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With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

RIGHTS OF SPOUSE WITH UNSOUNDNESS OF MIND:

(By Atindra Parashar)

ABSTRACT:

this paper examines the institution of marriage and its reaction to the phenomenon of unsoundness of mind. The personal laws of this country allow for annulment on the basis of unsoundness of mind and divorce in case of incurable mental disease. This paper examines how the courts have interpreted these provisions. The paper also examines the provisions of the Mental Health Act to see how it impacts marriage of a person with mental illness or unsoundness of mind

INTRODUCTION:

Marriage is accorded an exalted position in Indian society. For many people it is a once in a lifetime event and is considered as a prime necessity for that alone can enable a person to discharge properly his religious and secular obligations.¹ Furthermore marriage is considered to be a basis of social organisation and the foundation of important legal rights and obligations. The importance and imperative character of this institution is so great that it needs no comment. In fact, in certain communities' "marriage is attributed such immense importance that it is accorded the status of a religious sacrament."²

Given the importance that is given to marriage in Indian society, it goes without saying that marriage is considered to be an important threshold in the life of every individual and thus can be seen as an important criterion for being able to live with dignity.³ This holds to be true especially in the case of women. India is a patriarchal and largely exogamous society, therefore marrying off the daughter to another is considered to be the 'duty' of the girl's father. Even in the Manu, one of the commentators, Medhatithi has written:

'A girl should be married after giving her raiment and ornaments and she should also be given a portion(saudayika)⁴

¹ Dinshaw Fardunji Mulla and Satyajeet A Desai, *Mulla Hindu Law* (22nd edn, Lexis Nexis 2016). There are errors in your citations

² ibid

³ Indira Sharma, KarriRama Reddy and RabindraMukund Kamath, 'Marriage, Mental Illness And Law' (2015) 57

⁴ Dinshaw Fardunji Mulla and Satyajeet A Desai N (1) ---Follow pattern for repeat citations

For most women marriage is a means of social approval and their ultimate fulfilment. Therefore, if marriages and matrimonial relations fall apart for any reason, such as mental ailments, they tend to shatter the lives of such women beyond repair. It is said that the “plight of such women is a triple tragedy, of being a woman, mentally ill and being married”⁵

It’s because of reasons like this that there exists a taboo surrounding mental illness and it takes a toll on marital relations. The law acts as a hindrance in this case. It’s been seen that in many cases the provisions citing unsound mind as a ground for dissolution of marriage are used to drag matrimonial disputes to court and women and children end up as being the worst sufferers in these cases.

Therefore, there is a need to reform marriage laws especially provisions relating to validity of marriage in light of unsoundness of mind and to provide assured rights to the ailing spouse in such conditions to mitigate circumstances of exploitation.

The issue in Indian law especially HMA and SMA is that they rely on the fault based system of divorce and consider unsound mind as a fault grave enough to end a marriage. The rationale provided by the law makers is that marriage is an institution which entails commitment and lifelong responsibilities and severe mental illness results in disability which incapacitates the ill spouse thus barring them from fulfilling their marital obligations. Moreover, since mental illness emerges as a ground for dissolution of marriage, it fails to guarantee any rights for the mentally ill spouse. The only rights for maintenance that she gets are those that are available under the provisions of the CRPC. Therefore, there is a need to reform Indian personal laws so that they can account for these issues.

ISSUE WITH THE LAWS:

Under “section 5 clause (ii) of the Hindu Marriage Act of 1955 cites three conditions under which a marriage cannot take place:

- Either party is incapable of giving valid consent because of unsoundness of mind
- Is suffering from a mental disorder or insanity at the time of marriage
- Is prone to recurrent attacks of insanity”⁶

In this case the issue that exists is to interpret the meaning of unsound mind and valid consent. A consent is said to be valid when it is given in a condition where the person who is consenting

⁵ Indira Sharma, Karri Rama Reddy and Rabindra Mukund Kamath, 'Marriage, Mental Illness And Law' (2015) 57

⁶ The Hindu Marriage Act, s 5(2)

is in a state to be able to comprehend the meaning and ramifications of his or her answer. This is obviously given the fact there has been no fraud, misrepresentation, threat or duress from the party that is asking for consent. Therefore, in this case unsoundness of mind would translate into a situation wherein the person consenting fails to understand the marital duties and obligations that are attached to this consent. However, the phrase “as a consequence of unsoundness of mind”⁷ narrows the concept to mental ailment making the person incapable of making rational decisions under any circumstances, which is a far cry from reality.

