MENTAL CAPACITY AND MARITAL CONSENT: RETHINKING HINDU MARRIAGE LAW

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ABSTRACT

Hindu law states that legitimate consent is a prerequisite for marriage. According to Hindu marriage law, people who have mental illnesses or disabilities that interfere with their ability to get married or raise a family are not allowed to get married. Despite being meant to protect consent, the clause is out-of-date, unclear, and devoid of procedural protections, which causes varying court interpretations and drawn-out legal proceedings. Courts have alternated between functional evaluations of marital capacity and stringent diagnostic criteria, undermining legal certainty and perpetuating stigma against people with psychosocial disabilities.

The lack of a required medical evaluation, ambiguous terminology, and potential for abuse or concealment are important gaps. The wording of the clause takes a medicalized, discriminatory stance that goes against the equality, dignity, and autonomy guaranteed by the constitution. Better models are provided by comparative jurisprudence: English law similarly emphasizes decision-making ability over diagnostic categories, while the UN Convention on the Rights of Persons with Disabilities places emphasis on both functional capacity and non-discrimination.

This paper argues that immediate Section 5(ii) reform is necessary. Statutory definitions based on functional ability, backed by procedural protections like contemporaneous evaluation, privacy-protected disclosure, and unambiguous remedies to protect vulnerable spouses, should take the place of stigmatizing labels. Hindu matrimonial law would be more equitable, autonomous, and less exploitative while also offering legal certainty if it were in line with international norms and constitutional morality. By aligning personal law with developing human rights principles, such reform would move the law away from exclusion and toward a rights-based framework of marital consent.

Keywords: Mental capacity, Consent in marriage, Hindu personal law, Persons with disabilities, CRPD compliance, Legal capacity, Law reform

1. Introduction

Historically, Hindu marriage has been viewed as a sacrament in which two individuals join together to fulfil the responsibilities owed to their families and social community[1]. The Hindu Marriage Act, 1955 ('the Act') tried to modernise the institution and codify the prerequisites for a valid marriage[2]. The requirement for mental capacity is one of the major prerequisites identified in the Act. Section 5(ii) lays down that a person must possess sound mental capacity to provide valid consent and should not have a mental disorder that hinders marital life or procreation[3]. The parliamentary intent behind this provision was to uphold the sanctity of consent and the marital obligations of the parties - however, the way the provision was framed it gives rise to very significant ambiguities that will continue to affect aspects of matrimonial law.

The importance of this issue was vividly highlighted in Anima Roy v Prabadh Mohan Roy, where the Calcutta High Court had to address whether schizophrenia constituted a sufficient mental disorder to invalidate a marriage[4]. The court found that simply proving a person has a mental illness is not enough; what mattered was whether they had a mental illness of such a kind or degree as to render normal married life impossible. Numerous other rulings have used this logic, but there is too much variation in the results in the absence of established criteria.

The problem pertains to both the statutory language and judicial interpretation. Neither 'unsoundness of mind' nor 'mental disorder' has been expressly defined within the legislation, meaning it could be construed in a wide variety of ways and even used in conflicting ways. Also, the provision does not make medical examination or mention of mental health issues prior to marriage mandatory. There, ensuring that a foreground of deception is ripe for an elaborate future legal dispute. Although awareness of mental health has grown in India, vague statutory standards continue to reinforce stigma and foster discriminatory practices, thereby undermining the rights of persons with mental illness. This tension becomes evident when the provisions of the Hindu Marriage Act are compared with more progressive measures, such as

[1] JDM Derrett, *Introduction to Modern Hindu Law* (Oxford University Press 1963) 188.
[2] Hindu Marriage Act 1955, Statement of Objects and Reasons.
[3] Hindu Marriage Act 1955, s 5(ii).
[4] *Anima Roy v Prabadh Mohan Roy* AIR 1969 Cal 304 (Cal HC).

the Mental Healthcare Act, 2017, and India's commitments under the UNCRPD[5].

The claim of this paper is that Section 5(ii) needs urgent reform because the current provision does not achieve the necessary balance in protecting the institution of marriage whilst respecting the autonomy of individuals with mental illness. Using a critique of judicial tendencies, acknowledging legislative blind-spots, and comparative jurisprudence, this paper intends to specify practical reforms such as statutory definitions, disclosure obligations, and medical certification in order to consider the benefits of an equitable and rights-based approach in the field of marriage[6].

