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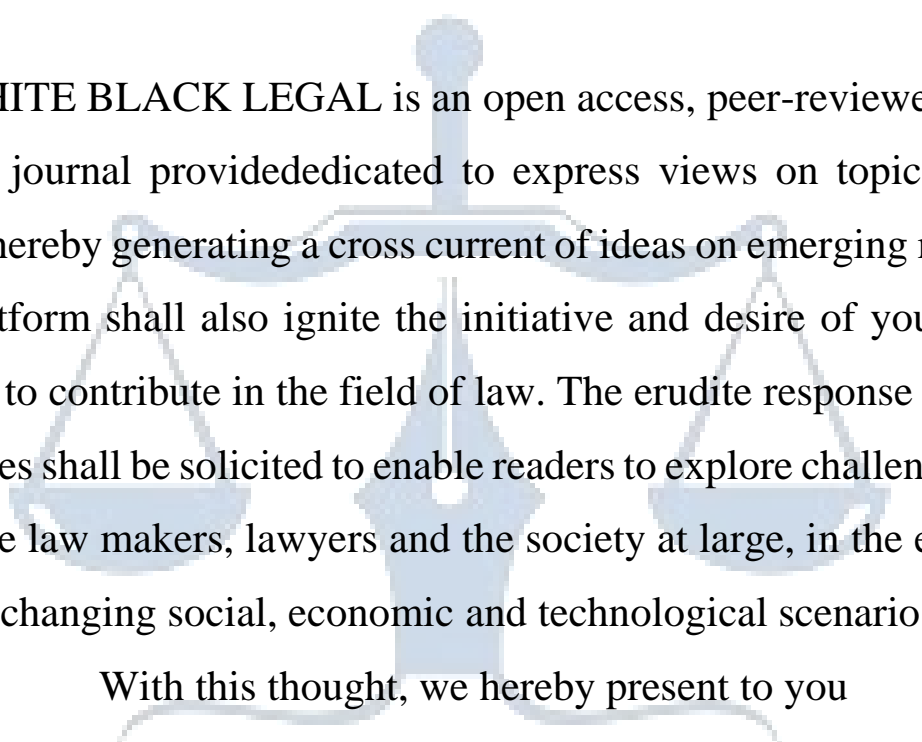


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

INSANITY AS A GROUND FOR DIVORCE **VIS-À-VIS HINDU MARRIAGE ACT, 1955**

Authored By- Debalina Roy

Third Year, BA. LL. B (H)

Xavier Law School

XIM University

“Mental health problems don’t define who you are. They are something you experience. You walk in the rain, and you feel the rain, but you are not the rain.”

— Matt Haig

By virtue of marriage, the husband and wife promise to stand by each other in sickness and in health. Though the terms “in sickness and in health” is generally used in the vows of a Christian marriage. The idea underlying the term is germane to the perception of Hindu marriage as well. To love and care for each other, to support each other, mentally, spiritually, financially, and to guide one’s better half’s path when they are going through a dark and difficult time, are the solemn promises an individual is bound by when enter into the sacred bond of marriage. But where does the word of honour to support and stand by each other in sickness and in health, fit into the provision of Section 13(1)(iii) of the Hindu Marriage Act, 1955 which recognizes insanity as a valid ground for dissolution of marriage. Marriage is one of the most essential aspects of an Indian woman’s life, and her social position improves after she marries, whereas remaining unmarried after a certain age is stigmatising for her. Unlike Western countries like USA, UK, Canada, India is not divorce pro hitherto. In India, there is a higher social and moral need to maintain the connection after marriage, even if there are problems in the marriage.

Marriage and mental illness have a complicated relationship. Marriage can cause or worsen the mental condition in a vulnerable person. Because of the prevalent stigma, most people would prefer not to marry a person with a mental illness. When the mental illness is discovered after marriage, the afflicted person is often abandoned. Because of this, more women than men with severe mental illnesses are separated, abandoned, or divorced. They are frequently refused, maintenance, as well as custody and visiting rights over their children. Divorce or judicial separation can be obtained if the person 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,” according to Section 13 of the Hindu Marriage Act, 1955. A spouse suffering from mental illness itself is not a ground for divorce; according to the Hindu Marriage Act, if a person has mental disorder of a kind that the spouse cannot be reasonably be expected to live with them, then divorce may be granted¹.

