

# Marital Status of a Schizophrenic Non-Muslim Spouse: Comparison Between Malaysia and India

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DOI: <https://dx.doi.org/10.47772/IJRISS.2025.907000111>

Received: 14 June 2025; Accepted: 27 June 2025; Published: 01 August 2025

## ABSTRACT

The capacity of individuals with mental illness, including schizophrenia, to consent to marriage has been widely debated in legal and psychiatric contexts. While non-Muslim spouses with schizophrenia in Malaysia may face annulment or divorce due to mental incapacity or unreasonable behaviour, recent legal and medical perspectives emphasize individual functionality. Many with mental illness, particularly during remission or with treatment, can validly consent to marriage and sustain meaningful relationships. As such, under Malaysian non-Muslim divorce law—unlike earlier approaches or Indian practices—mental illness alone is no longer sufficient for annulment or divorce without current, evidence-based assessments of mental and functional capacity.

**Keywords:** Mental illness, Schizophrenia, Marriage consent, Annulment, Non-Muslim divorce law, Functional capacity

## INTRODUCTION

Severe mental illness results in disruption of behaviour and may result in disability and inability to function satisfactorily and meet the obligations of marriage. Thus, different legislations on marriage have put restrictions on the marriage of persons with mental illness. Many legislations were based on the available foreign legislations during 1950s when none of the treatments such as chlorpromazine, imipramine or electroconvulsive therapy were available and the prognosis of severe mental illness was poor. In recent times with modern treatment most patients recover well and get married (Sharma, I, Reddy, K.R, et. al., 2015).

In 2015, the Malaysian Ministry of Health, identified that the prevalence of mental disorders among adults was 29% (Chua S, 2020). This is a threefold increase in comparison with the 10% prevalence rate identified in 1996. The rural region of East Malaysia had the highest prevalence of mental disorders, at 43%, followed by the capital Kuala Lumpur, where 40% of the population fulfilled the criteria for a mental disorder (Ministry of Health Malaysia, 2015). The National Health and Morbidity Survey (NHMS) 2023 reported that approximately 4.6% of Malaysians aged over 15 suffer from depression, amounting to about one million individuals (Institute for Public Health, 2024). Rural regions have more adverse socioeconomic conditions, with higher poverty and unemployment. This, combined with increased stigma, reduced access to general and mental healthcare, and the practice of seeking alternative care through religious practitioners or shamans, can all contribute to an increased risk for the development and maintenance of mental health problems (Guan NC, Lee TC, Francis B, et al., 2018).

In a series of cases of divorce reported in India, schizophrenia is pleaded as basis in one-third of the cases, followed by the causes, mild mental disorder, insanity, unsoundness of mind (Dhanda A, 2000). However, there is absence of statistics in Malaysia on dissolution of marriage due to schizophrenia suffered by either spouse in a marriage. Despite the widespread misconception that people with schizophrenia have no chance of recovery or improvement, the reality is much more hopeful. Although currently there is no cure for schizophrenia, one can treat and manage it with medication, self-help strategies, and supportive therapies (Vita, Antonioa, B; Barlati, Stefanoa, 2018).

This article discusses the marital status of a schizophrenic non-Muslim spouse in Malaysia in comparison with India. Specific reference will be made to the Malaysian Law Reform (Marriage and Divorce) Act 1976 (Act 164), which governs non-Muslim marriages in Malaysia and the Hindu Marriage Act 1955, which is the main law governing most of the people (Hindu) in India.

The lead author is a legal academic with expertise in non-Muslim divorce law in Malaysia. In recent years, the growing prevalence of mental health issues—both as contributing factors to marital instability and as legal considerations in divorce proceedings—has prompted her to explore the intersection between mental illness and the divorce law. This article reflects a deliberate shift in focus to address the emerging and underexplored legal challenges faced by individuals with mental health conditions, particularly in the context of divorce.

