



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh

Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



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.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE LEGAL POSITION OF PERSONS WITH DISEASE OR INFIRMNESS UNDER HINDU LAW

AUTHORED BY: MAITREYEE JAISWAL

Introduction

Jurisprudence regarding women, children, and persons with different gender and sexual identity is continuously expanding in our country. Since they are vulnerable sections of society, their legal position is only strengthened by the interpretations and amendments in our multiple legislations. But, another vulnerable section of society that consists of people who are diseased or infirm also requires such kind of judicial intervention to secure their legal position in their respective families and therefore the society. In the following article, the author will look into the legal position of diseased or infirm persons in marriage and succession in Hindu law. The article will also deal with the term “unchaste”, as one of the cases mentioned later in the article viewed it as a “defect” in the woman.

Legal position while married and during divorce

After scrolling through the Hindu Marriage Act of 1955, I came across section 12 which deals with voidable marriages. It is as follows:

“12. Voidable marriages. — (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

(a) that the marriage has not been consummated owing to the impotence of the respondent; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or.....”¹

Reading section 12(1)(a), the question that comes to mind is- what will qualify as “impotence” in a person? The court has interpreted “impotence” in various cases both with respect to a man and woman.

¹ The Hindu Marriage Act, Act No. 25 of 1955 (India)

In the case of *Mst. Shewanti Bhaurao Dongre vs Bhaurao Daulatrao Dongre*², where the appellant Shewanti was sterile and also did not menstruate. Her uterus was normal but her ovaries were small and rudimentary. The Court pointed out that the word “impotent” was not inserted in the legislation to point toward sterility. Rather, the intent of the legislation was for the couple to consummate their marriage normally and if not, then to be considered impotent. A sterile individual can also have conjugal intercourse with their spouse.

The husband was able to achieve an erection and a full penetration of the wife in the case of *R. v. R.*³, an alleged incapacity case, but he was never able to generate the ejection of semen into the wife's body. It was determined that the marriage had been consummated and that no judgment of nullity could be obtained.

How is legal impotence different from medical impotence?

In the case of *Mst. Shewanti Bhaurao Dongre vs Bhaurao Daulatrao Dongre*, before the case came in the M.P. High Court, the District Judge relied on the case of *T. Rangaswami v. T. Arvindammal*⁴ while giving his judgment.

"Potence in case of males means power of erection of the male organ plus discharge of healthy semen containing living spermatozoa and in the case of females means (1) development of external and internal genitals and (2) ovulation and menstruation." (Page 245)

However, in this instance, the learned judge who rendered the Madras judgment was presumably dealing with impotence in a medical rather than a legal sense, as seen by the way he summarized his findings about the legal element of the issue:

In summary, a marriage can be avoided or dissolved on the grounds of impotence upon the petition of either party if it can be demonstrated that, at the time of the marriage, one of the parties was and is incapable of effecting or permitting the consummation of the marriage because of either an irreversible structural defect in the reproductive organs that makes full sexual intercourse impracticable or an irreversible mental or moral disability that prevents the man from consummating

² *Mst. Shewanti Bhaurao Dongre vs Bhaurao Daulatrao Dongre*, AIR 1971 MP 168

³ *R. v. R.*, 1952-1 All ER 1194

⁴ *T. Rangaswami v. T. Arvindammal*, AIR 1957 Mad 243

the marriage with the specific woman or because the woman has an unquenchable dislike for the act of consummation with the specific man.

Now reading section 12(1)(b), we see that voidable marriages are also those marriages that contravene the conditions written in section 5(ii)

And clause (ii) of section 5 is:

“5. Conditions for a Hindu marriage. —*A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: —*

- (i)
- (ii) *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 children;*
 - or*
 - (c) has been subject to recurrent attacks of insanity”*⁵

In sub-clause (c) after insanity, “or epilepsy” was also present. Later, it was omitted by Act 39 of 1999. This was because epilepsy was a disease that was highly stigmatized in India but it is treatable and after taking the medication the person can perform their day-to-day task.

