

THE CONCEPT OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND OF DIVORCE: A STUDY

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ABSTRACT

A marriage that is completely unworkable, emotionally dead, beyond saving, and has irretrievably broken down is referred to as having a "irretrievable breakdown of marriage". Although the Hindu Marriage Act and Special Marriages Act do not recognize "irretrievable breakdown of marriage" as ground for divorce, the Supreme Court has held in a key decision that divorce may be allowed if a marriage is completely unworkable, emotionally dead, and beyond repair. The couple will never be able to live apart again as husband and wife if their marriage irretrievably fails. Finally, it is up to the Legislature to decide whether or not to include irreparable breakdown of marriage as a ground for divorce under the Hindu Marriage Act, 1955. However, the Legislature must take irretrievable breakdown of marriage into consideration. The fundamental laws of separation in India do not now take into consideration a scenario where the life partners must deal with the reality that, although living under the same roof, their marital relationship is the same as a divorce. That is, there is still no specific legislation for irretrievable breakdown of marriage. The Hindu Marriage Act identifies limited causes for marital dissolution under Section 13. Yet, due to changes in social mores and the public's developing conception of marriage, the supreme court has shown special concern on the issue of applying a irretrievable breakdown of marriage as a ground for a divorce. The separation cannot be recognized due to circumstances, for covering a significant number of cases when the marital relationship is effectively dead, and until this concept is compressed into legislation. Finally, it is up to the Legislature to decide whether or not to include irreparable breakdown of marriage as a ground for divorce under the Hindu Marriage Act, 1955. However, the Legislature must take irretrievable breakdown of marriage into consideration.

Keywords: Marital dissolution, Irretrievable breakdown of marriage, couple etc.

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I. INTRODUCTION

Marriage frames the actual promise of social association. The Hindu Marriage Act, 1955 has considered marriage as a ceremony which is interminable in its being. Without the promise of the organization of marriage, the general public can't exist at all and will consequently, have no civilization. 'Divorce' is the "Disintegration of a substantial marriage in law". When a separation is in truth, the parties to marriage are liberated from any sort of commitment, lawful or something else, towards the other party. Hinduism as a religion has always been against the concept of divorce, but the introduction of the Hindu Marriage Act in 1955 changed the religious beliefs of Hinduism and the concept of sacramental marriage. Now everyone who is married has the right to apply for divorce on the legal grounds for divorce which includes feelings of guilt, disappointment in marriage, and consensual divorce. It is said that when a marriage loses its essence and turns into a dead relationship, the Irretrievable Breakdown of Marriage is imminent. This means the condition that it is impossible to work to reconcile the spouses. Such relationship is definitely better to break. In India, under the Hindu Marriage Act 1955 and the Special Marriage Act 1954, there is a long debate over Irretrievable dissolution of marriage as a special ground for divorce. However, the problem has not yet been resolved.

II. EXERCISE BY SUPREME COURT UNDER ARTICLE 142 OF THE CONSTITUTION OF INDIA

Article 142 of the Constitution engages the Supreme Court to pass such pronouncement or request as might be fundamental for doing finish equity between the parties in a reason for issue forthcoming before it. In this way, the arrangement vests the Supreme Court with huge forces to give any heading so request (irrespective of the reality whether the issue is covered by any administrative arrangements exists or not) to do finish equity between the parties. Such an order heading is restricting as far as Article 142 of the Constitution of India. "It is to be recalled that such a right is just vested with the Supreme Court and no other Court has comparable force"¹.

Discussing marital issue, by and large, the Supreme Court does not practice its force under

¹ INDIACONST. art. 142.

Article 142 to disintegrate the relationships. In any case, the new patterns have shown that where grave foul play is being caused; where parties are enjoying faulty suit, or where government assistance of children is included, and so on the Court has practiced its jurisdiction and dissolved the marriage on grounds of irretrievable breakdown of marriage. In the milestone judgment—Anil Kumar Jain vs. Maya Jain², the Supreme Court held as under:

(1) Irretrievable Breakdown of Marriage isn't a ground for separation under section 13 or 13B of the Hindu Marriage Act, 1955, it tends to be applied to a procedure under both of these arrangements just if the procedures are under jurisdiction of the Supreme Court. Neither the common courts nor the High Courts can pass such order.

