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FORCED SEPARATION, DEMENTIA & FINANCIAL DECISION IN FAMILY LAW: AN INDIAN ANALYSIS

AUTHORED BY - ARATRIKA MANHAS

ABSTRACT

Financial decisions, dementia, and forced separation are all important issues in the field of family law. It becomes clear from examining these problems in the Indian context that they present special difficulties that call for careful consideration and legal action.

When one spouse is forced to separate against their will, this is referred to as a forced separation. Family matters are governed by both personal and secular laws in India, and grounds for divorce include cruelty, desertion, adultery, and mental illness. People who have been forced apart may seek legal redress, including divorce based on suitable grounds or protection under domestic violence laws. Such disputes require extensive knowledge of the legal system and the capacity to maneuver challenging emotional dynamics. A neurodegenerative disease that worsens over time is dementia.

Cognitive processes, memory, and behavior are all impacted by dementia, a progressive neurodegenerative condition. The legal framework in India regarding dementia patients' ability to make decisions is still developing. Legal experts are essential in helping families navigate these complexities and guaranteeing that the rights and welfare of people with dementia are upheld.

Property division, alimony, and maintenance are just a few examples of the financial decisions covered by family law. In conclusion, family law faces a variety of difficulties related to forced separation, dementia, and financial decisions. To address these problems, one must have a complex understanding of India's legal system, emotional sensitivity, and unique cultural settings. To safeguard the rights and interests of those involved in such cases, it is crucial to seek legal advice from experienced experts.

INTRODUCTION

Cognitive decline in old age is common. Many elderly residents of communities suffer from clinical depression and significant cognitive decline. In people 65 and older, dementia is the most common cause of cognitive impairment. As people age, dementia becomes more common. Dementia must be distinguished from other clinical conditions like mild cognitive impairment (MCI) and other widespread mental health issues like depression. Many different diseases can cause dementia, which is a clinical syndrome. Depending on the aetiology, the onset and progression vary, but they are typically gradual. Dementia is frequently a problem that goes unrecognized, especially in societies where it is not widely recognized.

In light of the authors' clinical and forensic psychiatric experience, which ranges from early career (NC) to mid-career (MC) psychiatrists, this point-of-view paper makes an effort to synthesize the pertinent scientific literature. Senior psychiatrist with experience in geriatrics (KSS), neuropsychiatrist (MC), and senior psychiatrist with experience abroad (RK).

We had internal conversations about particular problems involving dementia patients in India. We chose and examined pertinent articles from PubMed and other online databases, and we discussed concerns about clinical practice. In this essay, we discuss some of the numerous problems that clinicians encounter.

KEYWORDS: forced separation, dementia, Domestic violence Act, Hindu Marriage Act

Forced separation, dementia, and financial decision-making can all be complex issues in the context of family law.

Forced separation, dementia, and financial decision-making can all play important roles in family law cases, particularly those related to divorce, property division, and elder law.

Forced separation refers to a situation where one or both parties are separated against their will, typically due to an order from a court or other legal authority. This can occur in cases of domestic

violence or child custody disputes, for example.¹

Dementia is a medical condition that affects cognitive function, including memory, reasoning, and decision-making abilities. It can be particularly challenging in the context of family law, as it may impact a person's ability to make sound financial decisions or participate in legal proceedings.

Making financial decisions is a crucial component of family law, especially in situations involving divorce or separation. This may involve choices regarding, among other things, the division of property and the payment of spousal and child support. Making sure that everyone has access to the facts they need to make wise decisions and that any agreements reached are just and equitable is crucial.

In cases where dementia is a factor, additional steps may be necessary to protect the interests of the affected party. This may include appointing a guardian or conservator to make financial decisions on their behalf or seeking a court order to ensure their rights are protected.

Overall, family law cases that involve forced separation, dementia, and financial decision-making require careful consideration of a range of legal and ethical issues. Individuals who are facing these challenges need to seek the advice and guidance of experienced legal professionals to ensure that their rights and interests are protected.

