

## **A STUDY OF RECENT DEVELOPMENTS AND JUDICIAL APPROACH ON IRRETRIEVABLE BREAKDOWN OF MARRIAGE**

**CANDIDATE NAME = CHANDRA SHEKHAR**

**DESIGNATION= RESEARCH SCHOLAR SUNRISE UNIVERSITY ALWAR**

**GUIDE NAME= DR. PRAKASH KRISHNRAO DESHMUKH**

**DESIGNATION = ASSOCIATE PROFESSOR**

**SUNRISE UNIVERSITY ALWAR RAJASTHAN**

### **ABSTRACT**

The issue of divorce, however, is complex. Among Hindus, marriage is seen as a rite of passage into adulthood as well as a contractual agreement between two individuals. Although Hindu reformers were occasionally lobbying for modifications in the provision of Hindu Law, the British authorities frowned upon such efforts. Eight years after India's independence, in 1955, the Hindu Marriage Act was enacted. The grounds for which the parties may petition a court with jurisdiction to issue a decree of divorce are laid out in Section 13 of the Hindu Marriage Act. As defined by the law, a "divorce" occurs when two people of different sexes who nevertheless care for one other's dignity and respect live apart. The parties can seek recovery of conjugal rights, judicial separation, or divorce under Hindu marital law. Due to the presence of certain of the technical flaws in the previous theories of divorce, the Indian judiciary is now requiring irretrievable collapse of marriage as a unique reason for divorce.

**KEYWORDS:** Judicial Approach, Irretrievable Breakdown, Marriage, Hindu reformers, conjugal rights

### **INTRODUCTION**

The law committee sees adopting such a notion as a favor to partners who, for various reasons, cannot petition the court for a divorce decision. The Supreme Court and the Indian Law Commission agree that this should be treated as a distinct reason for divorce. Adding "irretrievable breakdown of marriage" as a new cause for divorce among Hindus was recommended in the 71st report of the Law Commission of India, titled "The Hindu Marriage Act, 1955 Irretrievable Breakdown of Marriage." . Recently the Supreme Court also in Naveen Kohli v. Neelu Kohli urged the Indian government to provide "Irretrievable Breakdown of Marriage" formal recognition as a legal basis for a divorce

decision under the Hindu Marriage Act of 1955. Section 13 of the Hindu Marriage Act, 1955 specifies a number of situations in which either spouse may file for a divorce and have the marriage dissolved by a decree of divorce. There was a swap out of some of the original grounds and some new grounds were added. Subsection (1-A) was added in 1964, and it allows either spouse to file for a divorce if either of two conditions is met: (1) there has been no resumption of cohabitation within the time frame specified in the decree for judicial separation; or (2) there has been no restitution of conjugal rights within the time frame specified in the decree for judicial separation

## NATURE OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

Tolerance, adjustment, and respect for one another are the bedrock of a healthy marriage. The destruction of the husband-wife relationship with no chance of reconciliation occurs when one or both partners are no longer able or willing to live together because they are not interested in tolerating each other. In many countries, the grounds for a no-fault divorce are the "irretrievable breakdown of the marriage."<sup>546</sup> Legal systems around the world recognize marriage as a relationship between a man and a woman, with the exception of the Roman Catholic Church. In the eyes of the Roman Catholic Church, marriage is a sacrament and an indissoluble union. Marriage in India is a deeply personal ritual, and its legal framework varies depending on the religious traditions of the two people involved. The grounds for a no-fault divorce vary from state to state, but they all center around the inability of the couple to reconcile their differences. No-fault divorce is exactly what it sounds like: a divorce in which neither spouse is at fault. Both the husband and wife have come to the realization that their marriage cannot continue in its current state. It's when there's absolutely no chance of the couple getting back together again, no matter what the circumstances or how much counseling they undergo. It's getting harder for unhappy couples in our country to stay together on the basis of compatibility. This fact was acknowledged in Section 13-B, "Divorce by Mutual Consent," which granted the legal authority to file for divorce when both parties agreed to do so. Some married couples are unable