Although the second co-author is not a legal professional, the insights presented in this article stem from lived experience and deep personal engagement with individuals navigating mental health challenges. Through years of close observation, meaningful dialogue, and long-standing relationships, the second co-author offers a human-centred perspective that enriches the legal analysis by illustrating how laws are applied and felt in real-life contexts. The third author is a Consultant Psychiatrist at the Department of Psychiatry, Hospital Al-Sultan Abdullah, Universiti Teknologi MARA, Malaysia. The fourth author is a Consultant Psychiatrist specializing in Forensic Psychiatry at Permai Hospital and has been serving with the Ministry of Health, Malaysia since 2000. Together, they bring both clinical expertise and policy-relevant insights to this interdisciplinary discussion, enriching the article with perspectives grounded in psychiatric practice and mental health systems.

## LITERATURE REVIEW

The legal implications of schizophrenia on marriage have long been a subject of scrutiny, particularly in balancing individual rights with the protection of marital institutions. Various jurisdictions offer nuanced approaches to how mental illness, especially schizophrenia, affects the validity or continuity of a marriage.

Kala (2015) critically examines the legal and social challenges of associating mental illness with marital dissolution. He argues that Indian law disproportionately penalizes individuals with treatable mental conditions, particularly women, who often face stigma and abandonment. The article advocates for legal reforms that incorporate psychiatric advancements and human rights considerations.

Math and Srinivasaraju (2010) provide a comprehensive legal and psychiatric critique of Indian marriage laws, contending that the current legal definitions of mental disorders are vague and outdated. They emphasize that psychiatric treatment has evolved, and many individuals with schizophrenia can lead stable marital lives. Their work supports the call for amending the Hindu Marriage Act to reflect these clinical realities.

Lanczová (2022) offers a comparative historical analysis of how mental disorders were used as grounds for divorce in Czechoslovakia and Hungary. She highlights that legal provisions were heavily influenced by the medical model and societal views on mental health. The article discusses how such laws often failed to differentiate between varying degrees of mental illness and did not accommodate the advancements in psychiatric care. Her work underscores the need for a more nuanced legal interpretation that balances public interest with individual dignity.

In the absence of comprehensive discussion on this area especially in Malaysia, this research is to fill the gap.

## Medical Perspectives of Schizophrenia

The diagnosis of schizophrenia is predominantly clinical and involves a comprehensive evaluation by a mental health professional such as a psychiatrist or clinical psychologist. It is based on criteria outlined in diagnostic manuals such as the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) (APA, 2022) or International Classification of Disease 11<sup>th</sup> Edition (ICD-11) (WHO, 2021). The main symptoms of schizophrenia include delusions, hallucinations, disorganized speech, grossly disorganized or catatonic behavior, and negative symptoms (such as diminished emotional expression or lack of motivation). These symptoms must cause significant impairment in social, occupational, or personal functioning and persist for at least six months. Similar manifestations which occur less than six months is diagnosed as schizophreniform (one month to six months) or brief psychotic disorder (less than 1 month). Other medical or psychiatric conditions, such as substance use, psychosis due to medical condition or mood disorders with psychosis, must be ruled out to confirm the diagnosis. Further investigations such as psychological testing, brain imaging, and lab tests may be used to support the assessment and exclude other causes.

### Schizophrenia: Curable or Incurable Mental Illness?

Currently, schizophrenia is considered not a curable psychiatric disorder, however, it is a treatable and manageable mental health condition. With the advances in neurotropic medications, the right combination of treatments, including antipsychotic medications, psychotherapy, psychosocial support, and lifestyle adjustments, many individuals with schizophrenia can lead stable and fulfilling lives (Seah & Brennan, 2020). A good prognosis in schizophrenia is possible, especially when the condition is identified early and treated consistently. Individuals with strong social support, a sudden onset of symptoms, and good functioning before the illness often respond well to treatment and may experience fewer relapses. On the other hand, an individual who has schizophrenia which is early onset, gradual development of symptoms, and severe negative symptoms like emotional withdrawal or lack of motivation may have a poor outcome. Frequent relapses, nonadherence to treatment and poor response to medication can also contribute. Lack of social support and co-occurring substance abuse worsen the illness. In such cases, long-term disability and reduced quality of life are more likely (Agid, 2024). Certainly, the debilitating symptoms of schizophrenia can significantly impair the ability to form good interpersonal relationships and maintain a healthy marriage.

