
UNIT 4 CIVIL PROCEEDINGS AND COMMITMENT

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4.0 INTRODUCTION

In this unit we will learn the concept and context of commitments in the court of law and decision-making about the commitment during civil proceedings. We will first define civil commitment, follow it up by criteria for the same and deliberate on the various laws that are available to provide justice to the victims. In this context we will also deal with family courts that are specially established for dispensing expeditiously with the family related problems and issues. We will then take up some of the laws that are available to provide justice to the needy such as the maintenance law, the adoption law and the civil commitment especially when a person is mentally ill. Finally we will be dealing with the need for forensic psychological assessment and evaluation especially in regard to physical and sexual abuse, domestic violence and related cases, child custody cases etc.

4.1 OBJECTIVES

After completing this unit, you will be able to:

- Define and conceptualise civil commitment;
- Elucidate the Criteria for civil commitment;
- Explain the provisions under 498 and 498 A sections as well as 113 A section;
- Analyse cruelty in legal terms;
- Explain the role of family courts in India;
- Elucidate the various Maintenance Laws to provide justice to the victims; and
- Describe the various assessment and evaluation techniques.

4.2 CIVIL PROCEEDINGS AND COMMITMENTS

We will be dealing with the civil proceedings and commitments in this section. Let us start with definition and concept.

4.2.1 Definition and Concept

The relatives or friends of a man charged with a crime may attempt to save him from criminal prosecution by having him committed to a mental hospital under the civil statutes. Even if his adjudication to a mental hospital is obtained, the criminal court is not thereby prevented from bringing the man to trial.

Civil statutes providing for the commitment of incompetent or insane persons do not apply to persons who have been charged with a crime. Under civil statutes a court may order commitment to a mental hospital if it finds that a person is mentally ill and likely to injure himself or others if allowed to remain at liberty. Mental illness can have a tremendous effect on one's thought process and can impair one's ability to make rational decisions.

Civil commitment was born out of the need to involuntarily hospitalise mentally ill patients who are assessed to be a danger to themselves or others while maintaining respect for their civil rights. The government has an obligation to protect its citizens and it may require the detention of a mentally ill individual who due to his illness, is perceived to present a danger to others.

4.2.2 Criteria for Civil Commitment

Civil commitment is a process in which a judge decides whether a person who is alleged to be mentally ill should be required to go to a psychiatric hospital or accept other mental health treatment. A person in the process of a commitment sometimes is called an Alleged Mentally Ill Person (AMIP). A civil commitment is not a criminal conviction and will not go on a criminal record.

In India the civil cases include misuse of anti dowry laws, legalisation of abortion. We have family courts in India, domestic violence, child custody, guardianship, maintenance, adoption.

The issue of women's rights and family law reform has been increasingly entangled within the polemics of politics and minority rights. It is true that the hardships and sufferings experienced by woman of all communities, minority as well as majority, cannot be overlooked with the help of persuasive or effective freedom of religion. The life of an average Hindu woman has always been difficult and pitiable due to existing social customs and practices of time.

The beginning of 19th century plays an important role in degrading Indian women till its depth. The fear of insecurity not only envisaged in unmarried young women but also married women. In India, "family" has always been prime importance. Marriage being an important social institution since Vedic period was biased against women. It was regarded as the social alliance between two families instead of two persons. The bride was expected to serve her husband and his family and ensure their happiness and well being. There was no question of her happiness, expectation or content. There were three main objectives of Hindu marriage: dharma or religious duties to be performed by the couple, proja or procreation, and rati or conjugal love.

The exploitation of woman began with the child marriage. A girl too young to take life seriously, a girl too young to understand the meaning of 'life' and 'marriage', had to step into the world of thorns. She was subjugated by her mother-in-law and other members of her husband's family, most of the time including even her husband. She was expected to observe 'purdah', not to speak to elders, speak in low voice to younger members of family, not to speak or meet her husband except midnight and bear all harsh words and sufferings for even minor fault and above all never to express her sorrows or utter a word of distress to anyone.

A woman had no freedom, neither personal nor economic. Traditionally, the Hindu woman had distinct economic right called 'stridhan'.² In order to partially set off the disability suffered under the notion of joint ownership by male members, the smritikars assigned a special category of property to women termed as 'stridhana'.³ The first mention of this term is found in Gautama Dharma sutra. He provided not only for the women's separate property but also distinct and separate rules for its succession. But the definition of 'stridhana' changed over from time to time, granting all the rights and power to husbands. Consent of the girl was not considered to be relevant and hence, she was left with no choice, except to accept all pains and marry.