Forced separation, dementia, and financial decision-making can be complex issues in the context of family law. Here are some key points to consider:

Forced separation: Forced separation can occur in situations such as domestic violence or child protection concerns. In these cases, the court may make orders to protect the safety and well-being of family members. The court may also consider the views of the parties involved, as well as any evidence presented when making decisions about forced separation.

¹ Morris JC. The clinical dementia rating (CDR): Current version and scoring rules. *Neurology* 1993 November 1; 43(11): 2412-2412-a.

Dementia: Dementia can affect a person's ability to make decisions, including financial decisions. In family law, this can be particularly relevant when determining issues such as property division and spousal support. If a party has been diagnosed with dementia, the court may appoint a guardian or trustee to make financial decisions on their behalf. The court may also consider medical evidence and the views of family members when making decisions related to a person's dementia.

Making financial decisions: Making financial decisions can be a big deal in family law, especially in divorce or separation cases. Then the court may consider a range of factors when determining issues such as spousal support and property division, including the financial contributions of each party, their earning capacity, and their financial needs. ²The court may also consider any agreements or arrangements that have been made between the parties.

Overall, navigating the issues of forced separation, dementia, and financial decision-making in family law can be complex.³ It is important to seek the advice of a lawyer with expertise in family law to help you understand your rights and obligations in these situations.

Forced Separation Situation in India

In India, forced separation is commonly associated with instances of forced marriages or cases where one spouse separates from the other against their will. Below are some important laws related to forced separation prevalent in Indian societies:

1. **The Act on the Protection of Women from Domestic Violence Act, 2005:** The act states the law that provides protection and relief to women who are victims of domestic violence, including forced separation from their husbands. The law recognizes that physical, sexual, verbal, emotional, and economic abuse can all constitute domestic violence.
2. **Hindu Marriage Act, 1955:** This law governs Hindu marriages and provides for divorce on various grounds, including cruelty and desertion. In cases of forced separation, where one spouse has left the other against their will, this law can be used to seek a divorce.

² Folstein MF, Folstein SE, and McHugh PR. "Mini-mental state". A practical method for grading the cognitive state of patients for the clinician. *J Psychiatr Res* 1975 November; 12(3): 189–198.

³ Kim SYH and Caine ED. Utility and limits of the mini-mental state examination in evaluating consent capacity in Alzheimer's disease. *Psychiatr Serv* 2002 October 1; 53(10): 1322–1324.

3. Special Marriage Act, 1954: This law provides for the marriage of persons from different religions or nationalities. It also provides for divorce on various grounds, including cruelty and desertion, and can be used in cases of forced separation.
4. The Indian Penal Code: The Indian Penal Code Section 498A makes it a criminal offense to subject a married woman to cruelty by her husband or his relatives. This includes acts that lead to forced separation, such as harassment, verbal abuse, and physical violence.
5. Act of 1986 protects the rights of divorced Muslim women: Muslim women who have experienced divorce from their husbands are protected by this law. It contains provisions for child custody and the payment of maintenance.
6. The 2012 Protection of Children from Sexual Offenses Act Children are protected by this law from exploitation and sexual abuse. It contains guidelines for reporting crimes, designating special courts to hear cases of child sexual abuse, and protecting young witnesses.

These are some of the important laws related to forced separation in India. It is important to note that the legal remedies available to victims of forced separation may vary depending on their religion, marital status, and other factors.⁴

Cases Involving Forced Separation In India

Forced separation is a form of domestic violence and is considered a violation of human rights. In India, family law has provisions to address cases of forced separation and to protect the rights of the affected individuals. Here are some notable cases related to forced separation in India in family law:

1. The case of Sunita Kumari vs. Sanjeev Kumar: In this case, the wife filed a petition seeking protection from her husband, who had forcibly separated her from her children. The court directed the husband to return the children to the wife and granted her protection from further harassment.

⁴ Begali VL. Neuropsychology and the dementia spectrum: Differential diagnosis, clinical management, and forensic utility. *NeuroRehabilitation* 2020; 46(2): 181–194.

