

## **MARRIAGE, COUNSELING AND MARITAL RELATIONSHIPS**

**Ms. Smita Joshi\***

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### **Introduction**

It is said that marriages are made in heaven and celebrated on earth. The popular belief is true to a certain extent, because it is a special bond shared between two souls, who tie the wedding knot after promising to be companions for lifetime. It is the physical, mental and spiritual union of two souls. But then being two distinct individuals they are different people which give rise to differences between them. When the couple faces cohabitation issues, cultural differences, and extra marital affairs, problems of forgiveness, parenting issues, sexual issues, and financial management then marriage counseling becomes a necessity. Once upon a time marriage was a 'forever' commitment. Today, however, it's a completely different story with some marriages being as short lived as just a few days or months. Divorce is no longer an alien or feared word among couples as marital problems are increasing in numbers. Separation and divorce are not the solution to marital problems. Every relationship undergoes rough patch. Almost most of us experience problems that are brought by indifference, monetary or financial problems, jealousy, 'third party' meddling, or other marital problems.

### **Marriage Counseling and Legal Definition**

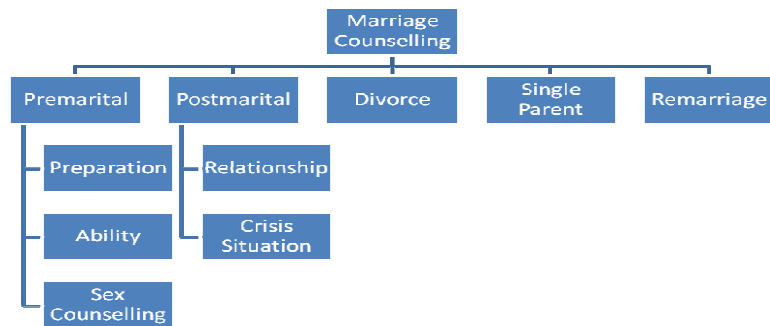
Marriage counseling seeks to identify the sources of conflict in a marriage, and provide healthy ways of resolving such conflicts. Marriage counseling is an alternative to divorce or separation for some couples. Marriage counseling may also be sought by couples who are in the process of a divorce or separation to help them deal with the changes and emotions being experienced so

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\* Marriage Counselor, Family Court, Pune, Maharashtra, India.

that the process is dealt with in a healthy manner. Such counseling may benefit both, the couple and any children who may be affected by negative feelings such as anger and vindictiveness. Laws vary by State, but some State laws allow a couple to obtain a marriage license for a reduced fee if they undergo premarital counseling. Marital counseling is also generally a requirement for the one who opts for a covenant marriage. Some State laws give judges the authority to order marriage counseling. In states where the judge may order counseling, the judge often delays the divorce proceeding for a month or two during the counseling period. It is an advice given by a trained person to people who are trying to find solutions to problems in their marriage.

### Areas of Marriage Counseling



### Procedure of Counseling in Family Courts

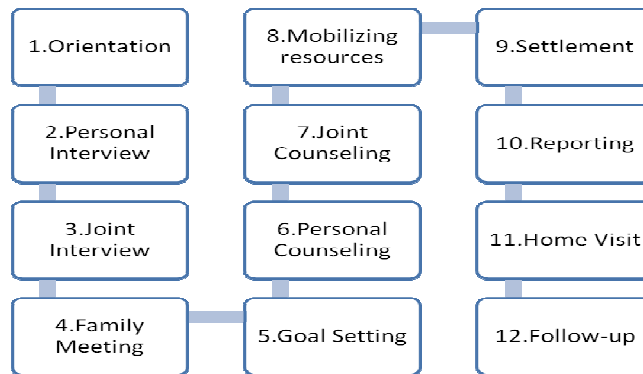
Marriage counselor performs all those tasks which in earlier days were being performed by a mediator and a family friend. The role of the marriage counselor is to see that disputes are solved amicably and that the parties unite instead of separating. Whatever they do, they do to help the parties.

As per the Family Court Rules,<sup>1</sup> certain time is given to the marriage counselors to work on the case and

<sup>1</sup> The Maharashtra Family Court Rules, 1987.

