

RAM NARAIN GUPTA
v.
SMT. RAMESHWARI GUPTA

SEPTEMBER 12, 1988

[A.P. SEN AND M.N. VENKATACHALIAH, JJ.]

Hindu Marriage Act, 1955—Section 13(1)(iii)—Dissolution of marriage—All mental disorders not recognised as grounds for grant of decree—Degree of severity or acuteness of—To be proved—Burden of proof on the spouse who alleges—Mere branding of a person as Schizophrenic not enough.

The appellant and respondent married in 1977. In 1983, the appellant filed a suit for dissolution of the marriage, alleging that his wife was suffering from severe mental disorder, psychiatrically recognised as 'Schizophrenia' which rendered her unsociable and despite competent professional treatment, her condition deteriorated to the point of making manifest in her suicidal tendencies and aggressive violent behaviour towards others. The appellant could not therefore reasonably be expected to live with the respondent as man and wife.

The Respondent denied the imputation of insanity and contended that the appellant was determined to get rid of her, as a result of the domestic discord between her and the appellant's mother and sister. Both the husband and the wife gave evidence, to prove their respective cases. Other witnesses were also examined. The respondent-wife produced a copy of the order passed by the Magistrate in proceedings initiated by the appellant under the Lunacy Act, for the committal of his wife to a mental asylum. The order stated that there was no abnormality in her, requiring institutional treatment.

On appreciation of the evidence, the trial court accepted the case of the appellant and granted a decree for dissolution of the marriage.

The Respondent-wife appealed to the High Court. Allowing the appeal, the High Court reversed the decree of dissolution of marriage, granted by the trial court. It held that the appellant had not shown that his wife's mental illness was so intense as to justify a reasonable apprehension that it would be impossible or unsafe for the appellant to live with her.

A In the present appeal before this Court, it was contended on behalf of the appellant that in assessing the reasonableness of the husband's apprehension that he could not be expected to spend the rest of his life with a 'Schizophrenic', due acknowledgement required to be made to his subjective susceptibilities also.

B Dismissing the appeal,

C HELD: 1.1 Section 13(1)(iii) does not make the mere existence of a mental disorder of any degree sufficient to justify the dissolution of a marriage. The burden of proof of the existence of the requisite degree of mental disorder is on the spouse basing the claim on that state of facts. The context in which the ideas of unsoundness of 'mind' and 'mental-disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental-disorder'. Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. [921C-H; 922A]

D 1.2 Schizophrenia is said to be a difficult mental-affliction. It is insidious in its onset and has hereditary pre-disposing factor. Each case of Schizophrenia has to be considered on its own merits. Mere branding of a person as Schizophrenic will not suffice. For purpose of Sec. 13(1)(iii) Schizophrenia is what Schizophrenia does. Not all Schizophrenics are characterised by the same intensity of the disease. [924D; 928D]

F 2. In the instant case, taking into account the facts and circumstances the High Court, on a reasonable assessment of the situation, rightly came to the conclusion that the requisite degree of the mental-disorder which alone would justify dissolution of marriage has not been established and that the decree for the dissolution of the marriage, granted by the trial court was not justified. [917C-D]

Rita Roy v. Sitesh Chandra, AIR 1982 Cal 138, approved.

G *McLoughin v. O'Brian*, [1982] 2 All ER 298; *Bennett v. Bennett*, [1969] 1 All ER 539, relied on.

H John Searle 'Minds, Brains and Science' [1984] Reith Lectures, PP. 10 & 11, *Concise Medical Dictionary*, p. 566, Oxford Medical Publications, 1980, *Philosophy and Medicine*, Vol. 5, p.x. F.C. Redlich and Daniel X. Freedman. 'The Theory and Practice of Psychiatry' [1966] Edn. William Alanson White, New York, 'The Autobiography of

a Purpose'—Doubleday & Co. 1938 p. 53, Karl Menninger '*Communication and Mental Health*', *The Menninger Quarterly*, [1962], p. 1., Richard C. Allen, Elyce Zennott Ferster, Jassee C. Rubin '*Readings in Law and Psychiatry*', Revised & Expanded edn. (1975), p. 38 relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2377 of 1987.

From the Judgment and Order dated 29.10.1986 of the Allahabad High Court in F.A. No. 493 of 1984.