2. Legislative provision

In Hindu marriage law, the statutory foundation for determining mental competence is contained in Section 5(ii) of the Hindu Marriage Act, 1955. The clause sets out the prerequisites for a lawful marriage and highlights the importance of free and valid consent. This seeks to assure that parties entering into a marriage must be mentally sound enough to understand that they are entering into a marriage and that they will have responsibilities[7].

A. Review of Section 5(ii)

Section 5(ii) describes three distinct disqualifications, which could be examined further as follows:

According to sub-clause (a), a marriage is considered valid only when neither spouse suffers from unsoundness of mind that prevents them from consenting. The clause highlights the necessity of understanding the nature of marriage and giving genuine, informed consent. Unsoundness of mind is not defined in the Act, and it is understood in medical jurisprudence to refer to a condition in which someone does not have sufficient cognitive capacity to reason normally and make rationally considered decisions[8].

[5] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, arts 12 and 23. India ratified the CRPD in 2007.
[6] See Amita Dhanda, 'Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?' (2007) 34 Syracuse J Intl L & Com 429.
[7] Law Commission of India, *71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground for Divorce* (1978) paras 2.4–2.6.
[8] Basant K Sharma, *Forensic Psychiatry in India: Legal and Clinical Perspectives* (Jaypee Brothers 2019) 112.

Indian courts have followed the same position as in the common law and held that mere eccentricity or a minor mental illness cannot amount to incapacity; there is one test: can the person understand the obligations they are taking on in marriage?

Under clause (b), a person may be barred from marrying if, despite being able to consent, their mental disorder makes them unsuitable for marriage or childbearing. This clause differentiates between having the competence to consent and being deemed capable of carrying out marital and procreative responsibilities. A mental disorder, for the purpose of paragraph (b), includes disorders such as schizophrenia, bipolar disorder, and prolonged depressed moods[9]. Notably the courts have always emphasized that the illness must be of a severity that prevents living a normal married life, as stated in Anima Roy v Prabadh Mohan Roy.

Clause (c) is now almost obsolete following improvements in psychiatric treatment, purely to prohibit individuals who have recurring attacks of insanity from obtaining a divorce. The aim was to prevent a scenario where periodic, and half the time self-inflicted, breakdowns with mental illness could disrupt the marital relationship. The definitions were also vague, and the way medical science has developed, this clause is highly contentious and often rightly criticised for its outdated terminology.

B. Relevant Provisions under Section 12 (Voidable Marriages)

Subsection 12 of the Act provides that a marriage realised in breach of Section 5(ii) is voidable at the option of the wronged person It continues to be legally recognised until a court issue an annulment order. An application must ordinarily be filed within one year of becoming aware of the incapacity, or disorder. This container finds some equilibrium between protecting the institution of marriage and individual autonomy, notwithstanding about the issue of being required to bring maters before the court in a fixed time frame, particularly given the stigma attached to mental illness and the potential trauma of discussing it in a marital context.

C. Connection to Medical Jurisprudence and the Issue of Consent

The above discussed consent issues in marriage closely parallel principles found in medical jurisprudence and contract law[10]. Valid consent requires that it be voluntary, informed, and

[9] *R Lakshmi Narayan v Santhi* (2001) 4 SCC 688 (SC).
[10] A P Simester and G R Sullivan, *Criminal Law: Theory and Doctrine* (Hart Publishing 2016) 164–166 (on consent as a legal construct).

grounded in a rational appreciation of the nature of marriage and its implications. As with Section 5(ii)(a), where one is incapacitated to give consent because of unsoundness of mind, this is the same incapacity that effects whether valid consent can be given for medical treatment Courts have, on multiple occasions, held that the Indian courts/subordinate courts have ordered psychiatric evaluations to test for capacity, however I am not aware of any statutory requirements guiding doctors undertaking a psychiatric evaluation for capacity reports, resulting in inconsistency in final decisions. We have also seen that with medical consent sometimes can involve long-winded or intermediated disclosures and documentation, by and large the assumption of consent is typically presumed, and consent is more often assumed than not and there is no intermediary to confirm that presumed consent. The lack of statutory guideline or intermediary has given the opportunity to conceal mental illness that resulted in drawn out matrimonial disputes or even worse outcome[11].