LEGAL CONNOTATION OF THE TERM ‘INSANITY’

Non compos mentis is a Latin legal phrase that translates to “of unsound mind,” whereas Nōn pefaces compos mentis literally means “having control of one’s mind. A person of unsound mind is an adult who, due to mental disability, is incapable of managing himself or his affairs. The Calcutta High Court in the case of *Anima Roy v. Probodh Mohan Roy*² held that because the term “insane” was not defined in the Hindu Marriage Act, its meaning and intent would be the same as under Section 3(5) of the Insanity Act, which states that any person suffering from mental imbalance of any kind may be regarded as an idiot or insane. In the context of matrimonial law, the phrase “unsoundness of mind” refers to a lack of a state of mind or capacity to understand one’s affairs or marital obligations. Matrimonial legislations in India appear to be highly prejudiced against disabled people, especially against people with mental illness.

The Indian Contract Act, 1872, is the only statute in India that defines a sound mind. It states that if a person is of sound mind at the time of entering into a contract, he is capable of understanding it and making a reasoned decision about its implications for his interests. Thus, mental illness is neither required nor sufficient for determining mental insanity. Even if a medical board determines that a person has a mental illness, this does not necessarily suggest that he is of unsound mind³. According to Clause 5 of the Mental Health Care Act, 2017, a person’s mental illness does not indicate or be construed to mean that the person is of unsound mind unless pronounced as such by a competent court.

The Mental Healthcare Act, 2017 is piece of legislation that regulates mental healthcare and treatment for all, any ground of discrimination, using a rights-based approach⁴. It is premised on the guiding principles of UN Convention on the Rights of Persons with Disabilities, ratified by India in 2007. As per the provisions of the Mental Healthcare Act, all persons suffering from a mental

¹ Debanjoli, Nandi, *Mental illness still ground for divorce?*, Deccan Chronicle, (Jul. 10, 2019), <https://www.deccanchronicle.com/nation/current-affairs/100719/mental-illness-still-ground-for-divorce.html>.

² *Anima Roy v. Probodh Mohan Roy*, AIR 1969 Cal 304.

³ *Supra* note 1.

⁴ The Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).

disorder are presumed to have the capacity to make choices regarding their own treatment, unless the contrary is proved. All people with mental illnesses have the right to be treated equally⁵ under the Act, and they are protected from cruel, inhuman, or degrading treatment. It includes rules for confidentiality, community life, access to medical records, and legal aid⁶. The Act also mandates insurance providers to give mental illness coverage on par with physical health coverage.

In *Navtej Singh Johar v. Union of India*⁷, the Supreme Court repealed Section 377 of the Indian Penal Code⁸, thereby decriminalized homosexuality. The definition of mental disorder and its anti-discrimination provisions provided in the Mental Healthcare Act was relied upon. In particular, the court's decision can be applied to invoke *the right to equality and non-discrimination* under Section 21 of the Act as a ground to prohibit discrimination against people with mental illnesses based on their sexual orientation to other laws that discriminate against people with mental illnesses. For instance, mental illness is recognised as a ground for divorce or annulment under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. The Supreme Court in *Accused X v. the State of Maharashtra*⁹ invoked Section 23, which protects the rights of people with mental illnesses to *confidentiality and privacy*, to direct the court registry not to reveal the accused's name because they were suffering from a mental illness.

SOUNDNESS OF MIND: AN ESSENTIAL CONDITION OF A VALID HINDU MARRIAGE

Section 5 (ii) of the Hindu Marriage Act, 1955, as amended by the Marriage Laws (Amendment) Act, 1976, states the following:

“At the time of the marriage, neither party –

- (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
- (b) though capable of giving a 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 child; or

⁵ Saumya Sinha, Yash Kapadia, *Legal rights of persons with mental illnesses*, Blog iPleaders, (Jan. 3, 2019), <https://blog.iplayers.in/legal-rights-of-persons-with-mental-illness/> (last visited Nov. 14, 2022).

