

Irretrievable Breakdown of Marriage

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ABSTRACT: The Irretrievable breakdown of marriage is the most controversial theory in legal jurisprudence. Under Hindu Law, marriage is viewed as a sacrament that is eternal and irreversible. Marriage is the union of two persons which is based on the love, affection and respect for each other. If any of these is hampered due to any reasons or if there is a failure in the matrimonial relationship between the spouses that reaches to such an extent that both the spouses are no longer willing to live with each other peacefully then it is better to dissolve such a dead relationship which exists only in name not in reality. This research paper discusses the requisite to establish an Irretrievable Breakdown of Marriage as a legal and justiciable ground of divorce.

Key words: Marriage, relationship and divorce

INTRODUCTION

Under Hindu Law, marriage is viewed as a sacrament that is eternal and irreversible. Monogamy is severely enforced under Hindu law. Divorce was not a recognized manner of ending a marriage before the passage of the Hindu Marriage Act, with the exception of where it was accepted by custom, which meant that the laws of dissolution of marriage and monogamy were subject to a valid custom to the contrary. Marriage was seen as an irreversible unity of the pair in Ancient India, hence separation was an exception to ordinary Hindu law. However, the objective of a Hindu marriage is still to maintain the marriage rather than to terminate it. The judiciary is making various measures to resolve matrimonial issues and save marriages. Under Modern "Hindu Law", there are four theories of divorce: guilt theory, frustration theory, mutual consent theory, breakdown theory.

"Irretrievable breakdown of marriage" refers to a marriage that is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably. Though 'irretrievable breakdown of marriage' is not a ground for divorce under the Hindu Marriage Act and Special Marriages Act, the Supreme Court has, in a significant ruling, said divorce can be granted if a marriage is totally unworkable, emotionally dead and beyond salvage

Historical Background of Irretrievable Breakdown Theory of Marriage:

The concept of Irretrievable breakdown of marriage was for the first time introduced in New Zealand where it was recognized that it needn't be necessary for there to be some fault or other for a spouse to want to opt out of a marriage and hence the law has to recognize and cater to that requirement. The first divorce on the ground of Irretrievable breakdown of marriage was granted by the court in **New Zealand in 1921**. The Court held that "when matrimonial relations have ceased to exist, it is not in the interests of the parties nor in the interest of the public to keep the man and woman bound as husband and wife in law". Then in **England** it was the case of **Masarati v. Masarati**¹ that introduced the theory of breakdown and the 1943 House of Lord decision in the case of **Blunt v. Blunt**² made it increasingly accepted that no public interest was served by keeping legally in existence a marriage which had in fact broken down.

The ground of Irretrievable Breakdown of Marriage is not been provided in the Hindu marriage act. Yet one can avail this ground for divorce. A collective definition of the Irretrievable Breakdown of Marriage can be called from the 71st Law Commission Report and also from the 217th Law Commission Report; "Such failure in matrimonial relationship or such adverse circumstances to relationship that no reasonable probability remains for spouses living together again as husband and wife."³ In other words the relationship is broken beyond repair. Irretrievable Breakdown of Marriage can be another ground for divorce even though the ground is not provided in the Hindu marriage act of 1955 officially, i.e., no formal ground of irretrievable breakdown of marriage. Per se Hindu Marriage Act both the husband and the wife have been given a right to get their marriage dissolved by a decree of divorce on more than one ground as enumerated in Section 13. The legislature has been conscious of the social developments and the need for making available the remedy of divorce in more and more situations. However, it is to be noted that none of the grounds enumerated in section 13 speaks of irretrievable breakdown of marriage as a ground for divorce.

Section 13(1A) of the Hindu Marriage Act of 1955 states that "either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground that the marriage was solemnized before or after the commencement of this Act

- That there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- That there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

Even though the ground does not formally exist in the statute the court often grants divorce on this ground when it is clear that any further legal proceedings will only lead to a long drawn costly legal battle, with corresponding no benefit to the relationship. In India, the Law Commission in its 71st Report has recommended that irretrievable breakdown of marriage should be a separate ground for divorce.⁴ As to the Irretrievable Breakdown of Marriage, it is submitted that the marital relationship had broken down in cases wherein the parties had ceased to cohabit and if one or both of them intend not to resume the cohabitation. However, in the case of divorce by consent u/s 13 of Hindu Marriage Act, that most probably anyone of the spouse would be willing to take permanent action, such as for dissolving the marriage, until and unless period of time had been given for reconsideration and unless any of the attempt at reconcile has been made as might be reasonably prudent to do in the given circumstances of a particular case.

