

MATRIMONIAL LAW

- Roshan Dalvi

A king was vanquished. He was given one year to be returned his kingdom if he answered the question, “what do women want?” correctly.

The king was told that the witch knew the answer.

The witch wanted to marry the Prime Minister if she gave the answer.

The marriage was performed.

The witch behaved like a witch at the wedding reception.

When the P.M. went to his room he saw a lovely maiden in his bed. He asked her who she was. She said, “I am your wife”.

“But”, said the P.M. “I have married the witch”.

“That’s what you think”, said the witch, “that’s me. You are a good man, so I am like this with you. The others are bad men, so I am like a witch with them. Now, I give you an option. I’ll be a witch for half the time and a beautiful maiden the other half of the time. You choose the time. If I am a witch with others during the day, I would be a lovely maiden during the night. If you flaunt me as a lovely wife to others during the day, I’ll be a witch with you in the night.”

The P. M. got the answer for his king.

What was the answer ?

Objects of Family Law

- ❑ To promote conciliation / settlement
- ❑ To resolve disputes promptly

Agencies for realizing the objects

NGOs for Social and Family Welfare – S. 5

- ❖ Marriage and Child Counsellors (for interview and advise) (*e.g. Muskaan, TISS*)
- ❖ NGOs for Women Empowerment (*e.g. SEWA, Swayam Siddha*)
- ❖ Lawyers' NGOs for Women Protection (*e.g. Majlis, Lawyers' Collective*)
- ❖ Bar Initiatives (*e.g. Sensitization of custodial and Non-custodial parents, films - voice of child who went through Court to help children who have to go through court*)

Agencies for realizing the objects

Medical and Welfare Experts – S. 12

- Psychologists
- Psychiatrists
- Experts in Social Work (MSW)
- College Initiatives
- Mediators / Pre-litigation Mediation
- Child Independent Lawyers (CIL)
- Legal Expert as *amicus Curiae* (S. 13)
- Social Service Unit in Israel

Agencies abroad

- Technical Specialists
- Interdisciplinary Intervention
- In-house Court Service
- Social Service Unit in Israel
- Training of Court Officers in S. Africa
- Judge to explain decision to children in UK

Areas of Work

- Dissolution and continuance of Marriage
- Injunctions
- Maintenance and alimony
- Stridhan
- Cruelty, Harassment, Domestic Violence
- Custody / care and contact with children

Way of Work for the Parties

Collaborative, not competitive

Involving:


- Client Counselling }
■ Negotiation and Facilitation } POS
■ Mediation and Conciliation }

Way of Work for the Children

Amiable, not Argumentative

- Interview the child
- Work out the access/contact
- Joint Parenting – Parenting Plan

Tug-of-Peace, not Tug-of-War



**A happy marriage
is the union of
two forgivers**

When someone does something wrong,
Don't forget all the things they did right.

- President Abdul Kalam



Woman without her man is
nothing. Punctuate.....

Woman, without her, man is
nothing.

AND

Woman, without her man, is
nothing.



“God, why did you
create **a woman**”?

“To do the work of
2 men”.

A day in the life of

Take a page

Tell a woman to write down all that she does in a day.

On the reverse tell her husband to write down what he does in a day.

What is multi-tasking ??