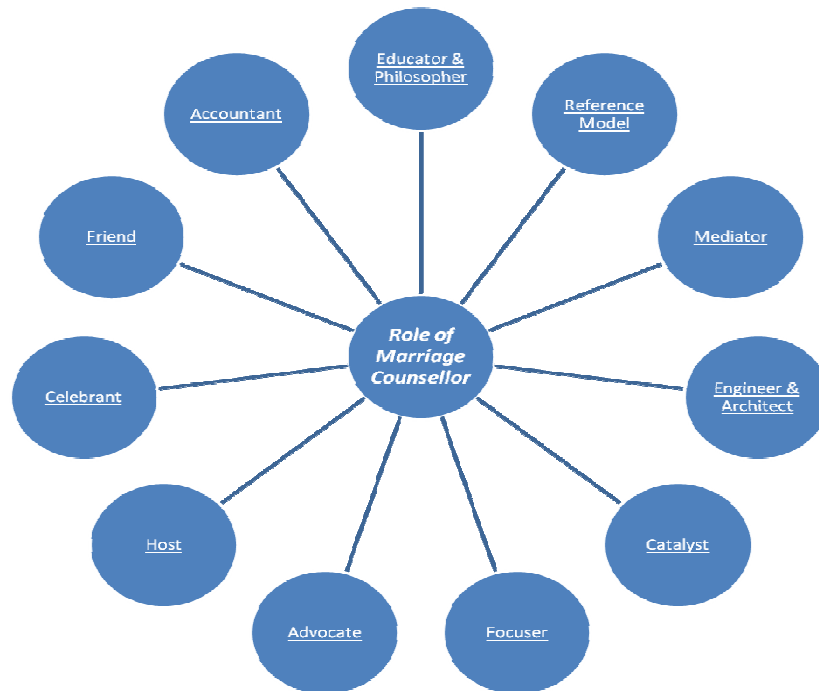
submit report to the court. When the parties step into the court, there is bitterness in their minds against each other. The counselor has to break these walls and make the parties comfortable to listen to the counselor's suggestions and think over it. Sometimes there are other legal complications involved such as filing of the cases under section 498A of Indian Penal Code, 1860, the Protection of Women from Domestic Violence Act, 2005 *etc.* In such cases the counselors availing the help of friends and relatives of the litigants could arrive at a proper settlement. The time taken by the counselor to settle a matter amicably or otherwise varies from case to case depending upon the gravity of each case and response of parties. When the counselor thinks that there is possibility of reconciliation or settlement, in such cases only the counselor requests for more time for further efforts.

#### Procedure of Counseling in Family Courts



#### Various Roles of a Counselor

Counselor acts in multiple roles while performing his duties. He is an all rounder personality and performs following roles:



**Data Analysis**

The samples were taken from the Family Court, Pune. The subjects were the clients who are a part of litigants in the Family Court; the clients, who have settled the matters amicably with the help of marriage counselor. Sampling was done using the random approach. Data for this research was collected from 45 couples.

A questionnaire was formulated which was tailor-made especially for the subjects; and the areas focused at were:

Confidence	Self-Esteem/Image	Focus
Responsibility	Decision Taking ability	Competitiveness
Initiative	Self-Reliance	Awareness

There were 21 objective questions with 5 point rating scale which was ranging from 'yes', 'mostly', 'sometimes', 'rarely', and 'no'. A subjective questionnaire was also made which the subjects had to fill in. The questions were basically mostly related to counseling, and how the clients have changed post-counseling also; why the clients settled the matter amicably; and the main reason how counseling is helpful to them. The case studies for each client were also taken while the data was being collected.

### **Discussion and Conclusion**

The questionnaire was given to the clients and the data was collected. After the scoring the interpretation was done and it was noticed that the clients scored very high on areas such as 'confidence', 'self esteem/image', 'focus', 'responsibility', 'competitiveness', 'ambition', and 'awareness'. This means that the counseling is working on the clients in the personal areas which enhance their entire psycho-social rehabilitation.

Marriage counseling therapy refers to the use of meaningful occupations to assist people who have difficulty in achieving occupationally balanced lives. A marriage counselor works with a variety of individuals who for whatever reason have difficulty in accessing or performing meaningful marital life. The subjects have really scored a high on confidence, focus, self esteem, *etc.* This shows that the clients are on a road to recover in terms that they are slowly but steadily learning to do things on their own. They are still not very confident about the decisions that are taking but at the same time they are growing to be confident about themselves. The self-esteem shows that they also have improved from the time they caught on the 'disease'. They feel good about themselves and have also started believing in spouse capacities and the capabilities that they possess. They also take responsibility for their own actions and whatever little/major decisions they are taking. According to the responses they still need a bit of help while working alone.

