Madhya Pradesh High Court
Smt. Alka Sharma vs Abhinesh Chandra Sharma on 4 February, 1991
Equivalent citations: AIR 1991 MP 205, I (1992) DMC 96, 1991 (0) MPLJ 625
Author: D Dharmadhikari
Bench: D Dharmadhikari
JUDGMENT D.M. Dharmadhikari, J.

1. This is an appeal by the wife/respondent under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), against the decree dated 5-5-89 passed by the Court of Second Additional Judge to the Court of District Judge, Raipur, declaring her marriage with the respondent/ wife as nullity under Section 12(1)(b) and (c) of the Act. By the judgment and decree under appeal, the trial Court accepted the case of the husband/ plaintiff that the wife was suffering from the mental disorder of the type 'schizophrenia' at the time of their marriage.

2. The facts not in dispute are that the parties were married on 22-5-1986. They lived together immediately after the marriage between 23-5-1986 and 4-6-1986 for about 12 days in the first instance. Thereafter the wife had gone back to her parents for a few days and they again in the second period lived together between 13-7-86 and 20-7-86 for about seven days. The total stay of the wife with the husband was thus nineteen days. The petition under Section 12 of the Act for declaring the marriage as nullity was filed by the husband within one year of the marriage i.e. on 1-9-1986. It may be mentioned that the petition for grant of a decree of nullity of a voidable marriage can be filed only within one year from the date of the marriage and not thereafter under Section 12(a)(i) and (ii) of the Act. Petition for divorce on the ground of mental disorder under Section 13(1)(iii) of the Act, cannot be filed within one year, but can be filed only after one year of the marriage in accordance with Section 14(1) of the Act.

3. The case of the husband as pleaded in the petition and sought to be proved by evidence in support thereof was that soon after the marriage, that is, on honey-moon night itself, he discovered that the wife was abnormal and erratic in behaviour. She refused sexual intercourse on the very first night and showed all signs of a person not mentally sound. It was also stated that during her second visit, on one occasion she became extermely uncontrollable and violent so much so that a psychiatrist had to be called to examine her who confirmed that the wife was a mental case of schizophrenia and she had been under his treatment since before her marriage.

4. The wife denied all the allegations made against her of abnormal behaviour and that she had ever suffered from any mental disorder called 'schizophrenia'.

5. The trial Court found the testimony of the husband examined as P.W. 1, supported by the testimony of his mother Smt. Shanta Sharma (P.W. 2), his brother Dr. S. K. Sharma (P.W. 3) and Dr. P. N. Shukla, Psychiatrist (P.W. 4) as worthy of acceptance and granted the decree declaring the marriage as nullity.

6. In this appeal by the wife, before discussion of evidence on record, let me clear the legal ground in the light of rival submissions made by the counsel for the parties, on the proper interpretation of the

provisions of the Act.

7. Section 12 of the Act is a provision in respect of voidable marriage and contains grounds on which a marriage can be annulled by a decree of nullity at the instance of either of the parties to the marriage. Section 12(1)(b)and (c) of the Act, which has been pressed into service by the husband for claiming a decree of nullity of their mariage, is in the following terms:--

"12.(1) Voidable marriage.-- 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 :--

(a) that.....

(b) that the marriage is in contravention of the conditions specified in Clause (ii) of Section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or to any material fact or circumstance concerning the respondent."

As quoted above, Section 12(1)(b) refers to Section 5(ii) of the Act. Section 5 contains conditions for a valid marriage between two Hindus. Section 5(ii)(b), on which the husband has based his case for obtaining a decree of nullity, reads as under:--

"5. Ceremonies for 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 procreation of children; or"

(underlined by me for the purpose of emphasis and for its proper construction in this case).

7A. Learned counsel appearing for the wife,. putting a construction on the above provisions of Section 5(ii)(b) of the Act submitted that in order to get a decree of nullity under Section 12(1)(b) for contravention of the conditions should co-exist with regard to the other spouse, that is, there should be a mental disorder of a serious nature so much so that the person is both unfit for marriage as also procreation of children. On behalf of the wife it was contended that in the present case there was

absolutely no evidence to show that the alleged mental disorder of the wife was such that she could not procreate children. The counsel, therefore, submitted that the trial Court committed serious error in granting a decree of nullity under Section 12(b) read with Section 5(ii) of the Act. Learned counsel appearing for the wife could not cite any case in support of the construction he has placed on the provisions of Section 5(ii)(b) of the Act.

8. Learned counsel appearing for the husband placed a different construction on the provisions of Section 5(ii)(b) of the Act and stated that the word 'and' between the words 'unfit for marriage and procreation of children' should be read as 'or' which is permissible as a settled canon of construction of statutes if such substitute 'or' and 'and' is susceptible to the subject and context of the legislation. Reference is made to the Principles of Statutory Interpretation by G. P. Singh, Fourth Edition at pages 250 and 251, particularly the following passage therein :--

"The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by SCRUTTON, L.J. "You do sometimes read 'or' as 'and' in a statute. But, you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. And as pointed out by Lord Halsbury the reading of 'or' as 'and' is not to be resorted to "unless some other part of the same statute or the clear intention of it requires to be done." But if the literal reading cf the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear."

9. Learned counsel appearing for the husband submitted that the mental disorder in a spouse is a condition which makes him/her both unfit for marriage as also for the procreation of children and, therefore, if any one of the two conditions exists, it should furnish a good ground for seeking a decree of -nullity of marriage. There is no reported case of this Court brought to my notice to assist me in proper interpretation of Section 5(ii)(b) of the Act and, therefore, I venture to construe it in the best possible manner to effectuate the intention of the Legislature and for fulfilling the purpose of the provisions.

10. I have to keep in mind that Marriage Laws (Amendment) Act, 66 of 1976 has introduced farreaching changes in the original Act of 1955 and the provisions regulating the relationship of marriage between the Hindus has been, to a very large extent, liberalised, keeping in view the recent modern trends on the subject all over the world. The orthodox concept of unbreakable marriage tie between two Hindus based on 'Sanskara' has to a very large extent modulated because it resulted, sometimes, in extreme hardship and tragedy to the party suffered or aggrieved due to the serious handicap or position of the opposite party. The original Sub-clause (b) of Clause (ii) of Section 5 prior to its amendment by the Act No. 68 of 1976 was as under:--

"Neither party is an idiot or lunatic at the time of marriage."

Sound mental condition of the spouses is prerequisite for solemnization of a valid marriage under Section 5(ii)(b) of the Act. By the use of the expression 'mental disroder' some minor idiosyncracies

or minor abnormal behaviour is not meant to disqualify a partner because from strict medical point of view, no human being is hundred per cent normal. It is, therefore, a mental disorder of a sufficiently grave and serious nature as will make marriage relationship hazardous, is only taken as a disqualifying factor for a valid marriage between the parties. The expression 'mental disorder' has not been defined in Section 5 of the Act, but aid can be taken of the provisions of Section 13(1)(iii) read with explanation (a) of the Act which provides for mental disorders of specified types as good grounds for a decree of divorce:--

"13. (1) Divorce.-- 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 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 a 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;"

11, The assistance of provision of Section 13(1)(iii) explanation (a) can reasonably be taken to understand the expression 'mental disorder' in Section 5(ii)(b) of the Act. I seek support from the decision, cited by the learned counsel for the wife in the case of Ajitrai Shiv Prasad Mehta v. Bai Vasumad, AIR 1969 Guj 48. The reasoning in the above respect in the above case appears to me to be sound because Section 12 read with Section 5 of the Act furnishes a ground for declaring a marriage as nullity due to disqualifications existing at the time of the marriage and Section 13 of the Act furnishes grounds for dissolving a marriage by a decree of divorce on disqualification arising after the marriage. The expression 'mental disorder' used both in Section 5 and Section 13 may be understood to have a similar meaning both for grant of a decree of nullity as also for a decree of divorce. Schinophrenia is clearly included with the expression mental disorder under explanation (a) to Section 13(1)(iii) of the Act. A schinophrenic patient can be of a type who is good for procreation of children, but unfit as a life partner due to his/her abnormal and erratic behaviour. The contention made on behalf of the wife does not appear to be rational and reasonable that merely because schinophrenic patient is capable of giving birth to a child, the marriage cannot be declared invalid although such a patient can never be a normal wife or husband.