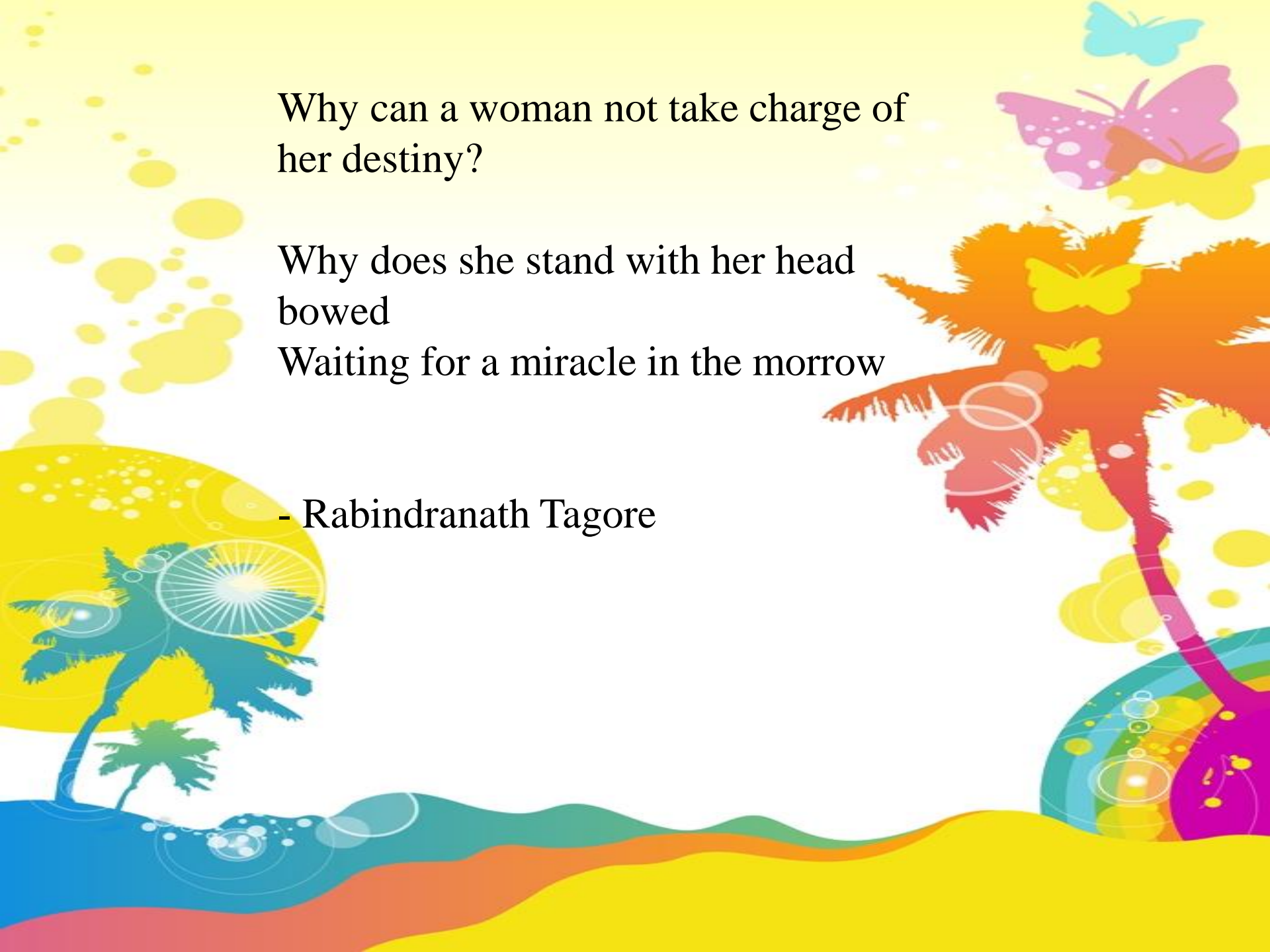
Devi or Dasi ?

Why can a woman not take charge of
her destiny?