In the case of *Munishwar Datt Vashisht vs Smt. Indra Kumari*⁶ where the appellant contested for the nullity of the marriage under sections 5 (ii) and 12 of the Act because his wife was a lunatic. There was sufficient and cogent evidence that his wife had mania. But it wasn't sure whether at the time of marriage (as written in section 5(ii)) was had unsoundness of mind or not. The court keeping in view of the above point did not declare the marriage to be void.

Now let's take a look at section 13 which relates to the grounds for divorce.

“13. Divorce. — *(1) 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*

⁵ Supra 1

⁶ *Munishwar Datt Vashisht vs Smt. Indra Kumari*, AIR 1963 P H 449

the ground that the other party—

(iii) 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.

Explanation. —In this clause, — (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 treatment;

Clause (iv) omitted by Act 6 of 2019, s. 5 (w.e.f. 1-3-2019)

(v) has been suffering from venereal disease in a communicable form; or

(vi) ”⁷

In the case of *Ram Narain Gupta vs Smt. Rameshwari Gupta*⁸, the appellant contested that his wife was suffering from Schizophrenia while the respondent said that it was not the case and the husband was only saying this because she does not get along with his mother and sister. The Court said that merely having a mental disorder is not enough as a ground for dissolution of marriage under section 13(1)(iii) and the intensity of the disease (which in this case is Schizophrenia) also matters. Adding to that they said that the spouse who contested the unsoundness of the mind of their partner has a heavy burden of proof to prove that the mental disorder is of such a nature that it makes it impossible for them to live with the other person. The court should assess the evidence properly also keeping in mind the hereditary nature of some mental disorders (in this case Schizophrenia) dismissed the appeal of Mr. Ram Narain.

Section 13 clause (iv) was regarding Leprosy. One of the oldest diseases in the world is leprosy, often known as Hansen's disease. Ayurvedic books from the sixth century BC mention the symptoms of

⁷ Supra 1

⁸ *Ram Narain Gupta vs Smt. Rameshwari Gupta*, 1988 AIR 2260:1988 SCR Supl. (2) 913

Leprosy. Leprosy is another topic covered in the Manusmriti, which establishes the guidelines and policies that control a marriage. Nevertheless, despite its lengthy past, most people have a misconception of leprosy as a disease, in all its characteristics such as the cause, method of transmission as well as its treatment.

The bacillus known as *Mycobacterium Leprae*, which was initially identified by Norwegian physician Gerhard Armauer Hansen in 1873, is the pathogenic agent of leprosy. Airborne infection can spread from a leprosy patient who is not receiving treatment. But, more than 85% of leprosy patients are non-infectious and do not spread the disease, and over 99% of people worldwide have a built-in immunity or resistance to leprosy, according to reports. Leprosy patients have pale, reddish skin, numb hands and feet, or lack of sensation in a small area of their skin. The leprosy incubation period might last anywhere from five to twenty years.

Leprosy is neither hereditary nor is it a result of impure blood and poverty. These myths have caused a stigma in our society and due to these Leprosy patients face a lot of discrimination. Acknowledging the following points, the Law Commission of India in Report number 256 titled “Eliminating Discrimination Against Persons Affected by Leprosy” repealed clause (iv) of Section 13 of the Hindu Marriage Act, 1955.⁹

Moving to **clause (v)** of section 13, we see the case of *Mr. 'X' vs Hospital 'Z'*¹⁰. Here the appellant ‘X’ was suffering HIV (+) patient. This information was disclosed to his partner (Ms.Y). He contested that his right to privacy, a right which comes under the right to life (Article 21) has been infringed. The court said that AIDS is a venereal disease in a communicable form and if the consummation of marriage had taken place, Ms. Y would immediately have contracted the disease. Since this disease is not curable as of now, it is also the duty of the doctor to disclose information regarding sexually transmitted disease to the partner of the patient. Also, risking Ms. Y’s health would lead to the infringement of her right to lead a healthy life. On top of that AIDS is a disease that is dangerous to life, so it will attract penal provisions mentioned in Indian Penal Code.

