

## PAPER.15

### LAW AND MEDICINE - A MATRIMONIAL CONTEXT.

Mental ill health is diagnosed by medical professionals on various grounds. This is for purposes of treatment and cure, wherever possible. Law encounters mental ill health in diverse contexts, such as, marriage, testamentary capacity, contracts, elections, crimes and Indian Lunacy Act proceedings. Medical perceptions and legal perceptions vary. Why ?

Medicine is concerned with the disease and its cure. Law is concerned with the individual, suffering from the disease. Law examines how the disease has affected the faculties of the individual in his / her role as a spouse, for instance. If, in spite of the mental ill health, he is capable of taking decisions in day to day life and relating to the other spouse and others in the family and friends, law does not treat him/her as incapacitated for marital life. The relief sought for on grounds of mental ill health is denied by courts. Thus the medical and legal perceptions of insanity do not vary. What they look for vary. One looks for the disease and the other looks for the consequence of the disease.

Mental ill health affects not only the individual concerned but also his interaction with others. His rights are sought to be abridged for his own benefit and for the benefit of others. Law takes note of what unsoundness of mind has done to the personality of the individual with a view to measure the impact on others with whom he may come in to contact in his day to day life. Law scrutinises his conduct to assess the deviations from normalcy. Medical opinion may not be needed for this; In any event, it is not conclusive. Medical opinion is no doubt relevant for the court to conclude that the individual is unsound in mind; But more has to be proved in a given case where, divorce, for instance is sought for on the ground of incurable unsoundness of mind.

Hence medical evidence can only be one of the factors to be taken in to consideration by the courts. It does not conclude the matter. That, of course, does not mean that there is any conflict between legal perception and medical perception. In one case the disease is diagnosed while in the other, the totality of the situation is diagnosed.

s.12 (1) (b) read with s.5 (ii) of the Hindu Marriage Act stipulates for annulment of a marriage. If a spouse was an idiot or lunatic at the time of the marriage the other spouse is entitled to seek divorce on that ground. In such cases, may be, medical opinion of lunacy at the time of the marriage may conclude the matter, if the medical evidence is unassailable. The court needs only to be satisfied about the fact of insanity on the balance of probabilities (Gosh Vs. Gosh AIR 1975 Calcutta 109). In a case under Divorce Act 1869, Mt. Titli Vs. A.R. Jones (AIR 1934 Allahabad 273) the court noted how the medical science had a long category of various degrees of abnormality which are thought to be insanity. "But that is not the legal view", it declared. But under s.13 (1) (iii) of Hindu Marriage Act, it has to be proved that the degree of mental disorder is such that the petitioning spouse cannot reasonably be expected to live with the other. Mere diagnosis of mental disorder would not suffice. If the affected person can, in spite of the disorder, cope with the demands made on him in day to day life, then, law does not sanction the divorce. Law has to take in to consideration other aspects like society's stake in the durability of marriages. The Supreme Court in Ram Narain Gupta Vs. Rameshwari Gupta (AIR 1988 SC 2260) sums it up by declaring that "Schizophrenia is what schizophrenia does". Thus the fact of the disease is established with the aid of medical evidence. The effect of it is deduced by the Judge from other evidence of conduct. Law and medicine jointly work out a solution. They do not clash.