D. Significant Observations

The statutory framework defined by Section 5(ii), ultimately progressive at the time of enactment, now appears limited in its ability to apprehend the realities of the evolving relationship between mental health and human rights. The language of the provision relies on, rather than engages a contemporary understanding of mental disorders as treatable and manageable conditions, without reference to the line between mental disorder, mental health, and mental fitness. Of note, the incidental relationship between matrimonial law and mental health legislation is still under-developed, creating legitimate concerns about coherence and compatibility. Access legislative reform is called for, with respect to clarity, fairness and stigma-free.

4. Loopholes in Section 5(ii)

Although it is designed to preserve consent and marital stability, Section 5(ii) of the Hindu Marriage Act, 1955 has a number of shortcomings that create problems in the application of the law. Because marriage litigation results in delayed justice, social stigmas, and in certain cases, serious injustices, these loopholes create interpretation uncertainties that are strong

[11] Amita Dhanda, 'Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?' (2007) 34 Syracuse J Intl L & Com 429.

deterrents to filing a lawsuit[12].

A. No Mandatory Medical Examination

The absence of pre-marital medical check-ups is astounding, and despite the fact consent forms the foundation of a valid marriage under Hindu law. By not conducting any form of questioning of mental capacity, the statute facilitates a space where persons with serious likely psychiatric conditions marry and do not disclose their condition, largely influenced by family or societal pressure. The absence of the need for medical checks is very surprising considering the growing trend towards informed consent in other areas of law including medical law[13].

The case R. Lakshmi Narayan v Santhi is an example of the extreme repercussions of such concealment. In this matter, the husband discovered many months post-marriage that his wife was severely mentally impaired and had chronic schizophrenia which impaired their conjugal life so significantly that the subsequent litigation for annulment of the marriage spanned many years and resulted in serious mental and financial impact for both parties before a requested annulment was granted[14]. Anima Roy v Prabadh Mohan Roy is another mental health related case where non-disclosure of a mental disorder led to protracted disputes that should have been avoided with statutory touchstones in place prior to solemnisation.

B. Vague Language in the Provision

Under Section 5(ii)(b), a mental disorder is recognised when its type or extent makes an individual unsuitable for marital life or for bearing children. While the Act does not define either `mental disorder' or `unfit' the term could mean anything from mild depression to severe psychosis, which creates the conditions for arbitrary interpretation of this provision. The lack of a clear definition, and therefore ambiguity, is compounded by the psychiatric categories used at the time of enactment which were outdated and not symptomatic of the current medical science available.

Judges tend to struggle with the vague wording of the Act and come to variable conclusions. Alka Sharma v Abhinesh Chandra Sharma highlights how courts interpret mental capacity in

[12] Law Commission of India, *71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground for Divorce* (1978) paras 2.4–2.6.
[13] *F v West Berkshire Health Authority* [1989] 2 AC 1 (HL).
[14] *R Lakshmi Narayan v Santhi (n 9)*

relation to marital consent, with the judgment noting that controlling medication with schizophrenia does not amount to `unfit for marriage'[15], however other court decisions have come to the opposite conclusion with respect to symptoms that in other cases would be considered moderate would, in these other cases, relive the individual from a marriage[16]. Such inconsistent application of law is damaging to the rule of law, creates frustration and anxiousness to those engaged in matrimonial bureaucracy.

C. Social Stigma and Concealment

Mental health conditions in India are still heavily stigmatized, with this being especially evident in matters of marriage. Many families hide psychiatric conditions for fear that disclosing them will ruin marriage possibilities. This is particularly true when it comes to less understood conditions, such as schizophrenia or bipolar affective disorder. Because of the stigma associated with these disorders, people enter marriage without disclosing the truth and there is emotional trauma, abandonment, or litigation when the truth is revealed. The legislative silence on disclosure requirements means the cultures of concealment are unchecked.