J.P. Goyal, Rajesh and V.K. Verma for the Appellant.

Mrs. Rani Chhabra for the Respondent.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. This appeal, in a matrimonial cause, is by the husband, and is directed against the Judgment and Decree, dated 29.10.1986, of High Court of Allahabad in First Appeal No. 493 of 1984, allowing the Respondent-wife's appeal and reversing the decree of dissolution of marriage dated 31.7.1984 granted by the Second Additional District Judge, Jhansi, in Original Suit No. 34 of 1983 of his file.

Appellant's suit for a decree of dissolution of his marriage with the respondent on the ground envisaged in Section 13(1)(iii) of the Hindu Marriage Act, 1955 (Act) that respondent suffered from a mental-disorder of such a kind that rendered Respondent unfit for married-life and that petitioner could not reasonably be expected to live with her had been decreed by the Court of first instance but dismissed by the High Court in appeal. Appellant-husband has come-up by Special Leave.

2. The marriage between appellant, Ram Narain Gupta, and respondent, Rameshwari Gupta, was solemnised on 17.6.1979 at Jhansi. The suit for the dissolution of the marriage was filed on 14.7.1983 on the allegation that the wife was a schizophrenic. The High Court, while holding it probable that the wife did suffer from some such mental-disorder, however, was persuaded to the view that appellant had not established the requisite extent and degree of the mental-disorder recognised by law as constituting a legal justification for the dissolution of the marriage. In the suit appellant had also

A alleged that the respondent was of unsound mind even before the marriage and that this fact had been concealed from him at the time of the marriage. This alternative case that the marriage was itself induced by the suppression of the material facts pertaining to the mental-state of the bride and that, accordingly, the marriage required to be annulled was, however, not pressed before the High Court.

B

3. In his suit appellant pleaded that the respondent suffered from a mental-disorder, psychiatrically recognised as 'schizophrenia', which was of such severity as to render Respondent unsociable and given to violent propensities, that the wife had been treated by the doctors at the Department of Psychiatry at the Medical College, Jhansi, and that despite competent professional treatment the mental condition of respondent continued to deteriorate to the point of making manifest in her suicidal tendencies and aggressive violent behaviour towards others. Appellant, therefore, averred that the mental-disorder of the respondent was of such a kind and to such extent that appellant could not reasonably be expected to live with respondent as man and wife.

D

Respondent in her written-statement denied the imputation of insanity and commission of several overt acts indicative of mental-disorder alleged against her and contended that appellant's determination to get rid of her was attributable to the domestic discord between her on the one side and the mother and sisters of the appellant on the other. Indeed, she also entered the witness-box to testify to and substantiate her defence. She was subjected to searching cross-examination.

E

4. The Trial Court framed the necessary and material issues stemming from the pleadings. On his side, appellant called a certain Dr. Ganesh Datt Shukla, (PW. 1) Head of the Deptt. of Psychiatry, Maharani Laxmi Bai Medical College to support his version. Appellant himself tendered evidence as PW 2. He also examined a certain Gyasi Ram (PW 3) said to be an artisan who claimed that during one of his visits to appellant's house for some odd job, he had seen respondent beating-up small children and conducting herself in a disorderly manner. Appellant also called a certain Janki Prasad (PW 4) said to be the private-home-teacher of appellant's nephews. PW 4 spoke to what, according to him, were oddities in the behaviour of the respondent and of her violent propensities. Appellant in order to show that Respondent was a violent—lunatic relied upon the medical-certificates at Exhibits P3, P4 and A2,—the first two issued by PW 1 and the third by

F

G

H

a certain Dr. S.A. Khan. Appellant also relied upon certain incidents which occurred on 1.7.1983 in which the respondent is alleged to have exhibited unprovoked violence towards appellant's sisters and inflicted injuries on their person.

A

The respondent-wife, as stated earlier, tendered evidence as DW 1. She also produced a copy of the order passed by the Magistrate in proceedings under the Lunacy Act initiated by the appellant for her committal to a mental-asylum. In those proceedings, it would appear, the Magistrate, after examining the respondent, is stated to have found no abnormality in her, requiring institutionalised treatment.

B

5. The trial court on an appreciation of the evidence accepted appellant's case and recorded a finding that respondent was afflicted with schizophrenia which was dangerous for her as well as for those who lived with her and granted a decree for the dissolution of the marriage. This decree, as stated earlier, has been reversed by the High Court.