⁶ Manisha Shastri, et. al., *The Central Role India's Courts Have Played to Protect People With Mental Illness*, The Wire Science, (Oct. 21, 2021), <https://science.thewire.in/law/mental-health-care-act-2017-india-courts-progressive-jurisprudence/>. (last visited Nov. 13, 2022).

⁷ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

⁸ Akshita Prasad, *A Win, With A Long Road Ahead: The Supreme Court Repeals Section 377*, (Sept. 6, 2018), <https://feminisminindia.com/2018/09/07/section-377-supreme-court-judgement/> (last visited. Nov. 14, 2022).

⁹ *Accused X v. the State of Maharashtra*, (2019).

(c) has been subject to recurrent attacks of insanity¹⁰”

This provision finds its roots in Section 2, clauses (c) and (d) of the Matrimonial Causes Act, 1973. The three clauses under Section 5 (ii) are independent of each other and under any of these clauses, a marriage can be annulled. Clause (a) does not encompass every kind of “unsoundness of mind” is not covered. It is stated that the unsoundness of mind should be such that it incapacitates a person from giving a valid consent to marriage. The clause further provides that it does not have to be persistent or continuous unsoundness of mind. It is possible that it had arisen just before the marriage. If such a condition did not exist at the time of the marriage but is developed after marriage, the provisions of this section would not apply. However, other remedies under Section 10, 13 and 13-A of the Act would be available¹¹. The Hindu Marriage Act mentions unable to give consent due to non-compos mentis renders a marriage voidable, but it nowhere mentions that valid consent is an essential condition for marriage.

Clause (b) of Section 5(ii) by virtue of the phrase “has been suffering” requires the mental disorder to be of some duration. However, there is no hard and fast rule in that regard. The duration is determined keeping in view the facts and circumstances of each case. Not in every case, a spouse suffering from a mental disorder will render the marriage voidable. The mental disorder must render the person unfit for marriage and of procreation of children. The Madhya Pradesh High Court held the above view in *Alka v. Abhinash*¹². The term “insanity” in Section 5(ii) is not qualified. In *Balakrishna v. Lalitha*, it was held by the Andhra Pradesh High Court that “the intent of Section 12 is that recurrence of insanity is sufficient to dislodge the marital tie and the prefix of curable is not warranted by the Act¹³.”

In *Manishwar v. Indra*¹⁴, The Court observed that the conditions pertaining to mental capacity mentioned in Section 5(ii) of the Hindu Marriage Act, 1955 are applicable in the pre-marriage context only, and not to post marriage mental conditions. The burden of proof that the respondent is suffering from any of the mental conditions mentioned in Section 5(ii) is on the petitioner. Marriage is voidable under Section 12 (1)(b) on the ground of the violation of the condition laid down in Section 5(ii) that no party is suffering from mental unsoundness, mental disorder, or insanity. It is question of degree of defect. The standard of proving such conditions is strict and the onus lies on the person who alleges unsound mind for untying the bond of marriage. In *R. Lakshmi*

¹⁰ The Hindu Marriage Act, 1955, § 5 (ii), No. 25, Acts of Parliament, 1955 (India).

¹¹ B.M. Gandhi, HINDU LAW, 4th ed., (2021), pp. 305 – 310.

¹² *Alka v. Abhinash*, 1991 MP 205.

¹³ *Balakrishna v. Lalitha*, AIR 1984 AP 225.

¹⁴ *Manishwar v. Indra*, 1963 Raj 449.

*Narayan v. Santhi*¹⁵, the Court held that establishing the intensity of the ailment she has been suffering from, which makes it hard for her to live normally, is required in order to classify a wife as unfit for a legal Hindu marriage on grounds of mental incapacity and reproducing children. It was observed that Section 12 (1) (b) as amended by the Marriage Laws (Amendment) Act, 1976, has widened the scope to encompass a large area of application. A very strict standard of proof is required.