D. Burden of Proof on the Aggrieved Spouse

The burden of establishing mental incapacity primarily lies on the aggrieved spouse. Courts often expect expert psychiatric evidence of either unsoundness of mind or degree of mental illness. This logic is sound in principle, but it creates practical and financial hurdles, especially for women who want an annulment. Expert evidence is expensive and time consuming, and the process of delivering justice can be a challenge for financially disadvantaged litigants[17].

The nature of matrimonial proceedings is adversarial, and psychiatric assessments are often disputed, even in uncontested cases. The procedures for psychiatric assessments are not standardized so opinions differ among psychiatric experts. Thus, courts often have to deal with complex medical issues without the advantage of any substantive legislative guidance.

E. Retrospective Evidence and Evidence Gap.

Courts will assess the ‘mental condition at the time of marriage', even if petitions are filed

[15] *Alka Sharma v Abhinesh Chandra Sharma* AIR 1991 MP 205 (Madhya Pradesh HC).
[16] *Rita Roy v Sitesh Chandra Bhadra Roy* (1982) 1 SCC 188 (SC).
[17] Law Commission of India, *Report No 59: Hindu Marriage Act, Special Marriage Act – Certain Problems* (1974) para 3.2.

many years later. This retrospective assessment poses enormous challenges. Contemporary medical evidence is rare, and psychiatric diagnosis derived from contemporaneous behaviours, or second-hand accounts, is unreliable. Given this, courts are increasingly relying on evidence produced by piecing together direct or circumstantial evidence of facts, evidence of conduct after the marriage, and other witness accounts. This is inherently uncertain, and inconsistent judicial decisions undermine the objectivity and justice of the matrimonial adjudication process.

F. Conflating capacity and fitness

The most fundamentally problematic basis for the argument in Section 5(ii) is conflating two distinct problems:

The cognitive capacity to provide consent focuses on determining whether a person has the ability to understand the nature and consequences of marriage and give informed consent. This is a legal test of autonomy and voluntariness[18]

5. Judicial Interpretation of Section 5(ii): Landmark Judgements and Trends

While the judicial reasoning reflects a growing sensitivity to the area of mental health and its centrality to marriage, there remains a lack of consistency across the courts.

A. The Early Judiciary - Narrow Explanation

Anima Roy v Prabadh Mohan Roy (1969) Cal HC

In this case, the court held the marriage was voidable, on the basis that the wife's mental impairment would prevent her from performing conubial obligations. The court's rationale demonstrates that it treats marriage as a contract that is frustrated by mental illness that only "performs" conjugal duties on one side of the contract. This is fundamentally problematic, and treats marriage as conception and companionship only, while ignoring autonomy and dignity. The judgment prioritises marital "utility" over individual rights and missed an opportunity to hold this marriage voidable on the basis of constitutionally protected rights to equality (Article 14) and human dignity (Article 21).

[18] *Sheodan Singh v Smt Daryao Kunwar* AIR 1966 SC 1332 (SC).

B. Expansion and Refinement of standards.

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

Here, the Supreme Court required "compelling medical evidence," that the disorder rendered the spouse incapable of leading a marital life. This seems to place a limitation by requiring much higher evidence, in general, to prevent the misuse of undefined claims. However, this requirement is still framed on a diagnostic model rather than a functional model. For example, the court is using psychiatric opinions as the authority, and neglects the fact that even individuals with mental disabilities may have decision-making capacity. Therefore, this decision does limit arbitrariness, but does not endorse a validity-based standard that is consistent with constitutional equality and the CRPD.

C. Capacity and Fitness are Confused: Continued Issues

Alka Sharma v Abhinesh Chandra Sharma (1991) MP HC

The court invalidated the marriage on a finding that the wife's schizophrenia made her unfit for marriage and for reproduction. The ruling was, in effect, a finding that for purposes of marriage the diagnosis established incapacity directing an assumption of incompetence, without any functional assessment. This is highly problematic reasoning, as it blurs the line between medical condition and legal capacity, and overlooks if the affected woman could at least understand her obligations under marriage. In imposing a blanket barrier, the ruling reinforces stigma and contradicts the provision in Article 21 to human dignity and autonomy. Furthermore, it breaches India's obligations under the CRPD, particularly as it broadly excludes marriage based on disability.