C

The point that commended itself to the High Court was that though the evidence indicated the possibility of some mental-disorder, however, the requirement of the law as to the existence of the requisite degree and the nature of the disorder that could alone justify a reasonable apprehension in the mind of the appellant that he could not live with the respondent-wife had not been established. This implied that the High Court partly accepted the appellant's case that respondent did suffer from a mental-disorder which in this case was described as schizophrenia. The High Court stated:

D

E

"The case of the plaintiff is that the defendant remained under the treatment of the psychiatrist Dr. G.D. Shukla, in Maharani Laxmi Bai Medical College, Jhansi, Exts. 1 and 2 are the prescription and discharge certificates issued by Dr. G.D. Shukla, Ext. 4, is the medical certificate dated 18.5.1983, which was issued by Dr. Shukla, in which he certified that the defendant suffered from schizophrenia since 26th March, 1983. There is no counter certificate of any expert from the side of the defendant. I, therefore, do not see any cogent reason to brush aside this certificate of Dr. G.D. Shukla, who examined himself as P.W. 1."

F

G

The High Court proceeded to refer to certain medical literature

H

- A on 'schizophrenia' and felt persuaded to the view that having regard to the various kinds of schizophrenia or rather the various ways in which that mental illness is known to manifest itself, it would be necessary for the appellant to go further and establish the degree and severity of the mental illness which would alone satisfy the requirement of the ground for dissolution of marriage envisaged in Section 13(1)(iii) of the Act.
- B In substance, the High Court held that appellant had not shown that the mental-illness of the wife was of such a kind and intensity as to justify a reasonable apprehension that it would not be possible or safe for appellant to live with the respondent.

The High Court posited the proposition which required its consideration thus:

- C "So it is only when the schizophrenia is of the third variety i.e. catatonia, that the patient is in a state of wild excitement destructive violent and abusive.

- D Let us see whether the defendant suffers from schizophrenia and whether there is any unassailable and cogent evidence to establish that the schizophrenia is of third variety, namely, catatonia, when the patient becomes destructive, wild and abusive."

- E Dealing with this, High Court noticed what according to it were certain shifts in emphasis in the two certificates Exhibit 4 dated 18.5.1983 and Exhibit 3 dated 2.7.1983 issued by P.W. 1. High Court noticed that while the earlier certificate dated 18.5.1983 did not contain any specific reference to the severity of the disease or to the violent propensities attributed to respondent which tended to endanger safety of others, the later certificate dated 2.7.1983, however, sought to supply this element. The High Court also noticed certain events of 1.7.1983, in the wake of which the certificate Exhibit-3 dated 2.7.1983 came into existence. High Court referred to the evidence on record which disclosed that at 11.45 AM on 1.7.1983, respondent-wife had lodged the first-information, as per Exhibit 11,
- G with the jurisdictional police complaining that she had been assaulted, first, by her husband's nephew and then by the members of the family of the appellant. She also had occasion to complain that appellant's mother, sisters etc. had threatened to extinguish respondent's life by setting her ablaze.

- H The attempt on the part of the appellant, the High Court

noticed, to commit her to an asylum was made on the very next day viz., 2.7.83. The medical certificate ex. 3 is also of that date. The Magistrate who was moved by the appellant under the provisions of the Lunacy Act rejected the application observing that respondent whom he had occasion to examine talked "in a sensible manner and is not at all hostile."

Referring to the setting in which Dr. Shukla's (PW. 1) certificate dated 2.7.1983 was required to be appreciated the High Court observed:

"..... The second certificate (Ext. 3) by Dr. G.D. Shukla dated 2nd July, 1983, has to be seen in the sequence of the above events. There is nothing on record to show that the defendant lodged false report with the police in the morning of 1st July, 1983, against the plaintiff *inter alia*. It is after the said report was lodged the plaintiff made efforts to collect all the evidence with the aim of sending the defendant to the mental asylum and filed the suit for dissolution of marriage by the decree of divorce. The above evidence were collected in quick succession. Keeping in view the above events, the reliability of the second medical certificate (ext. 3) dated 2.7.1983 has to be tested"

"..... Neither in the first certificate (Ext. 4) nor in the second certificate (Ext. 3) Dr. G.D. Shukla stated that the schizophrenia, the defendant is suffering from, was of the third variety, namely, Catatonia, when the patient becomes wild, destructive and violent. In this statement also, Dr. G.D. Shukla (PW. 1) does not state that the schizophrenia was of Catatonia variety. He does not say even a word about the danger, arising from the mental disorder of the defendant. The certificate Ext. 3 does not bear the thumb impression or signature of the defendant and, therefore, it cannot be said with certainty that the said certificate was issued by Dr. G.D. Shukla after having examined the defendant."

