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MARRIAGE: A UNION FOR LIFE OR A UNION OF COMFORT?: IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND FOR DIVORCE

-Karthik R. Iyer¹

ABSTRACT

The paper validates the idea of irretrievable breakdown of marriage being a reasonable ground for divorce. Even-though there are various nuances present in relation with S. 13-B of the Hindu Marriage Act, 1955, which speaks about “Divorce by Mutual Consent”, the disadvantage of the provision is that, both the parties must understand the matrimonial condition and should move forward for divorce, whereas there are a lot of couples whose marriage has been broken-down, but one party does not agree to get a divorce through mutual consent. Thus, a new amendment must be made which allows one party of the marriage to file for divorce on grounds of “Irretrievable Breakdown of Marriage”.

The paper showcases the notion of “irretrievable breakdown of marriage” which should be a new provision to be included in the Hindu Marriage Act, 1955. The ground was included in the bill passed by the Rajya Sabha in 2013. This paper states the legitimacy of the bill, which was introduced to save the parties by separating them from an unworkable marriage which has become practically and emotionally dead. Therefore, the marriage being irreversibly broken down is stated to be a valid ground in order to grant a decree of divorce to parties who are actually suffering because of the matrimonial union and are ready to get separate.

Keywords: *Irretrievable breakdown, Divorce, Unworkable marriage, Emotionally dead, 71st Report & 217th Report of Law Commission, S. 13-B Hindu Marriage Act, 1955.*

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INTRODUCTION

In India, personal laws not only regulate marriages and inheritance but they also deal with divorce, maintenance, succession and adoption decisions of its citizens. Legislations in this regard are significantly influenced by the religious customs and practices of different communities in the society. The Hindu Marriage Act is once such Hindu code bill enacted by the Indian Parliament in 1955. The main purpose of the enactment of this legislation was to codify and amend the laws relating to marriages. The enactment introduced new laws of separation and divorce between married couples, which didn't exist in the earlier times.

The concept "Irretrievable breakdown of marriage" refers to a matrimony that has become completely dead considering the emotional aspect of a marriage to such an extent that the breakdown is irreversible. Irretrievable breakdown of the matrimony has been introduced as a ground for the grant of divorce because restricting the grant of divorce because of a specific disability in the marriage causes injustice not only in the cases where there isn't any fault on both the parties of the marriage, but also to the parties who don't wish to continue the matrimonial relationship. S. 13(1) of the Hindu Marriage Act, 1955 mentions about "Divorce". The provision states that "any matrimony which has been solemnised can be dissolved by a decree of divorce"².

An article³ states how Rajya Sabha has granted the Hindu Marriage Amendment Bill of 2010 incorporating "irretrievable breakdown of marriage" as a reason to grant divorce under the Hindu Marriage Act, 1955. This article states how the courts had approached the cases wherein divorce was granted on the grounds that the marriage was irretrievably broken down.

This article discusses about the dismissal of appeal by Justice Katju & Justice V.R. Sirpurkar, regarding divorce by mutual consent under S. 13-B of the 1955 Act, after the unilateral withdrawal of consent which was strongly opined in *Vishnu Dutt Sharma v. Manju Sharma*⁴.

They argued that "If divorce is granted on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the

² Hindu Marriage Act, 1955, S. 13(1), No. 25, Acts of Parliament, 1955 (India).

³ Harshad Pathak, (2013). Article 142: Incomplete Justice?. *Chanakya National Law University Journal*, (3), 40.

⁴ (2009) 6 SCC 379

marriage is also a ground for divorce. And this can only be done by the legislature and not by the Court. It is for Parliament to enact or amend the law and not for the Courts.”⁵

Another article⁶ had discussed that the concept of irretrievable breakdown of the matrimony as a valid basis of granting divorce should be reserved only for marriages which appear to be truly broken i.e., where “the marriage has become impossible to resurrect,” or “the marriage has proved to be a complete failure,” or “when the emotional bonds which are of the essence of the marriage have disappeared.”