The traditional concept of marriage has greatly changed and Hindu marriage is considered to be of dual nature i.e. of both religious sacrament and contract, where mutual consent and benefit of both the parties are duly aided by different legal provisions and reforms. Attempts to bring about changes in the status of women either through legislation or judicial activism can achieve little success without a simultaneous movement to transform the social and economic structures and the culture (values, ideologies and attitudes) of society.

One of those attempts to bring changes in status of women and relieve her from her sufferings, pains and gloomy environment is given under chapter XX-A of Indian Penal Code, 1860. Chapter XX – Of offences relating to marriage (Sec. 493 to 498) and of cruelty by husband or relatives of husband (Sec.498-A)

Self Assessment Questions

1) What do you understand by the term civil commitment?

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2) Elucidate the criteria for civil commitment

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3) Describe the various civil cases that are tried in Indian courts of Law.

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4) What are the legal provisions that help to prevent women from being exploited and treated cruelly?

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4.2.3 Section 498 and 498 A

Chapter XX-A of Indian Penal Code, 1860, refers to 'cruelty by husband or relatives of husband' and includes section 498-A.

Section 498-A states, that whoever being the husband or relative of the husband of woman, subjects such woman to cruelty shall be punished with the imprisonment for a term which may extend to three years and also be liable to fine.

Explanation — For the purpose of this section, “cruelty” means —

- a) Any willful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) Harassment of the woman where such harassment is with view to coercing her or any person related to her meet any unlawful demand for any person related to her to meet such demand.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

4.2.4 Section 113-A

This section deals with the presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation — For the purpose of this section ‘dowry death’ shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).

The object for which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short ‘the Cr.P.C’) and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law’s and relatives. The avowed object is to combat the menace of dowry death and cruelty.

The act of harassment would amount to cruelty for the purpose of this section. Drinking and late coming habits of the husband coupled with beating and demanding dowry have been taken to amount to cruelty within the meaning of this section, but this section has been held not to include a husband who merely drinks as a matter of routine and comes home late.

In a case before Supreme Court it was observed that this section has given a new dimension to the concept of cruelty for the purposes of matrimonial remedies and that the type of conduct described here would be relevant for proving cruelty.

4.2.5 Meaning of Cruelty

It was held in ‘Kaliyaperumal vs. State of Tamil Nadu’, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two

sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under sec.498A of IPC. The meaning of cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well.

Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

In the case of 'Inder Raj Malik vs. Sumita Malik' , it was held that the word 'cruelty' is defined in the explanation which inter alia says that harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty.

Kinds of cruelty covered under this section includes following:

- a) Cruelty by vexatious litigation
- b) Cruelty by deprivation and wasteful habits
- c) Cruelty by persistent demand
- d) Cruelty by extra-marital relations
- e) Harassment for non-dowry demand
- f) Cruelty by non-acceptance of baby girl
- g) Cruelty by false attacks on chastity
- h) Taking away children

The presumption of cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

Self Assessment Questions

- 1) Discuss in detail the provisions under Section 498.

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- 2) Elucidate the various provisions under 498 A.

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3) In what way the provisions under 113 A help women in India?

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4) Give the meaning of cruelty and indicate the various forms that are considered cruel.

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4.2.6 Family Courts in India

The number of cases filed in the Supreme Court in India has been on the increase. From 2008 to 2009, the percent of cases increased was 103%. The issues that are considered include family matters and property. There are also marriage related issues. There are number of judicial provisions dealing with marriage and its various aspects. These include misuse of provisions like 498bA of the Indian Penal Code , protection of women from domestic violence act, child custody etc. There are also issues like alimony which become the topic of controversy and cause harassment to families.