### Legal Aspects of Schizophrenia

In Malaysia, the Mental Health Act 2001 (MHA, 2001) regulates the care, treatment, protection, and rehabilitation of individuals with schizophrenia and other psychiatric disorders. It came into effect in 2010 and applies to both public and private healthcare facilities. Key provisions of the Act include matters related to voluntary and involuntary admission to psychiatric hospitals or wards; rights of patients, including the right to be informed of their condition and to appeal against detention, the establishment of a Board of Visitors which is responsible for reviewing the conditions and treatment of patients in mental health facilities and legal protections for individuals with psychiatric disorders to ensure humane and ethical treatment. The Act aims to balance the need for treatment with the protection of patients' rights, promoting dignity and appropriate care within the mental healthcare system in Malaysia.

### Comparison between Malaysia and India

An idiot or a lunatic is the term that is used in some jurisdictions to refer to persons suffering from mental illness. In the repealed Indian Lunacy Act 1912, the expression 'lunatic' was defined in section 3(5) as meaning as 'idiot' or 'person of unsound mind'. The definition is very wide in its terms and include a schizophrenic patient.

Unlike India, in Malaysia, there is scarce case law on the issue of schizophrenia being the subject matter for a dissolution of marriage. In the Malaysian case of *Chin Pei Lee v. Yap Kin Choong* [2010] 4 CLJ 843, the plaintiff requested for an order that would exclude her from having to first submit her marital dispute to a conciliatory body for resolution before filing a divorce. The main issue to be resolved in this case was whether the defendant had an incurable mental condition that would disqualify the plaintiff from bringing her

matrimonial dispute before a conciliatory body (Section 106(1)(v) of Act 164). The plaintiff's attorney claimed that the defendant sought medical attention locally at a few private medical facilities, but none of the doctors could determine the nature of his condition or provide a treatment. In general, all doctors agreed that the defendant had either a persistent mental condition or chronic depression. Additionally, the plaintiff's attorney claimed that the defendant's ongoing "illness" had put them both through tremendous suffering. The plaintiff claims that despite the lack of evidence to back up her claim that the defendant is mentally ill, their marriage has irretrievably broken down and cannot be saved because of his sickness. The court ruled that there was insufficient evidence that the defendant had an incurable mental disorder. This decision of this case indicates that courts are serious and thorough in the analysis of mental disorders in marital relationships and that although persistent mental condition or chronic depression is the diagnosis of all doctors who had treated the defendant, the court is of the view that the defendant should not be denied the right to reconciliation process prior to the petition for divorce, as the case does not fall under the concept of incurable mental illness.

### **Concept of Nullity of Marriage and Divorce**

Nullity of marriage is a declaration by a court that the marriage is null, and void and that no valid marriage exists between the partners. In other words, it is a declaration that the said marriage never happened in the first place. However, it must be noted that nullity and divorce are two different terms with huge differences. Nullity of marriage can be divided into two which are void and voidable marriages. This is explained in *De Reneville v De Reneville* [1948] 1 All ER 56, CA, where Lord Greene MR expressed that "A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it; a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction.

The framework set forth by divorce law determines the conditions under which a marriage may be dissolved, and its participants are free to remarry. Several distributional issues, such as marital property, alimony or spousal support, child support, and custody and visitation laws, also arise because of divorce. These issues do not arise in a nullity of marriage.

### **Mental Illness vs Consent for Marriage**

The central legal justification against marrying a mentally ill person is that they might not be able to consent to the union and comprehend the responsibilities of matrimony. Under the Act 164, the only provisions that specifically provides provisions on mental illness or mental incapacity is for nullity of marriage under Section 70 for grounds of voidable marriages under paragraphs (c) and (d) where 'unsoundness of mind' and 'mentally disordered person' are used in the provisions.