to get a divorce on amicable terms because one spouse is trying to negotiate or impose conditions that would amount to harassment of the other. The next natural step in adjusting our divorce rules to shifting societal needs is to recognize divorce by irretrievable breakdown of the marriage. The modern woman does not want to be at her husband's and his family's whim and caprice. She has a lot of pride and self-assurance in herself. She is eager to find her own way in the world and take on its many challenges. She says she'd rather be single than in an unhappy marriage. A situation in which neither party is at fault, the fault is of such a nature that either party wants to disclose it, or there has arisen a situation in which the marriage cannot be worked would be unfair if the grounds for divorce were limited to a specific offense or matrimonial disability. Furthermore, when the emotional and psychological bounds which are vital to a marriage have vanished, there is little use in keeping the marriage as a mask. For whatever reason this marriage has ended and the spouses are no longer able to live together as husband and wife, the Supreme Court has ruled that it is in everyone's best interest to end the marriage and provide an order for restitution of conjugal right. In its final statement on the case, the Supreme Court of India said, "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 Hindu Marriage Act, 1955 to incorporate Irretrievable Breakdown of Marriage as a ground of divorce." Send a copy of the decision to the Secretary of India's Ministry

of Law and Justice so that he or she can take the necessary action.

## **IRRETRIEVABLE BREAKDOWN THEORY**

The Hindu Marriage Act, 1955 provides three theories of Divorce, primarily:

- I. Fault Theory or Guilt Theory
- II. Consent Theory
- III. Supervening Circumstances Theory (Frustration Theory)

As a result of the notion that marriage is a union of two people based on love, affection, and respect for each other, the fourth and most contentious theory of Divorce is the Breakdown theory in the legal jurisprudence. If any of these things are impeded for any reason (such as cruelty, desertion, adultery, insanity, etc.), and if the marital relation between the spouses reaches such a point from which it becomes completely irreparable, meaning that neither spouse can live peacefully with the other and acquire the benefits of a matrimonial relationship, then it is better to dissolve the marriage .

If a married couple has been living in different residences for an extended period of time (say, two or four years) and they have made no effort to reconcile, the law may rule that their marriage is dissolved.

Conflicts between unhappy spouses are at the heart of many societal issues. Many marriages end in divorce not because one partner is particularly evil but because the marriage itself is doomed to fail. In spite of their greatest efforts, many couples' unions ultimately collapse. One partner's selfishness, brashness, callousness, indifference, or similar attitudes might be a contributing factor in the breakdown of a marriage. There has been no infidelity in the marriage. So yet, though, the couple has

not been able to get their marriage off the ground. When one partner insists on maintaining the marriage relationship even though they have been living apart for years, the other partner often feels trapped. Virtual reality (VR) in the Muslim case Daily minor disagreements fades away over time and might be viewed as growing pains in a new marriage, as stated by Kishana Iyer J. While the current of a life shared in marriage may carry away lesser stones, what happens when two people just cannot agree on anything? When a marriage reaches this point of dissolution, the only option is for the law to acknowledge the obvious and grant a divorce .

The dissolution of a marriage as the sole ground for divorce is now recognized in a number of nations. In 1944, it gained official Soviet recognition. It is a valid ground for divorce in the vast majority of communist nations. It has legal standing in a number of US states. Until 1969, England was widely regarded as the world's preeminent conservative stronghold . More and more people are starting to question why it should be necessary for one spouse to prove that the other has committed some sort of culpable violation of the marital bond in order to get a divorce. "If a marriage has lost its significance for the married partners, for the children, and thereby for the society, if it has become merely an empty shell, it must be dissolved, independently, whether one of the married partners, or which of the two, bears the blame for its disintegration," states German Democratic Republic law .