(2) Just the Supreme Court to do finish equity, can via Article 142 of the Constitution, convert a procedure under Section 13 of the Hindu Marriage Act, 1955, into under Section 13B and pass an announcement for share desperation.

III. THE 71ST REPORT OF LAW COMMISSION OF INDIA

By quoting various authorities and the observations of the Supreme Court in the cases involving irretrievable breakdown of marriage, the Law Commission of India recommended the need for an immediate inclusion of the same in the marriage law. The Commission explained that maintaining marriage in the event of a total breakdown would only cause grave injustice to the parties and would jeopardize the individual freedom. In this connection, the Law Commission opined the following:- “The consequences of preservation in law of the unworkable marriage which has long ceased to be ineffective ear bound to be a source of misery to the parties”³The report contains an entire chapter which deals with the merits and demerits of the theory of irretrievable breakdown which has been gauged by the views sought through the questionnaire. While dealing with the demerits of the inclusion of Irretrievable Breakdown Theory, the Law Commission of India involved with three major points that were discovered by way of the questionnaire. They are:-

a) Irretrievable breakdown of marriage will cause hasty decisions to dissolve the marriage at

² Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415.

³ Law Commission of India, https://lawcommissionofindia.nic.in/report_eighth/ (last visited Aug. 15, 2023)

will, thus transforming the union for life into one which can be ended at pleasure. b) It is contrary to the basic principle that no man should be allowed to take advantage of his own wrong which is also a bar on matrimonial relief under the Hindu Marriage Act, 1955⁴. The inclusion of irretrievable breakdown of marriage will allow even the spouse who was responsible for the breakdown to obtain a divorce against his/her partner's will. c) The inclusion of irretrievable breakdown of marriage will lead to tremendous insecurity for women as, mostly, they are economically dependent on their husbands.⁵ In addition to these objections, the inclusion was not welcomed on the ground that the existing matrimonial reliefs in the present statutes are enough.

Law Commission of India drew in with three significant focuses. They are:-

- a) Irretrievable breakdown of marriage will make hurried choices disintegrate the marriage freely, in this way changing the association for life into one which can be finished at delight.
- b) It is in opposition to the essential rule that no man ought to be permitted to exploit his own off-base which is likewise a bar on marital alleviation under the Hindu Marriage Act, 1955. The consideration of lost breakdown of marriage will permit even them who was answerable for the breakdown to acquire a separation without wanting to his/her accomplice's will.
- c) The consideration of unrecoverable breakdown of marriage will prompt colossal uncertainty for ladies as, generally, they are monetarily subject to their spouses. Notwithstanding these protests, the consideration was not invited on the ground that the current wedding relief in the current resolutions are sufficient.

A separate chapter on 'safeguards' was accommodated in the report. By doing a comparative analysis, the Law Commission of India found that in other countries, usually the safeguards are provided by legislation with respect to the following:-

- 1) "Provision for the welfare of children.

⁴ Hindu Marriage Act, 1955, § 23(1) (a), No. 25, Acts of Parliament, 1955 (India).

⁵ Law Commission of India, https://lawcommissionofindia.nic.in/report_eighth/ (last visited Aug. 15, 2023)

- 2) Provision permitting the court to refuse divorce in case of hardship to the respondent.
- 3) Provision restricting divorce within a certain period after marriage.
- 4) Provision for reconciliation Restrictions arising out of the financial provision of the respondent.”⁶

IV. JUDICIAL APPROACH

Naveen Kohli vs. Neelu Kohli⁷ the Supreme Court of India recommended necessity to introduce irretrievable breakdown of marriage as a ground for obtaining divorce, till date, nothing has been done. “Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interest of the parties. Where there has been a long period of continuous separation, it may fairly be summarized that the matrimonial bond is beyond repair. The law in such cases does not serve the sanctity of marriage; on the contrary, it shows disregard for the feelings and emotions of the parties. Public interest demands not only that the married status should, as long as possible and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist. Human life has a short span and situations causing misery cannot be allowed to continue indefinitely. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom”.