12. In interpreting the provisions of Section 5(ii)(b) of the Act such interpretation should be placed and be accepted which would have way for a smooth marital relationship. As has been noticed above

Section 5(ii)(b) as it originally stood before amendment, contained one of the conditions of a valid marriage that 'neither party is an idiot or lunatic at the time of marriage.' The above expression was used in the light of the provisions of Indian Lunacy Act, 1912 where a lunatic under Section 3(5) has been defined as a person who is idiot or of unsound mind. The Amendment Act 68 of 1967 introducing drastic amendment to Section 5(ii)(b) substitutes the words 'suffering from mental disorder of such a kind and/ or to such an extent as to be unfit for marriage and for procreation of children", and is a clear intention of the legislature that a person who is mentally not sound although he may not be idiot or lunatic, is disqualified from contracting a valid marriage. A party cannot be compelled to suffer marital life with a marriage partner who is not mentally sound and is only fit for procreation of children. It would be absurd to hold that it is only such a mentally ill spouse, who is both unfit for marriage as also unfit for procreation of children, is disqualified to marry. To me, it appears that liberalized provisions of Section 5(ii)(b), as exist, after the Amendment Act 68 of 1976, make any one of the two conditions found wanting in a spouse due to mental disorder, a disqualification for contracting a valid marriage. In my opinion, the word 'and' between the expression 'unfit for marriage' and 'procreation of children' should be read 'and/or' meaning thereby that they may both co-exist or any one of them may exist as a pre-condition of a valid marriage. Reading the provision in the manner aforesaid, it becomes more intelligible and practicable in the marriage situations obtaining in individual cases. To say that a marriage partner that is, the wife or the husband is fit for marriage although mentally unsound, only because he/ she has capacity to produce children is to force one of the parties to the marriage to lead all his/ her married life with a seriously abnormal or mentally unsound life partner 'procreation of children' is one of the principal aims for going through a marriage ceremony, but it is not all and the only aim of it. A married life may be successful where one or both the parties to the marriage are unable to procreate children, but mental fitness must be taken to be a principal precondition for a valid marriage. The word 'and', therefore, cannot be read only conjunctively, as is sought, to be done by the counsel for the wife. It is true that 'and' can, under given circumstances, keeping in view the subject and intention of the legislature, be read as 'or' and vice versa, but I do not find any objection in reading 'and' as 'and/or'. According to me, if 'and' is read only as 'or' the legislative intent cannot be fulfilled. If the word 'and' is read as 'or', a spouse suffering from such a mental disorder as would make her/ him incapable of giving birth to children would be disqualified for marriage irrespective of the fact that he or she is otherwise fit for leading a life of a marriage partner with the other party. It may be noticed that under Section 13(1)(iii) of the Act 'mental disorder' as a ground of divorce is only where it is of such a kind and degree that 'the petitioner cannot reasonably be expected to live with the respondent'. Assistance, according to me, can be taken of the above provision for understanding the expression 'unfit for marriage' used in Section 5(ii)(b) of the Act, that is unfitness of the party suffering from mental disorder should be of such a type that the petitioner cannot reasonably be expected to run the risk of married life with the respondent. Understanding the word 'unfit for marriage' in the above manner and in the light of the provisions of Section 13(1)(iii) of the Act. I am, therefore, of the opinion that mental disorder merely disabling 'procreation of children' may not be, in a given case, a good ground for nullifying the marriage. We can envisage a spouse marrying at late age or a mental disorder of such a type where he or she is unable to complete a sexual act or a man or woman having no sexual organ for procreation of children but he or she may be otherwise completely fit as a marriage partner irrespective of a mental disorder disabling her/ him from procreating children. In such a case permitting dissolution or nullification of marriage

would break the marriage tie on an unsubstantial ground. In a given situation where the parties are young and the mental disorder is of such a type that sexual act and procreation of children is not possible it may furnish a good ground for nullifying the marriage because to beget children from a wedlock is one of the principal aims of Hindu marriage where Sanskar of marriage is advised for progeny and offsprings. The word 'and', therefore, should be read as 'and/or' permitting the matrimonial Court in a given situation and given case of mental disorder to nullify a marriage if either of them or both the conditions exist making living of the parties together highly unhappy if not impossible, hi my considered view, therefore, the word 'and' should not only be read as 'or' but should be read as 'and/or' meaning 'either or both'.

13. There can be another angle or looking at the same provision to give it effective meaning. In interpreting the provisions of Section 5(ii)(b), the order 'procreation' has, in my opinion, should be construed to have a wider legal meaning. The literal or dictionary meaning of the word 'procreate' or 'procreation' is as under:--

(1) According to Shorter Oxford English Dictionary the word 'procreate' is explained thus: To beget, generate, to produce offspring, engender.

(2) According to Longman Synonym Dictionary, Procreate: v. 1.-

1. beget, engender, generate, create, conceive, father, sire give birth to, get; bread, propagate, reproduce, spawn.

2. Cause, produce, effect effectuate, make happen, bring about, bring to pass, give rise to, occasion, begin, originate, initiate, sow the seeds of.

14. In the context of Section 5 of the Act and the subject dealt with therein, namely to lay down conditions for a valid Hindu marriage, the word 'procreate' has to be assigned a wider legal meaning that is, according to me, capacity of a spouse 'to give birth as also to rear up and bring up children.' A spouse although not sterile and medically fit to give birth to children may still be unfit, due to his or her mental disorder, to look after and bring up children. It may be noted that under Section 5(ii)(b) of the Act a reasonable degree of sound mental state is a precondition of marriage for both the parties that is the man and the woman. The word 'procreation', therefore, implies within it not only capacity to give birth to children but also to look after them as well so as to bring them up. The entire expression 'mental disorder of such a kind or to such an extent as to be unfit for marriage and for procreation of children', therefore, conveys that if one of the spouses suffers from such mental disorder which renders him or her unfit for discharging marital obligations towards the other spouse and parental obligation towards children, if they would take birth out of the wedlock, are considered as disqualified to contract a valid marriage.

15. I am inclined to take the above view in interpretation of the word 'procreate' because mental fitness of a reasonable degree is laid down as a precondition, at the. time of solemnising a valid marriage. The capacity or qualification of the spouse for the purpose of Section 5(ii)(b) has, therefore, to be assessed or judged at the time of their marriage and not at any subsequent stage of

their married life which is taken care of by the other provisions laying down grounds for seeking divorce under Section 13 of the Act.

16. I am conscious of the fact that in interpreting provisions of an Act the Court cannot substitute words of its own, in a statute, but in my opinion such interpretation should be placed on the statute so as to make it meaningful and practicable to the existing realities of the situation. I may quote the new line of interpretation as recommended by Mauro Chappelletti in his book "The judicial process in comparative perspective" in the following words:--

"With without the interpreter's awareness, some degree of creativity and discreation is inherent in any kind of interpretation -- be it interpretation of the law or of any other product of human civilization, such as music, poetry, the visual arts, or philosophy. To interprete means to penetrate the thoughts, the inspirations, and the language of others in order to understand them, and, in the case of the judge no less than in the case of, say, the musician, to reproduce, 'enforce' or 'execute' them in a new and different setting and time."