Why does she stand with her head
bowed

Waiting for a miracle in the morrow

- Rabindranath Tagore



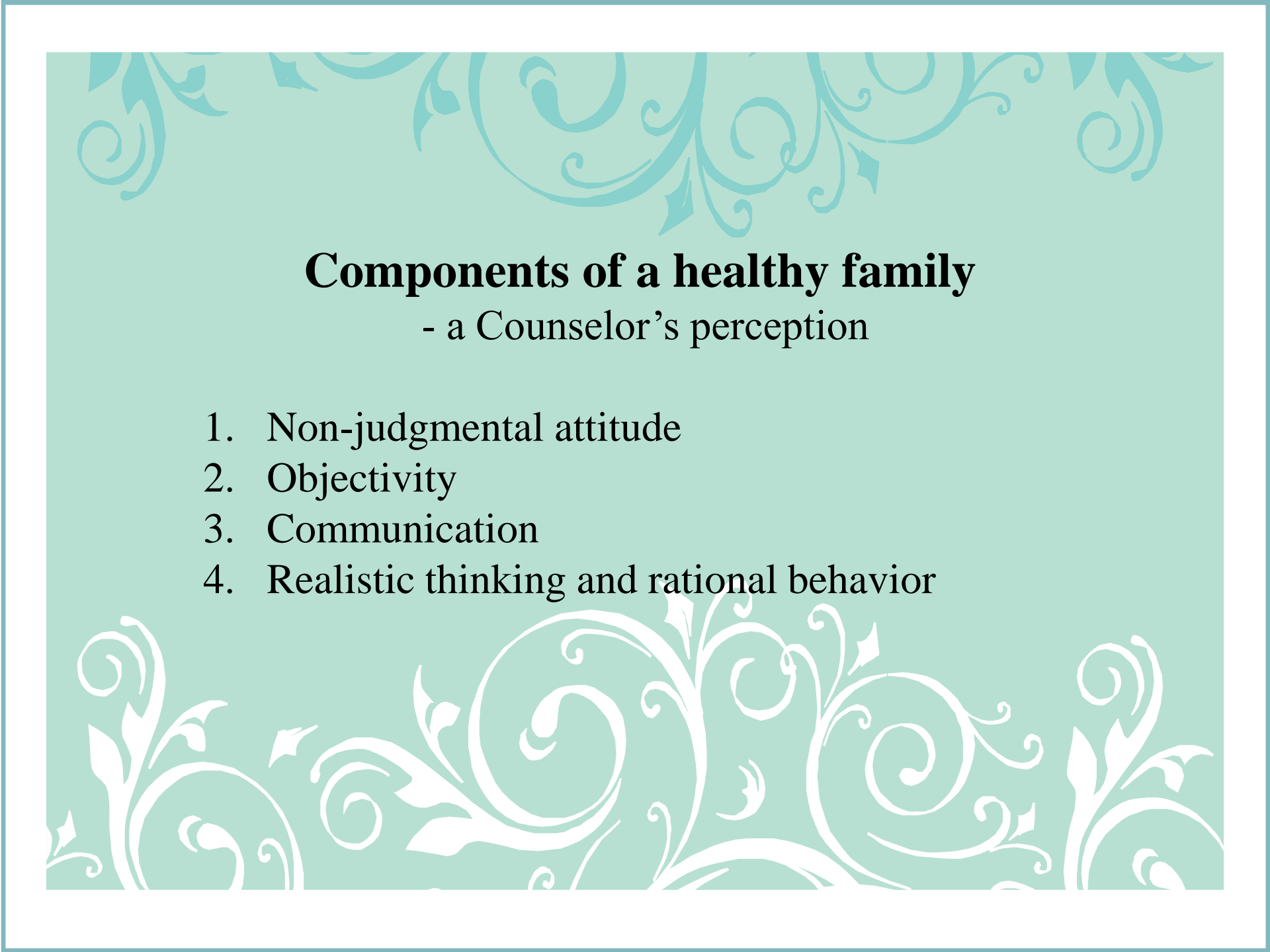
EVOLUTION OF FAMILY

Joint Family

Nuclear Family

Single Parent

Family is a nursery, a school, a playground,
a hospital, a hotel, a home.....



Components of a healthy family

- a Counselor's perception

1. Non-judgmental attitude
2. Objectivity
3. Communication
4. Realistic thinking and rational behavior

Break-down of marriage

Urbanisation,
Industrialisation, Globalisation,
Computerisation

have caused

Real Life → Reel Life
Real Life → Virtual or Net Life

The diagram features a purple decorative background on the left side with white floral patterns. A red line originates from the text 'Real Life' and branches into two arrows pointing to 'Reel Life' and 'Virtual or Net Life'.



Why family continues to be dysfunctional

- Don't talk about problems
- Don't express feelings openly and honestly
- Communicate indirectly
- Don't challenge the parents' beliefs on family rules

