The term ‘Unsound Mind’

What is the issue?

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- The term ‘unsound mind’ appears frequently in Indian law.
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- The Constitution of India disqualifies a person from being a MP or MLA, “if he is of unsound mind and stands so declared by a competent court”.
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- Even after the widespread use of the term and its effects on a person’s civil and political rights, **the term ‘unsound mind’ is not defined anywhere in Indian law.**
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What is the definition of ‘not a sound mind’?

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- The Indian Contract Act of 1872, gives examples of what is and **what is not a sound mind.**\n\n
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  - A patient in a lunatic asylum, who is, at intervals, of sound mind, may contract during those intervals.
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  - A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.
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- From the definition and illustrations, it is clear that ‘soundness of mind’ is **task-specific and not generalised** and mental illness is neither necessary nor sufficient for a finding of unsound mind.
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What the supreme court has said?

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- The Supreme Court in 2008 in **Hari Singh Gond vs State of MP** said there was no definition of unsoundness of mind, and that courts have mainly treated this expression as the equivalent of insanity.
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- However, the judges further said insanity itself has no precise definition but it is a term used to describe varying degrees of mental disorder.
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- The Supreme Court by equating unsoundness of mind with mental disorder had **equated legal incapacity (i.e., unsound mind) with medical incapacity** based on a medical finding of mental illness.
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- All the care taken by enlightened drafters of law in 1872 not equating mental illness with an unsound mind had been undone by a single phrase of the Supreme Court in 2008.
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What are the implications?

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- First, **the National Mental Health Survey** in 2016 said that 150 million people in India have mental illness of a severity that needs treatment.
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- If we use the Supreme Court's definition, all these people are of unsound mind.
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- **Unsound mind is akin to 'civil death'** i.e., once you are found to be of unsound mind, you can have a guardian imposed, you are not allowed to manage your financial affairs, the Hindu Marriage Act gives your spouse the right to divorce you on grounds of unsound mind and the Constitution of India bars you from voting or standing for election.
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- Thus, you stand to lose all your citizenship rights.
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- Equating 'unsound mind' with mental illness is an example of **institutional discrimination** against persons with mental illness who are denied civil, political, economic, social and cultural rights.
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- It also **increases stigma against mental illness** because the law itself affirms the incompetence of persons with mental illness.
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What is the way forward?

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- **The UN Convention on Rights of Persons with Disabilities,** ratified by India, says that ‘unsoundness of mind’ and other such discriminatory labels are **not legitimate reasons for the denial** of legal capacity to persons with mental illness.
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- Parliament or the Supreme Court needs to rectify this situation and rescue the citizenship rights of a large minority in this country with mental illness.
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- They need to properly define legal incapacity (discarding the term ‘unsound mind’) and ensuring it is not equated with mental incapacity (mental illness).
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Source: The Hindu

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