Rishikesh Sharma vs. Saroj Sharma,⁸ the Supreme Court after considering that the wife, who has been living separately for more than four decades, had instituted frivolous cases against the husband, observed that “the marriage is dead from every angle and is impossible to revive and thus, no purpose would be served in keeping both the parties retained in marriage. Thus, it dissolved the marriage on the grounds of irretrievable breakdown of marriage”.

⁶ Bare Acts Live, <http://www.bareactslive.com/LCR/LC071.HTM?AspxAutoDetectCookieSupport=1> (last visited Aug. 15, 2023)

⁷ Naveen Kohli v. Neelu Kohli, AIR 2006 SC 1675.

⁸ Rishikesh Sharma v. Saroj Sharma, (2007) 2 SCC 263.

Vishnu Dutt Sharma vs. Manju Sharma,⁹ Supreme Court observed that “when legislative provisions specify the grounds for granting a divorce, they constitute the only conditions on which the Court has jurisdiction to grant divorce. Granting a divorce on the ground of irretrievable breakdown, would mean adding a separate ground for divorce which can only be done by the legislature”.

Anil Kumar Jain vs. Maya Jain,¹⁰ in this landmark judgment the Supreme Court held “Although irretrievable breakdown of marriage is not a ground for divorce under Sections 13 or 13B of the Hindu Marriage Act, 1955, it can be applied to a proceeding under either of these provisions only if the proceedings are before the Supreme Court. Neither the civil courts or the High Courts can pass such orders”.

V. THE MARRIAGE LAWS (AMENDMENT) BILL, 2010

The Marriage Laws (Amendment) Bill, 2010, was presented in the Lok Sabha on August 4 by Shri M. Veerappa Moily, Minister of Law and Justice. The Standing Committee on Personnel, Public Grievances, Law and Justice was given the bill and instructed to report back in two months. The Committee has assigned till January 31, 2011, to submit the report. The Hindu Marriage Act, 1955, which codifies the legislation governing marriage between Hindus, and the Special Marriage Act, 1954, which allows for unique forms of marriage in specific circumstances, are both amended by the bill.

The amendment aims to make irretrievable breakdown of marriage a legal basis for divorce and suggests that the woman may get a portion of the marital estate.

AN ANALYSIS OF CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

"Any distinction, restriction, or exclusion, made solely on the basis of sex, that has the effect or purpose of impeding or nullifying the enjoyment, recognition, irrespective of their marital status, on a basis of equality of men and women, of fundamental freedoms and human rights in the

⁹ Vishnu Dutt Sharma v. Manju Sharma, AIR 2009 SC 2254.

¹⁰ AnilKumar Jain v. MayaJain, (2009) 10 SCC415.

social, political, economic, cultural, civil, or other spheres,"¹¹ is what is referred to as discrimination against women.

ANALYSIS OF INTERNATIONAL DECISIONS RELATING TO THE THEORY OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

Todd, R.W. and Todd, Y.D.¹²

Mr. Todd and Mrs. Todd were married in 1960, and they had two children outside of marriage. The wife and the two children left the marital residence on November 23, 1974; however, on April 21, 1975, all three of them returned. They all remained together after that until both parties chose to obtain a divorce in 1976. the divorce petition submitted to the Family Law Division of the Supreme Court of New South Wales under the Family Law Act, 1975. However, the divorce application was sent to the Family Court. What constituted "separation" and "separated and apart" for a continuous period of not less than 12 months was the main question in this case. According to the Family Court of Australia, the marriage has been irretrievably broken down.

VI. EXPANDING THE SCOPE OF DIVORCE LEGISLATION WAS REQUIRED IN LIGHT OF RECENT SOCIOECONOMIC DEVELOPMENTS. THE NEED FOR THE EXTENSION OF DIVORCE LAWS WAS DRIVEN BY RECENT SOCIO-ECONOMIC DEVELOPMENTS.

With the amendment of 1976, all three of these grounds were included as grounds for divorce as well. Furthermore, the statute included new grounds for divorce that are considered fault grounds ,like insanity, conversion ,etc. Section 13 of the Hindu Marriage Act of 1955 (hereafter referred to as the " HMA") specifies many justifications that are based on guilt. Expanding the scope of divorce legislation was required in light of recent socio economic developments. The need for the extension of divorce laws was driven by recent socio economic developments. Up until 1976, the aforementioned Act, which governs interpersonal relationships, could only be understood as using the fault-ground principle.