The issue with the term mental disorder is the same. The law fails to differentiate between different disorders and their gravity. There are hundreds of types of entities and sub entities of mental disorders as classified in the classificatory systems like “International Classification of Diseases-10 or Diagnostic and Statistical Manual of Mental Disorder fifth edition”.⁸ The law also fails to account for the developments made in the field of medical science and their impact on said disorders. With the introduction of treatments such as chlorpromazine, imipramine or electroconvulsive therapy and the development of new drugs it has become possible to treat many mental disorders like schizophrenia, anxiety disorders or even depression. There are medicines that even help suppress the symptoms of such ailments thereby making a person perfectly capable of functioning rationally. The problems that are seen in the special marriage act appear to be on similar lines as well. Furthermore, marriage assumes fitness for it including ability for procreation of children. “Disorders of procreation of children is a complex subject which involves not only some psychological disorders, but also gynaecological, andrological, endocrinal, neurological disorders inter alia. When the contribution for this unfitness by mental disorders is only a fraction, why should there be discrimination by their inclusion and by omission of physical illnesses.”⁹

THE COURT’S STAND:

The supreme court has given out a judgement which keeps a check on this discriminatory nature of section 5 clause (ii). In the case of **Gurnam Singh v Chad Kaur** (Punjab High Court, 1980)¹⁰. In this case “husband had filed for a decree of nullity because wife had been diagnosed with schizophrenia. For nullity, the husband had argued that she was incapable of fulfilling her obligations as a wife and, she was incapable of procreation. The court observed

⁷ ibid

⁸ Siddharth Sarkar and Siva Nambi, 'Mental Illness And Nullity Of Marriage: Indian Perspective' (2015) 37 Indian Journal of Psychological Medicine.

⁹ ibid

¹⁰ Siddharth Sarkar and Siva Nambi, 'Mental Illness And Nullity Of Marriage: Indian Perspective' (2015) 37 Indian Journal of Psychological Medicine.

that she already had a daughter and she was an educated individual who was capable of taking care of herself. So, while the court accepted the existence of a mental disorder, the petition was still dismissed on the grounds that she was perfectly able to take care of herself and thus capable of fulfilling her duties and obligations in the marriage.”¹¹

In fact, there are a number of supreme court and high court cases that have provided relief to mentally ill patients by expounding judgements that ensure that a mentally ill spouse is not abandoned on account of his or her ailment. The supreme court is very careful in reading the law and places great emphasis on the phrase ‘at the time of marriage’. The logic applied by the court is that the law provides for dissolution of marriage if a history of mental illness had been concealed when the couple was getting married, if that were the case then the argument of fraud also comes into play, however if the ailing party has contracted the disease after the **marriage even if it is within a short span of getting married then there is no valid ground for an annulment of the marriage.**

One of the earliest examples of this is the case of **Anima Roy v. Probodh Mohan Roy (AIR 1969, Cal 304)**¹². “In this case the Probodh Roy had approached the court to have his marriage nullified on the grounds that his wife Anima had been suffering from schizophrenia at the time of marriage. However, on examination of the witnesses and the evidence it was held that she had contracted the disease 2 months after the day of the marriage. So the court had ruled that a decree of nullity cannot be granted in such a case because the law allows for a decree of nullity if the spouse is of unsound mind at the time of marriage however there are no provisions for dissolution or nullity if the disease has been contracted after the marriage had taken place”¹³. Similarly, in the case of **Kartik Chandra v. Manju Rani (AIR 73, Cal 545)**¹⁴, the wife started exhibiting abnormal behaviour just three days after marriage however there was no history of any such behaviour prior to that, in fact she had appeared for her matriculation exam just two months before her marriage. Based on the provided information the court had ruled that lunacy at the time of marriage could not be proved, hence decree of nullity was denied.¹⁵

¹¹ *ibid*

¹² 'SCC Online | Session Expire' (Sconline.com, 2017)
<<http://www.sconline.com/Members/SearchResult2014.aspx>> accessed 23 October 2017.