Under the Act 164, Section 70(c) provides that a marriage is voidable if either party did not validly consent to the marriage due to duress, mistake, unsoundness of mind or otherwise. Section 70(d) also stipulates that a marriage is voidable if at the time of the marriage either party, though capable of giving valid consent, was (whether continuously or intermittently) a mentally disordered person within the meaning of the Mental Disorders Ordinance 1952 of such kind or to such an extent be unfit for marriage. As of 2023, Malaysia uses the Malaysian Mental Health Act 2001 (replaces Mental Disorders Ordinance 1952) which came into force in 2010 along with the Mental Health Regulations 2010. These two recent statutes provide an updated legal framework in dealing with the delivery of comprehensive care, treatment, control, protection and rehabilitation of those with mental disorders.

Section 2 of the Mental Health Act 2001 provides that "mental disorder" means any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired; and "mentally disordered" shall be construed accordingly. The question is whenever a patient is diagnosed with Schizophrenia, does that mean that the patient automatically will fall under the provision of sections 70(c) or 70(d), hence, enabling the other spouse to petition for a nullity of marriage? It may appear as such, however, upon reading the provision carefully, it is specified that the condition of 'could not validly consent to the marriage' under section 70(c) or 'unfit for a marriage' under section 70(d) must be



established. Hence, it is submitted that a spouse can only initiate a petition for voidable marriage if it can be shown that the schizophrenia patient is ‘unsound of mind’ under section 70(c) or ‘unfit for the marriage’ under section 70(d).

Recent advancements in psychiatric genetics have opened discussions about the potential of genetic testing in forecasting the risk of schizophrenia. While no test can definitively predict schizophrenia, genetic screening can identify vulnerability markers, offering prospective spouses valuable information to make informed decisions. As Appelbaum (2010) notes, possessing genetic risk does not equate to inevitability of illness. Therefore, while genetic testing may aid in risk assessment, it should be complemented by psychological support and non-discriminatory marital policies, hence genetic testing result of positive vulnerability marker of schizophrenia of one spouse should not be a valid grounds of voidable marriage under section 70(d).

In marital law contexts, this insight supports arguments for reforming voidability clauses to reflect evolving psychiatric and genetic understanding. Rather than serving as a barrier, genetic knowledge can empower marital partners to navigate potential future challenges collaboratively.

Malaysian courts have considered the implications of mental illness in nullity cases. In *Tan Ah Thee v Lim Soo Hin* [1993] 1 MLJ 103, the petitioner successfully obtained an annulment of marriage. The court found that the respondent, due to his mental disorder, was incapable of understanding the nature and responsibilities of the marital contract at the time of the marriage. The emphasis was placed on expert psychiatric evidence to establish the respondent's lack of mental capacity.

In contrast, *Re Maria Lourdes’ Petition* [1991] 2 MLJ 416 involved a situation where the respondent was diagnosed with active schizophrenia. The court granted a decree of nullity based on medical testimony that the respondent’s condition was not only present at the time of the marriage but also left him incapable of fulfilling marital obligations. The case highlighted how untreated and severe mental illness can impact a person’s ability to discharge spousal responsibilities.

In a more recent case, *Wong Yee Fong v Saw Mang Yee* [2012] MLJU 1200, the court addressed allegations of mental illness but dismissed the petition for nullity after finding insufficient medical evidence to prove that the respondent was incapable of giving valid consent at the time of marriage. The respondent was functioning in her career and daily life, and there was insufficient medical evidence to prove that she was unfit for marriage under Section 69. As a result, the petition for nullity was dismissed. This judgment reflects the judiciary’s demand for clear, credible, and medically supported claims in mental health-related annulment proceedings.

While all three cases underscore the relevance of mental capacity at the time of marriage, *Tan Ah Thee* focused on cognitive incapacity—specifically the inability to comprehend the nature of the marriage. In contrast, *Re Maria Lourdes’ Petition* emphasized the severity and chronicity of untreated schizophrenia, which rendered the respondent unfit for marital life. The *Wong Yee Fong* case demonstrates judicial restraint in granting nullity, reinforcing the principle that annulments based on mental illness must be substantiated with robust psychiatric evidence.

These decisions collectively reaffirm the critical role of medical expert testimony in substantiating claims, and illustrate the Malaysian judiciary’s nuanced approach to balancing statutory criteria, medical realities, and spousal rights. The courts have shown a willingness to differentiate between temporary emotional distress and clinically diagnosed, incapacitating mental disorders in evaluating the validity of a marriage.

