



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Irretrievable Breakdown of Marriage (IRB)

¹Navneet Kaur Chahal, ²Nasrullah Rezaie

¹Associate Professor, Department of UILS, (University Institute of Legal studies) Chandigarh University, Punjab, India.

²PhD. Candidate, Department of UILS, (University Institute of Legal studies) Chandigarh University, Punjab, India.

Abstract: 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.

Keywords: IRB, Marriage, Hindu Marriage, Divorce

1. Introduction

Separation was exception to general Hindu law in Ancient India because marriage was viewed as an irreversible union (janam janmatro ka bandhan) of the couple. A "spouse can not be delivered by her significant other, either by deal or by deserting", according to Manu, meaning that the conjugal bond can never be broken. Under Hindu Law once a marriage was considered always a marriage. There was no other way of separation except Death But with the introduction of Divorce now Hindu marriage is no more in dissolvable union. But even now the purpose of Hindu marriage is to subsist the marriage not to dissolve it. Various efforts are being made of Judiciary to resolve matrimonial disputes and to save marriages.

The word Marriage is not defined in any statute. Though "Personal laws" are clear on this point. "Marriage is known as a process or an event signifying the assumption of the roles of husband and wife in accordance with the jural tenets prevalent in the society or stratum of society to which the parties belong". The

institution of marriage has legal, religious and social importance. These three major aspects are attached to the concept of marriage inherently.

2. Method

The methodology used ultimately determines the success of a research project. The researcher employed a doctrinal method to work on the subject. While conducting research for the presentation of the legal framework, secondary sources were utilized. Several international treaties, conventions, papers, books, journals, articles, a website, were considered. This research was carried out in accordance with the research authors' stated principles, methodologies, and instructions.

3. Theories of Divorce

Under Modern "Hindu Law", there are only four theories of divorce upon the basis of which various grounds and provisions are based, that are as follow:

3.1 Guilt theory: In this theory one spouse of marriage is at fault or guilty or commits some kind of matrimonial offence and other spouse seeks divorce on basis of that, For this theory it is important that there should be one innocent and one guilt party and innocent party can file divorce For example Cruelty, Dissertation, Adultery. On basis of this theory under Modern Hindu Law "section 13(1) of Hindu Marriage Act".

3.2 Frustration theory: Divorce, according to this theory, is a release from frustration. Spouses can become frustrated for a variety of reasons. Long-term feelings of "deep anguish, disappointment, and frustration in one spouse" as a result of the conduct of the other can lead to mental cruelty According to this theory, either spouse can end the marriage due to a mental disorder, a physical ailment, religious conversion, renunciation of the world, or going unheard for an extended period of time. Only these factors remain as grounds for divorce, and any type of marital infraction is excluded from this theory and on basis of this theory Grounds are given under section 13(1) like conversion, leprosy, renounced of world, though these are not fault but it may gives frustration to another spouse.

3.3 Mutual consent theory: According to this theory divorce is obtained by couple by their own free will. According to this theory, the spouses can dissolve their marriage by mutual consent without any disagreement. A "petition for divorce" can be filed together by the "husband" and wife. They have the option to leave the marriage at any time. According to this theory, the essential ground for divorce is mutual consent to dissolve the marriage, which requires free consent from both parties without any kind compulsion. "Section 13 B of Hindu Marriage Act" deals with it.

3.4 Breakdown theory: "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 8 [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 8 [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties”.

4. Irretrievable Breakdown Theory of Divorce

This Theory of Divorce, “based on the principle that marriage” is a union of two people and a bond of mutual respect, love, affection. This is the most debatable theory in legal system. In this theory marriage dissolve beyond repair and there are fewer chances that they ever come together. And it will be better to “dissolve marriage where there are no chance” of repair and there is no question to stretch such a relation which has already been dead. This can also be called as no fault theory or no ground theory because probably parties are residing separately from long time without any reason. There is presumption by law that marriage has been dissolved.

Regardless of the other “remedies available to parties, such as restitution of conjugal rights, judicial separation, and divorce”, the Indian judiciary system demands irreversible breakdown of marriage as a special ground for divorce, as judges sometimes have difficulty granting divorce decrees due to technical flaws in existing theories of divorce.

5. Historical Background of IRB

The “concept of Irretrievable Breakdown of Marriage was submitted by Law Commission in their 71st report in 1978” deals. This Report broadly deals with that, what can be various grounds of divorce upon which IRB can be granted.

As per 1920 Report, The first Common Wealth Country was New Zealand that introduced a separation agreement of more than three years as a ground of divorce to file a petition in courts .The “first divorce on the ground of Irretrievable Breakdown of Marriage” was given by this country. 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”.ⁱ

This theory was established in England first time in the case of “Masarati v. Masarati, in which both spouses to the marriage had committed offence of adultery. On petition of wife for divorce, the court found that the marriage had broken down”. According to the Law Commission of England, "the objectives of good divorce law are two: one, to buttress rather than 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."ⁱⁱ and finally in England “Irretrievable breakdown of

marriage” was made as individual ground for divorce under “section 1 of the Divorce Law Reforms Act, 1973”, on the recommendation of the Law Commission.

The “Australia provided for divorce on the grounds of breakdown of marriage by The Matrimonial Causes Act, 1959”.