Counseling alone is not a treatment; but it will help in following all other parts of our care path. It is

recommended to complement your counseling with psychosocial support. Even when you feel relief of psychotic symptoms, you could experience difficulties with social contacts, motivations or daily care. It is also very likely that you find it difficult to find or hold on to a marital life, on improving social functioning; be it in the community, at home or at work.

### **Disposal of Cases through Marriage Counseling**

The table given below shows the year wise data 2001 to 2011, the cases referred to the marriage counselors of the Family Court, Pune. As per the Family Court Rules when the parties institute the case in the Family Court and both the parties appear in the court on that date they should have referred to a marriage counselor.

After the data analysis, the researcher found that the referral number is increased year after year. The year 2001 shows the number of cases referred to counselor was 2318, and in the year 2011 shows the number of cases referred to the counselor was 4689. The *net resultant* of this analysis means society needs counseling very much.

### **Disposal of Cases in 11 Years by Marriage Counselors**

<b>Year</b>	<b>Total</b>	<b>Disposal</b>	<b>Reconciliation</b>
2001	2318	846	179
2002	1750	775	155
2003	1656	708	125
2004	1968	767	122
2005	2401	1034	172
2006	2659	1251	192
2007	2521	1266	196
2008	3256	1351	165
2009	4038	1400	175
2010	4689	1464	167
2011	4790	1520	182

## **Views of Hon'ble Judges**

### **➤ Hon'ble J. Mrs. Mrudula Bhatkar<sup>2</sup>**

Hon'ble Ladyship Mrudula Bhatkar in her telephonic conversation with researcher has very specifically mentioned that the counselor's work is not different than the work of a judge as both the parties come with their disputes before the counselor as well as the judge. The counselor has to solve the problems by understanding the problems of the parties; the dispute can be solved in a very simple manner, but it all depends on what kind of counselor the parties have approached. The counselor can increase the dispute or it can solve the disputes easily. Thus, a counselor plays very important role in judiciary. Hon'ble Ladyship Mrudula Bhatkar says that the impartial counseling and non-judgmental attitude should be the first criteria of becoming a successful counselor. The parties must show confidence for the counselor as for better understanding between the parties, and the counselor there has to be trusted between both of them.

Hon'ble Ladyship Mrudula Bhatkar has considered a job of a counselor parallel to the smartness and cleverness of Lord Krishna as they both have to work on the serious grounds of counseling with a shark brain. The skill to understand the problem between the parties can only be done by a smart counselor and thus the counseling can be successful only by an intelligent counselor. The counselor should not force his own point of view on the parties as the parties already have suffered with emotional imbalance. Thus a smart counselor not only understands the emotional point of view of the parties but make them comfortable to solve the problem. Hon'ble Ladyship had admired the role of the counselor in solving the marriage disputes as due to correct counseling the marriages have been saved. The first aim of a counselor should be to save the marriage institution, and if not possible then to try to save the emotional and physical as well as the financial time of the parties by settling the matter amicably. Today's world is a very fast changing world and the marriage counselor can play a

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<sup>2</sup> Judge, Bombay High Court, Mumbai.

very important role in very part of life as most of the matters filed in the family court are based on anger, pride, feeling of taking revenge against each other, thus a true counselor can solve the problem with his/her smartness. In today's world engineers, doctors, information technologists and highly qualified people normally file matters for maintenance as well as for other problems. This problems are increasing day by day in today's world, thus a true counselor can make them understand their self-respect and can provide them confidence regarding themselves. Thus a marriage counselor plays a role of a torch to people who because of their ego have lost in the darkness of problems of their marriage. If a marriage counselor makes understand every individual that he/she has his/her own self-confidence and self-respect then the matters which are filed in court without any base will get disposed off very easily. Thus Hon'ble Ladyship Mrudula Bhatkar speaks about the importance of the counselors as an important pillar in Indian judiciary.