The article further discusses that the irreversible breakdown of the marital relationship shouldn’t become a tool for the husbands to walk out of the marriages and abandon the wives who have no support, whether economic or residential. The potential danger of the ground irretrievable breakdown is that “fault” grounds have served as a section of unilateral divorce. The research says that they should not grant divorce to separated women with no support as it would help the women in negotiating the terms for settlement.

The research paper is written to show the emerging ground for divorce and the reasoning behind the ground being valid. This research papers showcases the concept of a marriage being permanently broken down as a ground of divorce with its limitations. The author has been analysed the concept through a doctrinal research using secondary sources such as articles, reports, statutes, case-laws, etc, to gain an understanding about the concept of irretrievable breakdown.

The primary questions are, “Whether the courts granting divorce on the grounds of irretrievable breakdown of marriage is valid” and “How is this ground different from “Divorce by Mutual Consent”?”

REPORTS OF LAW COMMISSION OF INDIA

The New Zealand Divorce & Matrimonial Causes Amendment Act, 1920 acted as a pioneer by including a provision that mentioned about a separation agreement for three years or more being a valid basis in order to file a divorce petition in the court. This provision also gave the court a discretion, whether to grant divorce or refuse the divorce petition.⁷

⁵ Vishnu Dutt Sharma v. Manju Sharma (2009) 6 SCC 379

⁶ Srimati Basu, (2014-2015). Spoils of Marriage: Irretrievable Breakdown and Matrimonial Property in the Law Commission of India Reports. *Journal of Indian Law and Society*, (6), 22.

⁷ 71st Report of Law Commission of India, (1978). *The Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a ground of Divorce*.

Breakdown Principle of Salmond J: “The Legislature must, I think, be taken to have intended that separation for three years is to be accepted by this court, as *prima facie* a good ground for divorce. When the matrimonial relation has for that period ceased to exist *de facto*, it should, unless there are special reasons to the contrary, cease to exist *de jure* also. In general, it is not in the interests of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law when for a lengthy period they have ceased to be such in fact. In the case of such a separation the essential purposes of marriage have been frustrated, and its further continuance is in general not merely useless but mischievous.”⁸

Whenever, the issue of including the concept of “irretrievable breakdown of the matrimony” is proposed as an appropriate basis to grant divorce, the opposing parties have an argument that “Divorce by Mutual Consent” which was introduced to Hindu Marriage Act, in 1976 majorly grants coverage to the situation of irretrievable breakdown.

“Divorce by Mutual Consent” states that, “A petition for the dissolution of marriage can be submitted by both the parties to the marriage before the district court by a divorce decree, on the ground that they have been living separately for a period of one year or more and both the parties have mutually agreed to dissolve the marriage”⁹

It is of utmost significance to observe that the concept “Divorce by Mutual Consent” has a basic requirement wherein the consent of both parties to the marriage is required in order to file a divorce petition. However, if one of the parties is not ready to co-operate, the divorce cannot be granted by the courts since the ground of “mutual consent” is absent.

“Irretrievable breakdown of marriage”, becomes a reason wherein the courts are able to examine the facts of the matter in dispute and if the court comes to a conclusion that the marriage is irreparable or can't be saved, the court grants the divorce. Therefore, in this situation, the divorce which has been granted does not depend on the desires of the married couple, instead it relies on the facts pleaded and the conclusion of the court which may declare the marriage being irretrievably broken down.¹⁰

⁸ 71st Report of Law Commission of India, (1978). *The Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a ground of Divorce*.

⁹ Hindu Marriage Act, 1955, S. 13B, No. 25, Acts of Parliament, 1955 (India).