## IRRETRIEVABLE BREAKDOWN OF MARRIAGE THEORY

The central tenet of breakdown theory is that divorce should be granted when a marriage has broken down beyond repair (or irretrievably), regardless of who is at fault. Should we not acknowledge the reality if a marriage has failed beyond repair? Should we insist on determining who is at fault<sup>558</sup>? Should the divorce be denied if neither spouse was at fault for the marriage's breakdown? According to proponents of the breakdown theory, the only thing that matters is whether or not a marriage has actually broken down irretrievably; otherwise, being together is pointless. If a petitioner can show the court that their marriage has broken down irretrievably and that they want out of a situation that has become intolerable to them, then the marriage will be dissolved for whatever reason the petitioner claims.

The Supreme Court ruled in a historic case that a marriage that could not be saved should be dissolved when it became clear that neither party wanted to work on saving it. According to the case of *Naveen Kohli v. Neelu Kohli*, The couple tied the knot in 1975, but their relationship quickly began to deteriorate. Both sides accused the other of cruel and unjust treatment, as well as adultery and other wrongdoing. Wife started multiple legal cases against husband, both civil and criminal, to make his life as difficult as possible. Additionally, the husband had begun legal processes and had been living apart from the wife for over ten years. Therefore, it was clear from the evidence that the marriage was hopelessly broken. The trial judge ruled that neither side was able to prove that the other had engaged in

character assassination. The court found that the allegations were so serious that there was no chance of reconciliation between the parties and that the marriage should be dissolved. Therefore, it concluded that dissolving the marriage was the only option. The Supreme Court argued that the lower court made a mistake by granting the husband a divorce without giving due consideration to the evidence presented at trial. While considering the concept of irretrievable breakdown of the marriage on appeal, the Supreme Court also addressed other issues, including physical and emotional cruelty in matrimonial matters. The court reasoned that if a couple has been apart for a very long time, it is reasonable to assume that their marriage is over. When the marriage is no longer real, the legal bond must be terminated.

The majority of the reasons for divorce under the Hindu Marriage Act, 1955 may be found in subsections (1) and (2) of section 13, and these are all grounded in some sort of blame or guilt on the part of one of the spouses. One of the spouses must have committed a "matrimonial offence" in order for the marriage to be dissolved under this premise. Fault-based divorce laws do not provide sufficient relief for a failing union. Divorce courts are transparent with real-world examples of human behavior that dishonors marriage under the fault theory, which requires proof of guilt. It would be counterproductive to society and detrimental to the interests of the parties if the law ignored the reality that a marriage had irretrievably broken down. Section 13-B also allows for divorces to be obtained with "natural consent." and

section 14 which is based on the consent theory of divorce.

## LEGAL POSITION IN INDIA

Divorce in Hindu society is no longer allowed just in extreme cases, but rather on the basis of an irretrievable breakdown of the marriage. The Hindu marital Act of 1955 was the first major piece of legislation to significantly reform marital law and give the Hindu community numerous legitimate grounds for divorce. Both spouses are now legally entitled to file for divorce under Hindu law, and the Divorce Act of 1954 makes it possible to do so on a number of different grounds. In addition to these, the woman also has other reasons for divorce. It used to be that in order to get a divorce, one of the spouses had to be at fault, but now there are some grounds for divorce that have nothing to do with fault, such as when one spouse hasn't been seen alive for seven years or more and the other spouse files for divorce. The notion of breakdown was advanced by an amendment made to Section 13(1) Clauses (viii) and (ix) in 1964. Before the change, only the person who held the decree may file for divorce based on the parties' failure to resume cohabitation for two years or more time has passed since the divorce or separation judgment was issued. Section 13(1A) was added in 1964, and sections (viii) and (ix) were abolished, so that today either party can file for divorce. The Hindu marital Act of 1955 recognizes just three theories of divorce; the irretrievable breakdown of marital idea is not one of them. Section (13) (1A), however, makes an attempt to introduce the theory by stating that:

Either spouse in a marriage that took place on or after the effective date of this Act

may file for a divorce based on the following grounds:

(i) That the parties to the marriage have not resumed living together for a period of [one year] or longer following the issuance of an order for judicial separation in a procedure in which they were both named parties.