Under the Hindu Marriage Act 1955, prior to the marriage being solemnised, the Hindu Marriage Act 1955 specifies conditions regarding mental disorders under Section 5(ii), including that (a) neither party is incapable of giving valid consent due to unsoundness of mind, and even if they are, (b) they must not have any mental disorders that would make them unfit for marriage and childbearing, and (c) they must not experience recurrent episodes of insanity. It is important to note that the initial provision reads "neither party is an idiot or a lunatic," but that it was altered to the current provision by Marriage Laws (Amendment) Act, 1976 as mentioned earlier.

In the Indian case *Anima Roy v Probodh Mohan Roy* AIR 1962 Cal 533, the court annulled the marriage because the respondent suffered from mental illness that rendered him incapable of consummating the marriage or engaging in normal marital life. This decision illustrates how Indian courts, like Malaysia's, link mental illness with an inability to perform key marital functions.

The Hindu Marriage Act 1955 also contains a provision under Section 12 (1)(c) for the nullity of marriage, i.e., voidable marriage, if the petitioner's consent was obtained by coercion or fraud about the nature of the ceremony or about any significant fact or circumstance involving the respondent. The concealment of a history of mental illness seems to be viewed as fraud under the aforementioned provision. Typically, this leads to action for nullity. In the case of *Sandeep Aggrawal v. Priyanka Aggrawal* (MAT.APP(F.C.) 142/2020, the appellant-husband asserted that his marriage was the consequence of deliberate deception by the wife and her family. They apparently purposely chose not to disclose a crucial fact of information about her mental state. It was alleged that the wife suffered from acute schizophrenia before, during, and after their marriage and while she resided with the appellant-husband. The marriage was dissolved when the High Court of Delhi determined that withholding facts that could have altered the course of a marriage between a husband and wife after 16 years constituted "fraud" as provided under Section 12(1)(c) of the Hindu Marriage Act 1955.

As discussed earlier, recent literatures by Indian writers argue that these laws are outdated and fail to reflect current psychiatric understanding and treatment options. They highlight that many mental disorders are now treatable and that a diagnosis alone should not be the basis for denying someone the right to marry or maintain a marriage. The articles call for legal reform to protect the dignity and marital rights of individuals with mental illnesses (Math, S. B., & Srinivasaraju, R., 2010). Literature also discusses how outdated laws and societal stigma conspire to marginalize individuals with psychiatric conditions. Women with mental disorders, in particular, suffer double discrimination, hence literature calls for reforms that take into account modern psychiatry, ensuring laws are not only medically accurate but also socially just. Hence, the literature emphasizes the need for court systems to assess the impact of mental illness functionally, not solely diagnostically (Kala, A. K., 2015).

The development of the law on nullity of marriage based on the grounds of mental illness is in line with the development in the U.K. In *Sheffield City Council v E* [2004] EWHC 2808 (Fam), a UK family court emphasized that mental illness alone does not render a person incapable of marriage. What is critical is the ability to understand the nature of the contract and its duties. The case involved a woman, E, with moderate learning disabilities and mental health challenges. The issue before the court was whether E had the capacity to marry and consent to sexual relations. The court held that E had sufficient understanding of the nature of marriage and its obligations and therefore had the capacity to marry. The ruling reaffirmed that capacity must be assessed functionally and, on a case-by-case basis.

In contrast, in *Whysall v Whysall* [1959] P 262, the English court granted nullity on the grounds that the respondent's mental condition made him incapable of understanding the obligations of marriage. In that case, the respondent had been suffering from severe schizophrenia that severely impaired his reasoning and judgment. The court ruled that his mental state at the time of marriage was such that he could not understand the duties and responsibilities that marriage entailed, making the marriage voidable.