¹³ *Anima Roy v. Probodh Mohan Roy (AIR 1969, Cal 304)*

¹⁴ 'Kartik Chandra Banerjee Vs Sm. Manjurani Banerjee And Anr. On 4 July, 1973' (Indiakanon.org, 2017)
<<https://indiakanon.org/doc/1162216/>> accessed 20 October 2017. (Just citation of Court reporter would suffice)

¹⁵ *Ibid*

In the case of **Lakshmi Narayan V Shanthi**¹⁶, the Supreme court had held that a decree of Nullity can be granted only if it has been established that the spouse suffering from a mental disorder is not capable of procreation or of leading a normal life, under any circumstances. The court further directed that it must be proven that inability to procreate is arising from the mental disorder and not from sterility or infertility.¹⁷

Even when we talk of divorce which is covered under section 13 of the Hindu Marriage Act. Section 13(iii) highlights that a decree of divorce can only be granted in case of incurable mental disease. Furthermore the court has furthered narrowed down what classifies as incurable. The court reads that as long as there is proof that the spouse suffering from a mental illness can behave normally with medication and medical intervention and capable of procreation or of leading a normal life, under any circumstances, then there is no ground to ask for dissolution of marriage. In the case of **Kollam Padmalatha v Kollam Chandrashekhar**¹⁸ the supreme court stated that “schizophrenia cannot be considered as a valid ground for divorce. The court further went on that schizophrenia like diabetes can be kept under check and cured if the patient is receiving proper treatment. So, in this case the court directed the wife to continue receiving treatment for her ailment and it gave the reasoning that while the illness has its problems, but can this be reason for seeking dissolution of marriage especially after a child is born.”¹⁹

This view has been repeated time and again, when the supreme court reiterated its stand that a decree of nullity will not be granted if the mental disease is treatable in 2013. While hearing a plea on Dr. Chandra Shekhar’s case. The court used the precedent of Kollam Padmalatha v Kollam Chadrashkhar and said that “Indian society revered the institution of marriage and that it is given in the holy scriptures that husband and wife must support each other in both sickness and in health. Furthermore, the court said since the respondent’s disease(schizophrenia) was treatable and manageable like diabetes or hypertension therefore they were upholding Arunachal Pradesh high court’s decision of not granting a decree of nullity.”²⁰

¹⁶ 'R. Lakshmi Narayan Vs Santhi On 1 May, 2001' (Indiakanon.org, 2017)
<<https://indiankanon.org/doc/502728/>> accessed 21 October 2017.

¹⁷ R Lakshmi Narayan vs Santhi [2001] SC (SC).

¹⁸ SCC Online | Session Expire' (Scconline.com, 2017)
<[http://www.sconline.com/Members/NoteView2014.aspx?citation=\(2014\)%201%20SCC%20225&&&&40&&&&SearchPage](http://www.sconline.com/Members/NoteView2014.aspx?citation=(2014)%201%20SCC%20225&&&&40&&&&SearchPage)> accessed 23 October 2017.

¹⁹ Kollam Chandra Sekhar Vs Kollam Padma Latha (2014) 1 SCC 225

²⁰ Author?: 'Man Can'T Dump Wife On Grounds Of Schizophrenia, Rules Supreme Court' (The Hindu, 2017)
<<http://www.thehindu.com/news/national/man-cant-dump-wife-on-grounds-of-schizophrenia-rules-supreme-court/article5146611.ece>> accessed 27 October 2017.

So basically, the judiciary has, through a variety of judgements provided, ensured that a spouse suffering from a mental illness gets to enjoy the company of their spouse, child and matrimonial given that he or she has the capacity to understand the contract of marriage and the duties and responsibilities entailed by it. The courts have through their judgements given directives that limit the scope of abandonment of an ill spouse by the healthy one.