➤ **Hon'ble Dr. Mrs. Shalini Phansalkar - Joshi<sup>3</sup>**

The unique feature of the Family Courts Act, 1984 is the recognition of the institution of marriage counselors by creating for them a key and important role. As per the mandate of the Act, immediately after the institution of the proceedings and appearance of the parties on the first date the court has to refer them to the counselor for reconciliation and amicable settlement of matrimonial dispute. Thereafter also as and when there are chances of reconciliation between the parties, the court can and does refer the parties to a counselor to resolve the dispute amicably and finally. The Rules framed under the Family Courts Act, 1984 also confer wide powers on the counselors including to interview the parties, to pay home visits, to ascertain the wishes of the parties, to know their standard of living and nature of relationship with the children, to seek information from employer of the spouses to know their income, *etc.* Counselor is thus expected to assist the court in arriving at an amicable settlement between the parties and if it is not possible, then in arriving at just decision of the case. In that sense,

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<sup>3</sup> Joint Director, Maharashtra Judicial Academy.



the counselor acts as a bridge or link between the court and the litigating spouses. His role in custody matters of the children of the warring spouses is irreplaceable. One may say that, having regards to the object of the Family Courts Act, 1984 the counselor may be called as 'the backbone of the system'. The counselor does play such vital and effective role in settling, resolving and in narrowing down the dispute in matrimonial litigation.

➤ **Hon'ble Dr. Mrs. Sunanda Joshi<sup>4</sup>**

Family Courts deal only with matrimonial disputes. The provisions of the Family Courts Act, 1984, are in keeping with the objective of the Act of bringing about reconciliation and speedy settlement of disputes in matrimonial matters. The institution of marriage counselors is one of the most important and unique provisions of the enactment. Marriage counselors are the backbone of the functioning of the Family Courts.

Marriage counselors are professionally qualified and are having expertise in dealing with matrimonial disputes. Marriage counselor brings about dialogue between the parties and tries to remove misunderstanding between them. In most of the cases parties come face to face only in the chamber of the counselor after their separation. Marriage counselor puts different options before the parties to choose best suitable for them. A marriage counselor is not taking decision for the parties but helps them in taking decision. Thus counselor helps the parties in helping themselves. The role of a counselor is that of a friend, philosopher and guide for the parties. Counselor talks to their friends, relatives and family members to bring about some workable solution. It is very difficult to bring about reconciliation between the parties as people come to the court as a last resort when all their efforts fail. However, almost 50% of the disputes are settled at the level of marriage counselor with 'minimum bitterness' and 'maximum fairness' which is no less an achievement since it puts end to further litigation between the parties. Reconciliation is also brought about in 8% to 10% of the cases. By thinking that sometimes it is better than to

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<sup>4</sup> Judge, Family Court, Thane.

keep on fighting with each other throughout their life which has tremendous adverse effect on the children of the couple. The speedy settlement of disputes gives the parties relief at early stage, and saves precious years of their life and a chance to resettle. Thus the role of a marriage counselor is very vital to bring stability in family and social life. Continuous training and upgrading their skills is very important in achieving the objective of early settlement.

During some counseling sessions women were given reality orientation about limitations of the counseling office *e.g.*, it was not compulsory for the person (against whom complaints were made) to attend counseling sessions and even if he/she attends counseling sessions and arrives at a settlement, the counselor was not in a position to execute them as he had no such power.

By understanding all these things, women still use to prefer efforts at our office to try out resolving their problems.

Many of them were satisfied with the problem solving at the level of our office. But at the same time in some cases other persons would not respond to the call letters sent by own office, or they would meet their lawyers after signing agreements, and would not implement it as we were not in a position to take any action against them for non- implementation of the agreements.

➤ **Hon'ble Ms. Aruna G. Faraswani<sup>5</sup>**

With westernization in our society increasing, the relationships between the spouses are getting strained. Most relationships get strained on some point or other for misunderstanding, communication gap, leading to ego problem between the couples. Expectations from a spouse have increased to such an extent that loss of expectations has resulted in ripples in their relationship. Different mental setup is also one of the grounds of discord of marital relationship. It is a time of going to specialist and getting oneself treated from a specialist for any medical health problem. So also the need has arisen

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<sup>5</sup> Judge, Family Court, Pune.

to go to a specialist or a therapist for a discord in a marital relationship. Marriage counselors are specialized people who are working either voluntarily or through social institutions or through the Family Courts. The role of a marriage counselor is to work as therapist for couples, whose relationships are strained. The counselors are trained to be active listeners and act as catalyst to defuse the aggravated emotionally charged spouses. Their role is confidential which helps individual to confine in them which facilitate to identify the problem, understand the source of reactive reaction and to reorganize the key emotional responses in the relationship. With stress each spouse goes through, a special form of a therapy is required which a specialist, a trained marriage counselor can help in saving the marital relationship. If required they can refer the couple to psychologist, psychiatrist, for various therapies. The marriage counselors are professionals to help the couple in their need to save the marital relationship. As a specialist in medicine field is required for any disturbance in the function of the physical body, so also the marriage counselor is important in emotional disturbance of a spouse in a marital relationship. The marriage counselors have become the need of the hour as each individual is going through a lot of stress due to various factors like economical, financial, emotional, health, *etc.* Reconciling a couple strengthens the fabric of the society and the marriage institution.