The intersection between mental health and marital law is both complex and evolving. In Malaysia, the Act 164 includes provisions for the annulment of marriage on grounds of mental disorder. However, with significant advancements in psychiatric treatment, there is an increasing imperative to reconcile legal standards with the rights and capacities of individuals effectively managing mental illness. Comparative perspectives from jurisdictions such as India reflect a similar legal stance on voidable marriages due to mental incapacity, while also signalling a broader international shift toward more compassionate, rights-based approaches. These developments highlight the need for legal frameworks to adapt in a manner that protects vulnerable individuals without reinforcing stigma or overlooking the rehabilitative potential of modern mental healthcare.

## Schizophrenia as a Reason for Divorce?

There is absence of any provision on mental illness as grounds for non-Muslim divorce in Malaysia. Section 54(1)(b) of the Act 164 provides that among the facts that the court would take into regard as proof of marriage breakdown is that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The grounds of mental illness may potentially fall under Section 54(1)(b), depending on the severity of the mental illness of one party in the marriage and only if the non-mental ill spouse could prove that the respondent has behaved in such a way that petitioner cannot reasonably be expected to live with the respondent due to the mental illness, then the petition may be successful.

As discerned in the legal case of *Katz v Katz* [1989] 2 All SA 353, the concept of behaviour transcends a mere situation or mindset, encompassing actions or demeanour undertaken by an individual that exert an influence upon others. Within English Law, two perspectives have emerged, each offering distinct tests to ascertain the nature of the respondent's behaviour. The initial viewpoint mandates that the petitioner establish that said behaviour has reached a threshold whereby it becomes untenable to reasonably expect cohabitation. *Thurlow v Thurlow* [1975] 2 All ER 979 emphasises that mere proof of a dead or impracticable marital union falls short; rather, the petitioner must demonstrate that the respondent's adverse conduct substantiates the petitioner's inability to endure cohabitation.

Contrary to the initial viewpoint, the subsequent viewpoint incorporates an evaluation of the character, disposition, personality, and actions exhibited by both the petitioner and respondent when determining the reasonableness of cohabitation. In this context, three tests have been devised. The reasonable man test, as formulated in *Livingstone Stallard v Livingstone Stallard* [1974] 2 All ER 766, postulates whether an impartial observer of sound judgement would conclude that the respondent's behaviour justifies the petitioner's expectation of an untenable cohabitation, considering the holistic circumstances and the idiosyncrasies of the parties involved.

It is essential to note that it is not the behaviour itself that necessitates being deemed unreasonable, but rather the rational anticipation of further cohabitation. *Hariram Jayaram v Saraswathy Rajahram* [1990] 1 MLJ 114 concludes that the respondent's behaviour did not provide adequate grounds to sustain the petitioner's reasonable expectation of living together. Moreover, the behaviour test demands an assessment not only of the respondent's conduct but also of the character, disposition, personality, and behaviour exhibited by the petitioner, as illustrated by the precedent of *Ash v Ash* [1972] 1 All ER 582. Additionally, it falls within the court's purview to evaluate whether both parties have violated their marital obligations. *Pheasant v Pheasant* [1972] 1 All ER 587 elucidates a scenario wherein the husband alleged a breach of marital obligations due to the wife's failure to exhibit spontaneous demonstrative affection, which, according to his claim, irreparably damaged the marital union. However, the court dismissed this claim, concluding that the wife's behaviour lacked indications of breaching her conjugal responsibilities or significantly contributing to the marriage's deterioration.

Within the Malaysian legal framework, courts have adopted the tests expounded by the second viewpoint. *Joseph Jeganathan v Rosaline Joseph* [1989] 3 MLJ 106 serves as an example, wherein the court evaluated the overall circumstances, character traits, and personalities of the parties involved, considering persistent violent altercations and prolonged absences by the wife. Subsequently, the court ruled that the marriage had indeed deteriorated beyond redemption.

In Malaysia, psychiatric professionals have adopted a range of initiatives to support marriages where one spouse is diagnosed with schizophrenia, with family therapy emerging as a key intervention. These therapies aim to improve communication, foster mutual understanding, and equip family members with effective coping strategies. The Malaysian Ministry of Health's Clinical Practice Guidelines recommend family therapy as part of a comprehensive treatment plan for schizophrenia, recognizing its role in reducing relapse rates and enhancing overall family functioning. Research supports the efficacy of integrative family therapy approaches in managing schizophrenia within the familial context, particularly by strengthening communication, problem-solving, and stress management skills among relatives.

