

Mental Illness and Nullity of Marriage: Indian Perspective

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ABSTRACT

Marriage is a social institution that formalizes and stabilizes the union between a man and wife. At times, either of the parties undergoing the contract of marriage may ask it be declared null and void. Psychiatrists and legal experts may be called in to provide opinion whether such a marriage should be annulled. Some laws in India do state unsoundness of mind as a valid reason for nullity of marriage. However, determining unsoundness of mind can be a difficult issue, especially when made in retrospect. This paper highlights some cases where nullity of marriage was contested in view of unsoundness of mind. Furthermore, some issues encountered by psychiatrists pertaining to nullity of marriage are discussed. Though psychiatrists and legal experts may have different ways of approaching the issue of nullity on the basis of psychiatric disorder, the overall aim of both remains the same of avoiding broken homes, upholding the dignity of the individual and legal framework.

Key words: *Marriage, nullity, psychiatric disorder, schizophrenia*


INTRODUCTION

Marriage is a social institution that sets out the rules and regulation defining the rights, duties and privileges of the husband and wife.^[1] It is often considered as a contractual agreement which formalizes and stabilizes the social relationship that comprises a family. Marriage not only provides social acceptance to man and the wife, but also lays out expectations of behaviours and carrying out duties. Marriage plays an important role in sanctifying the role of procreation, and hence such unions are solemnized through social approval of the ritual.^[2]

As marriages become stressful, the psychiatrists and legal experts are called in to provide opinion whether the marriage is sustainable, and whether at all the marriage was valid in the first place.^[1,3-5] Two related yet distinct terms which require attention in this context are 'divorce' and 'nullity of marriage'. Divorce refers to the legal dissolution of a valid marriage when the relationship cannot be continued. Conditions prevailing during the course of marital life determine the continuation of the relationship between the partners. Desertion, cruelty, adultery, and mental illness may interfere with marital life and may be grounds for divorce. Nullity of marriage, on the other hand, means that the marriage is held null and void, that is the marriage is legally non-existent and a valid marriage did not take place at all. While divorce relates to sustainability of marriage, nullity refers to validity of the same.

LAWS GOVERNING NULLITY OF MARRIAGE IN INDIA

Several laws determine the nullity of marriage in India. These are discussed as follows:

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Hindu Marriage Act, 1955 (Amended In 1976)

This law considers a marriage is a valid one if neither party is an idiot or a lunatic at the time of marriage. From a psychiatric perspective, a Hindu marriage is voidable according to this law if either party:

1. Is incapable of giving a valid consent as a consequence of unsoundness of mind or
 2. 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 children, or
 3. Has been subject to recurrent attacks of insanity.
- In the above-mentioned three circumstances, the marriage can be held null and void. Additionally, if the marriage has not been consummated due to impotence of the respondent, the marriage can be considered null and void. Also, the marriage can be considered null and void if that the consent of the guardian was obtained by force or by fraud; or the respondent was at the time of the marriage pregnant by some person other than the petitioner.

Special Marriage Act (1954)

This law is applicable to persons from any religion undergoing a civil marriage. A marriage according to this law can be annulled if:

- a. Either party has a living spouse at the time of marriage;
- b. Either party is incapable of giving a valid consent to it in consequence of unsoundness of mind, or 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 children; or has been subject to recurrent attacks of insanity or epilepsy;
- c. The male has not completed the age of 21 years and the female the age of 18 years;
- d. The parties are within the degrees of prohibited relationship. Additionally, a marriage can be considered null and void if the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

Indian Divorce Act (1869) For Christians (Amended in 2001)

A marriage can be held null and void if the respondent was impotent at the time of marriage and at the time of the institution of the suit; or the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity; or either party was a lunatic or idiot at the time of the marriage; or the former husband or wife of either party was living at the time of the marriage and the marriage with such former husband or wife was then in force. There is no provision in this act for the ground that the consent of either party was obtained by force or fraud.

Dissolution of Muslim Marriages Act (1939) and Muslim Personal Law

The law for Muslims suggests that a person of unsound mind cannot contract a marriage and such a marriage if contracted is void. However, if the guardian of the person of unsound mind considers such marriage to be in his interest and in the interest of society and is willing to take up all the monetary obligations of the marriage, then such a marriage can be performed and may be considered valid.

Parsi Marriage Act (1936)

The law states that in any case in which consummation of the marriage from natural causes is impossible, such marriage may, at the instance of either party be declared to be null and void. Unsoundness of mind is not a ground for annulment according to Parsi Marriage Act.

Some case examples

Further discussed are some of the cases wherein nullity of marriage was in question and psychiatric opinion was called for.

Case 1: Anima Roy v. Prabadh Mohan Roy (AIR 1969, Cal 304)

In this case, the respondent was found to be suffering from schizophrenia 2 months after marriage. The psychiatrist who examined the respondent could not determine the exact time of onset of the illness. Consequently, it was held that the illness at the time of marriage was not proved. Hence the nullity was not granted.

Case 2: Kartik Chandra v. Manju Rani (AIR 73, Cal 545)

The respondent in this case exhibited abnormal behaviour after three days of marriage. The respondent had appeared for her matriculation exam three months prior to the examination. Observant of the above detail, the court presumed that this state of sanity continued till her marriage and the recent breakdown was not viewed as lunacy at the time of marriage.

Case 3

Similarly in another case as the previous one, the respondent had to be admitted into a mental hospital, just two weeks after marriage. However, incapacity at the time of marriage was held not proved because the disease was medically diagnosed to be of sudden onset which had been precipitated after marriage.