6. The High Court also evaluated the evidence of PW 3 & 4 and pointed out the intrinsic improbabilities of the evidence and the consequent unacceptability of their versions. The High Court, in particular, noticed that PW 4 in his cross-examination "expressed total inability to give description of the defendant's Physique i.e. her complexion,

A height etc.” The High Court observed:

“ The inability of this witness in giving the physical description of the defendant shows that his entire statement is tutored one. This is the state of affairs of the evidence of the plaintiff.”

B

7. The High Court also referred to the respondent’s grievance that the environment of hostility and harassment to which she was subjected by appellant’s parent and sisters etc. had taken its toll and rendered her apprehensive and irritable. High Court observed:

C

“ Cruelty inflicted by the in-laws culminated in the first information report which the defendant lodged in the morning of 1st July, 1983, for which no convincing evidence has been given by the plaintiff that the said report was false and that was filed by the defendant without any grave provocation. The case of the defendant is that the ill-treatment extended to her by her in-laws throughout right from the time of marriage told upon her mental state and she became very irritable and apprehensive. The case of the defendant has to be seen in this background.”

D

Concluding the High Court said:

E

“ I accept the contention of learned counsel for the defendant-appellant that the decree of the divorce cannot be sustained, as the plaintiff failed to adduce any evidence that could prove beyond reasonable doubt that the mental disorder of the defendant was of such a kind and to such an extent that the plaintiff cannot live safely with the defendant.”

F

G

H

8. Shri Goel, learned senior counsel appearing in support of the appeal, assailed the correctness of the approach of and the conclusions reached by the High Court. Learned counsel submitted that the High Court having, on the basis of overwhelming medical evidence, rightly accepted that part of the appellant’s case that the respondent did suffer from ‘schizophrenia’, however, fell into an error in weighing the possible manifestation of that insidious disease in golden scales and in its conclusion that appellant could yet live with her. Learned counsel submitted that if the evidence of the conduct of the respondent is assessed in the background of the fact that she was a confirmed

'schizophrenic', there would be no room for any speculative allowance to be made for any possibility of any alternative hypothesis for that behaviour. Learned counsel submitted that in assessing the reasonableness of the apprehension of the husband that he could not be expected to spend the rest of his life with a 'schizophrenic', due acknowledgment had to be made to the subjective susceptibilities of the husband also. Smt. Rani Chhabra for the respondent, however, sought to support the judgment under appeal. A
B

9. The point, however, to note is that Section 13(1)(iii) does not make the mere existence of a mental-disorder of any degree sufficient in law to justify the dissolution of a marriage. Section 13(1)(iii) provides: C

"Sec. 13. Divorce: (1) Any marriage solemnised, 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 the ground that the other party— D

(i)]

(ii)]Omitted as unnecessary

(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. E

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;" F

(b) Omitted as unnecessary. G

(Emphasis Supplied)

10. The context in which the ideas of unsoundness of 'mind' and 'mental-disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental-dis- H

A order'. Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of Decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.

