



Irretrievable Breakdown of Marriage

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INTRODUCTION:

Marriage is a union of man and woman commonly said to be settled in a heaven and performed on the earth. Those who believe in god worship, rejoice when it is performed. Those who believe only in the scientific origin of mankind, find it as a necessity compelled by biological reasons to further the great race of human beings. Either way it directly regulates life in its onward transmission to the next generation, and is therefore a permanent institution acknowledged in both religion and science. Marriage among the Hindus is a necessary sanskar for begetting a son, for discharging his debt to his ancestors and for performing religious and spiritual duties. Marriage, as a sacrament necessarily implied a permanent, eternal and indissoluble union and divorce was considered out of question. This indissoluble aspect of the Hindu marriage is thus expressed by Manu:

“The husband is declared to be one with the wife. Neither by safe nor by repudiation is a wife released from her husband”.¹

However with the advancing complexity of modern society and its possible consequences such as fast changing society – economic conditions, the disintegration of the joint family structure, the rapid development of industrialization and urbanization, education and employment and laws giving equal status and rights to women had a tremendous impact on the institution of marriage. Realizing the futility of retaining a bond legally which has actually become a bondage and source of agony, the law makers in the 1955 Act² have provided a way out by enabling parties to seek dissolution of marriage on certain specified



grounds. In fact divorce was not unknown to Hindu Marriage act, 1955. It was already recognized under Indian Divorce Act,1869; Parsi Marriage and Divorce Act,1936; Special Marriage Act, 1934 and dissolution of Muslim Marriage Act, 1939. It was also known in some Hindu Communities and tribes under the customs,³ now preserved under Section 29 of the Act. Besides, Section 13 lay down seven guilt grounds of Divorce to both the spouses and four additional grounds on which wife alone can sue under Section 13. However the grounds available under the Act are based on ‘Fault Theory’ i.e. Divorce cannot be granted merely on the ground that other party does not object to it and a ground must be established. ⁴Nevertheless the position has changed now. Marriage is no longer treated as indissoluble union. In fact there has been a considerable legislative and judicial interference in the sphere of matrimonial laws and during the past few decades Section 13 has been amended and liberalized couple of times with a view to meet the changing conditions of the society. From divorce under exceptional circumstances to divorce by consent, we are now heading towards divorce on the ground of irretrievable breakdown of marriage. The Supreme Court has also admitted that fault grounds are also proving to be inadequate to deal with this problem. Though irretrievable breakdown of marriage as a ground for divorce has not been incorporated statutorily so far, but if we analyze certain provisions and grounds mentioned in Section 13 and also the approach and interpretation by the judiciary, it would leave no scope to doubt that irretrievable breakdown has already made a back door entry in our divorce laws.⁵

Irretrievable breakdown of marriage can be defined as such failure in the matrimonial relationship or such circumstances adverse to that relationship that no reasonable probability remains of the spouses remaining together as husband and wife for mutual comfort and support. It is a situation that occurs in a marriage when one spouse refuses to live with the other and will not work towards reconciliation. When there is not even an iota of hope that parties can be reconciled to continue their matrimonial life, the situation can be considered as irretrievable breakdown of marriage.

It was first in the Hindu Marriage Act, 1955 a form of irretrievable breakdown of marriage theory was introduced through the Amendment of 1964, by which Section 13 (1 A) have been



inserted. The enactment of this section is a legislative recognition of the principles that in the interest of society if there has been an irretrievable breakdown of marriage there is no purpose in keeping the parties tied down with each other.

A further initiative towards the recognition of the principle of breakdown was the introduction of mutual consent as a ground of divorce in 1976 by incorporating Section 13VB in the Hindu Marriage Act, 1955. However till date in India irretrievable breakdown of marriage has not been expressly recognized as a ground for divorce.

Concept of Irretrievable Breakdown of Marriage: Origin and Scope:

The concept of irretrievable breakdown of marriage was first introduced in New Zealand. The Divorce and Matrimonial Causes Amendment Act, 1920 included for the first time the provision for separation agreement for 3 or more years as a ground for making petition to court for divorce and the court had discretion whether to grant divorce or not. In 1921, this discretion was first exercised in the case of *Loder vs. Loder*.⁶ The court laid down that when matrimonial relations have, in fact ceased to exist it is not in the interest of the parties or in the interest of the public to keep a man and a man and woman bound as husband and wife in law is futile. In the event of such a separation, the essential purpose of marriage is frustrated and its further continuance is not merely useless but mischievous. This formulation has become a classic enunciation of the breakdown principle in matrimonial law.⁷ In England the gate for this theory was opened up in the case of *Masarati vs. Masarati*,⁸ where both the parties to the marriage had committed adultery. The Court of Appeal, on wife's petition for divorce, observed breakdown of marriage. The Law Commission of England in its first report said, the objective of good divorce law are two: one to buttress rather than to undermine the stability of marriage and two, when regrettably a marriage has broken down, to enable the empty shell to be destroyed with maximum fairness, and minimum bitterness, humiliation and distress. On the recommendation of the Law Commission, irretrievable breakdown of marriage was made the sole ground for divorce under Section 1 of the Divorce Law Reforms Act, 1973. The Matrimonial Causes ACT, 1959 of the Commonwealth of Australia also provided divorce on the grounds of breakdown of marriage.



In India, the concept of breakdown of marriage got attention in the last quarter of 20th century. As early as 1967 however, a Full Bench of the Delhi High Court in *Ram Kali vs. GopalDass*,⁹ had said that, “it would be unreasonable and inhumane, to compel the parties to keep up the façade of marriage even though the rift between them is complete and there are no prospects of their ever living together as husband and wife.”