The Family Courts Act, 1984, was part of the trends of legal reforms concerning women. It was thought that this Act will facilitate satisfactory resolution of disputes concerning the family through a forum expected to work expeditiously in a just manner and with an approach ensuring maximum welfare of society and dignity of women. Prevalence of gender biased laws and oppressive social practices over centuries have denied justice and basic human rights to Indian women. The main purpose behind setting up these courts was to take the cases dealing with family matters away from the intimidating atmosphere of regular courts and ensure that a congenial environment is set up to deal with matters such as marriage, divorce, alimony, child custody etc. These family courts are also equipped with counselors and psychologists who ensure that the disputes are handled by experts who also look into the human and psychological dimension. The aim of these courts is to form a congenial atmosphere where family disputes are resolved amicably. The family court's main purpose is to assist the smooth and effective disposal of cases relating to family matters. A major drawback of the family court act is that it does not empower courts to grant injunctions to prevent domestic violence.

4.3 MAINTENANCE LAW

In regard to the Maintenance Law, considerable provisions have been made so that the woman does not suffer after divorce or separation from the husband. Obligation of a husband to maintain his wife arises out of the status of the marriage. Right to maintenance forms a part of the personal law. Under the Code of Criminal Procedure, 1973 (2 of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Claim of maintenance for all dependent persons is limited to Rs. 500 per month.

Under Hindu Law, the wife has an absolute right to claim maintenance from her husband. But she loses her right if she deviates from the path of chastity. Her right to maintenance is codified in the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956). In assessing the amount of maintenance, the court takes into account various factors like position and liabilities of the husband. It also judges whether the wife is justified in living apart from the husband. Justifiable reasons are spelt out in the Act. Under the Muslim Law, the Muslim Women (Protection of Rights on Divorce) Act, 1986 protects rights of Muslim women who have been divorced by or have obtained divorce from their husbands and provides for matters connected therewith or incidental thereto.

The Parsi Marriage and Divorce Act, 1936 recognises the right of wife to maintenance. The maximum amount that can be decreed by court as alimony during the time a matrimonial suit is pending in court, is one-fifth of the husband's net income. In fixing the quantum as permanent maintenance, the court will determine what is just, bearing in mind the ability of husband to pay, wife's own assets and conduct of the parties. The order will remain in force as long as wife remains chaste and unmarried.

The Indian Divorce Act, 1869 *inter alia* governs maintenance rights of a Christian wife. The provisions are the same as those under the Parsi law and the same considerations are applied in granting maintenance, both alimony pendente lite and permanent maintenance.

Maintenance is a right to get necessities which are reasonable from another. It has been held in various cases that maintenance includes not only food, clothes and residence, but also the things necessary for the comfort and status in which the person entitled is reasonably expected to live. Right to maintenance is not a transferable right.

4.4 THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Maintenance, in other words, is right to livelihood when one is incapable of sustaining oneself. Hindu law, one of the most ancient systems of law, recognises right of any dependent person including wife, children, aged parents and widowed daughter or daughter in law to maintenance. The Hindu Adoptions and Maintenance Act, 1956, provides for this right.

The relief of maintenance is considered an ancillary relief and is available only upon filing for the main relief like divorce, restitution of conjugal rights or judicial separation etc. Further, under matrimonial laws if the husband is ready to cohabit with the wife, generally, the claim of wife is defeated. However, the right of a married woman to reside separately and claim maintenance, even if she is not seeking divorce or any other major matrimonial relief has been recognised in Hindu law alone.

A Hindu wife is entitled to reside separately from her husband without forfeiting her right of maintenance under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma. Thus, in order to realise her claim, the Hindu wife must prove that one of the situations (in legal parlance 'grounds') as stated in the Act, exists.

Only upon proving that at least one of the grounds mentioned under the Act, exists in the favour of the wife, maintenance is granted. These grounds are as follows:

- a) The husband has deserted her or has willfully neglected her;
- b) The husband has treated her with cruelty;
- c) The husband is suffering from virulent form of leprosy/venereal diseases or any other infectious disease;
- d) The husband has any other wife living;
- e) The husband keeps the concubine in the same house as the wife resides or he habitually resides with the concubine elsewhere;
- f) The husband has ceased to a Hindu by conversion to any other religion;
- g) Any other cause justifying her separate living;

Apart from the relationship of husband and wife other relations in which there is economic dependency are also considered to be entitled to maintenance by the Hindu Adoptions and Maintenance Act, 1956. Accordingly a widowed daughter-in-law is entitled maintenance from her father-in-law to the extent of the share of her deceased husband in the said property. The minor children of a Hindu, whether legitimate or illegitimate, are entitled to claim maintenance from their parents. Similarly, the aged and infirm parents of a Hindu are entitled to claim maintenance from their children. The term parent here also includes an issueless stepmother.