¹⁰ 217th Report of Law Commission of India, (2009). *Irretrievable Breakdown of Marriage – Another Ground for Divorce*

JUDICIAL PRONOUNCEMENTS

The Supreme Court in **Jorden Diengdeh v. S. S. Chopra** has observed, “It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. We suggest that the time has come for the intervention of the legislature in those matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situation in which couples like the present have found themselves.”¹¹

The legislation relating to divorce is majorly based on the fault theory which becomes inadequate when the courts have to deal with a broken marriage. According to the Fault theory, the guilt of the person has to be proven and concrete instances of human behaviour which bring the institution of marriage into disgrace must be presented before the divorce courts.

It would become unrealistic for the justice system not to take cognizance of the fact that the marital institution has been broken down beyond repair, as it would ultimately affect in a harmful manner the parties’ interest as well as the society’s interests at large.

In circumstances where the married couple have continued to live separately from each other for a long period, there is a reasonable inference present which conveys that the nuptial bond has completely been ruptured and is beyond any repair. Although the marriage is supported by the law, it becomes a fiction to the parties of the broken marriage and when the court refrains to sever the legal tie of the broken marriage, it doesn’t attend the holiness of a matrimony, instead, it displays negligible regards towards the parties’ emotions.

The marriage being irretrievably broken down is not a valid ground for the grant of divorce, however, during the court’s examination process of the evidence on record, the circumstances of the matter have to be taken into consideration in order to determine whether the grounds on the basis of which the divorce petition is filed are made out. If the party seeking divorce is at fault, the divorce cannot be granted on the grounds of irretrievable breakdown of marriage.

The courts can grant a decree of divorce on the ground that the marital bond has been broken down beyond repair to those parties who have equal accusations against each other and when the parties claim that they cannot live together in a matrimonial relationship and when the matrimonial relationship appears to be virtually dead to the petitioner. The court’s authority in order to grant a divorce should be

¹¹ Jorden Diengdeh v. S.S. Chopra, AIR 1985 SC 935

exercised with utmost care and caution and only the interest of both the parties must be kept in mind in the exceptional circumstances.

The Calcutta High Court held, “In our considered opinion, the marriage between the parties cannot be dissolved by the trial court or even by the High Court only on the ground of marriage having been irretrievably broken down, in the absence of one or more grounds as contemplated under S. 13(1) of the Hindu Marriage Act, 1955.”¹²

The Supreme Court held, “Irretrievable breakdown of the marriage is not a ground for divorce by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind.”¹³

The Calcutta High Court held, “in a petition for divorce on a ground as mentioned in the Hindu Marriage Act or the Special Marriage Act, the court cannot grant divorce on the meagre ground of irretrievable breakdown of marriage.”¹⁴

The Supreme Court held, “The marriage between the appellant and the respondent has irretrievably broken down and that there was no possibility of reconciliation, we hereby direct that the marriage between the appellant and the respondent shall stand dissolved by a decree of divorce.”¹⁵

The divorce petition was filed by the husband-appellant (Vishnu Sharma), against the wife-respondent (Manju Sharma) alleging that the wife had begun to behave with cruelty towards him after the marriage by insulting the husband and his family and the wife had been avoiding to stay in the matrimonial home. Further she left the home while she was pregnant. The respondent in her written statement specified that the husband-appellant and his family had severely trashed her which resulted in her getting medically examined by the doctors.

The Supreme Court held, “Had the both parties been willing, we could have granted a divorce by mutual consent as contemplated by Section 13 B of the Act, but in this case the respondent is not willing to agree to a divorce”¹⁶, and dismissed the appeal.

¹² Geeta Mullick v. Brojo Gopal Mullick AIR 2003 Cal 321

¹³ V. Bhagat v. D. Bhagat (1994) 1 SCC 337

¹⁴ Tapan Kumar Chakraborty v. Jyotsna Chakraborty AIR 1997 Cal 134

¹⁵ Kanchan Devi v. Promod Kumar Mittal (1996) 8 SCC 90

¹⁶ Vishnu Dutt Sharma v. Manju Sharma (2009) 6 SCC 379

The Indian Supreme Court held, “Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty alleged may largely depend upon the type of life, the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance.”¹⁷ had disposed the appeal filed by the appellant-husband.