6. Comparative Jurisprudence: Utilizing Global Benchmarks

A. English Law: Marriage Act 1949 and Mental Capacity Act 2005

Historically, English law placed significant weight upon the mental capacity of both parties as a prerequisite for a valid marriage. Under the Marriage Act 1949, mental capacity to understand the nature of the marriage contract is critical. Nevertheless, the courts restricted the interpretation of mental capacity regarding marriage to a narrow definition of understanding

the rudiments of the marriage relationship: the nature and quality of the social union, the legal obligations which arise from that union. An intricate understanding of marriage is not required.

In the case of Sheffield City Council v E [2004] EWHC 2808 (Fam)[19], the court acknowledged that the threshold for capacity is relatively low: the individual must only understand marriage, whether it is a voluntary act and the basic duties imposed upon them as parties to the proceedings. The court's decision emphasised a functional test aspect to capacity as opposed to a diagnostic aspect and highlighted self-determination and autonomy.

The introduction of the Mental Capacity Act 2005 provides a rights-based approach with a presumption of capacity unless the contrary is established[20]. For example, section 1(2) of the Mental Capacity Act states: 'A person must be assumed to have capacity unless it is established that he lacks capacity.' The Mental Capacity Act does not allow paternalistic tendencies, including decisions about marriage that infringe on personal autonomy. Whereas the Hindu Marriage Act does explicitly label certain groups of individuals as unable to be married as a result of particular types of mental disorders, under the Mental Capacity Act there is no statutory disqualification of individuals on that basis, and therefore the inquiry only focused on the cognitive ability to consent.

B. United States: State-Based Approach

United States marriage capacity law varies from state to state, but there are common themes among them. The primary requirement involves some ability to understand the nature of the particular contract and any consequences that come with it. A person who is mentally ill will not be found incompetent to marry unless that mental illness prevents making an informed decision.

In Estate of Lira v. Richard, the Californian court stated that "mere eccentricity or mental weakness does not vitiate consent unless it takes away the exercise of will[21]." The Kentucky court case Haldeman v. Haldeman, afforded the respondent "substantial latitude" in reconciling her efforts to marry with her mental capacity. The test is functional: does the person know what marriage is, and can they voluntarily enter into it? This approach aligns with the English

[19] *Sheffield City Council v E* [2004] EWHC 2808 (Fam), [2005] 1 FLR 965.
[20] Mental Capacity Act 2005, s 1(2).
[21] *Estate of Lira v Richard* 78 Cal App 3d 746 (1978).

position, and departs from India's statutory scheme that conflates medical diagnosis with legal capacity.

C. Canada: Functional and Rights-Based Model

In Canada, courts use a liberal test where there is capacity to marry. In Banton v. Banton (1998), the Ontario Court of Justice held that capacity only requires that an individual possesses the minimal degree of understanding the nature of marriage and its obligations[22]. The court rejected arguments that a diminished intellectual ability, or mental illness, should automatically disqualify an individual. The court cautioned against engaging in discriminatory practices that violate autonomy.

Canadian jurisprudence also requires proportionality. Restrictions on marriage that apply to individuals under guardianship must be justified on compelling grounds because marriage is a fundamental liberty interest protected under the Canadian Charter of Rights and Freedoms. This rights-based perspective is in line with other international human rights accords and stands in stark contrast to the paternalistic tone of section 5(ii).

D. International Human Rights Standards

Article 12 of CRPD recognizes the equal legal capacity of persons with disabilities in all areas of life including marriage[23], and requires states to support decision-making rather than apply a blanket restriction. The CRPD Committee has condemned laws that ban a person from marriage due to being mentally or psychosocially disabled as discriminatory.

India ratified CRPD in 2007, and is now required there is a duty to tailor domestic laws to align with CRPD. Section 5(ii) clearly imposes categorical disqualifications regardless of mental disorder. This section of law is not consistent with Article 12 of the CRPD, and with the non-discrimination and equality clause in the Rights of Persons with Disabilities Act, 2016. Reforming this section of law is important and procrastination risks perpetuating structural discrimination, any future litigation will likely involve constitutional scrutiny under Articles

[22] *Banton v Banton* (1998) 164 DLR (4th) 176 (Ont Gen Div).
[23] UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, art 12.