⁹ Report No. 256: Law Commission of India

¹⁰ Mr. 'X' vs Hospital 'Z' (1998) 8 SCC 296

Sections 269 and 270 of the Indian Penal Code provide as under:

"269. Negligent act likely to spread infection of disease dangerous to life- Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description or a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life- Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."¹¹

Legal position in succession

Section 28 of the Hindu Succession Act, 1956 is as follows:

"28. Disease, defect, etc., not to disqualify. —No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever."¹²

Under Hindu law, an unchaste woman was disqualified to inherit property but section 4 of the same Act having an overriding effect makes such Hindu Law ineffective. This was the Court's statement in the case of *Jayalakshmi Ammal And Ors. vs T.V. Ganesa Iyer*¹³

Why discussing the above case is important? Because under Hindu law unchastely women are viewed as a 'defect' as an unchaste woman disrupts the structure of a family. But section 4 has an overriding effect and section 28 does not mention the word "unchaste" which gives a widow even though she is unchaste right to inherit property. This idea was strengthened in the above case as well as in the case of *Kuppu Alias Kuppammal vs Kuppuswami Mandiri And Ors*¹⁴.

¹¹ The Indian Penal Code, Act No. 45 of 1860 (India)

¹² The Hindu Succession Act, Act No. 30 of 1956 (India)

¹³ *Jayalakshmi Ammal And Ors. vs T.V. Ganesa Iyer*, AIR 1972 Mad 357

¹⁴ *Kuppu Alias Kuppammal vs Kuppuswami Mandiri And Ors* (1984) 2 MLJ 224

Analysis

Through this article, I have tried to identify the legal position of a diseased or infirm person. But what I observed while researching this topic is that there is a stigma around some diseases in our society, especially mental disorders. People hesitate to go to a psychiatrist for their mental well-being. This is because there is a false notion that mental disorders can't be cured or one will have to take medicines for their whole life. Families also form a part of society and majorly think the same. Therefore, a person in a marriage, when taking a divorce on the grounds of unsoundness of mind of his/ her partner does not wait for enough time before filing for divorce. Had people known more about the degree of improvement one can show after taking therapy and medication, there might be fewer cases of divorce. When filing for a divorce, the intensity of the disease should be so much so that it becomes difficult practically impossible for the other spouse to live with that person. Epilepsy is one such mental condition that is highly stigmatized but is treatable. Thanks to the Act 39 of 1999, it is no longer a condition for a voidable marriage.

Even though it not being a mental disorder, leprosy is also very stigmatized. Since ancient times, they have been segregated from society and they live in separate colonies. Such kind of practice also strengthened the myth that leprosy happens due to poverty and impure blood. Earlier, the drug Dapsone was used to treat leprosy. But in some cases, people who were treated with Dapsone developed a resistance towards it. Now, MDT (Multi-drug Therapy) is given to leprosy patients, and just after the first dose, 99.9% of leprosy bacteria are killed.¹⁵ Under MDT, powerful drugs such as Rifampicin, Clofazimine and others in combination with Dapsone, are given to the affected person to properly fight Leprosy bacillus. Over the past twenty years, more than 15 million Persons affected by Leprosy are said to have been cured because of MDT.¹⁶

Lastly, commenting on the impotence being a condition for voidable marriages- we see a change in the jurisprudence of it which in my eyes is positive. We have come a long way from interpreting legal impotence similar to medical impotence to now having segregation in the definition and understanding of the two. Marriage is done for the procreation of children but it is not just limited to that, it is in fact much more than that. Companionship being one of the important factors in a marriage cannot be ignored just because one of the two partners has an absent or rudimentary reproductive organ. The will to consummate a marriage is the important factor here.

¹⁵ *Supra* 9.

¹⁶ Report by the Nippon Foundation and Sasakawa Memorial Health Foundation