Importantly, involving spouses in the therapeutic process has been shown to improve marital relationships and contribute to better management of the affected partner's condition (Leff & Bentall, 2006). This evidence suggests that family-based interventions can mitigate the emotional and psychological challenges experienced by spouses, thereby potentially reducing the likelihood of divorce on grounds such as irretrievable breakdown of marriage due to the mentally ill spouse's perceived unreasonable behaviour. These interventions also take into account the personalities and shared experiences of both parties, providing a structured environment to foster resilience and emotional adjustment.

While Provencher and Mueser (2007) acknowledge the significant subjective burden faced by spouses—particularly when schizophrenia manifests after the marriage has begun—studies indicate that targeted psychological support can restore relational balance and decrease interpersonal strain (Maqbool et al., 2021). In this regard, proper implementation of family therapy and counselling can play a critical role in reinforcing marital stability and accommodating the complexities of living with schizophrenia (Thirumoorthy et al., 2018), hence, securing the lifelong of the marriage.

The definition and parameters of divorce in a Hindu marriage are set down in Section 13 of the Hindu Marriage Act 1955. Unlike the Malaysian Act 164, mental disorder is recognised as a legal basis for filing a petition for divorce under Section 13(1)(iii). The clause lists two terms along with their corresponding definitions. This can be seen in the section's explanations, where it is stated that under the general term "mental disorder," which includes mental illness, psychopathic disorder, schizophrenia, and incomplete mental development. The term "psychopathic disorder" has also been further subdivided into persistent disorder, abnormal aggression, and seriously irresponsible conduct.

The Supreme Court held in *Narayan v Santhi* 2001, 4 SCC 688 that to brand a wife as unfit for marriage and procreation of children on account of a mental disorder, it needs to be established that the ailment suffered by her is of such a kind or to such an extent that it is impossible for her to lead a normal married life. The unfitness for marriage and procreation of children contemplated here is one arising from mental disorder only, and not on account of any other disorder. Infertility or sterility as such is not a ground for annulment of marriage under Section 12 or for divorce under Section 13. In this case, the respondent was at the time of marriage suffering from schizophrenia. The medical evidence regarding the requisite degree of mental disorder is relevant, though not conclusive. After consulting works on mental health, the Supreme court held that for the purpose of Section 13 (1) (iii) "Schizophrenia is what schizophrenia does." The judgment is significant because it gives importance to the effects and the impact rather than to the mere labelling of mental illness. The court emphasised that each case of schizophrenia must be considered on its own merit.

Other than that, in the landmark case of *Ram Narain Gupta v. Smt. Rameshwari Gupta* (1988) AIR 2260, the Apex Court provided an interpretation of Section 13(1)(iii). According to the Court, the provision in no way gives significance to mental illnesses that are severe enough to constitute a good reason for dissolving a marriage. Instead, the spouse who asserts that the other spouse has a mental disorder must provide evidence that the other spouse has a sufficient level of mental instability.

The Supreme Court ruled in *Sharda v. Dharmapaul* (2003) 4 SCC 493, that each schizophrenia case must be evaluated on its own merits. Medical research on the required level of mental illness is pertinent but not conclusive. The Supreme Court further noted that divorce could not be granted when there was sufficient evidence for the court to determine that the wife's minor mental disease was not of a kind and to such an extent that the husband could not reasonably be expected to live with her. These inferences have significance because they place more emphasis on the consequences and impacts than they do on the simple labelling of mental illness.

Subsequently, a notable change in India's long-standing Hindu marriage law has resulted from the Supreme Court of India's decision in the case of *Kollam Chandra Sekhar vs Kollam Padma Latha* (2013) AIR SCW 5559. The fact that schizophrenia does not qualify as grounds for divorce for a man, the court made clear how crucial it is to assess the severity of mental illness in these kinds of situations. While dismissing the husband's appeal in this case, the court urged him to treat his wife properly if he believes she needs it. Instead of issuing a



divorce decree under Section 13 of the Act, the Court granted the petition for restitution of conjugal rights stipulated in Section 9 of the Act.