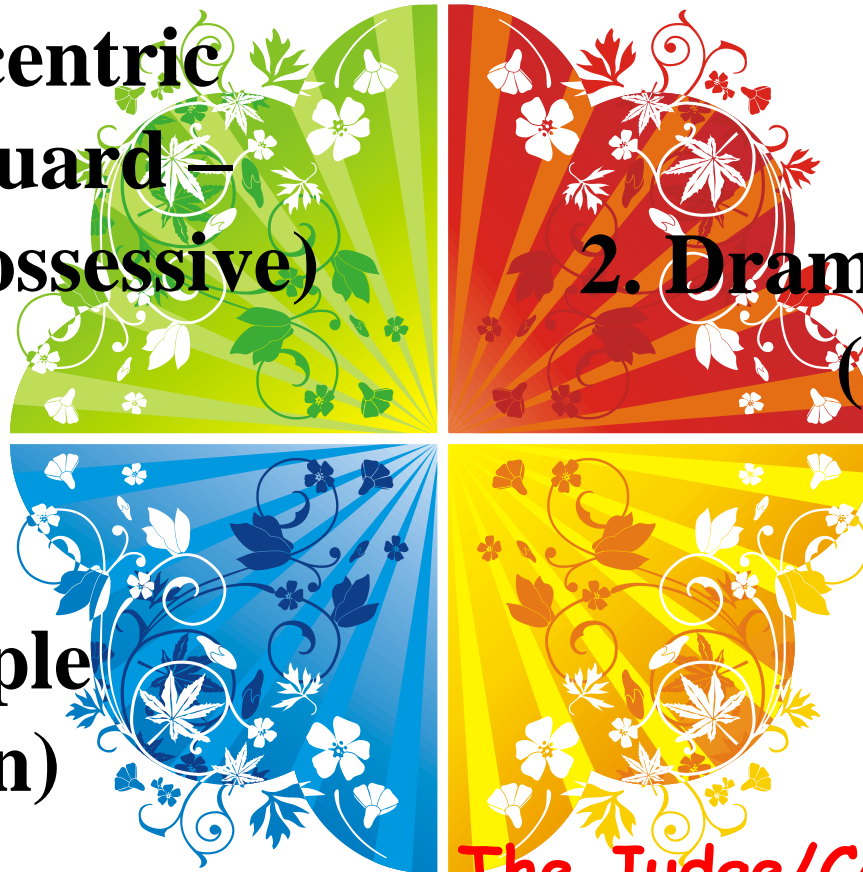
- Dr. Shrikant Joshi, Psychiatrist

PERSONALITY DISORDERS

1. **Odd and eccentric people (on guard – paranoid, possessive)**

2. **Dramatic people (show off)**

3. **Fearful people (withdrawn)**



The Judge/Counsellor have to mould - not hammer them; respect and accept them

Domestic Relationships

- Husband and wife
- Live-in Partners
- Parents and Children
- Relatives
- Adoptive family
- Joint family members

Types of Cruelty

- Physical
- Mental
- Emotional
- Psychological
- Economic
- Social
- Sexual

Definition – UN Model Legislation

- All acts of
 - gender based physical, sexual and psychological abuse
 - by a family member
 - against a woman in the family
 - including
 - Assault
 - Aggravated physical battery
 - Kidnapping
 - Threats
 - Intimidation
 - Coercion

- Stalking
- Humiliation
- Verbal Abuse
- Forcible or unlawful entry
- Arson
- Destruction of property
- Sexual Violence
- Marital Rape
- Dowry or related violence
- Female genital mutilation
- Violence related to exploitation through prostitution
- Violence against household workers

And attempts to commit the above acts = Cruelty / DV

Definition - DV

⊙ Physical

- ⊙ Causing harm or injury

⊙ Mental

- ⊙ Harassment for demand for dowry or property, threats

⊙ Sexual

- ⊙ Abuses, humiliation or degradation of women (includes marital rape)

⊙ Verbal

- ⊙ Including insults, ridicule or humiliation (specially, for not having a child or male child), threats

⊙ Emotional

⊙ Economic

- ⊙ Deprivation from “Streedhan”, other financial resources, properties
- ⊙ Disposal of property (includes deprivation of money or services)

⊙ Psychological

- ⊙ (e.g. preventing contact with family or friends, threat of removal of children)

Distinction

S.498A IPC

➤ Cruelty

⇒ Wilful conduct

→ As to cause injury

→ Danger to life

→ Drive her to suicide

⇒ Harassment

→ To meet demand for dowry or property

S.3 DV Act

➤ Violence

⇒ Act, omission, commission, conduct

⇒ as to constitute physical, mental, sexual, verbal, emotional, economic abuse

⇒ Considering overall facts and circumstances

Comparative Legislations

- U.S.A.
 - Violence Against Women Act
 - Victims of Crime Act
- U.K.
 - Housing Act, 1996
 - Protection from Harassment Act, 1997
 - Domestic Violence, Crime and Victims Act, 2004
 - Forced Marriage (Civil Protection) Act, 2007

Illustrations of DV

- × Assault
- × Burning
- × Homicide
- × Persistent denial of food
- × Perverse sexual conduct
- × Locking a woman out of the house
- × Confining a woman at home
- × Denying access to her relatives
- × Denying access to children

Illustrations of DV (Contd...)