Self Assessment Questions

- 1) What is Family Courts?

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2) What purpose do the family courts serve? Explain.

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3) Describe in detail the Maintenance Law in India.

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4) What is the importance of Hindu Adoption and maintenance Bill of 1956?

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4.5 CIVIL COMMITMENT

The main substantive criterion for civil commitment is the presence of a mental impairment. Mental illness and mental defect are necessary but not sufficient reason for commitment. In addition to the presence of mental illness, there are three main potential criteria for civil commitment:

i) *Risk of danger to self*

This may be manifested in form of a suicide attempt, an overt suicidal threat, or behaviour that indicates the individual's intention to harm his own self (i.e. writing a suicide note or stocking up a lethal medication in overdose), which may occur despite a patient's denial of suicidal thoughts.

ii) *Risk of danger to others*

Similar to the first criterion that both actions and thoughts allow for a patient to be committed by civil proceedings.

iii) *The patient's gravely disabled condition or inability to care for self*

This refers to the patient's inability to provide for his own basic needs, such as food, shelter, clothing, medical care, and personal security secondary to mental illness. On the basis of this assessment and prediction, the clinician is given both

the power and responsibility of placing a person, at least temporarily, in an inpatient facility potentially against his will.

4.5.1 Rights of the Committed Patients

Unless the person has been declared incompetent to exercise some rights, the committed patients have the following rights:

- i) Right to humane care and treatment.
- ii) Right to the highest standard of medical care depending upon the facilities and personnel available.
- iii) Right to the writ of habeas corpus.
- iv) Right to communicate by mail.
- v) Right to receive visitors.
- vi) Right to be employed at a useful occupation depending upon the patient's condition and the available facilities.
- vii) Right to exercise civil rights, including the right to dispose of property, to make contracts.
- viii) Right to vote.

Commitment to a hospital is neither a determination of incompetency nor a deprivation of civil or political rights. Deprivation of civil and political rights has never been part of the civil commitment process although it has been an integral part of the criminal law process.

4.5.2 The Process of Commitment

Once a mental health care provider has taken a decision that an individual has to be committed civilly, the clinician must adhere to the existing procedure. Though the criteria are often the same, the logistics of civil commitment vary between countries and states. In the United States, a delicate balance between psychiatry and the law exists during the commitment process.

All states allow for emergent commitment of patients meeting the abovementioned criteria with little or no involvement of the court system. Therefore, commitment is primarily based on the assessment of the clinician and occurs swiftly. At this time, the patient is provided with the potential duration of the confinement and the point in time when access to counsel and a hearing is granted. The second step in this process involves long term detention and does require judicial approval. Patients who require only brief stabilisation may be discharged before their cases reach court.

Civil commitment in United Kingdom can be enacted to ensure both patients' health and the safety of those around them and is based on an intention to treat patients' mental illness. In England and Wales, a patient can be involuntarily hospitalised, assessed, and treated for a period up to 28 days. If appropriate, after this evaluation period, a patient may be detained for a period up to six months based on the consensus of two medical opinions.

In Scotland, detention beyond the 28 days evaluation period must be sanctioned by a Mental Health Review Tribunal consisting of a lawyer, a psychiatrist, and a

third person with experience in handling mental health issues. In Northern Ireland, the initial evaluation period is only seven days, and this may be extended for another seven days if necessary.

Self Assessment Questions

- 1) What is civil commitment? What are the risks involved?

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- 2) What are the rights of the committed patients? Explain.

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- 3) Describe the process of commitment.

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4.6 ASSESSMENT AND EVALUATION

The methods of assessment and evaluation by forensic mental health personnel for making decision regarding the commitment of an individual.

Most professional forensic literature addresses the assessment of adults yet neglects the necessary differences that arise when working with minors. *Forensic Mental Health Assessment of Children* presents the reader with essential knowledge and practical suggestions regarding the forensic assessment of minors involved in a variety of legal applications. Methods of evaluation are described by leading experts regarding topics frequently encountered and of great importance to the courts including:

4.6.1 Physical and Sexual Child Abuse

The statistics on physical child abuse are alarming. It is estimated hundreds of thousands of children are physically abused each year by a parent or close relative. Thousands actually die as a result of the abuse. For those who survive, the

emotional trauma remains long after the external bruises have healed. Communities and the courts recognise that these emotional “hidden bruises” can be treated. Early recognition and treatment is important to minimise the long term effect of physical abuse. Whenever a child says he or she has been abused, it must be taken seriously and immediately evaluated.