¹¹ UN Women, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (last visited Nov. 22, 2023).

¹² Todd & Todd (1976) FLC 90-008.

The modern world is influenced by westernization, modernization, and urbanization. Males and women in India are progressing considerably more rapidly than previously. This has been viewed as a danger to marriage stability and tranquil married life for both men and women. Being divorced easily does not indicate a prosperous life. Divorce, on the other hand, is a backward step in that it ruins the spouses' family life and marriage, which has been seen as the basic cornerstone of society. Marriage and family are constantly sought to be recognized because they have an impact on the basic framework of contemporary society, which is built on the essential basis of family life. Mutual understanding, feelings of love, affection, and faith between spouses are key aspects that contribute to a happy, successful married life and help to develop and consolidate the institution of marriage. Under no circumstances should these fundamental foundations of Hindu marriage law be compromised. The couples enjoy the love and strength of their connection because of the harmony between the partners and the pleasant marital tie. As contemporary young men and women develop in pleasant living situations, the stability of modern Hindu society will be strengthened.

As both sexes now have equal status, are cognitively aware of one another, and are no longer economically dependent on one another, marriage is no longer regarded as an unbreakable union. The basis of a marriage is shared trust, love, respect, and care; when any of these elements are lost, intolerance towards one another results, turning married life into a living hell. Hence, it is preferable to sever the undesirable bond legally when the relationship between the parties has already ended and there is no hope of reconciliation. If a court awards a relationship breakdown in these circumstances, it cannot repair a strained marriage or improve the lives of the troubled spouses. Withholding the divorce in such situations not only makes things worse for the individuals seeking a divorce but also for society. The maintenance of marital status is necessary for the public interest as long as it is feasible, but if a marriage has been destroyed or shattered beyond repair, it is in the public interest to recognize that. This is something that courts have noted from time to time.

The irretrievable breakdown can be included as a ground for divorce with the help of the recommendations and suggestions made by the law commission, as well as the inclusion of some safeguards in the provision, allowing the couples who are carrying futile marriages on their shoulders to be relieved and end such marriages satisfactorily.

Article 142 Of the Indian Constitution, Which Gives the Supreme Court The Authority To Issue Whatever Decision They See Necessary To Ensure Complete Justice In The Case, The Supreme Court Of India Has Dissolved Marriages On The Grounds Of Irretrievable Breakdown Of Marriage.

The no-fault doctrine is not recognized in India. Hence, no such cause exists under the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954, which provide provisions for situations involving their retrievable breakdown of marriage. The inclusion of the aforementioned ground under the statutes, however, has been the subject of several continuing debates that have made headlines. The fundamental element of the discussion on marriages that are irretrievably broken down is that those unions that are affecting the life of either partner must be ended since doing so put personal freedom and human rights in danger. Also, it is useless to bring out faults in marriages that have reached a stage where are conciliation is impossible.

Comparatively speaking, the United Kingdom passed the Divorce Reforms Act in 1969. The act break down divorce idea was first presented. After that, the irretrievable breakdown of a marriage was recognized as a legal ground for divorce in the UK. Looking at the reformed laws of the United Kingdom, it appears that the majority of the legal reform's development has already been accomplished because of India's foreign traditions.

- i. Amendments to recent legal laws as a result of landmark decisions and judicial initiatives to establish the breakdown theory as a distinct basis of divorce under the Hindu Marriage Act of 1955.
- ii. It is impossible to deny any spouse their right to independence and dignity in the present period of gender equality, democratic government, socioeconomic globalization, industrial progress, and internet innovation.
- iii. When there is a lack of essential elements of marriage between spouses, such as mutual trust, respect for each other, acceptance, patience, sacrifice, affection, transparency, clear understanding, and taking care of each other's needs, the institution of marriage begins to break down, and if there is no scope for reform or any hope of resumption of spousal

duties and either any or both spouses do not wish to co-habit with each other, the institution of marriage begins to break down.

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