- × Abusing children in the mother's presence
- × Falsely denying paternity of children
- × Demoralizing or putting down a woman
- × Insulting or taunting her for lack of a child or a male child
- × Threatening divorce unless dowry is given
- × Forcing abortion or sterilization
- × Misconduct affecting the woman directly such as, drunkenness, gambling or crime

Known Grievous Cases

- Kiranjit Ahluvalia – UK
- Nicole brown Simpson, w/o Footballer O. J. Simpson – US
- Aruna Shanbag - India

False and Legitimate Cases

- Rajesh Sharma Vs. State of UP 2017 SCC Online 821
- Social Action Forum for Manav Adhikar Vs. Union of India 2018 10 SCC 443

Call for gender neutral laws –

Person, not woman

Spousal Violence, not DV

Marital Rape = Sexual violence = Cruelty

Responses to DV

- ◇ Psychological
 - ◇ Trauma
 - ◇ Hopelessness
 - ◇ Anxiety
 - ◇ Fear
 - ◇ Anger
 - ◇ Insomnia & nightmares
 - ◇ Depression
 - ◇ Social withdrawal
 - ◇ Lower self-esteem
 - ◇ Betrayal of trust
 - ◇ Self blame
 - ◇ Guilt
 - ◇ Shame

Responses to DV (Contd...)

◆ Social

- ◆ Isolation

- ◆ Loss of dignity

- ◆ Loss of safety

- ◆ Loss of marriage, home, job, family and social life

Results of DV

➡ Physical

- ➡ From black eye to death
- ➡ Burns
- ➡ Disability
- ➡ Pain
- ➡ Cuts & bruises
- ➡ Failed health
- ➡ Forced pregnancy
- ➡ Miscarriages and abortions
- ➡ HIV

Results of DV (Contd...)

☛ Psychological

- ☛ Failed marriage

☛ Economical

- ☛ Decreased productivity
- ☛ Wages lost
- ☛ Employment at stake due to absenteeism
- ☛ Financial costs
- ☛ Health costs

Responding to DV

- Sanctuary - Preventive
 - Provision of Safety
 - Shelter and refuge against re-victimization
 - Protection orders
 - Women victim centers in hospitals
 - Forensic examination
 - Crisis counseling
 - Police statement
- Sanctions - punitive
 - Disdain → ostracizing → punishment

Responding to DV (Contd...)

- Infrastructure
 - Mandatory arrest
 - Specialized police
 - Women's police stations
 - Women victim centers
 - Special Courts
 - Video recording of investigation
 - Video conferencing of trials
- Sensitivity
 - Training of Police Officers, Medical Officers, Public Prosecutors and Judicial Officers

DV Act - Reliefs

** Counseling [s.14(1)]

** Right to matrimonial home [s.17(1)]

** Injunctions [s.18]

* Prohibitive [s.18(a) to (g) and 19(a), (c), (d), (e)]

* Mandatory [s.19(b) and (f)]

* Additional conditions and directions [s.19(2)]

** Execution of Bond [s.19(3)]

** Police protection [s.19(5) and (7)]

DV Act – Reliefs (Contd...)

- * Return of Streedhan [s.19(8)]
- ** Monetary reliefs including maintenance [s.20]
- ** Temporary custody of children [s.21]
- ** Compensation and damages for injuries [s.22]

These include Interim Orders and Ex-parte Orders [s.23]

Other Reliefs?

