

THE CONCEPT OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE: A STUDY

Shahsi Bhushan Ojha*
Shushant Dabral**

Abstract: Irretrievable Breakdown of Marriage - This implies the couple can never again live respectively as man and spouse. The two accomplices, and one accomplice, must demonstrate to the court that the marriage separated so gravely that there is no sensible shot of getting back together. Till date, the predominant laws in India in regards to the issue of separation have not perceived a circumstance where the life partners are confronting a circumstance that in spite of the way that they live under a similar rooftop, their marriage is comparable to a division. That is, there is still no classified law for unrecoverable breakdown of marriage. The Hindu Marriage Act perceive few reason for disintegration of marriage in Section 13. But with the adjustment in the social mores and in perspective of the changing idea of marriage in the general public, the incomparable court has demonstrated exceptional worry over the matter of making lost breakdown of marriage as a ground for separate. The Supreme Court has with a view to do finish equity and abbreviate desolation of the gatherings occupied with long drawn fight, coordinated disintegration of marriage. For sure, these were extraordinary cases, as the law does not particularly accommodates the disintegration of marriage on the grounds other than those given in Hindu Marriage Act, 1955. Lost breakdown of marriage isn't a ground for Divorce under the Hindu Marriage Act, 1955. On account of the difference in conditions and for covering a substantial number of situations where the relational unions are for all intents and purposes dead and unless this idea is squeezed into administrations, the separation can't be conceded. At last, it is for the Legislature whether to incorporate lost breakdown of marriage as a ground for separation or not but rather as we would see it the Legislature must consider Irretrievable breakdown of marriage as a ground for allow of separation under the Hindu Marriage Act, 1955.

Index Terms – Irretrievable breakdown of marriage, couple, Spouse

I. INTRODUCTION

Irretrievable breakdown is a question that has been raised frequently before the judiciary and the question is that whether irretrievable breakdown of marriage is a lawful ground or not?

In the case of Saroj Rani vs Sudarshan Kumar Chadha the Supreme Court has first laid down in upholding a decree of divorce following a consent decree for restitution of conjugal rights that it is evident that for whatever be the reasons this marriage has broken down and the parties can no longer live together as husband and wife, if such is the situation it is better to close the chapter.

This view of the Supreme Court was referred to in Amarendra N. Chatterjee v Smt. Kalpana Chatterjee, in the context of different sets of facts and it has been held that the Hindu Marriage Act does not contain any provision for dissolution of marriage by a decree on the ground of irretrievable breakdown of marriage and as such the court cannot grant a decree on that ground alone. In Apurba Mohan Ghosh vs Manashi Ghosh, it has been held that in view of the provisions of s. 23 of the Act, the court would grant relief only when any of the statutory grounds mentioned in the Act is found to exist.

In V. Bhagat v D. Bhagat, it has been held that irretrievable break-down of the marriage is not a ground by itself for a decree of divorce. While scrutinizing the evidence on record it may be relevant to determine whether the ground alleged is made out. It cannot be said in case a marriage is found to have been broken down to an extent that it was beyond all rapprochement or reconciliation, then whether any ground as laid down by law exists or not the court ought to hold or can take circumstances alone, as a ground for dissolving the marriage.

Irretrievable breakdown of the marriage is not contemplated as a ground for dissolution of marriage s.13 of the Hindu Marriage Act and as such cannot by itself be taken as ground for decree for dissolution of marriage. Disregarding proposals of the Law Commission in its first Report, the Legislature did not think of it as prudent to present lost breakdown of marriage as one of the justification for an announcement of divorce. If the hypothesis of unrecoverable breakdown of marriage is presented in marriage law of India, there might be increment in the quantity of separation cases, yet that will not annihilate the establishment of marriage nor will it influence the nature of family life. Ms. Jorden Diengdeh v S.S. Chopra, The Supreme Court has made judicial recommendation for a complete reform of law of marriage by introducing inter alia irretrievable breakdown of marriage as a

* Assistant Professor, Law College Dehradun, Uttaranchal University – Dehradun (UK) – India.

** Shushant Dabral, Student BBA.LLB. (Hons.) Vth Year, Law College Dehradun, Uttaranchal University – Dehradun (UK) – India.

ground for divorce. Justice V.R Krishna Iyer had famously explained this concept: “Daily trivial differences get dissolved in the course of time and may be treated as the teething trouble of early matrimonial adjustment. While the stream of life lived in married mutuality may wash away small pebbles, what is to happen if intransigent incompatibility of minds breaks up the flow of stream? In such a situation we have the breakdown of marriage itself and the only course open for law is to recognize what is a fact and accord a divorce”.

II. THE CONCEPT

The first major proponent of this concept was through the 71st Report of the Law Commission of India (1978) which dealt with the question if the granting of divorce should be based on fault theory or on breakdown theory. It emphasized that restricting divorce grounds based on faults shall cause injustice to those couples who are stuck in situations where neither party have any fault with the marriage having become a merely an external appearance without any efficacy.

Salmond J. in *Lodder v. Ladder*, Enunciated this concept by stating that “when a matrimonial tie has ceased to exist de facto for that period it should cease to exist de jure as well” because the essential purposes of the marital bond stand frustrated.