B The answer to the apparently simple—and perhaps misleading—question as to “who is normal?” runs inevitably into philosophical thickets of the concept of mental normalcy and as involved therein, of the ‘mind’ itself. These concepts of ‘mind’, ‘mental-phenomena’ etc., are more known than understood and the theories of “mind” and “mentation” do not indicate any internal consistency, let alone validity, of their basic ideas. Theories of ‘mind’ with cognate ideas of
C ‘perception’ and ‘consciousness’ encompass a wide range of thoughts, more ontological than epistemological. Theories of mental phenomena are diverse and include the dualist concept—shared by Descartes and Sigmund Freud—of the separateness of the existence of the physical or the material world as distinguished from the non-
D material mental-world with its existence only spatially and not temporally. There is, again, the theory which stresses the neurological basis of the ‘mental phenomenon’ by asserting the functional correlation of the neuronal arrangements of the brain with mental phenomena. The ‘behaviourist’—tradition, on the other hand, interprets all reference to mind as ‘constructs’ out of behaviour. “Functionalism”, however, seems to assert that mind is the logical or functional state of physical systems. But all theories seem to recognise, in varying degrees, that the psychometric control over the mind operates at a level not yet fully taught to science. When a person is oppressed by intense and seemingly insoluble moral dilemmas, or when grief of loss of dear ones etch away all the bright colours of life, or where a broken-
E marriage brings with it the loss of emotional-security what standards of normalcy of behaviour could be formulated and applied? The arcane infallibility of science has not fully pervaded the study of the non-
F material dimensions of ‘being’.

G Speaking of the indisposition of science towards this study, a learned author says:

H “ We have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in the seventeenth century. Descartes divided the world into two kinds of substances; mental substances and physical substances. Physi-

cal substances were the proper domain of science and mental substances were the property of religion. Something of an acceptance of this division exists even to the present day. So, for example, consciousness and subjectivity are often regarded as unsuitable topics for science. And this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation."

A

B

C

"... the use of the noun 'mind' is dangerously inhabited by the ghosts of old philosophical theories. It is very difficult to resist the idea that the mind is a kind of a thing, or at least an arena, or at least some kind of black box in which all of these mental processes occur."

D

(See: John Searle "Minds, Brains And Science" 1984 Reith Lectures, p. 10 & 11)

Lord Wilberforce, referring to the psychological basis of physical illness said that the area of ignorance of the body-mind relation seems to expand with that of knowledge. In *McLoughlin v. O'Brian*, [1983] 1 Law Reports 410 at 418 the learned Lord said, though in a different context:

E

"..... Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact. It is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the courts

F

G

But the illnesses that are called 'mental' are kept distinguished from those that ail the 'body' in a fundamental way. In "Philosophy

H

A and Medicine", Vol. 5 at page-X the learned Editor refers to what distinguishes the two qualitatively:

..... Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears, obsessions, compulsions, and anxieties

B

“.... This is captured in part by the language we use in describing the mentally ill. One *is* an hysteric, *is* a neurotic, *is* an obsessive, *is* a schizophrenic, *is* a manic-depressive. On the other hand, one *has* heart disease, *has* cancer, *has* the flu, *has* malaria, *has* smallpox

C

(emphasis supplied)

12. 'Schizophrenia', it is true, is said to be difficult mental-affliction. It is said to be insidious in its onset and has hereditary pre-disposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid-states, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

E

"Schizophrenia" is described thus:

"A severe mental disorder (or group of disorders) characterized by a disintegration of the process of thinking, of contact with reality, and of emotional responsiveness. Delusions and hallucinations (especially of voices) are usual features, and the patient usually feels that his thoughts, sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal ineffectiveness are the major changes; hebephrenic, which starts in adolescence or young adulthood (see hebephrenia); paranoid; characterized by prominent delusion; and catatonic, with marked motor disturbances (See catatonia).

F

G

H

Schizophrenia commonly—but not inevitably—runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation, and environmental stress can precipitate illness.” (See Concise Medical Dictionary at page 566: Oxford Medical Publications, 1980)

A

B

But the point to note and emphasise is that the personality-disintegration that characterises this illness may be of varying degrees. Not all schizophrenics are characterised by the same intensity of the disease. F.C. Redlich & Daniel X. Freedman in “The Theory and Practice of Psychiatry” (1966 Edn.) say:

C

“..... Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living

D

(p. 252)

“Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to nondeliberate but none-the-less favourable psychosocial stimuli other than specific therapeutic activity”

E

(p. 465)

(Emphasis Supplied).

F

13. The reasoning of the High Court is that the requisite degree of the mental disorder which alone would justify dissolution of the marriage has not been established. This, it seems to us, to be not an unreasonable assessment of the situation—strong arguments of the Sri Goel to the contrary notwithstanding.