Children who have been abused may display:

- a poor self image
- sexual acting out
- inability to trust or love others
- aggressive, disruptive, and sometimes illegal behaviour
- anger and rage
- self destructive or self abusive behaviour, suicidal thoughts
- passive, withdrawn or clingy behaviour
- fear of entering into new relationships or activities
- anxiety and fears
- school problems or failure
- feelings of sadness or other symptoms of depression
- flashbacks, nightmares
- drug and alcohol abuse
- sleep problems

Often the severe emotional damage to abused children does not surface until adolescence or even later, when many abused children become abusing parents. An adult who was abused as a child often has trouble establishing lasting and stable personal relationships. These men and women may have trouble with physical closeness, touching, intimacy, and trust as adults. They are also at higher risk for anxiety, depression, substance abuse, medical illness, and problems at school or work.

Early identification and treatment is important to minimise the long-term consequences of abuse. Qualified mental health professionals should conduct a comprehensive evaluation and provide treatment for children who have been abused. Through treatment, the abused child begins to regain a sense of self-confidence and trust. The family can also be helped to learn new ways of support and communicating with one another. Parents may also benefit from support, parent training and anger management.

Physical abuse is not the only kind of child abuse. Many children are also victims of neglect, or sexual abuse, or emotional abuse. In all kinds of child abuse, the child and the family can benefit from evaluation and treatment from a qualified mental health professional.

4.6.2 Domestic Violence

Domestic violence and abuse can happen to anyone, yet the problem is often overlooked, excused, or denied. This is especially true when the abuse is psychological, rather than physical. Emotional abuse is often minimised, yet it can leave deep and lasting scars.

Noticing and acknowledging the warning signs and symptoms of domestic violence and abuse is the first step to ending it. No one should live in fear of the person they love.

Domestic abuse, also known as spousal abuse, occurs when one person in an intimate relationship or marriage tries to dominate and control the other person. Domestic abuse that includes physical violence is called *domestic violence*.

Domestic violence and abuse are used for one purpose only, that is to gain and maintain total control over the person concerned. An abuser does not “play fair.” Abusers use fear, guilt, shame, and intimidation to wear the person down and keep her under his or her thumb. The abuser may also threaten, hurt, or hurt those around the person.

Domestic violence and abuse does not discriminate. It happens among heterosexual couples and in same-sex partnerships. It occurs within all age ranges, ethnic backgrounds, and economic levels. And while women are more commonly victimised, men are also abused, especially verbally and emotionally, although sometimes even physically as well.

Domestic abuse often escalates from threats and verbal abuse to violence. And while physical injury may be the most obvious danger, the emotional and psychological consequences of domestic abuse are also severe. Emotionally abusive relationships can destroy the victim’s self worth, lead to anxiety and depression, and make the victim feel helpless and alone. No one should have to endure this kind of pain, and the first step to breaking free is recognising that a certain situation is abusive. Once the person acknowledges the reality of the abusive situation, then the victim can get the needed help.

There are many signs of an abusive relationship. The most telling sign is fear of the partner. If a person has to constantly watch what she says and does in order to avoid a blow-up, the chances are that the relationship is unhealthy and abusive. Other signs that the victim may be in an abusive relationship include a partner who belittles her or tries to control her, and the victim herself having feelings of self-loathing, helplessness, and desperation.

4.6.3 Child Custody in Divorce Proceedings

Child custody is a term used in family law courts to define legal guardianship of a child under the age of 18. During divorce or marriage annulment proceedings, the issue of child custody often becomes a matter for the court to determine. In most cases, both parents continue to share legal child custody but one parent gains physical child custody. Family law courts generally base decisions on the best interests of the child or children, not always on the best arguments of each parent.

In general, courts tend to award PHYSICAL child custody to the parent who demonstrates the most financial security, adequate parenting skills and the least disruption for the child. Both parents continue to share legal child custody until the minor has reached the age of 18 or becomes legally emancipated. Legal custody means that either parent can make decisions which affect the welfare of the child, such as medical treatments, religious practices and insurance claims. Physical child custody means that one parent is held primarily responsible for

the child's housing, educational needs and food. In most cases, the non-custodial parent still has visitation rights. Many of the religions practicing in India have their own personal laws and they have their different notion of custody.