Case 4: Gurnam Singh v. Chad Kaur (Punjab High Court, 1980)

In this case, the court held that a diagnosis of schizophrenia only established the existence of a mental disorder. For a decree of nullity, it was essential

to prove that the ailment rendered the respondent incapable of marriage and the procreation of children. The respondent was an educated individual who had given birth to a daughter. In the face of this fact, though the existence of mental disorder was established, the court refused to nullify the marriage because incapacity consequent to the disorder was not proved.

Case 5: C. J. Joy v. Shilly, (Kerala High Court, 1995)

In this case, the respondent started exhibiting signs of mental illness within 4 days of the marriage for no specific reason. It was concluded the respondent was a lunatic at the time of marriage, but also that the consent of the petitioner was obtained by fraud. A single judge of the Court had held that nullity on the ground of fraud could not be obtained in Christian Law. This ruling had been reversed by a division bench of the court.

Case 6

Similarly, a division bench of the Kerala High Court reversed the decision of single judge granting nullity, and held that a person with an IQ of 68 who could manage her marital duties with occasional assistance possessed marital capacity.

Case 7: Kollam Padmalatha Vs. Kollam Chandrasekhar (Supreme Court, 2000)

The court in this case ruled that wife can't be dumped on grounds of schizophrenia. The court considered that schizophrenia is a treatable, manageable disease, which can be put on a par with hypertension and diabetes. The court observed that illness has its problems, but can this be reason for seeking dissolution of marriage especially after a child is born? The court stated that wife also must stick to treatment plan and get better.

In all these cases, the court's opinion remains that the person should have the capacity to understand the contract of marriage and the duties and responsibilities entailed by it. Even where the respondent was found to be subnormal in mental capacity, slow to understand complicated questions, but able to give relevant answers to simple questions and could manage herself and all her affairs in her own simple way, it was held that individual had the capacity to get married and cope with the obligations of marital life.

RATIONALE FOR DISQUALIFICATION OF MARRIAGE OF MENTALLY ILL

The predominant legal reason for prohibiting marriage of a mentally ill person is that the individual may be unable to give consent to marriage and understand the obligations of a marital relationship.^[6] Consent and understanding are essential legal requirements whether marriage is considered a contract or a sacrament. A

mentally ill person may be considered unfit to marry from a psychiatrist's perspective because of the stress of new relationship may further exacerbate the mental illness.

It must be acknowledged that all persons with a psychiatric illness do not have impairment in understanding and role functioning to the same extent.^[7] Though the diagnosis may be the same, a person who has fairly well controlled illness and is functional cannot be considered at par with a person with severe disorder who is unable to even understand the ceremony of marriage and consent to its obligations. Hence, there is a need to go further from just the diagnostic label, and ascertain the social adjustment, role functioning and capacity to consent while evaluating nullity of marriage.

Even though both legal and mental health disciplines are in agreement that a person suffering from severe incapacitating psychiatric illness may not be very much benefitted by marriage, there is a strong folk belief that marriage may cure mental illnesses.^[8] Psychiatrists are often baffled by questions posed by the relatives whether seeking alliance would be a good idea for relieving the symptoms of severe psychiatric disorder. A justifiable position would be to inform the guardians about the nature and course of the disorder and clarify misconceptions regarding aetiology and treatment for the disorder.

Another question that is commonly encountered by psychiatrists is whether a person who was once mentally ill can get married after improvement? Given the availability of efficacious treatment modalities for psychiatric disorders, it is possible for persons who had suffered from psychiatric illness previously get married and discharge their marital responsibilities adequately. The need of continuing the medications regularly does remain as poor compliance is often associated with relapses. The second related question is whether there is any obligation to disclose the fact of past illness, and does failure to disclose amount to fraudulent conduct? In India, two high courts have answered this question in two different ways. One court held that failure to disclose past illness amounted to suppression of a material fact and this fraudulent conduct nullified the marriage. Another court however held that in the light of the stigma of mental illness, expectation of disclosure of this fact was unrealistic and impractical, and such normal conduct cannot be termed fraudulent.

Often, the scenario in India is that once a young person suffers from mental illness and becomes somewhat better with treatment, an alliance is arranged and the person is married off. Discontinuation of medications with relapse of symptoms results in marital strain and

stand-off between families. The psychiatrist is often contacted by the in-laws who intend to enquire about the patient's symptoms and diagnosis prior to the marriage. The psychiatrist need to tread cautiously and give due weight to the confidentiality of the relationship between patient and the therapist. However, the diagnosis and treatment details would need to be divulged when being asked by the presiding judge. Thus, premature discussions with the in-laws, especially in the absence of the patient or his/her guardians could better be avoided.

CONCLUSION AND WAY FORWARD

The law regarding nullity of marriage should not discourage persons from seeking mental health treatment, and neither from getting the persons with mental illnesses married. The aim of the law is to avoid and nullify only those marriages where unsoundness of mind is severe and intense to preclude discharging basic marital duties. It is suggested than an expressive legislative provision should be incorporated, which states that a past history of mental illness should not be a bar to marriage. Given the stigma associated with mental illness, failure to disclose past history or the treatment of mental illness should not amount to suppression of a material fact that leads to nullity of marriage. The psychiatrists and courts both intend

to reduce instances of broken marriages, and need to work in unison to avoid frivolous instances of nullity of marriage pleas, at the same time upholding the sanctity of the law and individual dignity.

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