14 and 21[24].

E. Comparative Observations

The overwhelming majority of contemporary law jurisdictions utilize a functional test, looking to whether or not an individual is able to understand the nature and duties of marriage. This is completely opposed to the testing process in India, which uses a diagnostic test of identifying essential mental conditions which provide grounds for annulment of marriage, regardless of actual capacity. India's model mixes medical status and legal incapacity, which makes for overbreadth and opportunities for misuse and overreach.

English, American, and Canadian legal uses the presumption of capacity, with the evidentiary burden being placed on those challenging the marriage to demonstrate incapacity. Indian law assumes that the people with mental disorders are incapable to marry.

7. Impact of Loopholes

A. Psychological Trauma on Unknowing Spouses

The concealment of prior serious mental illness will typically lead to a significant burden of emotional distress for the unknowing spouse. Following a marriage that was meant to be built on trust and openness, when one spouse learns post-marriage that the other spouse has a serious mental disorder, it is shocking, and leads to disillusionment. The husband petitioned for annulment in R. Lakshmi Narayan v Santhi based not just on the degree of his former wife's mental health conditions but on his feelings of betrayal at being deliberately robbed of material information[25].

Typically, during the course of the marital relationship, this concealment of relevant information shrouds the marital home in fear, disorder and social embarrassment. To cope with these social effects, the unknowing spouse often experiences guilt, anger and helplessness, which in turn exacerbates their mental health issues such as depression and anxiety.

Given the sacred role of marriage in society, the end of a marital relationship will typically attract severe social scrutiny. Often families expect spouses to 'adjust' rather than pursue a legal

[24] Constitution of India, arts 14 and 21; *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[25] *R Lakshmi Narayan v Santhi (n 9)*

resolution, fearing publicity that can tarnish their family name. These cultural pressures can augment psychological trauma and force people to endure psychological trauma and mental health issues in a dysfunctional or abusive marriage context.

B. Cost and Delay

Disputes pertaining to Section 5(ii) can be lengthy and expensive, as litigation can be drawn out with regards to establishing evidence of unsoundness of mind or a mental disorder which makes a spouse 'unfit for marriage'[26]. In order to establish the legal criteria for unsoundness of mind or a mental disorder reasonably requires extensive psychiatric evidence, multiple hearings, and expert evidence. Courts often insist on very detailed medical documentation evidence - most individuals have little medical documentation of their mental health history available at the time of marriage, which results in court and counsel relying on retrospective assessments by qualified witnesses.

The requirements of evidence place an undue delay on the adjudication process. Legal actions like Anima Roy v Prabadh Mohan Roy demonstrate how legal petitions for claims of invoking Section 12 (regarding voidable marriages) can be protracted for years and consume judicial time while parties' financial and emotional health is exhausted[27].

Due to litigation costs, the financial disproportionably affects a woman who often does not have the money to engage in prolonged litigation. The expense of hiring mental health experts for independent expert opinions is financially depleting. In many cases, however, economic difficulty is exacerbated by lack of interim relief, resulting in situations where no maintenance is provided for a woman in litigation.

C. Gender Bias: Inordinate Effect on Women

Social norms affect women disproportionately when they are left to pretend their marriage is harmonious wellbeing careful since they are in fact the person without fault in the un-harmonious situation. The husband is in admitted mental un-fitness and they are hiding the mental illness, the wife could have been crazed to endure that in silence and remained crazy to preserve a fictitious position in society where her parents would not disapprove of the liar social

[26] Hindu Marriage Act 1955, s 12 (voidable marriages).
[27] *Anima Roy v Prabadh Mohan Roy* (n 4)

position and her married ended in divorce, they expect the woman to suffer and endure those kinds of things. When the wife reveals a mental disorder, society enables itself to presume blame upon her family/extended family for "deceiving the husband" and junk, society continues to develop the stereotype about mental ill or insane women[28].