Judicial Trend:

The judiciary is convinced with the theoretical as well as the practical basis for advocating the introduction of irretrievable breakdown as a ground of divorce and has started adopting a more liberal and practical approach. Several judgments of different courts prove the fact that they no longer stick to the traditional notion of inviolability of the marriage tie. In the case of **Chanralekha Trivedi vs. S.P. Trivedi**¹⁰ the Supreme Court did not use the term breakdown but observed that the marriage is dead. In this case, the husband initiated the divorce proceedings on the ground of cruelty wife’s intimacy with young boys. Wife also made similar allegations against the husband. The Supreme Court felt that it could be futile to decide the allegations and counter allegations as the marriage had become dead and granted a decree of divorce. In **V.Bhagat vs. D.V. Bhagat**¹¹ the Supreme Court observed that irretrievable breakdown of marriage is not a ground for divorce by itself but while ascertain the evidence on record to determine whether the ground alleged are made out and in determining the relief to be granted, the said circumstances can certainly be borne in mind. The usual steps of granting divorce can be resorted to only to clean up the indissoluble mess, when the court finds it in the interest of both the parties.

In the landmark judgment of **Naveen Kohli vs. Neetu Kohli**¹² the Supreme Court while expressing it’s concern that divorce could not be granted in number of cases where marriage were virtually dead due to the absence of the provision of irretrievable breakdown, strongly 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 grant of divorce. The three judge Bench of the Supreme Court, after referring to the matrimonial laws of various countries and reports, observed that once the marriage has foe the law not to take notice



of the fact, and it would be harmful to society and injurious to the interest of the parties. Where there has been a long period of separation it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever the tie the law in such cases do not serve the sanctity of marriage, on the contrary it shows scant regard for the feeling and emotions of the parties. The court further observed that public interest demands that the married status should, as far as possible be maintained. However where a marriage has wrecked beyond any hope of being repaired, public interest requires recognition of the fact. The judgment notes that the essence of any marriage is mutual compatibility and cohabitation and there is no acceptable way in which a spouse can be compelled to resume his or her matrimonial life with the consort. Just because one of the express grounds under Section 13 of the Hindu Marriage Act, 1955 are not made out the parties cannot be compelled to live together as the purpose of marriage can still not be attained. The situations causing such misery should not be allowed to continue indefinitely and that law has a responsibility to adequately respond to the needs of the society.

In **Vishnu Dutt Sharma vs. Manju Sharma**¹³ Supreme Court defined giving divorce on the ground of irretrievable breakdown holding that no such ground has been mentioned in the Hindu Marriage Act, 1955. The court observed that the earlier cases had not taken into account the legal position as laid down in Section 13 of the Act and held that a mere direction of the court in earlier cases, without considering the legal position, was not a precedent to be followed by the courts. It further held that if it grants divorce on the ground of irretrievable breakdown, then it's like adding clause to Section 13 to the effect that irretrievable breakdown is the ground of divorce. This can be done only by the legislature and not by courts.

It is ironical that after so clearly specifying that no ground of irretrievable breakdown of marriage exist for the dissolution of marriage, the Supreme Court in its decision **Anil Kumar vs. Maya Jain**¹⁴ in fact granted divorce holding that the trial court and the High Court cannot grant degree of divorce on this ground because there is no provision in the Act to grant divorce on the ground of irretrievable breakdown of marriage, however the Supreme Court can grant relief of divorce on this ground in exercise of its extraordinary power under article 142 of the constitution.

Conclusion:

Marriage is not only a physical union based simply on biological concern or emotional flashes; it is a complete understanding of how to endure life itself it is a vow of togetherness as against all odds of the world, which theme navigates a permanent union between two souls. Therefore, one has to be very careful while entering into such relationships as it is well said that marry in haste, repent at leisure. However when the disputes arrive casting a dark shadow over this pious relationship it is in the danger of collapse.

To apply the doctrine of irretrievable breakdown following basic ingredients are to be satisfied:

1. Both the parties are equally indulging in cruel behavior, physical or mental against each other.
2. It is not possible for the court to come to any definite conclusion about the role or responsibility of one particular spouse in creating and sustaining the bitterness.
3. Marital relationship is emotionally dead and none of the spouses genuinely wants to live with the other spouse.

END NOTES:

1. Manusmriti XI 45-47.
2. Hindu Marriage Act, 1955.
3. Pras Diwan, "Customary Law" Chapter IX (1990).
4. Edwardraj vs. Sillakathi AIR 1992 MAD 82.
5. Prof. Kusum (ed.), Indian Law of Marriage and Divorce, 165 (wadhwa Company, Nagpur, (2008).
6. 1921 (New Zealand Reports) 786.
7. Law Commission, 71st Report.
8. AIR [1969] 1 WLR 392.
9. 4(1968) DLT 503.
10. Headed by H R Khanna J. Former Judge of the Supreme Court of India.
11. Samar Ghosh vs. Jaya Ghosh 2007 (2) RCR (CRIMINAL) 515.
12. AIR 1985 SC 935.



13. AIR 2006 SC 935.
14. Law Commission of India, 71st Report on The Hindu Marriage Act, 1955- Irretrievable Breakdown of Marriage as a ground of divorce.
15. 1994 SCC 232.
16. 2006 (2) RCR (Civil) 290.
17. 2009 (4) RCR (Civil).
18. Nilambe Bharatkumar Patel vs. Bharatkumar Dayabhai Patel, Special Leave Petition (C) No. 20889 of 2015.
19. Aboobaka Haji vs. Manu Koya AIR 1971 KLT 663.