Followings are a few examples of the different kind of evidences that the court will accept as proof for the irretrievable breakdown within the marriage: -

- The couple has not lived together as each other's spouse or as husband and wife for a particular and continuous period of time.
- One of the partners had sexual intercourse with somebody else (other than his/her spouse) and because of which the other partner finds it impossible to continue living together as husband and wife.
- One of the partners is in imprisoned after being declared as a habitual criminal. (This means he or she keeps committing crimes continuously, and because of which he or she was sentenced for 10-15 years of imprisonment.)
- One of the partners deserted the other.
- One regularly abused the other amounting to assaults and mental agony, for example the wife keeps assaulting the husband at home or workplace or at social gatherings.
- One of the partners is an addict to alcoholic or drugs or any immoral substance.
- The partners don't love each other for any long; this might be due to a lot of differences and misunderstandings before and after marriage, or they married when they were too young. One of the partners finds it impossible to live together as husband and wife for any other non-enumerated reasons.

Judicial view on irretrievable breakdown of marriage:

The Supreme Court recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for divorce in the following words: **“Before we part with this case, on the consideration of the totality of facts, this Court would like to recommend the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce”**.

The Supreme Court used its extraordinary powers under Article 142 of the Constitution to grant divorce in a case of “irretrievable breakdown of marriage”. Article 142 provides a unique power to the Supreme Court, to do “complete justice” between the parties involved. This means that at times when law or statute may not provide a remedy, the Court can extend itself to settle a dispute in a manner that would befit the facts of the case. It is with this objective that the court finds it appropriate to grant divorce in a case of “irretrievable breakdown of marriage”.

In the year 2009, Indian “Law Commission of India suo motu” consider the matter and in “217th Report titled suggest ‘Irretrievable Breakdown of Marriage as Ground for Divorce’ and recommended that ‘Irretrievable breakdown of marriage’ must be added as another ground decree of divorce”. Pursuant thereto, the **“Marriage Laws (Amendment) Bill, 2010”** was given in “Lok Sabha” which proposed to add 13- C Section in Hindu Marriage Act to make Irretrievable Breakdown of marriage as ground of divorce. This proposed Bill also launch express to save the welfare of the wife and kids who can suffer as a result of the divorce given on basis of irretrievable breakdown of marriage. Though, the above said Bill is at “proposal stage”. Therefore, the last recourse with the parties to dissolve a still dead marriage is to reach at the doors the Supreme Court . Now, we will discuss the judgments of divorce on the ground of irretrievable breakdown of marriage:-

The Supreme Court has refused to grant divorce on the ground of Irretrievable Breakdown of Marriage in a number of cases, for example in case of **Savithri Pandey v. Prem Chand Pandey**³, The Supreme Court held that no circumstance exists for the exercise of power under Article 142 of the Indian Constitution. On the other hand, the Supreme Court has granted divorce in many cases on the ground of irretrievable breakdown of marriage, for example, in case of **Samar Ghose v. Jaya Ghose**⁴ the Supreme Court held that the parties have been living separately since 1990 and the decision was of 2007 and they further held that there is no emotion or feeling left between the parties in the marriages irretrievably broken down. So, there is no to plank onto it and it's better to grant divorce.

In A. Jayachandra v. Anel Kaur⁵, the Supreme Court examined the cases where the marriage has come to an end and there remains no scope for the couple to cohabit together in love and peace. In this case of 2004, the Apex Court had held, "To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'." The issue involved here was if in the event of a long-drawn litigation process, a couple can claim divorce to shorten the agony due to the lengthy procedure through the model of irretrievable breakdown of marriage. The husband in this case complained about the “obnoxious and humiliating” behaviour of the wife and seek divorce by mutual consent under section 13 of the Hindu Marriage Act, 1955 so as to avoid any further unnecessary complications. However, the court went through the evidence and provided a decree for judicial separation. Supreme Court in the appeal rather decided that there did exist cruelty and it deduced from the facts & circumstances that the marriage had irretrievably broken down. The court further stated that it knows that this concept can be used to provide a decree for marriage but it continued with a view to complete justice and shorten the mental agony of the parties. All in all, when the respondent gives priority to her profession over her husband's freedom it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage. The Court found the marriage irretrievably broken down and granted divorce to the husband. This is however very surprising, as many a times in the similar circumstances the court, rather than granting a decree for divorce has ordered for the restitution of conjugal rights holding the notion of a Hindu marriage being sacrosanct as the very foundation of decree for restitution. The idea behind the declaration of irretrievable breakdown of marriage is also based on the consent as it plays a major role in the occurrence of a valid marriage. Since consent is accorded primacy at the time of marriage, it follows that when one or both parties believe that the marriage has broken, they can petition for divorce. When both parties agree the marriage has failed, they can apply for divorce by "mutual consent". When only one of the parties believes that the marriage is failing, it would be enabling for the party to seek divorce arguing that the marriage has broken down, despite the unwillingness of the other party to end the relationship.