G

The High Court referred to and relied upon the decision of the Calcutta High Court in *Smt. Rita Roy v. Sitesh Chandra*, AIR 1982 (Cal.) 138. In that case the Division Bench of the Calcutta High Court observed:

H

A “ each case of schizophrenia has to be considered on its own merits ”

B “ According to the aforesaid clause (iii), two elements are necessary to get a decree. The party concerned must be of unsound mind or intermittently suffering from schizophrenia or mental disorder. At the same time that disease must be of such a kind and of such an extent that the other party cannot reasonably be expected to live with her. So only one element of that clause is insufficient to grant a decree.”

C Considering the evidence in that case, the High Court reached the conclusion:

D “ We are clearly of the opinion that she only has slight mental disorder and she has been suffering intermittently from the same. But after considering the totality of the evidence and the impact on the husband, we must hold that such mental disorder is not of such a kind and to such an extent that the husband cannot reasonably be expected to live with her, within the meaning of the second portion of clause (iii) of Sec. 13(1) of the Act ”

E We approve this approach of the High Court of Calcutta. Indeed, the following observations of Ormrod J. in *Bennett v. Bennett*, [1969] 1 All E.R. 539 with reference to ‘mental-disorder’ in Section 4 of the Mental Health Act, 1959, are opposite in the context of Sec. 13(1)(iii) of the ‘Act’:

F “ Now, the definition of ‘mental disorder’ in sec. 4 of the Mental Health Act, 1959, is in very wide language indeed. It includes mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind and so, for the moment to turn to medical language it clearly includes, or one would suppose it clearly includes, not only psychotic illness but neurotic illnesses as well and thus begins by enormously enlarging the field. The way in which this very large field is cut down in the Act of 1965, s. 9(1)(b), is by the use of this phrase “of such a kind or to such an extent as to be unfitted for marriage and the procreation of children.”

H

The burden of proof of the existence of the requisite degree of mental disorder is on the spouse basing the claim on that state of facts.

A

14. Indeed the caution of a learned author against too readily giving a name to a thing is worth recalling:

“Giving something a name seems to have a deadening influence upon all our relations to it. It brings matter to a finality. Nothing further seems to need to be done. The disease has been identified. The necessity for further understanding of it has ceased to exist.” (See “The Autobiography of a purpose”: William Alanson White New York: Double-day & Co., 1938, p. 53)

B

C

It is precisely for this reason that a learned authority on mental health saw wisdom in eschewing the mere choice of words and the hollowness they would bring with them. He said:

“I do not use the word ‘schizophrenia’ because I do not think any such disease exists I know it means widely different things to different people. With a number of other psychiatrists, I hold that the words ‘neurosis’, ‘psychoneurosis’, ‘psychopathic personality’, and the like, are similarly valueless. I do not use them, and I try to prevent my students from using them, although the latter effort is almost futile once the psychiatrist discovers how conveniently ambiguous these terms really are”

D

E

“In general, we hold that mental illness should be thought and spoken of less in terms of disease entities than in terms of personality disorganization. We can precisely define organization and disorganization; we cannot precisely define disease”

F

“Of course, one can describe a ‘manic’ or a ‘depressed’ or a ‘schizophrenic’ constellation of symptoms, but what is most important about this constellation in each case? Not, we think, its curious external form, but rather what it indicates in regard to the process of disorganization and reorganization of a personality which is in a fluctuant state of attempted adjustment to environmental reality. Is the imbalance increasing or decreasing? To what is the stress related? What psychological factors are accessible to ex-

G

H

A *ternal modification? What latent capacities for satisfaction in work, play, love, creativity, are discoverable for therapeutic planning? And this is language that can be understood. It is practical language and not language of incantation and exorcism."*

(Emphasis Supplied)

B (See Karl Menninger, "Communication and Mental Health", "The Menninger Quarterly (1962) p. 1—Readings in Law and Psychiatry: Richard C. Allen, Elyce Zenott Ferster, Jesse C. Rubin: Revised & Expanded Edn. 1975: page 38).

C 15. This medical-concern against too readily reducing a human being into a functional non-entity and as a negative-unit in family or society is law's concern also and is reflected, at least partially, in the requirements of Section 13(1)(iii). In the last analysis, the mere branding of a person as schizophrenic will not suffice. For purposes of Section 13(1)(iii) 'schizophrenia' is what Schizophrenia does.

D The appeal is dismissed. There will be no order as to costs.

G.N.

Appeal dismissed.