MENTAL HEALTH ACT:

The mental health Act of 2017 too is a legislation which looks after interest of spouses with unsoundness of mind. Under section 14(1) of the act a “mentally ill person has a right to appoint a nominated representative of his or her choice”²¹. This clause can be used to make a spouse accountable and involved in the life of the patient thus dodging the risk of alienation.²² Section 17 e provides that the “patient may choose to take home-based rehabilitation”²³ thus ensuring that if the patient is married, he or she still has access to the matrimonial home and the right to the company of his or her house. The mental health act also ensures that a patient is kept at home until and unless it is necessary to admit the patient in a mental institution. Section 21(2) of the act provides that “in the case of women, her child of below 3 years of age should be kept with her until and unless it is seen to be dangerous for the child, if she has regular visitation rights with the child. Also, the decision to separate mother and child should be reviewed after the first 15 days and then after the first 31 days.”²⁴

“Section 26 of the act provides for the patient to receive or refuse visitors. It also gives them the option of regularly communicating with his/her friends and family via telephone, mobile, letter, email etc.”²⁵

So, to put it in a nutshell the mental health act has made provisions to ensure that in case a married person is hospitalised, he or she is able to live in proximity to their spouse and family for as long as possible and to stay in contact with them both during and after hospitalisation. Also, in case of women they assured custody of their child till the child is not harmed.

²¹ Mental Health Act, 2016 s 14(1)

²² Indira Sharma, Karri Rama Reddy and Rabindra Mukund Kamath, 'Marriage, Mental Illness And Law' (2015) 57

²³ Mental Health Act, 2016 N(21) s 17(e) (follow style guidelines for repeat citations)

²⁴ Ibid. s 21(2)

²⁵ Mental health Act, 2016 s 26

CONCLUSION AND PROPOSED REFORMS:

So, while there have been many improvements over the years which have led to the development of a clearer definition of unsoundness of mind and have laid down clear conditions under which a divorce or decree of nullity can be granted on account of insanity, there is still much more that needs to be done. Most of the legislations governing marriage had been passed in the 1950's and have failed to keep up with change in societal values and scientific developments. Moreover because of the restrictions they placed on the prospects of marriage of people with unsound minds, it led to the stigmatisation of mental illness thus making it difficult for patients to be public about their disease or get proper healthcare. Therefore there are a few suggestions regarding reforms in the law to remove the stigma surrounding mental health and to ensure that mentally ill spouses have a secure financial and emotional support system.

Some of these suggestions are as follows:

- *The words 'as a consequence of unsoundness of mind'²⁶ shall be removed from HMA section 5 Clause (ii) a. The reason for this is that not all people with unsound mind are incapable of giving valid consent, as has been discussed in the article.*
- *The wording of clause 5(ii) b & c should be changed to look into the impact the disease has on the decision making of the person concerned, his/her ability to have children and its chances of the person being cured from this ailment. The reason behind it is that with development in medical sciences it has become possible to cure many ailments and with research it has been found that in many cases despite of having a mental illness it is possible to procreate and fulfil marital obligation especially if proper medication is given to the patient.*
- *Since incurable mental disease is a ground for divorce there needs to be a legislation providing for proper financial maintenance, residence and medical care of a spouse who is suffering from a mental illness.*
- *There is also a need for clear legislations and directives to ensure that patients are not abandoned by their spouses.*
- *As per the 243rd law commission report on "section 498a, protection of women from domestic violence act"²⁷, gave guidelines for "medical facilities and counselling to the victim"²⁸ which is covered under Section 9 (1) e, Section 14(1) and section 37(2) k. The*

²⁶ The Hindu Marriage Act, 1955 s 5(2)(a)

²⁷ The Indian Penal Code, 1860 s 498(a)

²⁸ Law commission, Section 498A IPC (Law Com No 243,2012) Para 18

term “medical facilities in Section 9 (1) e”²⁹ should be changed to include medical/psychiatric facilities, the term avail psychiatric facilities should be added in “section 14(1) which refers to medical counselling”³⁰ and section 37 (2) k should be changed to include undergo counselling or psychiatric treatment.



²⁹ Protection of Women from Domestic Violence Act,2005 s 9(e)1

³⁰ Protection of Women from Domestic Violence Act,2005 s 14(1)