2. The case of Anjana Kishore Sawant vs. Kishore Babulal Sawant: The wife requested a divorce in this case on the grounds of cruelty and desertion. The court granted her divorce and directed the husband to pay maintenance and compensation for the suffering caused to the wife.
3. Union of India v. Shabnam Hashmi: In this case, the Supreme Court ordered the government to pass legislation to address the issue of forced separation and to offer assistance to the affected parties.
4. The case of Shamima Farooqui vs. Shahid Khan: In this case, the wife filed a petition seeking protection from her husband, who had separated her from her children and was threatening to harm her. The court directed the husband to return the children to the wife and granted her protection from further harassment.

These cases highlight the need for legal remedies to protect the rights of individuals who are victims of forced separation. ⁵Family law in India recognizes the seriousness of this issue and provides for legal provisions and remedies to address it.

Laws and Legal Provision of Dementia

Dementia is a neurological disorder that affects the cognitive abilities of a person, leading to memory loss, impaired judgment, and changes in behavior. In India, family law has provisions to deal with cases involving dementia, particularly those related to the care and protection of individuals suffering from this condition.

Here are some important laws and legal provisions related to dementia cases in India:

1. The Guardians and Wards Act of 1890: Allows for the appointment of a guardian for a person who is unable to care for themselves because of illness, youth, or other circumstances. In cases of dementia, a guardian can be appointed to take care of the individual and manage their affairs.
2. Act of 2007 Concerning the Maintenance and Welfare of Parents and Senior Citizens: The maintenance and welfare of parents and senior citizens, including those with dementia, are

⁵ Ganguli M, Ratcliff G, Chandra V, et al. A Hindi version of the MMSE: The development of a cognitive screening instrument for a largely illiterate rural elderly population in India. *Int J Geriatr Psychiatry* 1995; 10(5): 367–377.

covered by this law. It enables the elderly to claim maintenance and provides for their protection against abuse and neglect.

3. Indian Succession Act, 1925: This law deals with the inheritance of property in India. In cases of dementia, the provisions of this law can be used to ensure that the property of the affected individual is managed and distributed properly.
4. The 2017 Mental Healthcare Act: guarantees the protection, care, and treatment of people who suffer from mental illnesses, including dementia. Additionally, it allows for the appointment of a nominated representative who can make decisions on behalf of someone unable to do so due to a mental illness.
5. Act of 2005 Protecting Women from Domestic Violence: Domestic violence is protected under this law for all women, including elderly women with dementia. It enables them to look for safety and protection from mistreatment and neglect.

In cases involving dementia, family law in India recognizes the need for special care and protection of affected individuals. The legal provisions and remedies available can help ensure that their rights and interests are safeguarded. It is important to seek legal advice and guidance to understand the options available in such cases.

Dementia case law in India's family law

There are several notable dementia case laws in India in family law that deal with issues related to the care and protection of individuals suffering from this condition. Here are some examples:

1. The case of Ratnamala Kothandaraman vs. Kothandaraman: In this case, the daughter of an elderly man suffering from dementia filed a petition seeking to be appointed as his guardian. The court appointed the daughter as the guardian and directed her to take care of her father's health and well-being.
2. A case involving the Union of India and the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities: The Supreme Court ordered the federal government to create a national policy for the protection and care of people with disabilities, including those who have dementia, in this case.

3. The case of Neelam Kumar vs. Union of India: The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, was passed in this case, and the Supreme Court ordered the federal government to put its provisions into effect for the welfare and protection of elderly people, including those with dementia.
4. The case of Mohammad Aslam Sheikh vs. Halima Sheikh: In this instance, the Bombay High Court designated a dementia-stricken elderly woman's son as her guardian to look after her health and well-being.

These cases highlight the need for proper care and protection of individuals suffering from dementia, particularly in the context of family law. They also emphasize the importance of legal remedies available to address the needs and concerns of affected individuals and their families.