The grounds for divorce under the Hindu Marriage Act, 1955, are primarily founded on the 'fault theory.' A divorce can be obtained if a person can prove before the court that their spouse was at fault in any of the ways provided in Section 13(1). The issue with this approach is that the reasons for divorce infringe on an individual's right to privacy and cause societal stigma. The law basically demands a person to name and prove to the court their spouse's responsibility. This provision was clearly written into our laws to discourage and avoid divorce. This is due to our society's high regard for the institution of marriage. However, this provision breaches an individual's fundamental right to privacy and unduly stigmatises divorce¹⁶.

INSANITY VIS-À-VIS SECTION 13 OF THE HINDU MARRIAGE ACT

Divorce should not be granted because all of the inconveniences resulting from the mental disease cannot possibly have such an offensive character as to merit dissolution. The alternative point of view on insanity and divorce is not founded on sentiment, but on ideas with the welfare of society and its constituent individuals as their goal¹⁷. Insanity is unquestionably an illness. A sickness that occurs after marriage should not be used to justify divorce. Other than insanity, there are several disorders that make conjugal life painful and nearly impossible. Other diseases are repulsive and incurable, but they cannot be deemed grounds for divorce. An illness must be included in the conjugal risk.

The key difference between mental illness and other diseases is that it affects or eliminates the normal personality. Marriage requires a shared interest, particularly from a mental perspective. Affection and dedication are given to one another because each has the ability to reciprocate. When

¹⁵ *R. Lakshmi Narayan v. Santhi*, (2001) 4 SCC 688.

¹⁶ *Supra* note 19.

¹⁷ Alfred Gordon, *Insanity and Divorce*, Journal of Criminal Law & Criminology, Vol. 4, Issue 5, (1915), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1317&context=jclc> (last visited. Nov. 15, 2022).

the frame of mind of one of them is disturbed, his individuality is lost; it either becomes automatic or a new personality emerges. What happens is that the prior personality that the spouse married is no longer present. As a result, insanity is a ground for dissolution of marriage. There is a distinction between mental illnesses that are treatable and thus curable and those that are incurable. In the first instance, the individual's personality is only momentarily affected and thus divorce would be an injustice in such instances.

Adultery, desertion, and cruelty were viewed as “matrimonial offences” that needed to be chastised, and divorce was utilised as a tool to punish those who committed such an offence. This was initially referred to as the “offence theory” of divorce. Later, insanity was included as a ground for divorce and was regarded a matrimonial offence, despite the fact that insanity or unsoundness of mind is a misfortune, not a source of guilt. Because disorders such as insanity could not be classified as an offence, the “offence theory” was renamed the “fault theory,” as discussed above. That is, if the respondent had ‘some fault’ that rendered cohabitation impossible, the petitioner was entitled to divorce.

Section 13(1)(iii) which deems Insanity as a ground for dissolution marriage states that, “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 **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.**”

Further an explanation which defines mental disorder and psychotic disorder has been provided:

- (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 sub—normality 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 treatment¹⁸”

An analysis of the above provision will reveal that mental illness, psychopathic condition, schizophrenia, and inadequate mental development have all been grouped under the umbrella

¹⁸ The Hindu Marriage Act, 1955, § 13 (1)(iii), No. 25, Acts of Parliament, 1955 (India).

category of mental disorder. The term psychopathic disorder has been subdivided into three categories: chronic disorder, aberrant aggression, and highly reckless behaviour. A person's mental illness is not a justification for divorce in and of itself; however, if a person has a mental disorder of such severity that the spouse cannot reasonably be expected to live with them, divorce may be granted. The threshold of mental illness or disorder in the context of divorce, according to the provision in Section 13 (1)(iii) is very high. The mental disorder must be severe enough that the partner is unable to live with him or her. There are different levels of severity, and the court must decide which one applies to the case at hand. The difficulty is that lawyers and judges are not always sensitive to or aware of mental health difficulties.

. In *Rita Roy v. Sitesh Chandra*¹⁹, divorce could not be granted when there was sufficient evidence for the court to decide that the wife's minor mental illness was not of such a nature and extent that the husband could not fairly be expected to live with her. In *Sharada v. Dharmapaul*²⁰, it was held that the medical evidence concerning the extent of mental illness is relevant, but not conclusive.