The Court in another case held that the marital bond between the parties was dead for all practical purposes and there were no probabilities in order to retrieve and save the marriage. Thus, the continuation of a dead relationship would result in cruelty towards the parties and the court had directed to dissolve the marriage.¹⁸

The Supreme Court had irrefutably notice that the matrimonial bond was emotionally as well as practically dead and the revival and the continuation of such marriage is not possible. Therefore, the Supreme Court had disposed of the appeal.¹⁹

The Single Judge had directed for dissolution of marriage on the ground of “cruelty” which was prayed by the respondent. Cruelty not only includes physical brutality but mental torture is also considered, although the degrees of cruelty required to amount for a matrimonial offence have not been defined in the 1955 Act.

Both the appellant and the respondent were staying together for a short length of time and they parted company, despite several attempts of pacification no conciliation between them was possible.

The court held, “It can be reasonably inferred by the circumstances the marriage between the parties has been broken down irretrievably without any fault on the part of the respondent”²⁰, thus the court dismissed the appeal and directed that the High Court’s decision should not be disturbed since the decision was in favour of the respondent’s payer for the dissolution of marriage on the grounds of breakdown.

¹⁷ Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558

¹⁸ Satish Sitole v. Ganga (2008) 7 SCC 734

¹⁹ Ashok Hurra v. Rupa Bipin Zaveri (1997) 4 SCC 226

²⁰ Praveen Mehta v. Inderjit Mehta (2002) 5 SCC 706

BILL PASSED BY THE RAJYA SABHA

The Bill passed by the Rajya Sabha to make amendments to S. 13 of the Hindu Marriage Act, 1955 through insertion of S. 13C “Divorce on the ground of irretrievable breakdown of marriage”²¹

Section 13C²²

- (1) A petition for the dissolution of marriage by a divorce decree must be presented before the district court by one party to the matrimony on the ground that the matrimony has broken down irretrievably.
- (2) The court hearing the petition of irretrievable breakdown (referred in subsection (1)) should be completely satisfied that the parties to the marriage have lived separately for a continuous period of three years or more, immediately preceding the filing of the petition.
- (3) If the court is completely satisfied by the evidence present before, as to the fact mentioned in subsection (2), the court can grant a decree of divorce, unless it is content with the evidence that the marriage has not broken down irretrievably.
- (4) For the purpose of subsection (2), considering the continuous period of time for which the parties to the marriage have lived separately, the court will not take into account of any duration of time (not exceeding three months), wherein the parties had resumed living with each other, but no other period of time where the parties have lived together shall be counted as a part where they have lived separately.
- (5) For the purposes of subsection (2) & (4), the married will be considered as living separately unless they are living with each other under the same roof in the same house.

CONCLUSION

The General Assembly of the Church of Scotland had accepted a reported submitted by their Moral & Social Welfare Board which had suggested, “Matrimonial offences are often the outcome of a deteriorating marriage rather than being the cause of a failed matrimony. An accusatorial principle of divorce tends to encourage matrimonial offences which increases bitterness and widens the rift present between the couples. Separation for a continuous period of at least two years consequent upon a decision

²¹ Marriage Laws (Amendment) Bill, 2013, Bill No. 41-C of 2010.

²² Marriage Laws (Amendment) Bill, 2013, Bill No. 41-C of 2010, S. 13C

of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown.”²³

If the married couple has been emotionally and practically separated from each other for an adequate length of time and one party has filed a divorce petition, the courts assume that the marriage has broken down. The court must make an attempt in order to reconcile the disputes between the parties. However, if the court finds out that the breakdown is irreparable, divorce should be granted to the parties, since the repercussions of preserving an unworkable and ineffective marriage would become the source of misery to the parties.

“The foundation of a good marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and always keeping in view the physical and mental conditions of the parties, their character and social status. Technical and hypersensitive approach towards this would be counterproductive to the institution of marriage. The courts, therefore, do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman instead.”²⁴

As the families are becoming to be more democratic, both the husband and wife not only share a family house but they also share the earnings of each other. Thus, it becomes necessary to ensure mutual cooperation between two and in case of failure of such attempt, legal sanctions must be withdrawn.