"Where there is doubt, the simple tool of logic does not suffice, and even it is disguised and unconscious, the judges are called on to exercise the sovereign prerogative of choice". Indeed, the interpreter has to give new life to a text which, per se, dead a -- mere symbol of another person's act of life."

Somewhat similar line of interpretation has also been suggested by Lord Denning in his book. The Discipline of Law' at page 12. Lord Denning opines that "when a question arises whether the power has been properly conferred and even if so, the extent of it, a judge is such a situation cannot simply fold his hand and blame the draftsman and look for new enactment. "Lord Denning would invite the Judge then" to set to work on the construction task of finding the intention of the Parliament or the law making body and to do this not only from the language of the statute because as is found many times, language is an imperfect medium and very often thoughts are perpetually in search of broken language. The Judge must do this work of construction of statute from consideration of social conditions which give rise to it and of the mischief which it was intended to remedy and also in the light of the constitutional inhibitions and then supplant the written words and add to it and give 'force and life' to the intention and purpose of the legislature or the making authority. A Judge must not alter the material of which a law or an instrument is woven but he can and should iron out the creases and if one may venture to say make articulate the inarticulate premise but make articulate only which follow from necessary compulsions of the situations and the constitutional position."

17. Thus, some amount of creativity is allowed to the Court in interpreting the statute if it fulfils in a better way the object of the enactment. I have not to lose sight of the fact that the subject of legislation for interpretation before me is a subject on Hindu marriage for regulating relationship between Hindu spouses keeping in view the equal status of men and women in the Constitution of India, I have, therefore, to assign such meaning to the provision which harmonizes that relationship between the marriage partners.

18. The husband in the present case has also sought relief of declaration of nullity of marriage on the ground governed by Section 12(1)(c) of the Act which reads as under:--

"12(1). Voidable marriage.-- Any marriage solemnized, 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) and (b) .....

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or to any material fact or circumstance concerning the respondent."

Learned counsel appearing for the wife submitted that in the above provision the expression "consent of the petitioner" in case of an adult party as distinguished from minor, who may give consent through the guardian, should be strictly construed to mean "consent of the petitioner personally" and not through any agency with regard to alleged fraud concerning any 'material fact or circumstances concerning the respondent'.

19. Learned counsel for the wife submitted that in the present case the evidence on record showns that marriage negotiations took place indirectly between them, through the mother and grandmother of the husband from the side of the husband and the parents of the wife on the other. The provisions of Section 12(1)(c), according to the counsel for the wife, cannot apply to such a situation because it cannot be contended on the basis of the evidence on record that consent of the petitioner personally was obtained 'by force or fraud' to any "material fact or circumstance concerning the respondent."

20. The counsel appearing for the respondent on the other hand submitted that marriage negotiations for arranged marriage in Hindus are generally done by the parents, elders or friends in the concerned families. Amongst Hindus it is very seldom that marriage proposals come directly from the wife to the husband or vice versa. Even with the modern trends in Hindu society proposals for marriage generally ccome from wife's side through parents, relations or friends of the families. The counsel for the husband, therefore, submitted that where consent to a marriage is given by a party to a marriage, in such arranged marriages, through negotiations, done on their behalf by their parents, relations or friends, the same is covered by the expression "consent of the petitioner" under Section 12(1)(c) of the Act.

21. Learned counsel for the wife, in reply, had to take an extreme position that Section 12(1)(c) can apply only to love marriages where the parties to the marriage themselves negotiate and accept proposals made to each other, but where there are negotiating agencies of parents or elders in the family, Section 12(1)(c) will not be attracted. The counsel for the wife in the above respect also submitted that custom prevalent amongst Hindus regarding marriage negotiations for arranged

marriages cannot be given any weight or cognizance in interpreting and applying the provisions of Section 12(1)(c) of the Act because of the overriding effect given by the Act under Section 4 over any custom or usage in Hindu Law, Section 4 of the Act, on which reliance is placed, reads as under:

"4. (a) Overriding effect of Act.-- Save as otherwise expressly provided in this Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

22. Having given my thoughtful consideration to the rival contentions of the learned counsel for the parties concerning the scope and application of Section 12(1)(c) of the Act, I am of the opinion, that the custom prevalent amongst Hindus of negotiating for arranged marriages through parents, relations or elders can be taken into consideration for understanding the provisions of Section 12(1)(c) of the Act and such a course would not amount to applying a custom or usage contrary to the intentions and provisions of the Act. A custom or usage of Hindu law can be taken aid of in understanding a provision and such a course does not amount to enforcing a custom or usage contrary to the provisions of the Act, as has been sought to be suggested by the learned counsel for the wife. In my considered opinion, the expression 'consent of the petitioner' used in Section 12(1)(c) of the Act, in the background of the method of arranged marriages amongst Hindus would include consent given by the petitioner to the marriage as result of negotiations made on his/ her behalf by his/ her parents, elders in the family or other relations including friends.

23. In this respect I may also point out that the decisions cited by the learned counsel for the wife, that is, Mandkishore Shaligram Vyas v. Munnibai, 1979 MPLJ 105 : (AIR 1979 Madh Pra 45) and Madhusudan v. Smt. Chandrika, AIR 1975 Madh Pra 174 were the cases based on unamended provisions of Section 12(1)(c) not on as it stands after the Amending Act of 1976. Under the unamended provisions only 'consent' which was obtained by force or fraud as to the nature of the ceremony alone made a marriage voidable on that ground, but the Amending Act of 1976 added to Section 12(1)(c) the words "or as to any material fact or circumstance concerning the respondent". The aforesaid addition of words completely changes the complexion of the provision and, therefore, in my opinion, enlarges the meaning of the word 'consent'. It cannot be disputed that the alleged fact of the wife suffering from a serious mental disease of schinophrenia is a material circumstance which if, in fact, not disclosed to the petitioner, would vitiate the consent given by him for marriage due to concealment of the above material fact. It is true, as has been commended by Mulla, that "whether a misrepresentation or false statement or concealment is as to any material fact or not must to a large extent depend on the facts and circumstances of the case and must be something affecting the respondent and as such had definitely induced or influenced his consent. The fact should be so vital and material that the petitioner must show that but for such false representation or statement or concealment he or she would not have married the respondent." The aforesaid two decisions of this Court on unamended provisions of Section 112(1)(c), are not of much assistance in understanding and interpreting Section 12(1)(c) as it stands after amendment of 1976.

24. Before parting with the discussion of the case under Section 12(1)(c) of the Act, I may also make it clear that two Division Bench decisions of our Court (supra) have taken a view that the word 'fraud' as used in Section 12(1)(c) of the Act cannot be given the same and as narrow a meaning as in Section 17 of the Contract Act and the said word 'fraud' would include all cases of misrepresentation and concealment of material fact regarding one of the spouses as a valid factor for avoiding the marriage. It may also mention that two decisions of Delhi High Court cited on behalf of the husband, that is, Smt. Asha Shrivastava v. R. K. Shrivastava, AIR 1981 Del 253, Rajinder Singh v. Smt. Pomilla, AIR 1987,Del 285 held that concealment of fact of the wife suffering from schizophrenia is concealment of a material fact concerning the spouse and is covered by the provisions of 'Section 12(1)(c) of the Act. I agree with the views expressed in the aforesaid Delhi High Court decision concerning schizophrenia as one of the grounds making a marriage voidable under Section 12(1)(c) of the Act, if the other ingredients of the said sub-section are fulfilled in a given case. I may also note that the Delhi High Court decisions cited above distinguish and dissent from the view taken in the decisions of Madhya Pradesh High Court, quoted above, on one of the grounds that those decisions were rendered under unamended provisions of Section 12(1)(c) of the Act, as fully explained by me above.