JUDICIAL INTERPRETATION OF INSANITY AS A GROUND FOR DIVORCE

The Courts have construed the provision of Section 13(1)(iii) in various cases, whereby key elements and chief terms of the Section were given interpretation:

In *Ram Narain Gupta v. Smt. Rameshwari Gupta*²¹, the Court reasoned that the provision of Section 13(1)(iii) gives no weightage to mental disorders of whatever severity as a strong reason to end a marriage. Instead, the burden of proving the presence of a required level of mental instability in the other spouse falls on the spouse who claims such mental illness in the other spouse.

In *Kollam Chandra Sekhar v. Kollam Padma Latha*²², observing that a man cannot divorce his wife because of schizophrenia, the Supreme Court, led by Justices G.S. Singhvi and V. Gopala Gowda, emphasised the necessity of ascertaining the degree of mental condition in such circumstances. While dismissing the husband's appeal in this case, the Court directed him to offer therapy to his wife if he believes she requires it. Instead of issuing a divorce decision under Section 13, the Court

¹⁹ *Rita Roy v. Sitesh Chandra*, AIR 1982 CAL 138.a

²⁰ *Sharada v. Dharmapaul*, (2003) 4 SCC 493.

²¹ *Ram Narain Gupta v. Smt. Rameshwari Gupta*, 1988 AIR 2260.

²² *Kollam Chandra Sekhar v. Kollam Padma Latha*, Civil Appeal No.8264 of 2013.

granted a petition for restitution of conjugal rights under Section 9 of the Act of 1955.

The apex court in *Tallam Suresh Babu v. T. Swetha Rani*, while hearing a divorce case filed by the appellant, the husband, on the grounds that his wife, the respondent, was diagnosed with schizophrenia and thus wanted a divorce on the basis of Sections 13(1)(iii), 5(ii), and 12 of the Hindu Marriage Act, 1955, took into account that only a small number of schizophrenic patients become aggressive and that this occurs on occasion. For a matter to fall under the purview of Section 13(1)(iii), the petitioner must demonstrate that the respondent has an unsound mind that is incurable or has been prone to repeated insanity attacks that make life difficult for both the petitioner and the respondent. The court observed that all mental illnesses do not constitute a ground for divorce and held that schizophrenia is not a valid ground for divorce in this case.

A SOCIETAL PERSPECTIVE ON MENTAL ILLNESS AND MARITAL DISSOLUTION

“Marriage consists of the rules and regulations which define the rights, duties and privileges of the husband and wife.”
- George A. Lundberg

The problem of insanity and divorce is one of vast importance from a social standpoint and has widespread societal implications. Divorce based on fault theory under Section 13 of the Hindu Marriage Act, 1955, is sometimes known as a ‘contested divorce.’ This moniker encapsulates the fault theory’s fundamental inadequacy. If one points out a flaw in their spouse in private, it is likely that they would argue in defence. Then, filing for divorce on one of the aforementioned grounds is tantamount to publicly blaming one’s spouse. This practically guarantees that one’s spouse will fight the petition tooth and nail, in response to which he or she is likely to point out some of the petitioner’s own flaws. This denigration will contribute to ‘divorce’ becoming an unappealing mark on one’s reputation.

Women suffer the most in India as a result of insanity being a ground for divorce. When significant problems strike a young lady, her parents are concerned about her marriage. Due to a lack of information and the popular belief that marriage is a cure-all for all ills, some parents marry off their daughters even when they are symptomatic. However, when the facts are revealed, a dangerous scenario of mutual distrust, resentment, and antagonism develops. Women who develop significant

mental problems before or after marriage are frequently abandoned by their husbands and his family. As a result, the lives of these women have been destroyed beyond repair, and nearly all of them have moved in with their parents, many of whom are already elderly. These women suffer enormous difficulties and are left to fend for themselves with little options. They are stigmatised for three reasons: being female, having a severe mental illness, and having a divorced or separated marital status. Thus, the woman must deal with the “triple tragedy.”