According to the Law Commission's assessment, the rule restricting divorce to matrimonial offences is unfair in circumstances when no party is at “blame or the fault is of such a nature that neither party” wants to admit it, and the “marriage” has ended. In other words, irreversible “marriage” collapse refers to a condition in which “emotional” relationships, respect, and other essential elements of a marriage have all but evaporated, leaving only a semblance of a marriage.

5.1 Irretrievable breakdown of marriage in India

Irreversible collapse of “marriage” as a basis for divorce has shifted dramatically in recent years, particularly in favour of emerging Indian women. In “Article-142 of Constitution of India, case laws and Law Commission’s suggestions. Irretrievable breakdown of marriage is still a rarest phenomena in India even though there is Article-142 of Constitution of India, related case laws and the Law Commission recommendations”.

Section 13 “of the HMA, 1955 talks about various grounds of divorce similarly Section 27 of the Special Marriage” Act also provide the same grounds. However both these act never provides “Irretrievable Breakdown as ground of divorce”. The 71st Report of law commission gives suggestion to add IRB as ground of divorce.

The Commission also survey “legislations” in extent as well as a various of “judgments” of the Apex “Court and Higher Courts” on this subject and submitted that “irretrievable breakdown of marriage” must be “incorporated” as more ground for giving divorce under both the above said acts.

A divorce law that is primarily based on fault or mutual consent or breakdown is insufficient to deal with marriage. Human behaviour that tarnishes the institution of marriage. When a marriage is irreparably damaged, it is time to call it quits.

It would be unfair for the law to override that fact, and it would be illegal also. “whereas it is harmful to society and injurious to the parties' interests. It is possible that there has been a long period of continuous separation. It can be assumed that the matrimonial bond is irreparable. The Marriage, despite being supported by a legal tie, becomes a fiction by refusing to sever that bond, the law in such cases does not serve the public interest, sanctity of marriage; on the contrary, it demonstrates a lack of regard for the parties' feelings and emotions”.ⁱⁱⁱ

Attempting to bind the parties eternally to a marriage that no longer exists is useless since there is no appropriate manner for a spouse to be forced to “resume life with the consort”. Human life is finite, and

situations that cause suffering cannot go on endlessly. A halt must be called at some point. Law cannot turn a blind eye to such conditions or refuse to address the demands that develop as a result of them.

6. Marriage Laws (Amendment) Bill, 2010^{iv}

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 IRB 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.

7. Judicial Perspective Towards IRB

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”.^v

Supreme Court in case of held that: “It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases and also 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”.^{vi}

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

The Supreme Court had observed: “it appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as ground 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 civil 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”.^{vii}

The “Delhi High Court in a full bench decision in Ram Kali v. Gopal Das^{viii} 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”.

In case of “Smt. Geeta Mullick vs Brojo Gopal Mullick held that the marriage between the parties can not be dissolved by the trial Court or even by the High Court only on the ground of marriage having been irretrievable broken down, in the absence of one or more grounds as contemplated under section 13(1) of the Hindu Marriage 1955”.^{ix}

In case of Chetan das v/s kamla devi^x and in case of Murlial v/s Sarswati^{xi} Supreme court rejected divorce on basis of IRB.

8. Conclusion and suggestions:

Many “criticisms are leveled against irretrievable breakdown of marriage as a divorce ground in The Hindu Marriage Act, 1955”.

1. It is pleaded that divorce on this basis can make easy to get divorce and it can be dangerous to destroy the society, concept of family in Indian society.
2. Some people also criticized it on the basis that sanctity of the foundation of marriage will also in fear if this ground is added.
3. The other point of criticism is that; “this ground of divorce is vague and is included in other grounds of divorce. So there is no need for its introduction as a separate ground for divorce”.
4. “Irretrievable breakdown permits the spouses or even one spouse; to terminate the marriage at his or her wish. It can be misused or abused by anyone party according to its wishes”.
5. This ground is opposite “to the principle that no one should be allowed to take advantage of his own wrong”. But in this theory spouse who is at fault can take advantage and can get divorce on basis of this.

The necessity of modern society, culture, and ethos is the source of irreversible marriage collapse. It considers a variety of factors, including the “individual's sensitivity, mental and emotional makeup, social norms and values, the importance and sanctity of marriage for both the individual and society, and, last but not least, the protection of the parties' individual dignity and respect”, even if they are involved in a matrimonial dispute. As a result, it is strongly urged that the legislature fully embrace irreversible marriage collapse as a reason for divorce.

Reference

- ⁱ <https://blog.iplayers.in/irretrievable-breakdown-marriage-history-applicability-current-status-india/> visited on 12.10.2021 at 10.35 am.
- ⁱⁱ Ibid.
- ⁱⁱⁱ Hindu Law on Divorce: An analysis on Irretrievable breakdown of Marriage as a separate ground for Divorce
- ^{iv} <https://prsindia.org/billtrack/the-marriage-laws-amendment-bill-2010> visited on 16/12/2021 at 10.00 am.
- ^v Naveen kohli v/s Neelu Kohli ,AIR,2006.
- ^{vi} ibid
- ^{vii} Ms. Jordan Diengdeh vs S.S. Chopra AIR 935, 1985 SCR Supl. (1) 70.
- ^{viii} ILR 1971(1) del 10.
- ^{ix} AIR 2003 Cal 321, (2004) 1 CALLT 40 HC.
- ^x Appeal (civil) 14740 of 1996.
- ^{xi} 1981 AIR 660, 1981 SCR (1)1005.