In the Hindu Law, all the personal law matrimonial statutes make provisions for dealing with the issue of child custody. The provisions in the matrimonial Acts can, however, be invoked only when there are some proceedings pending under the Act.

Hindus have an additional Act, viz. the Hindu Minority and Guardianship Act, 1956 (HMGA). Apart from this, there is the Guardians and Wards Act, 1890 (GWA). This is a secular law for appointment and declaration of guardians and allied matters, irrespective of caste, community or religion, though in certain matters, the court will give consideration to the personal law of the parties.

The provisions of the HMGA (and other personal laws) and the GWA are complementary and not in derogation to each other, and the courts are obliged to read them together in a harmonious way.

In determining the question of custody and guardianship, the paramount consideration is the welfare of the minor. The word 'welfare' has to be taken in its widest sense, and must include the child's, moral as well as physical well-being, and also have regard to the ties of affection.

The English and Indian decisions are replete with such statements that :

- i) the children of tender years should be committed to the custody of the mother,
- ii) older boys should be in the custody of the father, and
- iii) older girls in the custody of the mother. But these are judicial statements of general nature and there is no hard and fast rule. As to the children of tender years it is now a firmly established practice that mother should have their custody since father cannot provide that maternal affection which is essential for their proper growth. It is also now recognised that for proper psychological development of children of tender years mother is indispensable.

The Hindu Minority and Guardianship Act, 1956 contains a provision which lays down that custody of a child upon the age of five should ordinarily be with the mother. Under other personal laws, though there is no such statutory provision, the Indian courts have consistently taken this view.

In respect of older children our courts take the view that the male children above the age of sixteen years and female children above the age of fourteen years, should not ordinarily be compelled to live in the custody to which they object. However, even the wishes of the mature children will be given consideration only if they are consistent with their welfare.

Ordinarily, custody should be given to either of the parents. But where welfare so requires, custody may be given to a third person.

4.6.4 Risk Assessment for Violence

It is well known that prisons contain substantial numbers of individuals with psychiatric disorders, substance abuse problems, and personality disorders. Research has shown that the rates of severe mental illness for incarcerated

populations are 3 to 4 times higher than those of the general population. It has also indicated that substance abuse and personality disorders can range from 5 - 20% higher in incarcerated populations.

Actuarial instruments as well as clinical assessments consider a number of factors in their assessment of risk potential magnitude, imminence and frequency. Research has indicated that the following factors have predictive value:

1) **Base Rates**

- refers to the frequency of violence in a given population
- one of the most highly predictive actuarial factors
- does not relate specifically to mental disorder
- can “over-predict” (e.g. can incorrectly identify some offenders as potential killers)

2) **Demographic Factors Associated with Increased Risk**

- men more highly represented in criminal and violent populations (though not necessarily in psychiatric areas)
- age: crime (especially violent) tends to occur more in younger than in older men
- unemployment: low socio-economic status, low educational achievement correlate with violence
- race and ethnicity: although these can be factors, they tend to dissipate when the other factors taken into account statistically

3) **Past History of Violence**

- violent history: one of most powerful indicators of future violence potential
- nature of the violence: always important to consider (e.g. types of victims, environmental and contextual issues, etc.)

4) **Substance Abuse**

- drugs and alcohol are major contributors to violence amongst both mentally disordered and non-mentally disordered offenders
- prevalence of substance abuse in mentally disordered offender tends to be higher than in general (non-incarcerated) population
- substance abuse is important risk factor in psychotic individuals
- doubles the lifetime risk of violence among the severely mentally disordered, particularly if substance abuse had early onset

5) **Psychiatric Diagnosis and Risk of Violence**

- earlier research linked violence with schizophrenic patients in particular but later studies have been more equivocal about this
- however, recent meta-analyses suggest that risk of violence is three-fold among those with psychosis
- much more relevant to look at psychiatric *symptoms* as opposed to diagnosis:

6) Acute Psychiatric Symptoms

- a) **Mania (and Violence):** Mania is a form of serious mental illness characterised by elevated mood or irritability, sense of grandiosity and/or invincibility, racing thoughts and speech patterns and can result in threatening and assaultive behaviour but serious intentional violence is rare
- b) **Depression (and Violence):** The characteristics of major depression include feelings of worthlessness or inappropriate guilt, indecisiveness, lack of concentration, loss or gain of weight and appetite, persistently depressed mood, persistent need for more sleep, loss of energy and general fatigue, persistent lack of interest and pleasure in activities, sometimes there are thoughts of death or suicide

Violence can be either self-directed (suicide) or directed to others, usually those close to the individual

examples: depressed mothers who kill their children; depressed men who kill family members and then themselves

- c) **Delusions (and violence):** This refers to fixed false beliefs that cannot be reasoned away, usually out of keeping with the individual's educational, social and cultural background. Research indicates consistent links between violent behaviour and delusions particularly noteworthy are delusions of being threatened by others, paranoid delusions of personal control being overridden delusions can be categorised into main sub-sets:

Erotomania: Individual believes that someone outside their normal sphere of interaction (e.g. television personality) is in love with them and is sending them coded messages supporting and encouraging a relationship

- *Erotomania and Violence:* Erotomanics are more often male than female. Fewer than 5% are violent. The person who gets in the way is the most likely to be injured, followed by the person who is the "love object"
- *Pathological Love:* Different from erotomania in that the individual perceives the unattainable person as the "best person for me, if only I could meet her." Individual tends to follow the object of their affection, hoping for glimpses or chance meetings.
- *Pathological Jealousy:* Exhibited by individuals who cannot accept rejection. Attitude of "if I can't have you, no one will".
- *Paraphiliacs:* Individuals with sexual deviations who become particularly fixated on particular targets.
- *Stalkers who Kill Strangers:* These individuals tend to be more often mentally disordered than otherwise. Believe themselves to be unique, tend to identify with other stalkers, collect newspaper clippings, etc. They research their target victims thoroughly. Often fanatical about keeping records, diaries, photographs of their stalking activities. May even purchase a weapon for the particular "mission" they are on. Targets of their attentions can change.

- d) Hallucinations (and violence) This refers to false perceptions (e.g. hearing things that are not there)

Command Hallucinations: A hallucination/voice that tells someone to do something — risk of violence stemming from a command hallucination is increased if the “voice” is familiar (e.g. mother)

Violent Fantasies: approximately 70% of males in general population have had violent fantasies or homicidal thoughts at one time or another persistent violent thoughts are associated with violence in patients with severe substance abuse but no mental disorder (i.e. people other than the acutely psychotic are most worrisome), reporting of violent thoughts associated with diagnosis of psychopathy.

4.6.5 Antisocial Personality Disorder and Psychopathy

In addition antisocial personality disorders may also make a person at risk to kill. For instance higher prevalence of it in severely mentally ill population and in prison population (50-70%). There is a strong association with substance abuse, is a strong predictor of criminal recidivism, particularly violent recidivism, and especially in women.

Psychopathy

Another condition called psychopathy overlaps with antisocial personality disorder. Psychopathy is

- characterised by combination of traits from APD and Narcissistic Personality Disorder: self-centredness, egocentricity, lack of empathy, etc.
- treatment of psychopathy problematic and research has shown can be counterproductive (Penetanguishene MHC)
- degree of psychopathy measured effectively by Hare’s Psychopathy Checklist-Revised (PCL-R)
- high scores on PCL-R consistently correlate with violence in incarcerated offenders and forensic patients
- PCL-R score incorporated as key feature in the Violence Risk Assessment Guide (VRAG) which assesses violence risk potential

Biological factors

Also in certain cases biological factors may contribute to such violence and risk to violence behaviour and these are as given below:

- frontal lobe deficits
- neurotransmitter abnormalities
- perinatal neurological damage
- behavioural genetics

4.6.6 Potential for Rehabilitation in Juvenile Court Cases

The juvenile justice system is the structure of the criminal legal system that deals with crimes committed by minors, usually between the ages of 10 and 18 years. The upper age of eligibility is determined by the juvenile law of each state, which varies. A juvenile crime is any offense that could be committed by

an adult but that is committed by a juvenile. There are also “status offenses” that may only be committed by a juvenile, such as curfew violations, running away, truancy, and underage alcohol consumption. In the juvenile justice system, youth offenders are not tried as adults, and their cases are heard in a separate court designed for juveniles.