Divorced or separated women with significant mental illnesses become unwelcome everywhere, and their position becomes truly pitiful. In the Indian setting, things are not as bad for men. If a guy with a significant mental illness marries while concealing the fact, the woman must usually reconcile with the circumstance and bear the burden of caring for her husband, as well as being the breadwinner for the family. Being divorced was increasingly stigmatised. If one of the parties in matrimonial disputes is actually suffering from mental illness and the parties and courts either deny, do not identify, or do not recognise the mental condition, the mental illness and its treatment continue to be neglected, and the situation worsens. This issue must be addressed immediately. Modifications to existing legislation are required to ensure that people suffering from mental illnesses do not lose their essential human right to medical treatment. A trial is held to determine whether a person has mental illness severe enough to warrant divorce, which is a safeguard. The court will analyse whether the person with mental illness is capable of leading a married life. It is necessary to consider the person with mental illness’s informal impediments to attending court. Whether e or she is financially and socially capable of defending a case in court is to be considered.

Psychiatrists play an essential role since families may consult them for advice relating to marriage in addition to medical advice. When mental illnesses cause complications, there is frequently a conflict of interest between the psychiatrist, the patient and his or her family, and the spouse and his or her family. The psychiatrist is mostly concerned with medical issues such as treatment, outcome, relapse prevention, planned pregnancy, rehabilitation, etc. The primary concern of the patient’s family is to get the girl married, and then to save the marriage, i.e., to avoid divorce. The main goal of the spousal family on the other hand, is to get rid of the ailing spouse as soon as possible by securing a divorce. As a result, the psychiatrist may face enormous pressure from the patient’s husband to provide information about earlier illnesses (diagnosis and treatment) in order to obtain a divorce²³. Such circumstances are quite difficult. With Indian legislation in the background, the

²³ Mrugesh Vaishnav & Indira Sharma, *Management of issues relating to Marriage, Mental Illness, and Indian Legislation*, Indian Journal of Psychiatry, Vol. 64, pp. 93-103, (March. 2022), https://journals.lww.com/indianjpsychiatry/Fulltext/2022/03001/Management_of_issues_relating_to_marriage_mental.14.aspx (last visited. Nov. 15, 2022).

psychiatrist must respect social standards and work in the best interests of the patient. As a result, developing recommendations for psychiatrists to deal with such tough situations, which are relatively common in clinical practise, is critical.

A CALL FOR AMENDMENT: THE WAY FORWARD

Since the enactment of the Hindu Marriage Act, 1955, there have been tremendous changes in the field of science, psychiatry and medical research. Today, effective treatment of all sorts of mental disorders have emerged. Hence, it seems appropriate to eradicate any terms and references to mental illnesses as a ground for divorce from the Hindu Marriage Act, 1955. The rationale of this proposition is as follows:

- I. Incapability to give valid consent owing to unsoundness of mind deems a marriage voidable. If valid consent is essential for a valid marriage, then incapacity for any reason must be regarded as a disability. The phrase “unsoundness of mind” is unnecessary because it stigmatises mental diseases. It should be noted that, with the exception of acute symptoms, most people with significant mental problems can give their consent. Furthermore, in most Hindu marriage rites, the girl’s consent is rarely sought at any point of the marriage. In such circumstances, the girls’ parents give consent on her behalf. Therefore, if the provision of valid consent is deemed necessary, it should be kept without regard to insanity.
- II. The term “mental disorders of such a kind or to such an extent as to be unfit for marriage” is quite a vague term and difficult to decide how the person with mental disorder is unfit for marriage. There are various physical illnesses that are highly disabling, and the person may be regarded unfit for marriage as a result of these. These, however, are not categorised as a disabling condition. Then, why is there discrimination against those with mental illnesses? The incurability of mental diseases is underlined as a primary reason for their placement on the list. However, thanks to advances in psychiatry, it is now possible to cure practically all cases of mental diseases, and almost all people with mental problems, with the exception of a tiny fraction, are able to enjoy normal lives. As a result, considering mental illness as a barrier to marriage is both irrational and discriminatory.
- III. Procreation of children is a complicated subject that includes not only some psychiatric illnesses but also many gynaecological, genitourinary, endocrine, and neurological disorders. When mental disorders contribute only a small portion of this unfitness, then should only mental disorders be considered disabilities while leaving out many physical illnesses. It is worth noting that under Section 13 of the Hindu Marriage Act, sterility is not a basis for divorce. As a result,

it is unreasonable to put restriction on inability of procreation of child only due to mental disorders²⁴.