25. In the above legal background 1 now propose to discuss the evidence led by the parties in the case but before I do so it is necessary to understand the nature of the mental disorder 'schizophrenia'. The medical opinion is to be found in a few standard text books on Medicine. I would first refer to the Text Book of Medicine by Rustom Jal Vakil, Second Edition, at page 1482, where schizophrenia is defined as under:--

"Schizophrenia is characterised by a withdrawal from reality, with a tenancy towards antisttc thinking, flat or incongruous emotional reactions and inconsistent and impulsive behaviour. The patient may show a tendency to maintain false belief, which cannot be corrected by reasoning or logic. False perception and hallucinations (mostly auditory) may be present.

The term or word "schizophrenia", which means a "split personality" was coined by Bteuer (1911) to describe a certain condition of the patient's mind. Previously, the condition was referred to as "dementia praecox", because such patients, usually young, tend to appear demented through their inability to respond adequately to the environment. However, since the condition is due, not to any detectable abnormalities of the brain, but to a "split from reality", the term "dementia praecox" is no wadays replaced by the scientifically more accurate term "schizophrenia".

The medical opinion is that there are several types of schizophrenia, of which 'paranoid schizophrenia' is one of the conditions. This type of schizophrenia is explained at page 1485 of the above cited book as under:--

PARANOID SCHIZOPHRENIA The illness usually begins late in life, between the age of 25 and 35 years. The patient may justify his incapacity to cope with stress by laying the blame on others. He may feel that others are against him and are out to persecute him. He may attribute his failures to the jealousy or "spite" of superiors, associates or colleagues. He may even ascribe the failure of his marriage to an imagined infidelity on the part of the wife. Such delusions are frequently centered

round some near relative or friend. The delusions may be logical or bizzare.

He may also have grandiose delusions. Because of his superior intelligence, he may claim to lead his country to victory or the world to prosperity. He may claim to reach the sun, the moon or the stars within a few years. He may claim to be the greatest authority on religion, science or philosophy."

The only decision of the Supreme Court on a similar mental disorder schizophrenia which was made a ground of divorce is reported in the case of Ram Narayan Gupta v. Smt. Rameshwari, AIR 1988 SC 2260 the Supreme Court has also referred in the aforesaid judgment a few standard books on Medicine and had taken help of them in understanding the mental ailment. The following medical opinion extracted by the Supreme Court in the judgment was relied upon for applying the same to the case before it (at p. 2267 of AIR):

"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....."

In general, we hold that mental illness should be thought and spoken of less in terms of disease entitles than in terms of personality disorganisation. We can precisely define organisation and disorganization; we cannot precisely define disease....."

Some assistance also can be had from a Division Bench decision of Calcutta High Court in the case of Pronab Kumar Ghosh, AIR 1975 Cal 109 (113) in paragraph 20 where the text book by Handerson and Gilespi 10th Edition at page 279 has been quoted. In the aforesaid medical book schizophrenia has been described as "an illness of slow insidious" on-set developing over years. Patient's relatives may report strange, odd, inappropriate behaviour. The schizophrenia is a general classification of a kind of mental disorder which has various forms and various degrees depending upon the patient, his heredity and environment. Schizophrenic patient may be of a very serious or of a milder type. So far as the milder type patient is concerned, the medical opinion contained in Davidson's Principles and Practice of Medicine at page 791 is as under;--

"These are the more florid manifestations of schizophrenia. Milder signs are less easy to recognise, because they merge into the peculiarties of everyday living. These include instances of unexpected rudeness or tactlessness, abrupt and inexplicable behaviour with a marked withdrawal from ordinary social contacts. Such persons may be considered awkward or unsociable and it is only when they reveal quite bizarre ideas, shout back at their hallucinatory voices, or otherwise behave in a conspicuously strange manner, that one realises that they are not merely eecentric, but mentally ill."

26. So far as the legal opinion in cases of schizophrenia patients in marriage relationship is concerned, Indian Courts including the Supreme Court have been taking assistance from the English decisions because the provision for a decree of nullity or divorce on the ground of mental illness or

disorder obtaining in our Act is comparable to the provisions contained in Matrimonial Causes Act, 1950, applicable in England. The earliest available case noted is of Whysall v. Whysall, (1959) 3 All ER 389 (396). In order to decide the nature and degree of unsoundness of mind which can furnish a good ground to nullify a marriage, the English Courts took help of the provisions of S. 90 of their Lunacy Act and it has been understood that the degree of unsoundness of mind for breaking a marriage should be that a person complained of "is incapable of managing himself and his affairs" and 'affairs' as used in the Lunacy Act was understood to include 'the problews of society and of married life' and the test of ability to manage affairs is that to be required of the reasonable men. See following quotation in the case of Whysall's case (supra) at page 396:--

"It seems to me that the intention of Parliament was to enable one spouse to obtain a dissolution of the marriage when the mental incapacity of the other, despite five years' treatment, was such as to make it impossible for them to live a normal married life together and when there was no prospect of any improvement in mental health which would make it possible for them to do so in the future. The state of mind envisaged was accordingly a degree of unsoundness or incapacity of mind properly called insanity. If a practical test of the degree is required. I think it is to be found in the phrase used in Section 90 of the Lunacy Act, 1890-- "incapable of managing himself and his affairs"-- provided it is remembered that "affairs" include the problems of society and of married life and that the test of ability to manage affairs is that to be required of the reasonable man. The elderly gentleman who is no longer capable of dealing with the problems of a take-over bid is not in my judgment to be condemned on that account as "of unsound mind." The above case was followed and quoted with approval in the case of Bennet v. Bennett, (1969) 1 All ER 539. In this decision the provisions contained Section 9(1)(b)(ii) and (iii) of the Matrimonial Causes Act, 1965 as are comparable with Section 5(i)(b) of the Act, have been construed. In the Matrimonial Causes Act the language used is that a decree of nullity can be passed if one of the spouses is suffering from a mental disorder "of such a kind or to such an extent as to be unfitted for marriage and procreation of children".

In the case of Bennett v. Bennett (supra) the opinion of the Court in construing the above phrase was expressed as under:--

"The question then is, what did Parliament mean by the use of the phrase, "unfitted for marriage and the procreation of children" because they are not disjunctive but conjunctive. "Unfitted" is a word which is not easy to construe. It might be given a very wide interpretation on the one hand, or a very narrow one on the other. It is quite plain, to my mind, having regard to the context in which this amendment was made, with the background of mental deficiency in mind, that Parliament cannot possibly have intended to use the word "unfitted" in an extended sense at all. This must really mean something very much like the best of unsoundness of mind although perhaps not quite the same; it really must mean something in the nature of; "Is this person capable of living in a married state, and of carrying out the ordinary duties and obligations of marriage"? I do not think it could possibly be given any wider meaning than that."

27. In the aforesaid English case of Bennet v. Benett, (1969) 1 All ER 539 the expression "procreation of children has been construed as not including within its capacity to bring and rear up

children, but I do not find any justification, as I have commented above, to give such a narrow meaning to the expression 'procreation of children' as meaning only a capacity of the spouses to give birth to children or offsprings. One cannot lose sight of the fact that under the Act petition based on ground of nullity of marriage has to be brought by the aggrieved party to the Court at the earliest opportunity and within a period of one year if possible. A sound mental condition is laid down as one of the essential qualifications to be possessed by either party to a marriage and decree of nullity of a marriage can be sought even at a time when parties may not have begotten children. The procreation of children, therefore, in marital relationship must mean not merely giving birth to children, but capacity to look after them as well. The use of the two expressions together i.e. 'unfit for marriage' and 'procreation of children' permit such a wider interpretation to the latter expression used therein.