(ii) It has been [one year] or more after the decree for restitution of conjugal rights in a procedure to which the parties were parties and there has been no restitution of conjugal rights as between the parties to the marriage.

In both circumstances, a decree of dissolution of marriage can be obtained by one of the parties if the couple has not lived together for a year. So, being divorced or separated for an appreciably long time is the unifying factor. The motivation behind this change was to end the "marital limbo." In the case of *Madhukar v. Saral*, the Bombay High Court made an insightful observation, "When Congress passed Section 13(1-A) in 1964, they acknowledged the notion that maintaining a couple's marriage after it has broken down serves neither their interests nor society as a whole. To insist on maintaining a partnership that has completely broken down and on preventing a party to marriage from remarrying and living respectably is contrary to public policy, as provided for in this section."

In the bill's declaration of goals and reasons, the Indian Parliament made it clear that it intended to make irretrievable collapse of marriage a legal basis for divorce to the effect that "the right to apply for divorce on the ground that cohabitation has not been resumed for a space of two years or more after the passing of a decree

for judicial separation, or on the ground the conjugal life has not been restored after the expiration of two years or more from the date of decree for restitution of conjugal rights, in such cases, it is clear that the marriage has proved a complete failure," is available to both husband and wife. Accordingly, there is no authority for limiting the exercise of this privilege to the prevailing party in each case in which a decision has been issued.

The inclusion of section 13 B in the Hindu Marriage Act, 1955 in 1976, which recognized the notion of breakdown by divorce by mutual consent, has been viewed as a next key step in this direction. In 1988, the Parsi marriage law and in 2001, the Indian Divorce Act, 1869, added mutual consent as a reason for divorce. While it's true that a divorce by mutual consent eliminates the need to attribute wrongdoing to one spouse, it's also worth noting that this doesn't help when one spouse still refuses to divorce even though the marriage is clearly beyond repair. While a divorce decree can be legally terminated when both parties agree, this is not always the case. For this reason, please refer to Gulabrai Sharma v. Pushpa Devi<sup>574</sup>, effective when cited has the potential to be quoted. In its ruling, the Delhi High Court found that the husband's assertion that his wife had deserted him was unproven, and hence dismissed his petition for divorce. The marriage ended and no one was to blame, according to the documented facts. As Justice Sachar expressed his regret, "An unpleasant situation has occurred when neither party is at fault, but nonetheless they don't have the grace and compassion to agree to a divorce by mutual consent. It is with great regret

that I must affirm the trial court's determination that the appellant failed to prove the element of desertion necessary to obtain a decree.

## **LAW COMMISSION OF INDIA 71ST REPORT ON IRRETRIEVABLE BREAKDOWN OF MARRIAGE**

In New Zealand, the concept of irretrievable breakdown of marriage was first introduced because it was acknowledged that a spouse's desire to opt out of a marriage need not be attributable to any particular fault or wrongdoing. In 1969, a court in England heard a case in which both spouses had been unfaithful. Therefore, the court granted the wife's petition for divorce after finding irretrievable breakdown of the marriage. After this case, the hypothesis was accepted in England. The appeals court in the same case stated, "Today we are perhaps faced with a new situation as regards the way to be attached to one particular factor i.e. the Breakdown of Marriage."

While the idea of using irretrievable breakdown as a basis for divorce in India has been discussed for some time, it was not until the 71st report of the Indian Law Commission that the idea received widespread support. Consequently, the report titled "The Hindu Marriage Act, 1955 irretrievable breakdown of marriage as a ground of divorce" recorded that the theoretical basis for adopting irretrievable breakdown of marriage as a ground of divorce is one that attorneys and others are already aware with. It was highlighted that unfairness would result if divorce grounds were limited to those in which one or both parties were at fault but the marriage had deteriorated to the point where it was only

a formality The Delhi high court with a full bench decision in Ram Kali v. Gopal Das stated, "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 is no prospect of their ever living together as husband and wife." According to the 71st report from the law commission, "a petition of divorce on the ground of Irretrievable Breakdown of Marriage as visualised by us would not make it necessary for the court to go into the question as to which party was at fault before granting a decree of divorce, and it would be enough to prove that the relations between husband and wife have reached at such an impasse that it is no longer possible to salvage the marriage." This would spare the parties the trouble of having to produce evidence of arguments and other marital occurrences that they might rather keep private.

