

SCHIZOPHRENIA AND DIVORCE

THE SUPREME Court has held with reference to section 13(1)(iii) of the Hindu Marriage Act 1955, that the mere branding of a spouse as "schizophrenic" is not sufficient. Degree of mental disorder of the spouse must be proved to be such, that the petitioning spouse cannot reasonably be expected to live with the other party.¹ The conclusion, with respect, is sound enough. But the reasoning on which it is based cannot be understood without an examination of some of the medical aspects relevant to the subject.

"Sanity" has a social and legal meaning, but is no longer used in medicine. In the negative form (insanity), it still appears in the names of some hospitals. Sanity is defined socially, but retains an additional weight, because the social judgment has been embodied in laws that try to define criminal insanity. In general, a criminal is said to be sane when he knows the meaning and moral content of his act. The notion of temporary insanity is also embodied in law and means that the criminal was insane only for the duration of the criminal act. Thus, murder committed in a fit of fury caused by sexual jealousy might be adjudged an act of temporary insanity, but in the United States and the United Kingdom, it is usually left upto juries to determine how the facts fit the law. Psychiatrists called as witnesses often differ. Therefore, the courts are sensitive to the public attitude to the act itself, and to the conventional distinction between sanity and insanity.

One important legal aspect of sanity concerns the hospitalisation of mental patients who are, in law, too ill to decide for themselves. In the United Kingdom, certification for admission to hospital because of a mental disorder, without the consent of the patient, requires the agreement of two doctors, and it must be reviewed within three weeks. The procedure is controversial. Some psychiatrists, such as the American, Thomas Szasz, argue that any committal without the patient's informed consent is contrary to the Hippocratic oath. Protection of the patient's rights depends ultimately on the social definition of sanity, as well as on medical knowledge and experience.

One type of mental ill health is called "schizophrenia" -- a much misunderstood word. It is derived from Greek *schizein* = to divide + *phren* = mind. It comprises a group of diseases identified by symptoms of emotional abnormality, thought disorder, disturbances of motivation, stupor or catatonia and delusions often associated with hallucinations. Its causes are unknown and it is not curable. Schizophrenia is not fatal, but about 20 per cent of all schizophrenics attempt suicide and life expectancy amongst schizophrenics is probably less than half of that of the general population. Roughly one-quarter of all schizophrenics suffer only one acute attack and are thereafter normal. In about one half, there are remissions or symptom-free periods, but

1. *Ram Narain Gupta v. Rameshwari Gupta*, A.I.R. 1988 S.C. 2260 (A.P. Sen and M.N. Venkatachaliah, JJ.)

the illness recurs. After the third or fourth recurrence, the patient is usually chronically ill for the rest of his life. The remaining 25 per cent of schizophrenics are chronically ill from the outset and must be continuously hospitalised.²

Schizophrenia can be diagnosed only because of its symptoms. Despite its relative severity, there are borderline cases of people with schizoid characteristics who are able to carry on relatively normal lives given a measure of support from those close to them.

Schizophrenia was identified by Kraepel in 1896. He called it "*dementia praecox* (early madness), because the symptoms appear more often in adolescents and young adults than in other age groups. In 1911, Bleuler established the name 'schizophrenia'. He compared studies of many patients by various doctors in different countries, and found that one symptom, the splitting of intellectual activity from emotional response, seemed to be almost, if not absolutely, universal. Typically, the patient's intellect is relatively unclouded. He is aware of the nature of pain, fear, anger or love, and when he senses these emotions himself, he is alive to their content and object. But he cannot feel the emotions of others. Inflicting pain on others is meaningless. Only a minority of schizophrenics are aggressive or dangerous, and those few act only occasionally. But when they strike, they do so with utter ruthlessness. Schizophrenia means a division of facets of a normal mind, rather than the presence of two or more personalities, though multiple-personality may also betoken the disease.

On the whole, the incidence of the disease is higher in fraternal twins than in the general population, and much higher in identical twins. Fraternal twins develop from two ova and are likely to develop the same traits as any other siblings. Identical twins develop from a single ovum and can be genetically identical individuals. Thus, if a characteristic is inherited, both the identical twins are likely to have acquired it, and fraternal twins are about as likely to inherit it as any other brother or sister. One more curious extraneous fact has never been explained: a majority of schizophrenics are born in the first half of the year.³

It is thus clear that schizophrenia, speaking medically, can, at times, be a serious disease. Nevertheless, to enable a spouse to obtain matrimonial relief on the ground of this or any other type of mental ill health, the law (as incorporated in Hindu Marriage Act) requires that the disease should be of such a quality that the petitioning spouse cannot be reasonably expected to live with the person suffering from the disease. This legislative approach has a rationale. Matrimonial law is concerned with human conduct or human situation, only if, and insofar as, it affects matrimonial happiness. In assessing the effect on matrimonial happiness the legislature has adopted the test of reasonableness. This keeps the statute free from rigid, mechanical tests. It

2. Richard B. Fisher, *Dictionary of Medical Health* 217, 218 (1980).

3. *Id.* at 223.

also leaves the judiciary an element of elasticity which, *inter alia*, enables the court to adjust the relief according to (i) developments in medical science; (ii) appearance of new or aggravated disease; and (iii) unexpected or unusual mental symptoms.

The context in which the idea of unsoundness of "mind" as "mental disorder" occur in matrimonial law as grounds for dissolution of a marriage, requires the assessment of the degree of the "mental disorder". Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for the ground of divorce. The judgment is faithful to this essential position.

The court pointed out that schizophrenia, in its worst manifestation, brings about a lowering of the higher mental functions. But the disintegration of personality that characterises this illness, may be of varying degrees. Not all schizophrenics are characterised by the same intensity of the disease.

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