Even having had an annulled marriage or divorced marriage stigmas are hard for women in developing their futures near a marriage possibility in carrying to their next marriage formalities the stigma of being a divorcees or relatively being held accountable for being hereditary mental illness patriarchal stereotyped potentially infected future worker ant, and taking upon that as their own association are they not vulnerable enough to take it in the first place, it removes their autonomy, etc.[29]

We have research study evidence lying around, we have judicial rules of law; there is anecdotal(stories and share opinions) evidence as well on domestic committees where mental un-fit marital exchange/disclosures related to unknown mental illness being communicable, escalating marital exchanges with regard to a man and a women marriage, to emotional or physical abuse, and this model of behaviour often occurs with women while being a victim of domestic violence, the consuming population of women experience this behaviour without best regard for possibility/ability prosecution by the family society or evidence of court.

D. Effects on Children from Such Marriages

When children are born into marriage conflicts related to mental health problems, each child constantly gets emotionally disturbed in the unsafe environment. This makes them even more insecure and creates a feeling of fear within themselves. According to reputable family psychology research studies, these kids are also experiencing emotional and cognitive constraints which directly impacts the long-term development.

In addition to immunizing children born with mental instability and abnormal behavior, the stigma associated with mental illness also sustains an intergenerational stigma of suspicion that carries over into adulthood and onto their offspring. Potential marriage partnerships and future educational and training opportunities will be severely hampered by this circumstance; in fact,

[28] Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999).
[29] *ibid*

many people are persistent in their discrimination because of the societal belief that mental illness can be inherited and passed down to future generations.

E. Broader Societal Implications

Marriage as an open and voluntary institution is undermined by the concealment of mental illness and the ensuing legal issues. People may resort to informal or extralegal methods to settle matrimonial disputes when they believe the law is insufficient to guarantee transparency and equity, undermining the rule of law.

Because the courts now have to deal with difficulties interpreting statutes and evidentiary issues, the lack of clear statutory obligations adds to the judicial backlog. The public's confidence in the legal system's ability to deliver fair and just outcomes in time-sensitive matrimonial matters is further undermined by the additional delays brought on by obtaining timely resolutions, which are typically regarded as justice.

8. Suggested Reforms: Towards a Rights-Based Framework

The form of the law should set a distinct functional test restricting an inquiry to if the person can understand the nature and consequences of marriage and can make and communicate a voluntary decision. Labels which may include ‘schizophrenia’ or ‘bipolar disorder ‘should not, in and of themselves, exclude someone from being able to marry. This approach is imbued with the principle of autonomy and is based on actual capacity as opposed to medical status, therefore eliminating discrimination.

Reform must bring the Hindu Marriage Act into line with the Rights of Persons with Disabilities Act, 2016 and the UN Convention on the Rights of Persons with Disabilities (CRPD)[30]. Both of these instruments view legal capacity as part of personhood and are expressly against exclusionary practices[31]. The use of archaic terms such , insensitive terms like ‘unsoundness of mind’ and ‘recurring attacks of insanity’ are not consistent with either of these treaties, and ought to be abolished. The focus of the law, should not be to impose blanket disqualifications, but rather to facilitate decision-making support wherever appropriate.

[30] UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (‘CRPD’), arts 12 and 23.
[31] Rights of Persons with Disabilities Act 2016, s 13.

The current regime permits intrusive medical examinations and retrospective psychiatric assessments without sufficient regulation. Medical, psychological, or psychiatric assessments should limit retrospective assessments wherever possible, and must require some form of contemporaneous evidence. Medical examinations should be ordered only in exceptional cases, and only on a case-by-case basis, with judicial standards outlined. A dignity and privacy safeguard must be explicitly articulated through legally codified procedures to protect dignity when conducting invasive examinations, protect privacy from unwarranted government intrusion wherever possible, and to adhere to the agreed constitutional rights entrenched in Articles 14 and 21. Consent must be provided before medical or psychiatric evaluations are conducted, and that, when agreed upon, should be appropriately reviewed.

B. Legislative and Policy Proposals

One of the most effective forms of prevention would be to require a premarital disclosure obligation for serious mental health conditions that may affect the parties' marital lives with accompanying privacy protections to prevent improper uses. The disclosure obligation should only extend to conditions that would be materially important to disclosing and not a blanket disclosure obligation for all mental health conditions. Failure to disclose the condition could be a form of fraud under Section 12 and subject to the necessary due process protections and proportionality.