28. The aforesaid two English cases have been duly noted and relied upon by the Gujarat High Court in the case of Ajit Rai Shiv Prasad v. Bai Vasumati, AIR 1969 Guj 48, on which the learned counsel for the wife placed heavy reliance. The test, therefore, laid down in the two English cases (supra) can safely be applied to the present case in hand. The Supreme Court in the case of Ram Narayan Gupta v. Smt. Rameshwari, AIR 1988 SC 2260, has also taken aid of the English decisions on the point to determine the degree of mental illness which is required to be proved for grant of a decree of divorce.

29. Having thus seen medical and legal opinion on the subject, it is now the stage for me to discuss the evidence on record, but before doing so one thing has to be further made clear that a degree of mental illness sufficient for grant of a decree of divorce may not be the same for nullifying a marriage under Section 12 of the Act, the reason being obvious, that nullification or avoidance of marriage at the first available opportunity on the ground of mental illness of the other party is with a purpose to permit the aggrieved party to rejet as unfit the other marriage partner who is disqualified at the time of marriage Compared to the above seeking of relief of divorce on the ground of mental unfitness may be on the basis of a subsequent event of the opposite party developing unsoundness of mind or mental ill health after the marriage and the degree of mental condition should be that the party petitioning "is not expected to live with the other party." A distinction may be noted between the provisions of Section 5(ii)(a) and (b) of the Act. Under Sub-clause (a) a party incapable of giving a valid consent in consequence of unsoundness of mind vitiates the marriage and justifies nullification of it but in Sub-clause (b) a party suffering from mental disorder of a degree mentioned therein, even though capable of a giving valid consent is disqualified and may justify nullification of marriage at the instance of the other party. The legislature in using different language deliberately in substance (a) and (b) of Section 5(ii) of the Act, in my opinion, have evinced a modern outlook on Hindu marriage to relieve parties of marriage tie where mental disorder would lead to tragedy in married life. The provision in Section 5(ii)(b) thus, envisages a situation where the other spouses at the time of marriage may be in lucid interval and hence in a capacity to give valid consent, but otherwise suffers from such a mental disorder as disables her/him from discharging marital obligations towards the other spouse or parental obligations towards the children. In my opinion, therefore, the degree of mental illness for grant of a decree of divorce may not be the same for grant of decree of nullity, because for seeking a decree of nullity, it is enough for the complaining party to prove that the other party, due to mental illness was disqualified from taking the marital

responsibilities and was not likely to shape into a reasonably good wife or husband with reasonable capacity and capabilities to undertake the married life. This, I have made this position clear because the degree of proof of mental disorder required in cases seeking relief of nullity can be alittle less onerous than the one in divorce cases based on Section 13(1)(iii) of the Act.

30. The stage has now finally been reached to critically examine the evidence led by the parties in this case. The oral testimony of the parties has to be evaluated in the light of their pleadings. Learned counsel for the wife read out almost in full the contents of the petition for annulment of marriage filed by the husband and commented that the petition appears to have been drafted in consultation with a Psychiatrist and all possible symptoms of the disease Schizophrenia have been included therein and have been falsely attributed to the wife as a patient suffering from it.

31. I have also gone through the written statement filed by the wife. It is important to note that the written statement of the wife contains two admissions. In para 4 of the written statement she admitted that Dr. P. N.

Shukla, Psychiatrist, was treating her. In para 5 of the written statement she admitted that on the first Honey-moon night she was terribly upset when the husband disclosed to her that his father had remarried a Punjabi lady and was living separately and away from the husband's family with that lady. The only controversy is with regard to the version of the wife in her deposition concerning disclosure alleged to have been made to her by the husband on the first honey-moon night itself. She deposed that the husband gave her suggestion on the honey-moon night itself that in case an incident or re-marriage happens with him as it happened with his father, the wife shall mutely submit and suffer the same as the mother of the husband has suffered all along. According to the wife, this disclosure of the husband in their first meeting after marriage upset her so much that she became extremely nervous and for the whole night was restless with a dread and fear in her mind that if similar incident, as happened with the father of the husband, happens with the husband, it would be disastrous for her.

32. Apart from the above admissions in the pleadings it is enough for me to discuss the evidence of important witness examined on behatf of the husband including himself to describe the behaviour of the wife after marriage. It is an admitted position that the total stay of the wife with the husband after marriage in two stages was only for 19 days. After the marriage she stayed with the husband in the fkst visit for 12 days and in second visit for 7 days. Her stay in the first visit with the wife has been described by the husband in his deposition as witness P.W. 1. Reading his evidence as a whole, I find that he has mentioned the following acts of abnormality or misbehaviour on the part of the wife:--

(1) After the marriage and in the first few days on all occasions when the husband made advances towards the wife for performing sexual acts, she used to repell the same and could never satisfactorily accomplish sexual intercourse. In this effort of sexual intercourse by the husband the wife was always found nervous, frigid and passive. It was described that during sexual attempts by him she 'lay like a corpse'. The husband narrated that some times he found her face extremely terrifying and on few occasions she looked at him with great hatred.

(2) She never paid any attention to whatever was instructed to her or asked from her and behaved and acted in her own way. On some occasions when some question was put to her, she used to blurt out as if woke up from a stupor. The husband found her also chattering to herself in solitude and whatever she spoke it was incoherent.

(3) During her second visit on one day the husband was shaving and after the shave he gave her the brush and razor to wash it. The wife put back the articles in the hands of the husband and refused to obey for no apparent reason.

(4) On one day when the husband came out after the bath, the wife approached him complaining that she could not ignite the gas cylinder stove and she needed some help. The husband then went to the kitchen and found that the gas cylinder had been opened by her and the whole kitchen was filled with gas. The husband then opened the window, lighted the gas and asked her to prepare tea. The husband stated that there were two milk polythin packets. The husband instructed her only to open one packet because the quantity therein was sufficient for two cups of tea but the wife was adament and opened both the packets for nothing. She left the bags of milk without putting them in the container and thus it was wasted.

(5) The husband and wife, both, had on one occasion went to pay a visit to their aunt and while they were returning in Riksha, the wife enquired from him about her purse. The husband in reply stated that it was for her to have taken care of it. Leter on, it was found that the same was lost.

(6) On one occasion when the members of the family were taking food, the wife was preparing parathas in the kitchen. The mother of the husband then went to the kitchen and asked her not to prepare Parathas but to prepare Chapatis. The mother then lifted the ghee tin and kept in aside but the wife was obstinate and the she again took out the ghee container and continued preparation of Parathas insisting that Paratha eating is good for health. She then broke out in laughter and had no signs of repentance on her face.

(7) On 19th of July, 1986 in the evening between 6 to 7 O'clock in presence of. members of the family she urinated in the varandah. The husband scolded her for the same and found that her Sari was wet and asked her to change it but she refused to do so and had to be forced to change it.

(8) On 20th of July, 1985 in early hours of the morning the wife was found awake in her bed. The husband interrogated her as to whether she had a sleep in the night. She looked at him with anger and then suddenly got enraged and attempted to assault him with her fists. The husband then cried for help and all members of the family arrived. The younger brother of the husband Dr. S. K. Sharma (P.W. 3) is a doctor, who also came and examined the wife. He advised that a Psychiatrist be called and then Dr. P. N, Shukla, Psychiatrist was called. Psychiatrist then examined her and gave her injection and also prescribed some medicines. The husband thereafter made enquiries from the Psychiatrist about the health of the wife and the Psychiatrist then disclosed to him that the wife suffered from a mental disorder for which she was already receiving treatment from him since past three years. The Psychiatrist also diclosed to the husband that the mental illness of the wife was incurable.