A similar sentiment can be found in the 71st report from India's Law Commission, which states, "Human life has a short span and situation causing misery cannot be allowed to continue indefinitely."<sup>583</sup> Whether Irretrievable Breakdown of Marriage can be constituted a ground of Divorce under the Hindu Marriage Act, 1955, and if so, to what degree and under what conditions, was addressed in the report. The Law Commission has pointed out that limiting Divorce just in cases of matrimonial infirmity is unfair because it leaves people stuck in unhappy marriages who may or may not be at fault unresolved. It's used to describe when a pair has lost their emotional connection to one another. The committee appears to exist solely to disentangle the married couple from a relationship that is harmful to both their

children and society as a whole. Marriage is not viewed as a legal contract in Hinduism, as it is in Indian culture more generally. Some have even seen it as a sacrament and a mark of family unity. And the children and extended family of the couple are also stigmatized by the decision to divorce. The Law Commission, however, believes that a marriage should be ended for the greater good of society if staying together between the spouses is intolerable and fosters feelings of animosity and enmity.

## **IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND OF DIVORCE - 217TH REPORT OF LAW COMMISSION OF INDIA**

It was recommended for inclusion in the Hindu Marriage Act, 1954 in the 217th report of the Law Commission of India, titled "Irretrievable Breakdown of Marriage- another Ground for Divorce." There was a recommendation in the study that marriages that have broken down irretrievably, or that appear to be beyond repair to the court, should be dissolved on the basis of "irretrievable breakdown." Whenever the topic of include irretrievable breakdown as a ground of divorce under Hindu law is raised, the study states that opponents contend that the inclusion of "Divorce by Mutual Consent" adequately covers the circumstance, thus there's no reason to add a second ground. However, the fact that both parties must agree in order to file the petition under "Divorce by Mutual Consent" should be taken into serious account. Furthermore, the aforementioned ground cannot be used if one of the parties claims they did not cooperate. However, the court can dissolve a marriage based on the "Irretrievable

Breakdown of Marriage" ground if it finds, based on the evidence presented, that the marriage in question is hopeless. In this case, the divorce would be granted not because the parties want it, but because the court finds, based on the evidence presented, that the marriage is hopelessly damaged.

The commission also stated that a marriage should not be maintained if the couple cannot coexist peacefully and joyfully under the same roof. If the feelings that make marriage sacred—love, care, tolerance, and respect—have deteriorated into hostility, indifference, intolerance, and disdain, it's hard to envisage a happy future for the couple. Since life is short and shouldn't be wasted, it's best for everyone involved if a hopeless marriage is dissolved so that one or both partners can move on with their lives. "It is, therefore, suggested that immediate action be taken to introduce an amendment in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 for inclusion of 'irretrievable breakdown of marriage' as another ground for grant of divorce," the 217th report of the Law Commission of India states. Before issuing a decree of divorce on the grounds of irretrievable breakdown, the court may be required by the amendment to determine whether or not the parties and any minor children have been provided for adequately.