### **Suggestions and Conclusion**

Marriage counseling is in its essence 'a helping in a relationship'. All of us seek to satisfy our personal needs. More often than not, in trying to gratify our needs, we find ourselves in conflicting situations in which our interests clash with those of others. But through the process of socialization in childhood, and later through education, we learn to moderate our desires such that there is no open clash. We may learn to suppress a few desires and inhibit other needs so long as our happiness is not endangered. In addition to human suffering caused by physical handicaps and clash of interests, a major source of suffering is to be found in one's own personality. Often a sense of personal inadequacy and inferiority leads to lack of self-confidence, withdrawal and

lack of desire for achievement. Even if the individual has the desire or motivation, he is hindered by subjective and environmental factors. A marriage counselor and client relationship is a helping relationship is characterized by certain essential features and is meaningful because it is personal and intimate as follows:<sup>6</sup>

- Is affective in nature involving mild to strong emotional relationships.
- Involves the integrity and is sustained voluntarily.
- Involves the mutual consent of the counselor and the counselee either explicitly stated or implicitly to be inferred.
- Takes place because the individual in need of help is aware of his own limitations and inadequacies.
- Involves confidence reposed in the counselor.
- Is often achieved and maintained through communication and interaction; it involves, gives and takes, *i.e.*, it is not a one way process.
- Involves a certain amount of 'structure'. The situation is either vaguely or clearly defined.
- Is marked by the desire for change in the existing condition of the client, that is, it is concerned with the improvement of the client.

In short, the marriage counselor's profession involves specialized knowledge, trained skills and the desire to provide comfort to others.

### **Summary**

Law is not for a law's sake. Law is an instrument of social control. It originates and functions in a society, and for a society. The need for a new law, a change in existing law and the difficulties that surround its implementation

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<sup>6</sup> Shertzer, Bruce, Stone, Shelley C., *Fundamentals of Counseling*, Houghton Mifflin, 1968.

cannot be studied in a better manner. Without sociological enquiry, law and society are not divisible as water tight compartment. They are interlinked. The Alternative Disputes Resolution, Arbitration and Conciliation Act, 1996 was enacted for the speedy disposal, and for proper and permanent solution which is convenient for both the parties. It means that law is needed for the society.

The Family Courts Act, 1984 enacted for the settlement of family disputes, where emphasis should have been laid on conciliation and achieving societal desirable results, and adherence to rigid rules of procedure and evidence should have been eliminated. The Law Commission in its 59<sup>th</sup> Report in 1974 had also stressed that in dealing with disputes concerning the family the court ought to adopt and approach radically different approach than that adopted in ordinary civil proceedings, and that it should make reasonable efforts at settlement before the commencement of trial. The need was, therefore, felt in the public interest to establish family court for speedy settlement of family disputes. As per section 6 of the Family Courts Act, 1984 and the Maharashtra Family Court Rules (1987) No. 12 and 13, a marriage counselor attached to the counseling center shall be appointed by the High Court. The role of marriage counselor is to give the disputed parties a scope to resolve their disputes by way of reconciliation or an amicably settlement.

This non-doctrinal or empirical research was carried out by collective and gathering data by using methods/interviews, questionnaire, and counseling experts' views/opinions. The researcher concludes that marriage counseling is important in a judicial set up. The researcher also critical analyze the Alternative Dispute Resolution system (ADR), mediation and conciliation in judicial set up, and also suggest that marriage counseling is necessary not only Family Courts but in every marital disputes in court litigation and out of the court also. A pre-marriage counseling is also important. The views and opinions suggest that a marriage counselor plays various pivotal roles by using scientific technique as it is very important to save the matrimonial relationship, and it is most possible when a counselor tries to discuss various

options lying before the parties and to find out a proper and permanent solution. The parties can try to recognize or settle the matter permanently and amicably. The institution of marriage counselors is one of the most important and unique provisions of the Enactment. Marriage counselor is the back-bone of the functioning of the Family Courts.

Hence, it can be rightly said that the marriage counseling is a perfect mean to end unending marital disputes.

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