The petitioner has to be present before the court and must prove with concrete facts that the couple were living separately for a long period of time, which would facilitate the judges to adjudicate by considering the evidence presented before the court.²⁵

The law of divorce is majorly based on the Fault Theory which does not include the concept of an irretrievably broken marriage, because, under Fault Theory the culpability of the party/parties has to be proven and the courts have to be presented with concrete occurrences of human behaviour so as to bring the matrimonial institution into disrepute.

²³ 71st Report of Law Commission of India (1978). *The Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a ground of Divorce*.

²⁴ 217th Report of Law Commission of India (2009). *Irretrievable Breakdown of Marriage – Another Ground for Divorce*.

²⁵ 217th Report of Law Commission of India (2009). *Irretrievable Breakdown of Marriage – Another Ground for Divorce*.

The issue with the ground of irretrievable breakdown is that it allows either one spouse or even both spouses to terminate the matrimonial relationship at their whim which transforms the institution of marriage from a union for life to a union which can be ended at pleasure.

It's contrary to the utmost basic principle that, "No man should be allowed to take advantage of his wrong, i.e., a person who was responsible for the marriage breakdown would not depend on the ground in order to obtain a divorce against the partner's will. If the courts grants divorce in such scenarios, it is implied that the law has given statutory acknowledgement to a situation wherein a person may take advantage of their own wrong."²⁶

The ultimate goal for the legislation of "irretrievable breakdown of marriage" is to focus on the rehabilitation and forward movement instead of reconciliation between the parties. Divorce in such cases is concerned with bringing both the parties and the children to terms of the new scenario and developments rather than the wrongs of the past. This is also possible by regulating their relationship in the changed circumstances.

Therefore, "irretrievable breakdown of marriage" can be stated as a valid ground for granting a divorce decree to parties who are actually suffering because of the matrimonial union and are ready to get separate. The court has the authority to grant divorce on such circumstances but also has the responsibility to get into the matter of the case deeply before granting a divorce to avoid fallacy and to prevent people from getting rid of the matrimonial union for petty reasons.

²⁶ 71st Report of Law Commission of India (1978). *The Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a ground of Divorce*.

BIBLIOGRAPHY

ARTICLES

- a. Harshad Pathak, (2013). Article 142: Incomplete Justice?. *Chanakya National Law University Journal*, (3), 40.
- b. Srimati Basu, (2014-2015). Spoils of Marriage: Irretrievable Breakdown and Matrimonial Property in the Law Commission of India Reports. *Journal of Indian Law and Society*, (6), 22.

CASES LAWS

- c. Jorden Diengdeh v. S.S. Chopra, AIR 1985 SC 935
- d. Geeta Mullick v. Brojo Gopal Mullick AIR 2003 Cal 321
- e. V. Bhagat v. D. Bhagat (1994) 1 SCC 337
- f. Tapan Kumar Chakraborty v. Jyotsna Chakraborty AIR 1997 Cal 134
- g. Kanchan Devi v. Promod Kumar Mittal (1996) 8 SCC 90
- h. Vishnu Dutt Sharma v. Manju Sharma (2009) 6 SCC 379
- i. Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558
- j. Satish Sitole v. Ganga (2008) 7 SCC 734
- k. Ashok Hurra v. Rupa Bipin Zaveri (1997) 4 SCC 226
- l. Praveen Mehta v. Inderjit Mehta (2002) 5 SCC 706

REPORTS

- m. 217th Report of Law Commission of India (2009). *Irretrievable Breakdown of Marriage – Another Ground for Divorce*.
- n. 71st Report of Law Commission of India (1978). *The Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a ground of Divorce*.

BILL

- a. Marriage Laws (Amendment) Bill, 2013, Bill No. 41-C, Bills of Rajya Sabha, 2010 (India).

STATUTE

- a. Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).