To protect against misuse of your honour in relation to the disclosure obligation, legislation should expressly prohibit public access to medical records and any violation of confidentiality should carry significant penalties. This format achieves a balance between transparency and privacy and individual dignity.

There is a lack of clarity concerning the meanings of terms applicable in statutory sources and outdated concepts applied by legal practitioners. A term, such as ‘unsoundness of mind’ has no defined medical meaning and is not fully compliant with rights standards. The law should focus on meaningful, clear, and consistent definitions based on functional capacity—and not merely on a medical label.

D. Incorporation of Mental Healthcare Act Principles into Family Law

The Mental Healthcare Act, 2017 adopts a rights-based approach to mental health, privileging

autonomy, informed consent, and non-discrimination. Incorporating these rights into matrimonial law would harmonise the two legal areas and provide for consistency therein. Thus, the Act recognises that persons have the right to make decisions about personal relationships and that such rights must not be restricted except when capacity under that entitlement is demonstrably absent, and the test is narrowly defined.

E. Additional Safeguards and Judicial Guidance

To avoid misuse and for the sake of uniformity, clear evidentiary standards should be laid down in the statutory provisions[32]. These may include among others:

Requiring contemporaneous medical records wherever possible;

Limiting psychiatric opinions to those issued by accredited institutions;

Requiring courts to rely on multi-disciplinary panels rather than the opinion of a lone expert.

Women disproportionately bear the brunt of annulment proceedings under Section 5(ii). Reforms must, hence, consider gender-sensitive remedies, such as interim maintenance, protection from domestic violence.

9. Conclusion

The original purpose of Section 5(ii) of the Hindu Marriage Act, 1955 was to preserve the integrity of marriage by ensuring that both individuals entering into it were mentally capable of giving valid consent. However, as time has passed, the provision has not progressed in line with contemporary constitutional principles or mental health jurisprudence. Phrases such as ‘unsoundness of mind’ and ‘recurring attacks of insanity’ convey stigma and reflect a fragmented medical-legal paradigm designed to exclude rather than empower. This framing collapses two distinct concepts: an individual’s capacity to consent and understand to marry, and the assessment of whether or not a person is ‘fit’ to marry based on their mental health history related to their marriage. There is no statutory requirement for premarital health disclosure, there are no accurate statutory definitions, and there is a heavy reliance on retroactive psychiatric assessments: all of this creates terrible injustice to spouses who marry

[32] Anima Roy v Prabadh Mohan Roy (n 4)

unaware. These spouses are often left with emotional turmoil, protracted litigation, financial burden, and societal stigma, a dilemma that is cumbersome and often more impactful for women. Courts face varying interpretations of what constitutes a 'mental disorder', leading to uncertain court outcomes and a diminishing of personal autonomy and stability in the community's marriages. Children borne of such marriages endure emotional pain for a lifetime and social scorn in silence. There is no question that changes in the law will be inadequate, and only true reform will suffice. Future reforms in law must take a functional approach to capacity, and require assessing the substance of awareness around the implications of marriage and the decisions being made, rather than some general medical diagnosis. Any prospective changes must also go beyond the considerations in this field, and include attention to India's own constitutional right to equality and dignity under Articles 14,15 and 21 as well as India's commitments under various international instruments, like the Convention on the Rights of Persons with Disabilities. Procedural safeguards will be necessary, in each case, amounting to the highest evidence, combination of medical status, contemporaneous medical assessments, privacy, and dignity during the process. Additionally, employing elements of the Mental Healthcare Act, gender-based considerations, and mediation versus contested litigation could remove cases from unnecessary circumstances. At the end of the day, reforming Section 5(ii) is needed, not only legally, but morally. Changing these laws is a way to bring them up to speed with relatively contemporary science, human rights, and social realities. Rather than remaining rooted in stigma and exclusion, these laws can serve a purpose that is based in fairness, compassion, and empowerment by demonstrating that marriage involves a relationship of equals based on consent, dignity, and respect. Reformation of section 5 ii must be a constitutional necessity to justify that the personal laws fall within the realm of fundamental rights and adhere to the constitutional intent.

References

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