- IV. Recurrent episodes of insanity are a ground for annulment of marriage. It should be noted that the term “insanity” is no longer used medically, however it is still used in legal jargon. Recurrent attacks are characterised by remissions, relapses, and lucid intervals. Mood disorders are the most common type of such recurring nature in the world of psychiatry. The severity of mood disorders ranges from moderate depression to severe psychotic episodes. However, these diseases are potentially treatable, and almost all mood disorder sufferers can live a normal life. Remission and relapse are also characteristics of the course of schizophrenia. However, the course and prognosis of schizophrenia have significantly improved, and the majority of patients may lead a normal life.
- V. “Mental disorder” is a broad phrase that encompasses a wide range of problems, from small anxiety disorders to serious disorders such as schizophrenia. The prognosis of everyone is highly variable. Including the broad phrase of mental disorder frequently causes problems for persons suffering from modest anxiety or depression issues. If the parties become hostile, attempts are made to interpret any form of mental treatment as a reason for divorce. It is difficult for people who have modest psychiatric problems, and seeking psychiatric therapy is stigmatising. Parents usually avoid consulting psychiatrists for their daughters who have minor or significant psychiatric disorders, even if the girl has a possibly treatable psychiatric problem. It is the responsibility of both the government and society to take initiatives to reduce the stigma associated with mental diseases. As a result, mental illnesses must be removed from the list of disabilities to marriage.
- VI. There is reference of “incurably of unsound mind” in the divorce criteria. The first thing to make is that most mental diseases are now treatable. The second argument is that anyone, whether before or after marriage, might have a physical ailment that is incurable and renders the person afflicted unable to live a normal marital life. Other than “incurably of unsound mind,” leprosy, and venereal illnesses, no condition is recognised as a cause for divorce/judicial separation. As a result, the clause is very discriminatory for those with mental illnesses, denying them the ability to remain married.
- VII. Another ground for divorce is that “the petitioner has been suffering continuously or intermittently from a mental condition of such a sort and magnitude that the petitioner cannot fairly be expected to remain with the respondent.” It is worth noting that the handicap described

²⁴ Laxmi Narayan Choudhary, et. al., *Indian marriage laws and mental disorders: Is it necessary to amend the legal provisions?*, Indian Journal of Psychiatry, Vol. 57, pp. 341-344, (Dec. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711231/#:~:text=According%20to%20the%20Section%2013,expected%20to%20live%20with%20the> (Last visited. Nov. 15, 2022).

in Section 5 was “of such a kind or to such an extent.” However, it is “of such a kind and to such an extent” here. As a result, it should be acknowledged that a severe mental disorder with a substantial degree of incapacity should be the basis for divorce. Other than mental problems, there may be a variety of reasons why a person cannot fairly live with the other person. It is terribly bad that mental illnesses are the only grounds for divorce. It adds unnecessary stigma to the person suffering from mental problems, making them hesitant to seek psychiatric therapy.

- VIII. All people with mental illnesses have the right to marry and live in dignity under Article 21. Legally restricting this freedom is discriminatory. The fundamental issue is society's negative attitude toward mental diseases, as well as the stigma associated with them. Many people with mental diseases outperform individuals who do not have such disorders. Marriage is a vital support structure for many people with mental illnesses and being unmarried or getting divorced or separated deprives them of it. Siblings of people with mental illnesses are rarely supportive.
- IX. India has signed and ratified the 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD), the goal of which is to promote, defend, and ensure that all individuals with disabilities have full and equal enjoyment of all human rights and basic freedoms, as well as to encourage respect for their inherent dignity. Under the UNCRPD, mental illness is classified as a disability. The freedom to marry may be considered a fundamental human right. Thus, denying people with mental illnesses the right to marry violates the UN Convention on the Rights of the Child.
- X. Mental illness is frequently concealed at the time of marriage, especially in the case of girls. This is largely due to the idea that disclosing the fact will not only result in the girl's rejection, but also will hinder her from finding a good match. Parties do not disclose all information on the prospective bride or groom and withholding of all information about the person is not deemed fraud. It has been proposed that an express provision be added to the Act stating that a history of mental illness is not a bar to marriage and that failing to disclose such psychiatric history or the fact of mental illness is not a bar to marriage. Keeping this in view, if all reference to mental disorders is removed from the condition of disability of marriage and from the grounds for divorce; such express provision would hardly be required.