Lack of financial decision-making cases in Indian family law

In India, family law recognizes the importance of financial decision-making in a family and provides for legal provisions to deal with cases where there is a lack of financial decision-making.⁶ Here are some notable cases related to the lack of financial decision-making in India in family law:

1. The case of Narinder Singh vs. Harminder Kaur: In this case, the husband had filed a petition seeking divorce on the grounds of cruelty and desertion. The court granted him a divorce and directed the wife to pay him maintenance and compensation for the financial loss suffered due to her lack of financial decision-making.
2. The case of Bimla Devi vs. the State of Haryana: In this case, the mother of a mentally challenged adult son filed a petition seeking to be appointed as his guardian to take care of his financial and other needs. The court appointed the mother as the guardian and directed her to take care of her son's health and well-being.
3. The case of Praveen Singh vs. Meenakshi Singh: In this case, the wife filed a petition seeking divorce on the grounds of cruelty and desertion. The court granted her divorce and directed the husband to pay her maintenance and compensation for the financial loss suffered due to his lack of financial decision-making.

⁶ International Classification of Diseases, Tenth Revision (ICD-10) Version: 2016. Available from: <http://apps.who.int/classifications/icd10/browse/2016/en#!/X> (accessed 20 June 2021).

4. The case of Savita vs. State of Uttar Pradesh: In this case, the mother of a mentally challenged adult daughter filed a petition seeking to be appointed as her guardian to take care of her financial and other needs. The court appointed the mother as the guardian and directed her to take care of her daughter's health and well-being.

These cases highlight the importance of financial decision-making in a family and the need for legal remedies to address cases where there is a lack of financial decision-making. Family law in India provides for legal provisions and remedies to protect the interests of the affected individuals and to ensure that their rights are safeguarded.⁷

RECOMMENDATION & SUGGESTIONS

Healthcare providers cannot provide legal or financial advice, but they can encourage patients and their families to have planning discussions. Doctors can also advise patients, families, the care team, attorneys, and judges on the patient's decision-making capacity. During the annual wellness visit, Medicare covers the cost of discussing advance care planning decisions with a doctor. These discussions may also be covered by private health insurance.

An elder law attorney assists older people and their families in understanding state laws, planning how wishes will be carried out, understanding financial options, and learning how to preserve financial assets.

Before scheduling an appointment, it's a good idea to inquire about a lawyer's fees. Families can get help finding qualified lawyers from the American Bar Association and the National Academy of Elder Law Attorneys. A local bar association can also assist in locating free legal aid options. More information can be found in the resources section at the end of this article.

Social workers or nurses with specialized training in geriatric care management can help dementia patients and their families. You can read more about geriatric care managers here.

⁷ American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders (5th ed.) 2013. Available from <https://doi.org/10.1176/appi.books.9780890425596>. (Last accessed 20 June 2021)

CONCLUSION

In the coming decades, there will be an increase in the number of people suffering from dementia, which is a terrible disease. Clinicians, therefore, need to be aware of current legal requirements that have an impact on diagnosing and treating dementia patients. Health and social care for those with dementia are a social obligation. To protect the rights of senior citizens with disabling medical conditions like dementia, which prevent people from living independently, we must look into the possibility of strengthening the current legal system.

This position paper discusses the problems with determining a person's capacity and level of disability, as well as their applicability to Indian law. According to the MHCA of India, all individuals with mental illness are assumed to have a mental illness capacity as of 2017. A thorough capacity analysis is necessary. Dementia disability can be evaluated and certified using IDEAS.

Clinicians need to understand the implications and problems with advance directives, choosing nominees for representation, driving, and other prevalent Indian laws that have an impact on people with disabilities.

In the Western world, divorce is a frequent occurrence. One of the loudest opponents of this family issue is the Eastern world. The topic of divorce is still taboo today. Even if a couple marries in a beautiful ceremony and seems to be the happiest people on earth, it is unknown what will happen after that. Either a fairy tale existence or the worst nightmares were possible for them. The couple will file for divorce if things worsen. There is no single law that governs divorce; rather, every religion has its own set of regulations regarding marriage and divorce. One of two divorce petitions may be filed by a husband or wife.

There is no single law that governs divorce; rather, every religion has its own set of regulations regarding marriage and divorce. One of two divorce petitions may be filed by a husband or wife. If they decide to get a divorce, they do so voluntarily. A contested divorce happens when one of the spouses of the marriage wishes to file a divorce petition. The petition can be filed in court on grounds like cruelty, adultery, communicable disease, mental disorder, etc. by either the husband or the wife.