITIONS**

#### **PERSONAL LAW**

Civil laws which regulates the 'personal matters' of an individual. Marriage, divorce, guardianship, inheritance etc. are called 'personal matters' of individuals because they relate to those affairs which normally affect only their own personality.

#### **FAMILY LAWS:**

Personal laws are known also as Family Laws as their ultimately affect family-matters:- Distinctive feature of personal laws in India are that they are based on religion which is a matter of faith and belief. The Personal laws move with the person and is applicable to him wherever he is.

#### **GENERAL LAWS:**

are applicable to all persons irrespective of their religion. Ex: Indian contract Act, Indian Penal code and Income Tax Act etc.

#### **COMMON LAW (COURTS)**

Governors all patients

#### **STATUTE LAW (PARLIAMENT)**

Governors specific patient (Ex: The Mental Health Act, 1987) Statute law overrides common law.

**ADMINISTRATION OF LAW:**

Courts and tribunals administer law, sometimes assisted by psychiatric evidence.

**LEGAL AND PSYCHIATRIC CONSTRUCTS:**

Clearly distinguished, even when apparently related e.g., 'psychopathy' in psychiatry Vs 'psychopathic disorder' in the MHA

**CRIMINAL LEGAL PSYCHIATRY:**

Involves the state against an individual (e.g., a mentally disordered defendant)

**CIVIL LEGAL PSYCHIATRY:**

Involves one individual against another one or more of whom may be mentally disordered.

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