33, In support of his case the husband examined his mother, Smt. Shanta Bai Sharma (P.W. 2), Dr. S. K. Sharma, his brother (P.W. 3), who both supported the above version of the husband. In proof of her mental disorder at the time of the marriage and subsequently, the husband Examined the Psychiatrist, Dr. P. N. Shukla, The above named Psychiatrist stated that he has special qualifications on the subject being M.D. in Psythiatry. The Psychiatrist stated that the wife prior to her marriage had come to him for consultation in December, 1984 and at that time her name was maintained by him in the patients' Register. The relevant entry in the Patients' Register maintained by the Psychiatrist in the Clinic is marked as Ex. A/1. The Psychiatrist testified that during his first visit he found the wife as a patient in a excited state of mind. The Psychiatrist stated that he diagnosed her illness as Schizophrenia of paranoid type. The Psychiatrist stated that he treated her continuously for six or seven months. He confirmed to have paid visit to examine her again after her marriage to the husband's house. The Dr. Shukla had found the wife in his second visit to the husband's house in a frenzied condition. She was reported to be violent, crying and trying to assault. She was terribly in anger and excited and unable to make differenciation between elders and youngers in the family.

34. The Psychistrist was cross-examined very closely by the counsel for the wife appearing for her in the trial Court. The Psychiatrist admitted that he knew both the families but denied any relationship with the wife. In cross-examination he produced a prescription given by him to the wife on 16th of August, 1988 (Ex. A/2). In para 8 of his cross-examination he admitted that he was called for evidence only with the copy of the Register of patients but on his own he also brought with him the prescription marked as Ex. A/2. To a specific question regarding degree of mental disorder his reply was that the wife was 100 per cent schizophrenia patient. He, however, admitted that in the year 1988 when he again re-examined her, she was found to have recovered at least fifty per cent. He also admitted that such patients if kept in proper environment and guidance can improve. He also stated that some electric shocks are also required to be given to such patients which were given to the wife in the past during the course of her treatment by him.

35. Learned counsel for the wife criticised the testimony of the above psychiatrist in strongest possible words. It submitted that his testimony should not be given any weight for two very strong reasons that he was closely related to the uncle of the husband and secondly he showed his over zealousness and self-initiative in creating false evidence by producing a prescription of his clinic in the name of the wife. Learned counsel submitted that it appears from the nature of the pleadings and the testimony of the psychiatrist in the Court that it was actually he who invented several false pleas and evidence against the wife to help the case of the husband. The counsel pointed out that in cross-examination the psychiatrist had to admit that he knew the parties before their marriage and although it was said that he conveniently avoided to answer the question straight but it has to be inferred from his evasive replies that he attended the marriage of the parties. This conduct was criticised by commenting that it was most unlikely that if he knew that the wife suffered from mental illness of schizophrenia, he would not have disclosed the same to the husband with whom he was distantly related. Learned counsel submitted that it is very easy to castigate a mentally sound person to be a mental case. The counsel submitted that evidence in the present case both medical and oral is insufficient to prove that the wife was a schizephrenic patient. It was argued that in a short stay of 19 days the husband could not have formed an opinion that the wife suffered from mental disorder as has been alleged. It was pointed out that the wife is highly educated and has secured

post-graduate M.A. degree. If she were a patient of schizophrenia she could not have taken up higher studies. It was also pointed out that from the tenor of her deposition she could not be described as a mentally ill person as she effectively withstood the cross-examination in the Court.

36. Learned counsel appearing for the husband supported the findings of the trial Court stating that they are based on due appreciation of evidence. On behalf of the husband it was submitted that there was no reason to disbelieve the testimony of psychiatrist, Dr. P. N. Shukla, who had the necessary expertise on the subject and had treated the wife before and after the marriage. The counsel also agrued that there was no reason for the husband to have rejected the wife and the fact that at the very first opportunity and well within a period of one year, the petition for nullity has been filed, is a circumstance to show that the husband found the wife mentally deficient. Counsel for the husband read out before me the relevant part of the evidence of the wife who alone entered the witness box to support her case. On going through her deposition I find that she stuck up to her pleadings in the written statement and admitted that on the first honey-moon night she was terribly upset because of the disclosure by the husband of his father having re-married a Punjabi woman and having left the family of the husband. In cross-examination she admitted that on the above disclosure in the first night she was disappointed. In para 14 she admitted in her cross-examination that soon after learning the fact of the husband's father having kept a Punjabi woman she had a shock of her life ¼eS fd drZO; foew< gks xbZ Fkh½. She also admitted that she was terribly nervous up set on that night ¼;g lgh gS fd igyh jkr dks fujk'k vkSj fu<ky gks xbZ FkhA½. She however, maintained that there was a sexual intercourse with the husband. In para 15 she further admitted that she continued to be haunted with the idea of the husband doing a similar act of keeping another woman as was the case with his father. She stated that she never expressed those apprehensions to anyone. In para 12 of her cross-examination she had to admit that she knew the Psychiatrist Dr. Shukla and when confronted with the averments in the written statement she admitted that she had visited Dr. Shukla although she said that it was when she had developed only fever.

37. On the bulk of the above evidence and the comments made by the counsel on either side in respect of that evidence, the question before me is whether the evidence is sufficient to hold that the wife was unable to contract a valid marriage on the date of the marriage because of the mental disorder. Before I record my finding on the basis of the evidence in the case, a few salutary legal principles will have to be kept in mind. A Hindu marriage, according to the customary law, is a sacrament and is also a contract which is now regulated by the Statute i.e. the Act. A contract to marry is simple and is a high degree of intelligence is not needed to understand what it implies. It is only the presence of such mental disorder, which, at the time of marriage makes the individual concerned unable to comprehend the nature and implications of marriage and prevents his/her from fulfilling the physical conditions of the marriage contract or prevents him/her from taking care of himself herself or his/her property which would render the marriage voidable under Section 12(1)(b) read with Section 5(ii)(b) of the Act. I seek assistance in understanding the requirement of law in the above respect from Gradiobi's legal medicine (third edition) page 511 which reads as under:--

"Weakness of mind, disorder of character or personality apart from associated mental illness are not sufficient to invalidate a marriage contract. The presence of mental disorder, which, at the time of marriage, made the individual concerned unable to comprehend the nature and implications of marriage, prevented him from fulfilling the physical conditions of the marriage contract, or prevented him from taking care of himself or his property, would render the marriage null and void after application to the divorce Court. Evidence, which will depend on the psychiatrist, must be clear and definite and must apply to the mental state of the individual at the time of the marriage. Mental disorder developing after marriage does not per se entitle either partner to a divorce or judicial separation. In the U. K., if subsequent mental disorder leads to misconduct or cruelty on the part of the afflicted partner, the other cannot obtain a divorce unless it can be shown that the mentally disordered partner, was incapable, because of this disorder, or understanding the character and consequences of his acts, and that the mental disorder is a persistent one.

Mental disorder present at the time of marriage and not revealed by the afflicted partner may, in England, under the Matrimonial Causes Act, 1965, be grounds for annulment of the marriage."

Therefore, the evidence of the parties and of the Psychiatrist which gives the mental state , of the individual at the time of marriage is relevant for the purpose of avoiding the marriage under Section 12(1)(b) read with Section 5(ii)(b) of the Act. Mental disorder developing after marriage is not covered by the above provision and may be a ground of divorce under Section 13 of the Act.