The juvenile justice system operates according to the premise that youth are fundamentally different than adults, both in terms of level of responsibility and potential for rehabilitation. The treatment and successful reintegration of youth into society are the primary goals of the juvenile justice system, along with overall public safety.

Special education

Special Education is that component of education which employs special instructional methodology (Remedial Instruction), instructional materials, learning and teaching aids as well as equipment to meet educational needs of children with specific learning disabilities.

Remedial instruction or Remediation aims at improving a skill or ability in a student. Techniques for remedial instruction may include providing more practice or more explanation, repeating information, and devoting more time to working on the skill.

For example, a student having a low reading level could be given remediation via one-on-one reading instruction, phonic instruction, or practice in reading aloud. Special education teachers work with children and youths who have a variety of disabilities. A small number of special education teachers work with students with mental retardation or autism, primarily teaching them life skills and basic literacy.

However, the majority of special education teachers work with children with mild to moderate disabilities, using the general education curriculum, or modifying it, to meet the child’s individual needs. Most special education teachers instruct students at the elementary, middle, and secondary school level, although some teachers work with infants and toddlers.

Special educators provide programs for specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, multiple disabilities, hearing impairments, visual impairments, autism, combined deafness and blindness, traumatic brain injury, and other health impairments. Students are classified under one of the categories, and special education teachers are prepared to work with specific groups. Early identification of a child with special needs is an important part of a special education teacher’s job. Early intervention is essential in educating children with disabilities.

4.6.7 Childhood Development and Trauma as Mitigating Circumstances in Death Penalty Cases

Mitigating circumstances, or mitigating factors, are facts which, though they do not exonerate the defendant, may serve to reduce the charge or the punishment. In civil actions, for instance, the defense will often ask the jury to consider mitigating circumstances in order to reduce the damages or the extent of the defendant’s liability.

As for mitigating circumstances in criminal law, these are most often brought to bear in cases where the death penalty is among the forms of punishment available. Mitigating circumstances could include mental illness, the youth of the defendant, economic hardship, and childhood abuse. Though the use of mitigating circumstances often generates little sympathy among the population as a whole, the Supreme Court has ruled that juries must consider mitigating circumstances in death penalty cases.

Self Assessment Questions

1) Explain assessment and evaluation.

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2) How is child abuse and sexual abuse evaluated and assessed?

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3) How do we assess domestic violence.

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4) What is meant by antisocial personality disorder/ How is it assessed in terms of criminal Q. behaviour?

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5) Describe how are psychiatric disorders and violence / crime are related?

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4.7 LET US SUM UP

In this unit we have learnt about the concept of civil proceedings and commitment. These concepts were defined and explained and the criteria for civil commitment was also put forward. The provisions under sections 498 and 498 A were discussed and so also the provisions under the section 113 A. While discussing the violence the term cruelty was defined and explained as per the law. Then we discussed about how the family courts were established and their purpose and the manner in which they deal with all the cases pertaining to family conflicts. These courts were also supposed to render speedy justice. Then we discussed about the Maintenance law in regard to women who divorce or separated etc. The Hindu Adoption and maintenance bill was also presented with all its provisions. This was followed by civil commitment especially where a person is mentally ill. The many rights of such patients committed were also put forward in detail. This was followed by the manner in which the commitment is carried out. The next section dealt with the assessment and evaluation in which we discussed how the physical sexual abuse are assessed, how domestic violence is evaluated, what kind of assessment is done in order to adopt a child and have the custody of the child in divorce proceedings. We then learnt about how to assess the risk of violence and the various issues related to the same were dealt with.

4.8 UNIT END QUESTIONS

- 1) Define and conceptualise civil proceedings and commitment.
- 2) Discuss in detail the establishment and purpose of family courts in India?
- 3) Critically examine the Maintenance Law in India?
- 4) What are the important contributions of the Hindu Adoption and Maintenance Act of 1956?
- 5) Discuss critically the civil commitment? What are the rights of the committed patient?
- 6) Discuss assessment and evaluation as important components of rendering justice to victims.
- 7) Discuss assessment and evaluation of the following:
 - Physical and sexual abuse
 - Domestic violence
 - Child custody in divorce proceedings
 - Risk assessment for violence
 - Anti social personality disorder and psychopathy
 - Potential for rehabilitation in juvenile court cases
 - Childhood development and trauma as mitigating
 - circumstances in death penalty cases

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