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**IRRETRIEVABLE BREAKDOWN OF MARRIAGES IN INDIA- A
SOCIO LEGAL APPROACH**

Abstract

In India, marriage is considered a sacred thing as it joints two families together. It is considered that the husband and the wife are not only united in the life but also even after the death, they remain united. Earlier, the parties could not divorce each other because of any reason like adultery or prostitute. The wife was bound to live with his husband and if there is an agreement that enables the wife to live away from the husband, if husband goes out of the village or if he marries another woman, then it would be held as void. On the other hand, it was the duty of husband to live with his wife and maintains her. As the world is industrializing and urbanising rapidly, both the partner is getting equal rights in everything and because of this, divorce laws have also been diversified.

Keywords: *Marriage, divorce, adultery, rights, partner.*

Introduction

For every family, marriage is the foremost thing. Once the marriage happens and a relationship formed, the law steps in and binds the parties to a relation from certain rules and regulations

and liabilities. Under the Hindu Marriage Act, 1955, both the parties have got the equal rights to file a decree for divorce under Section 13. The marriage is built on trust, understanding, love and respect between the spouses. The moment, it loses its essence, the marriage breaks up and it becomes the continuous misery for both the spouses. No purposes are served by continuing such marriages. On the basis of the theory of “irretrievable breakdown of marriage”, such marriages should be dissolved for the betterment of both the spouses. However, no ground of Section 13 of Hindu Marriage Act talks about this ground. In this article, we will try to look for the provisions of “irretrievable breakdown of marriages” and some judicial precedents related to this theory.

Divorce under Hindu Marriage Act, 1955

Under Hindu Marriage Act, 1955, Section 9, 10 and 13 had laid down the provision for judicial separation and various grounds for divorce. These are:

“Section 9- Restitution of conjugal rights- When either party of the marriage leaves the society without any reason, then the other party can seek for this section.

Section 10- Judicial separation- After fulfilment of any grounds of divorce given under section 13 of Hindu marriage act, 1955, the other party can seek for judicial separation.

Section 13- Divorce- This section had laid down various grounds. These are: -

Sec 13(1)-

- i) Adultery- When any party to the marriage voluntarily entered into sexual relationship apart from the his or her spouse. In *Joseph Shine v Union of India* (2018), it was held by the Supreme Court that adultery is no more a crime, but it is still a ground of divorce.
- ii) Cruelty
- iii) The other party had deserted the aggrieved party for minimum two years counting from the petition.
- iv) The party had converted into other religion.
- v) The other party are of unsound mind or suffers from any mental disorder.
- vi) If the party is suffering from venereal disease which is communicable.

- vii) If the party has renounced the world.

Section 13(2): This section only talks about when a wife can seek divorce. These are: -

- i) Bigamy
- ii) The husband is guilty of rape, etc.
- iii) She had been married before the age of 18 years, doesn't matter, whether consummated or not.

Section 13(B) talks about divorce by mutual consent. In which party can seek divorce, if they show that they had been leaving separately for one year or more, and they are happy in that, then divorce can be granted.”¹

History and background

In India, divorce laws are based on three theories², they are: -

- 1) Guilt theory- It states that the divorce can be granted if any party has committed the offence related to matrimony. The innocent party can seek the divorce under this theory, but if both are at fault, then this theory is silent on it.
- 2) No fault theory- This theory states that if both the parties are at fault, then the court, after considering all the facets of the case, can grant divorce to the couple.
- 3) Consent theory- This theory states that the parties on the basis of their mutual consent can end their marriage, provided the parties should have lived separately for a specific period of time.

Irretrievable breakdown of marriage is the fourth type of theory, which is nowhere mentioned in the Hindu Marriage Act, 1955. This theory states that in every marriage, love and respect for the other partner is the must thing, without these essences, marriage is nothing but a dead relationship. It states that if the relation between both the partners has come to such a position, where there is no love and respect between them and it has become irrevocable in nature, then it is better to give them divorce rather than force them to live together. It promotes that the marriage should be dissolved for the betterment of the spouses.

It requires following points to get fulfilled: -

¹ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, §§ 9, 10, 13.

² Law Commission, *The Hindu Marriage Act, 1955- irretrievable breakdown of marriage as a ground of divorce* (Law Commission No 71, 1978).