38. So far as the question of degree of proof in Matrimonial case is concerned, I find myself in agreement with the views expressed by the Division Bench of Calcutta High Court in Pronab Kumar Ghose v. Krishna Ghose, AIR 1975 Cal 109. The Division Bench of Calcutta High Court in the case (supra) held, relying on the earlier decision of that Court, that standard of proof in matrimonial cases is not such as is required in a criminal case, but the Court need only be satisfied on preponderance of probabilities (See also S. M. Anima Roy v. Probodh Mohan Roy, AIR 1969 Cal 304. In the Single Bench decision of Gujarat High Court of Ajit Rai Shivprasad Mehta's case (AIR 1969 Gujarat 48} (supra), on which strong reliance has been placed by learned counsel for the wife, in case of mental disorder the test applied is the same as was applied by Phillimore J. in Whysell's case (1959-3 All ER 389) (supra). The test applied is where the unsoundness of mind or incapacity of mind is such that the person is 'incapable of managing himself and his affairs', and 'affair' includes the problem of society and of married life as is expected and required of reasonable men. In the same case, it is described in different way to mean such mental cases of persons, "who do not understand the nature and consequences of their acts and are not able to control themselves and their affairs and reactions in the normal way". It is true that the learned single Judge in the above Gujarat case (supra) found on evidence that the wife was not suffering from such a mental disorder of a degree where she could not 'manage herself and her affairs'. It may also be noted that in the Gujarat case (supra) the provision for consideration was the unamended provisions of Section 5(n) of the Act in which requirement was that 'neither party is an idiot or lunatic at the time of marriage'. The present provision of Section 5(ii)(b), after amendment has enlarged the scope of the provision and liberalised the same with the modern ideas that mentally deficient persons should not be forced to married life and the aggrieved party should be able to nullify or avoid the marriage if at that time of the marriage the person is not found to be mentally in order. As has been noted above Section

5(ii)(b), after amendment, now provides as one of the conditions of the valid marriage that neither party is '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'. The single Bench decision of Gujarat High Court, therefore, is distinguishable because the provision applied and evidence discussed in that case was on unamended provision of Section 5(ii) of the Act. I have to assess and evaluate the evidence in this case on the much liberalised provision which exists now after amendment introduced to Section 5(ii)(b) of the Act. I have already dealt with the subject above in greater details and need not revert to the subject again. It suffices for me to say that if at the time of marriage one of the parties is found to be suffering from a mental disorder where he or she was not likely to develop into a reliable husband or wife for discharging marital and/or parental obligations towards children, likely to give birth in wedlock, the marriage is voidable.

39. In the instant, case, I do not find any reason to reject the testimony of the Psychiatrist examined in the case only on the ground that he was distantly related to the husband and intimately related to his uncle. It may be true that he knew families of both the parties before the marriage and knew about the mental ailment of the wife but the mere fact that he did not disclose it to the party of the husband is no ground to completely discredit his testimony. It is not uncommon to find that third parties generally do not intermeddle in the affairs of other and hesitate to interfere in such matters particularly in marriage negotiations which may lead to break the marriage. The testimony of the Psychiatrist to some extent has to be believed because the wife admitted to have visited him for medical treatment. Dr. Shukla in his deposition has clearly stated that he is not a general practitioner but specialist in mental cases. It can, therefore, be safely inferred that the wife was taking treatment for mental disorder from Dr. Shukla from before her marriage.

40. So far as the behaviour of the wife after marriage and during her second visit in husband's house is concerned, I do not find any justification to reject the testimony of the husband as a falsehood. There is nothing on record to suggest that the husband would cook up a false story against his wife with some ulterior purpose. The wife has not cast any such aspersion or allegations against the husband that the wanted to get rid of her for some extraneous reasons. It has, therefore, to be inferred that the husband really saw something very unusual and abnormal about her behaviour. The incidents of misbehaviour which I have catalogued above, from the testimony of the husband, confirm the medical opinion of Dr. Shukla examined in the case and opinion stated in Standard Medical Books on the subject of Schizophrenia. In the Division Bench of Calcutta High Court the text book of Psychiatry by Gillespies (Tenth Edition) at page 279 has been referred in para 20 of its judgment. A "Storage odd and inappropriate behaviour, pattent sitting or standing motionless and highly resistive to all attention, subject to feelings of inexplicable fears or doubts" are some of the symptoms of the disorder. The Division Bench also records that the Schizophrenia is not completely curable, being hereditary and recurring. As I have quoted from the text book of medicine by Vakil "delusions, elusiveness, loss of contact with reality, emotional incongruity and behavioural disturbances" are indications of paranoid type of schizophrenia. These delusions are sometimes centred round ghosts, relatives or friends. In the instant case, the wife admitted that on the honey-moon night she was terribly nervous and felt completely shattered although she says that it was because of a very shocking disclosure and suggestion of the husband that if he also kept another woman as was done by his father, she should suffer the agony mutely. The husband in his deposition

has denied to have made any such shocking disclosure on the very first night. The question whether the version of the wife is to be believed or of the husband. I cannot lose sight of the fact that admittedly the two families are Brahmins from Chhatisgarh and there is evidence on record to show that they were inter-related and known to each other since long. It is most unlikely that the wife and her relations did not know that the father of the husband did not live with the husband and had taken a Punjabi woman as a keep and living with her since long. It is also on record that the marriage proposals and acceptance was by the mother and grandmother of the husband. The husband's father never negotiated for marriage and was also not present at the time of the marriage. The wife, therefore, cannot be believed that she came to know of the father of the husband having taken a Punjabi woman as a keep only through alleged disclosure by him on the honeymoon night. It has, therefore, to be inferred that this fact was known to her from before the marriage. The question is now about second suggestion alleged to have been made by the husband to the wife that if similar incident happened with him of a re-marriage, the wife would have to suffer it mutely. It is hard to believe that a husband in the first night would have made any such attempt to frighten his life partner at the time when they were to have first sexual intercourse. It appears to me that the version of the wife is untruthful and she is trying to explain her strange conduct and behaviour on the first honey-moon night. It appears to me that the husband must have received a great shock due to the behaviour of the wife which was most abnormal. She was so cold, frigid and nervous that she could not co-operate in performing the sexual act. Her behaviour, therefore, can only be due to the kind of mental illness she was suffering from and commented and explained by the Psychiatrist. It appears that she was under some unknown fright or frenzy and that made her a totally passive partner in the sexual act on the first night.

41. With regard to the other incidents, narrated by the husband, learned counsel for for the wife submitted that the acts or behaviours such as that, the wife did not wash the shaving brush as asked by the husband, kept open to gas cylinder, prepared Parathas instead of Chapatis are such minor acts of misbehaviour as to be not worthy of being given any weight so as to brand her as a mentally ill person. These, according to the learned counsel for the wife, are minor irritations of domestic life which may be seen in married life of many normal persons.

42. Having perused the whole evidence of the parties I do not think that the incidents as narrated by the husband and his mother can be easily brushed aside as trivial acts of misbehaviour. Some of the symptoms of schizophrenia in a milder form as commenced by Davidson in his book of Medicine quoted by me above are rudeness and tactlessness, obstinacy and explicable behaviour. In this particular case the incidents do go to show that the wife was unable to control her behaviour and to manage herself and the domestic shares. A wife who is unable to properly handle domestic appliances in the kitchen and is unresponsive to the needs of the family members cannot be said to be a person responsible in behaviour. The wife also, according to me, could not explain her conduct of urinating in the varandah in presence of all the family members. In her deposition she denied the fact but admitted that on that day she had gone to the bath room. There is, therefore, some element of truth in these allegations of the husband as well. As I have mentioned above the degree of proof of mental disorder in avoiding a marriage on the ground that one of the parties suffered from such mental disorder at the time of the marriage is lighter compared to the degree of mental disorder required for seeking a decree of divorce under Section 13. Under Section 12 a spouse can avoid a

marriage if the other party is found to be not in order mentally so as to take up the marital and likely parental obligations. It may be true that, later on, the wife may have been, to some extent, cured of the disease and was not so mentally deficient at the time of recording her statement but that would not negative the case of the husband that at the time of marriage she suffered from a mental disorder of the type described by him and proved by the Psychiatrist examined in its support.