Judicial experiences in both Malaysia and Singapore indicate that the presence of a medically diagnosed mental illness does not, in itself, constitute definitive grounds for divorce. Rather, the key determinant is whether the illness renders it unreasonable to expect the parties to continue living together. This expectation, however, can be mitigated by supportive interventions such as family therapy, which may improve relational dynamics and reduce the perceived hardship of cohabitation with a mentally ill spouse.

### **Rights of a Schizophrenic Spouse: An Evaluation**

For spouses who are suffering from schizophrenia to have their rights upheld, the general concept of non-discrimination is essential and protected under the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of Persons with Disabilities (CRPD). The most fundamental right of PSSDs—the right to freedom from arbitrary discrimination—is derived from the non-discrimination principle. The UN Committee on the Rights of Persons with Disabilities' observation that states are required by the principle of non-discrimination to treat people with special needs in a way appropriate to their condition is highly significant for the consideration of the marital status of schizophrenic spouse.

Most patients with mental illness can give consent for marriage and even patients with most psychotic illness can give consent when they do not have acute symptoms. Traditional legal frameworks often treat mental illness as a condition that inherently compromises legal capacity, particularly in cases involving psychotic disorders such as schizophrenia. However, emerging literature challenges this assumption. Most individuals with mental illness, including those with psychotic symptoms, can understand the nature and consequences of marriage during periods of remission. The broad categorization of mental illness as a disqualifier for marriage is being criticised and the necessity of individualized functional assessments is very much emphasised (Nambi, 2005). Supporting this viewpoint, a study established substantial number of patients with psychosis demonstrated retained decisional capacity. The study underscored that legal capacity should not be presumed absent solely based on diagnosis; rather, it should be assessed based on the person's actual cognitive and functional ability at the relevant time (Thirumorthy et al., 2025).

These findings contribute to a growing body of evidence advocating for nuanced legal standards that align with psychiatric realities. They reinforce the idea that mental illness does not automatically equate to incapacity and that many patients, even those with serious mental disorders, can validly consent to marriage when they are not experiencing acute symptoms.

This perspective is aligned with functional models of capacity assessment used in many jurisdictions, where the ability to understand, retain, and weigh relevant information is the determining factor. Legal reforms in line with this approach may promote greater autonomy and protection of the rights of individuals living with mental illness. Consent for marriage can be taken over an extended period before marriage. In the case of a person with mental illness, it would be most unlikely that the person would have been acutely disturbed over an extended period to be unfit to give valid consent. Although many physical illnesses are very serious and disabling, but they are not included in the restrictive conditions of marriage. Since in present times effective treatments are available for mental illnesses and most mental disorders have good prognosis, patients with mental illness have a right to marry and live a life of dignity. Depriving mental patients, the right to marry would be a violation of human rights.

### **CONCLUSION**

The status of being single, divorced, or legally separated has a negative impact on the prognosis of the mental disease. Unmarried, divorced, or separated women who have serious mental illness are a significant public health issue. In India, research shows that schizophrenic patients living with spouses were associated with better outcomes, while schizophrenic patients living independently had the highest symptom severity and lowest functioning (Ang, M.S., Rekhi, G. & Lee, J., 2021). Marriage is widely believed to be a cure for many

types of mental disorders as it grants a support system that helps individuals rise above certain life stressors (Behere, P.B., Mulmule A.N., et.al., 2021) Although there appears to be scarce case laws in Malaysia regarding dissolution of marriage due to schizophrenia suffered by either spouse in a marriage, however, this does not indicate that this is not a current raising issue amongst the non-Muslims, as the case may have been resolved via mutual consent (section 52 of the Act 164) due to the taboo arising from this sensitive mental health issue. Hence, legal fair approach towards the marital status of schizophrenic spouses would aid in greatly reducing the stigma associated with mental diseases and assist them for management of their mental condition.

## ACKNOWLEDGEMENT

The authors would like to thank UTM.

## FUNDING

There is no funding for writing this article.

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