In Kanchan Devi v. Pramod Kumar Mittal, AIR 1996 SC 3192,⁶ the Supreme Court held that the marriage between husband has been broken down beyond repair and divorce is to be given on basis of irretrievable breakdown of marriage.

The Delhi High Court in a full bench decision in **Ram Kali v. Gopal Das**⁷ took note of the modern trend of not insisting on the maintenance of a union which has utterly broken down, and observed; It would not be practical and realistic approach, indeed it would be unreasonable and inhumane, to compel the parties to keep up the facade of marriage even though the rift between them is complete and there are no prospects of their ever living together as husband and wife”.

The most important landmark judgment of irretrievable breakdown of marriage is the case of **Naveen Kohli v. Neelu Kohli**⁸, delivered on 21st March 2006 by a 3-judge bench and written by **Justice Dalveer Bhandari**. In this case the parties married in 1975 and had 3 sons, for whom they established three factories the husband alleged due to the ill-temper and rude behaviour of the wife he cannot continue with the marriage and moved out of the house in 1994 and started living in a rented accommodation. After that there were multiple FIRs lodged between the parties and many civil and criminal proceedings, finally the matter reached Supreme Court of India and after much considerations Supreme Court held that "Even at this stage, the respondent doesn't want divorce by mutual consent. From the analysis an evaluation of the entire evidence it that the respondent has resolved to live in agony only to make life a miserable hell for the Appellant. A marriage between the parties is only in name. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond. Hence the Supreme Court of India granted divorce on the grounds of irretrievable breakdown of marriage holding that there was nothing left in the marriage to continue to hold on to. It would be a sham and would be counterproductive.

A divorce case based on breakdown should involve the determination of these questions:

- Has the marriage broken down?
- If so, is there any reasonable prospect of reconciliation?
- If not, is there any reason of public policy, including particular justice to the parties and to the children, why marriage should not be dissolved?
- If so, what are the appropriate consequential arrangements to be made regarding the parties and the child?”⁹

CONCLUSION

Thus, it can be said that marriage is an institution in the maintenance of which the public at large is deeply interested. It is the foundation of the family and in turn of the society without which no civilization can exist. This foundation presupposes the existence of a platform build on the basis of sound understanding between the spouses. If this understanding is missing between the spouses and the marriage is a continuous malady, then it is desirable that the marriage should be dissolved with the intervention of the court. There is no useful purpose served by continuing such a marriage. Thus, on the basis of “irretrievable breakdown theory” such marriages should be dissolved for the common betterment of both the spouses. it is high time to appreciate the need of Irretrievable Breakdown of Marriage theory so that spouses can have a new and better life instead of wasting their young life in courts. Hence, it is advisable to the legislation to introduce the Irretrievable Breakdown as an official ground to grant a decree of divorce in the light of Justice, Equity and Good Conscience towards society as a whole with the parties in dispute, which would also empower jurisdiction and orders of the judiciary with no conflict in the instances of broken-down marriages beyond repair. Even the judicial overload in the family court could be reduced by escaping the unnecessary complications in the marital relations and long stretched procedure could be avoided for the welfare of the society.

Refernece:

1. Masarati v. Masarati [1969] 1 WLR 393 CA
2. Blunt v. Blunt [1943] AC 517,HL
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4. Samar Ghose v. Jaya Ghose(2007) 4 SCC 511
5. A.Jayachandra v. Aneel Kaur(2005) 2 SCC 22
6. Kanchan Devi v. Pramod Kumar Mittal ,AIR 1996 SC 3192
7. Ram Kali v. Gopal DasILR 1971 (1) del 10
8. Naveen Kohli v. Neelu Kohli Appeal (civil) 812 of 2004
9. Reform of the Grounds of Divorce (1966)
10. 71st Report of Law Commission of India,1978
11. 217th Report of the Law Commission of India,2009
12. Hindu Marriage Act ,1955