## CONCLUSION

Hindu marriage is usually considered a rite rather than a contract, as we saw earlier. Before the Hindu Marriage Act of 1955, Hindu law did not provision for divorce because marriage was viewed as an indissoluble institution. The Hindu Marriage Act of 1955 authorized divorce

proceedings under certain conditions. If one wanted to file for divorce on the basis of blame, they would have to provide evidence of the respondent's wrongdoing in the marriage, such as cruelty, desertion, adultery, etc. Later, in 1964, the breakdown theory was added to the Hindu Marriage Act, 1955, and in 1976, the mutual consent theory was included by a modification to the Act. To reflect these societal shifts, the Indian government has gradually expanded the legal grounds for divorce. Whether or not irretrievable collapse of marriage should be introduced as a separate independent ground has been a point of contention for almost half a century. In this regard, the Law commission of India submitted a report in 1978 that argued for the inclusion of this provision in the Hindu Marriage Act of 1955. On the proposal of the Law commission in 2009, a measure to incorporate this ground was filed once again in 2010. After reviewing the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954, the Law Commission of India concluded that irretrievable breakdown of marriage should be added as a ground for divorce under the provisions of both statutes. The Commission also suggested that, before issuing a ruling based on irretrievable breakdown of the marriage, the court conduct an inquiry relating to the appropriateness of financial provisions for the parties and children. On August 26, 2013, the Rajya Sabha approved the revised Bill. Due to the dissolution of Lok Sabha in 2014, the Bill unfortunately died. There is a range of opinions on whether or not this basis should be included, and if so, what sorts of protections should be put in place to prevent its abuse. The Supreme



Court of India has been granted divorces in many cases despite the lack of such a provision as a reason for divorce under the Hindu Marriage Act, exercising its inherent powers under Article 142 of the Indian Constitution. However, other Supreme Court benches have taken contrasting positions on the matter. The reality is that once a marriage has been shattered, it cannot be repaired and the state has no authority to do it. If the spouses are unable to reconcile after making every effort to do so, then it is time for them to divorce amicably. Therefore, the greatest option for future stale marriages may be for parliament to alter marital laws to include Irretrievable breakup of marriage as a separate ground for divorce.

## REFERENCES

1. Jayashree Sarathy, "About Section 13 of the Hindu Marriage Act" Andhra Weekly Reporter (1990) I, p.9-11.
2. K.C. Srivastava, K.C., "Matrimonial ceremonies among Hindus", The Supreme Court Journal, (1996) II, p.35-45. 45.
3. K.S.N.Murthy, "Hindu Minor Marriages", The Supreme Court Journal (1979) II, p. 35-38.
4. Kusum, "Divorce by Mutual Consent" Journal of Indian Law Institute, 1987, Vol. 29:1, p.110-114.
5. L. Sarkar, "Status of women and Law as an instrument of social change", Journal of the Indian Law Institute, 1983, Vol. 25:2, p.264-269.
6. M.K., Agarwal, "Maintenance of Muslim divorced wife: Conflict between legislature and judiciary", Supreme Court Journal 2001, pp.1-10.
7. Manavva S. Badigar, "Exparte Divorce: An Overview, Indian Journal of Social Work", 1999, pp.193-201.
8. P.M. Bakshi, "Divorce by Mutual Consent: some reflections", Supreme Court Journal, (1986)2 p.27-30.
9. P.R. Amato, (2000), "The Consequences of Divorce to Adults and Children, Journal of Marriage and the Family", pp.1269-1287.
10. Paras Diwan, "Marriage and Divorce Law Reforms (The Marriage Laws (Amendment) Act, 1976); The Breakdown Theory in Hindu Law", 1969 Lawyer (J) pp.192-204.
11. Paul W. Alexander, "Let's get the Embattled Spouses out of the Trenches, Law & Contemp.", 1953, p.102.
12. Rajkumari Agrawala. : "Changing basis of divorce and the Hindu Law", Journal of the Indian Law Institute, 1972, Vol. 14:2, p.431-442.
13. S. Akhtar, "Marriage Age in Hindu law", Andhra weekly reporter, (1978)1 p.20-23.
14. S. L. Albrecht, (1980), "Reactions and adjustments to divorce: difference in the experiences of males and female" (29 ed.). Family Relations, pp. 59-70.



15. S. Venkataramana: “Matrimonial causes among Hindus”, The Supreme Court Journal, (1962) I, p.1-15.