- ◇ Restitution Orders
- ◇ Rehabilitation
- ◇ Restraining Orders upon acquittal
- ◇ Employment
- ◇ Alternate accommodation
- ◇ Photographs and particulars of offender in media
- ◇ Legal separation
- ◇ Earnings from property
- ◇ Deposit of security
- ◇ Home visits



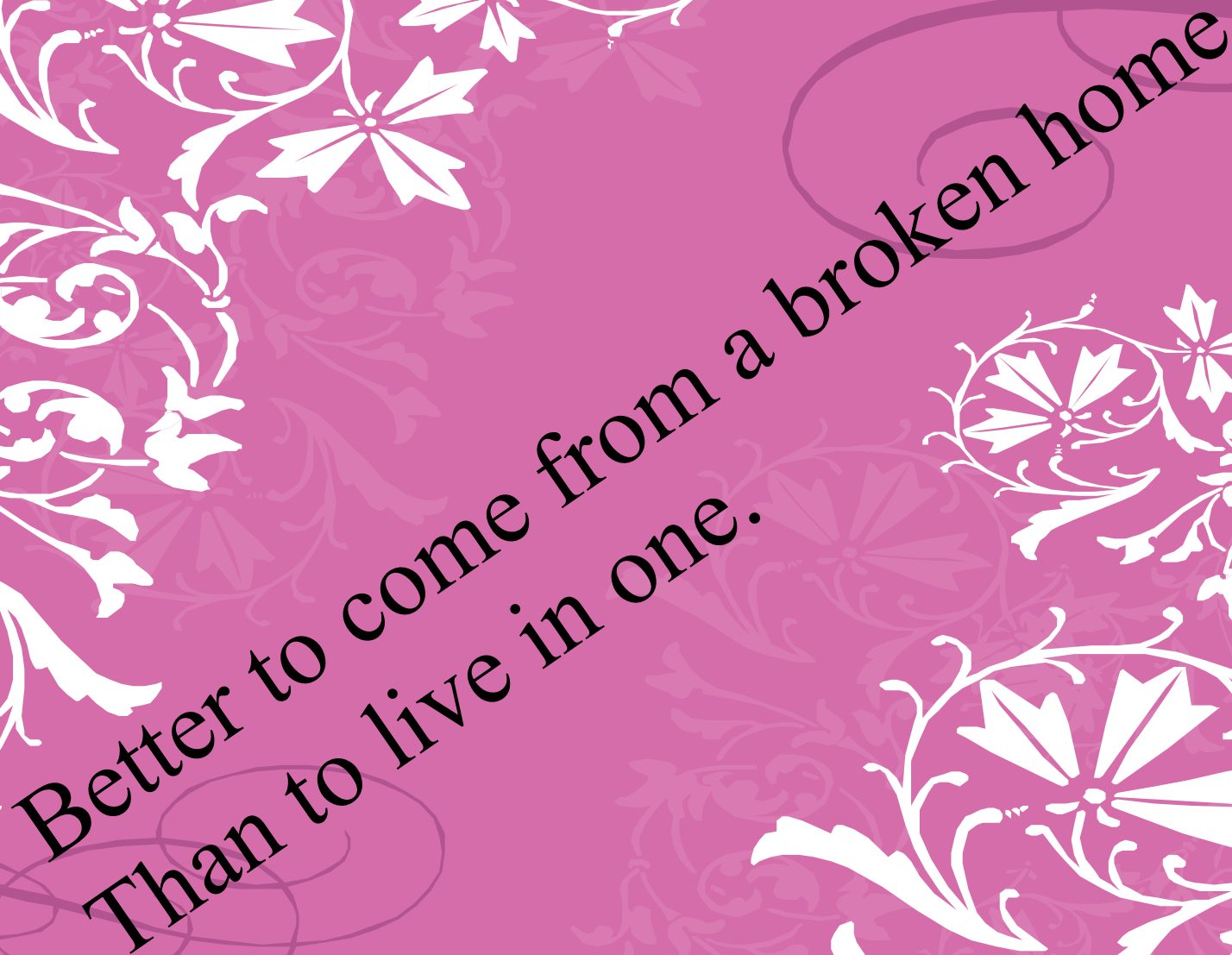
What do you give a woman?

Give her fish

or

Give her the rod so that she
can fish.

Swayam Siddha



**Better to come from a broken home
Than to live in one.**

The Judiciary must

Hear those who cannot shout,

Listen to those who cannot speak.