43. In a similar situation the Division Bench of Calcutta High Court, in the case of Pronab Kumar Ghose's case (AIR 1975 Cal 109) (supra) granted a decree in favour of the husband holding that "the events which preceded, attended and followed the marriage unmistakably go to show that at the relevant time i.e. on the date of the marriage the wife must have suffered from Schizophrenia". On the state of evidence on record in this case 1 also come to a similar conclusion and the husband is, therefore, entitled, in my opinion, to a decree of nullity of marriage under Section 12(1)(b) read with Section 5(n)(b) of the Act.

44. Learned counsel for the wife made a fervent appeal on her behalf that it is a very hard case for her where after a short stay with the husband of only 19 days she has been rejected by the husband by branding her as schizophrenic and she had no opportunity to establish her mental fitness to him.

45. It is true that this is a tragic case and I do feel sorry to have come to this sad conclusion against the wife. I am also fully conscious, as held by the Supreme Court in the case of Ramnarayan Guptas case (AIR 1988 SC 2260) (supra) that "mere branding of a person as schizophrenic will not be sufficient for purposes of Section 13(1)(iii) of the Act and schizophrenia is what schizophrenia does to a patient". In the instant case, I have found that within 19 days the behaviour of the wife did show schizophrenic symptoms and a totally irrational and absurd behaviour. I have also held that there is a distinction in proceedings for nullity of marriage and proceedings for divorce. In proceedings for nullity of marriage mental fitness has to be judged on the date of marriages and absence thereof entitles the other party to avoid the marriage but in case of divorce the mental unfitness which may develop later on should be of such a kind or degree which makes living of the parties together difficult and unhappy. In my opinion, it should be open to a spouse to avoid a marriage on the ground that on the date of marriage the other spouse was mentally unfit and the legislature does not expect that he or she should take the risk of giving a trial to married life with a mentally unfit person. 1 am not at all impressed by the argument of the learned counsel for the wife that she having taken up education up to M.A. and having effectively faced the cross-examination in Court could never be branded a 'schizophrenic' or mentally unfit. In the above respect I have referred to the medical opinion that schizophrenia is of various kinds and degrees. It is possible that the schizophrenic patient may take up education and yet may be totally unfit as married partner because of the delusions and hellucionations or fears from which he or she suffers. So far as facing the cross-examination is concerned, the trial Judge had the opportunity to watch her demeanour in the Court and I did not have that opportunity. In the matters of appreciations of evidence as held by the Supreme Court in Madhusudan Das v. Smt. Narayani Bai, AIR 1983 SC 114, the evaluation of oral testimony made by the trial Judge has to be given greater weight while considering, the correctness of the conclusions based on it, by the appellate Court.

46. It has also come on record that the husband has remarried immediately after passing of the decree of nullity by the trial Court and it is admitted that the remarriage, being before the expiry of the appeal period, could not have been contracted by the husband in violation of the provisions of Section 15 of the Act. I have, therefore, not allowed my mind in the least to be clouded by the fact of remarriage of the husband for deciding the present case and, yet, I have not been able to find any infirmity in the conclusions of facts drawn by the trial Court.

47. Now last question that remains for decision is whether the husband is entitled also to a decree of nullity under Section 12(1)(c) of the Act on the ground that his consent to the marriage was obtained by fraud with regard to the material fact or circumstance concerning the respondent that is that she suffered from mental disorder schizophrenia. I have already held above that expression 'consent' used in Section 12(1)(c) need not be the consent given personally by the petitioner and without intervention of any mediator or any agent. In the context of Hindu Marriages the 'consent' as held by me includes a consent to marriage given by a spouse through his/her parents, elders in the family, other relations or friends. I find support for my above view also from a decision of Division Bench of Calcutta High Court in Ruby Roy v. Sudarshan Roy, AIR 1988 Cal 210, which was a converse case on facts. In the Calcutta case consent to. the marriage given by the husband, through his father, to whom all necessary disclosures regarding wife were made by her, was treated to be a good consent binding on the husband although the husband had not personally negotiated, for marriage. The meaning of 'consent' under Section 12(1)(c) as understood by the Calcutta High Court where the concept of agency in the matters of marriages have been applied is explained in following words (at Pp. 212-213 of AIR) :--

"If an obedient son, who is in good terms with his father, authorises his father to negotiate for and settle his marriage including the selection of the bride, and the father selects a bride after full knowledge about her physical defects and the son marries that bride, the son cannot thereafter be allowed to turn round and to have the marriage annulled on the ground that he would not have consented if the defects were made known to him. A marriage may not be a contract only; but is nevertheless a contract also; it may be that all the principles of law of contract may not apply with all their rigour to a contract of marriage; but there can be no reason as to why the fundamental principle so well known in the law of Agency, namely Qui Facit Per Alium Facit Per Se, that is, he who acts through another acts himself, shall not apply where, as here, the petitioner has held out his father as the authority to finalise the negotiation and to select the bride and has not disputed that the father was given such authority. Under such circumstances, the disclosure to the father was obviously disclosure to the son and consent of the father on such disclosure was consent of the son on such disclosure."

48. In the light of the above statement of law the oral evidence in this case on the aspect of 'consent' will have to be examined. The husband as P. W. 1 in his testimony in para 15 stated that the marriage proposals came from the party of the wife which was accepted by his grandmother and mother who both, later, saw the wife before settling the marriage on his behalf. The husband stated that he had not himself seen the wife before the marriage and did not at all negotiate for marriage. The mother of the husband, Smt. Shanta Sharma, (P.W. 2) has given the entire version how the marriage was brought out. It was stated that first proposal came through her sister-in-law (Jethani)

Smt. Girja Bai and then a formal proposal came through the Aunt of the wife. The mother then is said to have visited the wife's residence at Phool Chowk, Raipur, where she was living with uncle and later on conveyed the consent of the husband for the marriage. The mother of the respondent stated that it was never disclosed to her by the wife or her relations that she was taking any medical treatment for a mental disorder. Contradicting the above version of the witnesses of the husband, the case of the wife examined as N.A.W. I, was that the families were known to each other and all enquiries were made by the relations of the husband regarding her mental condition. Attention in the above respect is invited to para 12 of her vkosnd ds ifjokj okys bl rjg dh iwjh tkip dj fy, gS] fd esjs dksbZ ekufld chekjh ugha gS rHkh esjk laca/k r; gqvk FkkA

49. On the state of above evidence led by other party it is hard to believe the version of the wife. It is not at all likely that the relations of the husband having known about mental condition of the wife, would have consented to the marriage. The version of the husband as proved through his mother and himself appears to be more acceptable that the fact of the wife taking medical treatment for mental illness from Dr. P. N. Shukla, Psychiatrist, was not disclosed to the mother and grandmother of the husband who had negotiated the marriage on behalf of the husband. It cannot be disputed that the fact of mental unfitness and that she was taking mental treatment for it was material circumstance concerning the wife which ought to have been disclosed to the husband or his relations who had negotiated the marriage on his behalf. The husband, therefore, in my opinion, is also entitled to a decree of nullity on the ground under Section 12(1)(c) of the Act.

50. Lastly, the learned counsel for the wife stated before me that breaking of marriage tie only after 19 days of married life will bring upon her great tragedy but as I have found, on the basis of legal and factual position in this case, the marriage has to be annulled to avoid greater tragedy befalling on both of them and their would be children.

51. To conclude, the appeal of the wife fails and is hereby dismissed but without any order as to costs.