- I) Both the parties have been living separately for a quite longer period of time, i.e., for minimum two- three years.
- II) They are living separately because of reasonable reason like desertion, cruelty, etc or any unreasonable reason, that represents that both are unwilling to live together.
- III) All the attempts have failed to bring them back together.

The Law Commission of India suggests to make irretrievable ground of marriage as a separate ground of divorce for the Hindus. In *Naveen Kohli v Neelu lohli* (2006), the Supreme Court of India also recommended to the Indian Parliament to make a irretrievable breakdown of marriage as a ground of divorce because of the circumstances that has changed very much in today's world.

Law commission of India views on irretrievable breakdown of marriage

The law commission of India in its 71st report, 1978, recommended to make irretrievable breakdown of marriage as a separate ground for divorce. It also mentions that New Zealand was the first country to include a provision that if the spouses live separate for three years or more, then they can file a petition for divorce. It recommended the legislature that separation for at least three years must be accepted as a good ground for divorce.³

In its 217th law report 2009, the Law Commission of India took suo moto action to conduct a study on the given subject. It held that the irretrievable breakdown of marriage must be made a separate ground for divorce under Hindu Marriage Act, 1955 and Special Marriage Act, 1954. The Law commission also took this point to consideration that it is argued that the irretrievable breakdown of marriage is almost covered in the divorce by consent, but the law commission said that in this consent of both the parties are required and if any party refuse to give, then no divorce can be granted, and whereas in this ground, if the court agrees on the basis of the facts, then, on its own discretion, can grant divorce to the parties. Therefore, the law commission clearly support to make irretrievable breakdown of marriage as a valid ground of divorce.⁴

³ Law Commission, *The Hindu Marriage Act, 1955- irretrievable breakdown of marriage as a ground of divorce* (Law Commission No 71, 1978).

⁴ Law Commission, *Irretrievable Breakdown of Marriage- Another Ground for Divorce* (Law Commission No 217, 2009).

Judicial precedents

- 1- *Naveen Kohli v Neelu Kohli* (2006)⁵- In this case, Naveen Kohli was the respondent and marriage with the appellant Neelu Kohli. They had three sons, but the relationship got soured and the respondent filed many complaints against the appellant. After this, in Family court, the appellant filed a suit for divorce and both had made allegations against each other. The family court agreed to grant divorce on the basis of cruelty against the respondent and ordered the husband to pay 5 lakhs as a settlement money. The husband appealed in the high court, but the high court denied the divorce. Then the husband appealed in the Supreme court, the court gave judgement on the basis of cruelty and irretrievable ground of marriage. The court held that when the relation between the husband and the wife had reached that point where it can't be reformed, then it is better to make them separate. In this case, the court also recommended the legislature of India to include the irretrievable breakdown of marriage as separate ground for divorce.
- 2- *Vinita Saxena v Pankaj Pandit* (2006)⁶- In this case, both the parties to the marriage only lived together for 5 months and live separately for 13 years. They filed for divorce, but the lower courts rejected the petition. The supreme court held that there is no possibility of reunion between the parties and it would be great injustice to them by refusing from granting the divorce.

Suggestions: -

- It is not in the interest of either the society or the couple to tie them together as husband and wife, if in a fact, it is not the case and they remained separate for a lengthy period of time.
- When there is no essence of marriage remained, then it is advisable to keep them apart.
- Once the parties got separated for a sufficient length of time, I could be well presumed that the marriage has broken down.
- The law commission has suggested in its report that the human being has a short span of life and the court cannot turn a blind eye to the situation which is causing misery.

⁵ *Naveen Kohli v Neelu Kohli*, 2006 SCC OnLine SC 311.

⁶ *Vinita Saxena v Pankaj Pandit*, 2006 SCC OnLine SC 313.

Conclusion

With the society changing rapidly and drastically, both the parties, i.e., the husband and the wife are getting equal rights in all sphere of the life. One should not forget that the basis for every relation is trust, love and respect. If in any relationship, there is no love and respect for the partner, then it is better to end that relationship. By looking at the provision of irretrievable breakdown of marriage, we can conclude that it promotes this ideology.

The apex court, i.e., Supreme Court of India also agreed in many judicial precedents to make irretrievable breakdown of marriage as a valid ground for divorce. The law commission of India also support this idea in its report.

Hence, the legislature should amend the Hindu Marriage Act and Special Marriage Act to include this provision to prevent any injustice and exploitation to the parties.



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