CONCLUSION

Marriage is a sacred union of two souls. It is an institution by virtue of which a sacrosanct bond between two individuals is created, wherein the two are tied by the promise to stand by each other through thick and thin and to weather all the storms of life, together. Keeping this in view, a spouse seeking to break this sacrosanct bond on account of his or her spouse being affected by a mental disorder seems harsh and insensitive, though reasonable in certain circumstances. On that note, it is

important to note that divorce cannot be granted unless there is evidence to prove that the mental illness had left the spouse incapable of leading a married life.

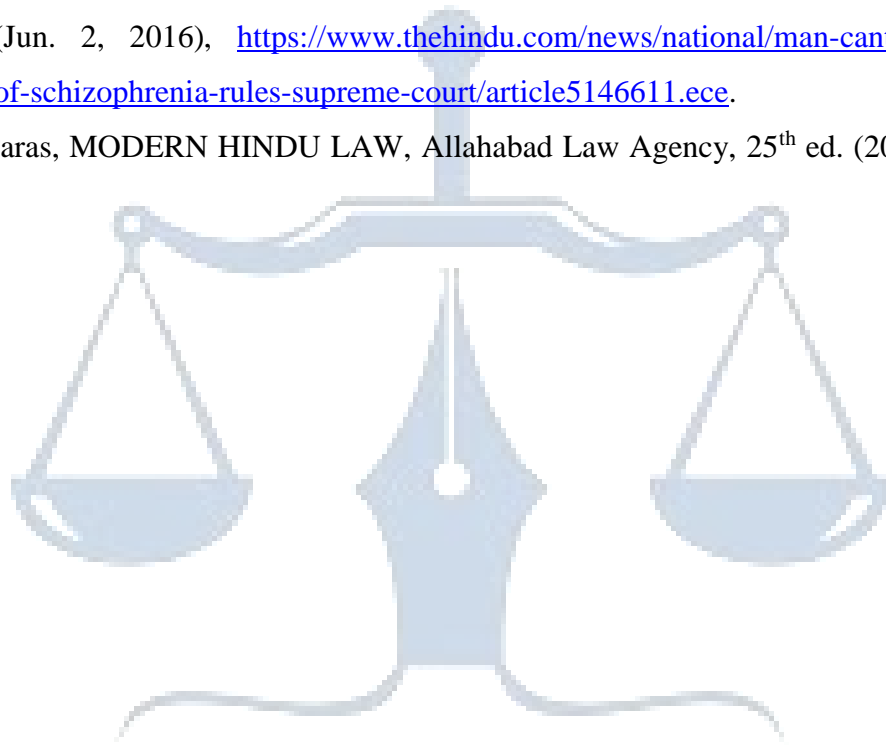
The main rationale for include mental illnesses as a ground for divorce when the laws were drafted six decades ago, was the incurability. However, owing to tremendous advances in the field of psychiatry, most mental diseases are now treatable, and those affected can lead a normal life. Therefore, mental incapacity should be excluded from the definition of disability under marriage legislations. We should strive to modify the unfavourable public attitudes toward mental illnesses, which contribute to their stigma. The use of terms such as “recurrent episode of insanity,” “inability to live a normal life,” or “child procreation” is disparaging and stigmatising, which must be revised.

The inclusion of mental illness in the Hindu Marriage Act, 1955, as a prerequisite of a legitimate marriage becomes an avenue for spouses to take matrimonial problems to court. Cases can drag on for years, and it is frequently a no-win situation. Women and children are the most vulnerable. There is an urgent need to update the antiquated rules that are causing harm to patients and their families. Furthermore, it goes without saying that those suffering from mental illnesses should not be denied their fundamental right to marry and live a dignified life guaranteed by the Constitution of India. A crucial aspect that is often missed out in this drawn-out battle of matrimonial dispute and litigation is the mental health of the spouse, which required attention but failed to.

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