The 1981 Bill for Irretrievable breakdown of marriage as a ground did not get through as it was considered that such a bill shall encourage devious husbands who shall desert their spouses under the aegis of an irretrievable breakdown

Even though irretrievable breakdown of marriage has not been stated under Section 13 of the Hindu Marriage Act, 1955 as a ground for divorce, there have been many judgments which gave decisions based on the principle. To further understand the scope of the model, few landmark case laws have been discussed *Jayachandra v. Anel Kaur*. The issue involved here was if in the event of a long drawn litigation process, a couple can claim divorce to shorten the agony due to the lengthy procedure through the model of irretrievable breakdown of marriage?

The husband in the case complained about the “obnoxious and humiliating” behavior of the wife and sought divorce by mutual consent under section 13 of the Hindu Marriage Act, 1955 so as to avoid unnecessary complications.

However, the court went through the evidence and provided a decree for judicial separation. Supreme Court in the appeal rather decided that there did exist cruelty and it deduced from the facts & circumstances that the marriage had irretrievably broken down. The court further stated that it knows that this concept can be used to provide a decree for marriage but it continued with a view to complete justice and shorten the mental agony of the parties.

It was explained in the case of *Ajay Sayajirao v. Rajashree Ajay Desai*

That when there is no alleged fault ground proved, relief cannot be granted on ground of irretrievable breakdown of marriage. However, a differing stance was taken in the case of *Dinesh Kumar Mandal v. Mina Devi* where it was held that a couple living separately for many years justify the fact that the marriage is broken beyond repair and even though the alleged ground of adultery was not proven here, divorce was granted.

Another landmark case relating to the concept is of *Kanchan Devi v. Promod Kumar* wherein the parties were staying separately for over a period of ten years and every attempt at any reconciliation turned futile. In its order, the court invoked its jurisdiction under Article 142 of the Constitution which has the provision to provide “any decree or order as is necessary for doing complete justice in any case or matter pending before it”

The memorandum of settlement clearly explained that this was a case of divorce by mutual agreement but the observations of the court clearly reinforced the fact that irretrievable breakdown of marriage as a model to claim divorce has seeped into the decisions of the courts.

The landmark judgments of *Savitri Pandey v. Prem Chandra Pandey* and *Naveen kohli v. Neelu Kohli* also reiterated the need for inclusion of irretrievable breakdown of marriage as a ground for divorce.

III. MERITS AND DEMERITS OF THE THEORY.

Before talking about the benefits and negative marks of the hypothesis of irretrievable breakdown, an inquiry emerges, that whether the Hindu Marriage Act can be altered with a view to making irretrievable breakdown of marriage as a decent ground for allow of an announcement of separation? In looking for reply to the inquiry we need to hold up under at the top of the priority list the changing idea of the family. The family is winding up more law based and more populist. Both the couple share not just the family house; at times they additionally share the income of each other. In light of the rising rate of female action, the family is all the more a coalition. It is hence important that if the coalition can't be worked, the legitimate authorize for it must be pulled back.

In reply to the commitment that the ground of irretrievable breakdown of marriage is ambiguous, it might be expressed that the candidate needs to fulfill the court of a solid certainty living separated for an adequate time span. Judges have in this manner to arbitrate on actualities (not on some dubious ideas) the inquiry whether or not, on the confirmation before them, the gatherings have been living separated for the predefined period.

A law of separation construct principally in light of blame is deficient to manage a broken marriage. Under the guilt hypothesis, blame must be demonstrated; separate from courts are introduced solid occurrences of human conduct as bring the organization of marriage into offensiveness. On account of the separation of wedding offense, judges, and legal advisors are here and there diminished to the part of foragers. The legal advisors need to search for and uncover and the judges are stood up to with, the most noticeably awful obscenities inside a wedded life. It is in this manner, not shocking that with the present enemy framework a wide range of charges are openly heaved over the court. We require not remain on an old separation law which requests that people must be discovered blameless or liable. It is attractive to get freed o general society washing of earth material which happens in protracted pitilessness cases or in cases in light of blame. In the event that separation is permitted to experience on the ground of marriage breakdown, such a despondent scene will be kept away from.

One can't state that it is an improvement of the respondent for marriage if there are countless people frantically on edge to regularize their situation in the group and they can't do as such. Individuals ought to have the capacity to wed again where they can get a passing endorsement in regard of a marriage effectively since a long time ago dead. The protest that irretrievable breakdown as a ground of separation is dubious has been as of now managed. Different complaints to it might be managed-

- a) Irretrievable breakdown allows the spouses, or even one spouse, to terminate the marriage at will, thus transforming marriage from a union for life into one which can be ended at pleasure,
- b) It is necessary to the basic principle that no man should be allowed to take advantage of his own wrong; a spouse who was responsible for the breakdown of marriage should not be able to rely on such breakdown in order to obtain a divorce against his or her partner's will. By authorizing one spouse to divorce the other against the latter's will after separation for a specific period, the law will have given statutory recognition for the first time to the principle that a person may take advantage of his or her own wrong.

The theory that one cannot take advantage of one's own wrong has not been adhered to in the Hindu Marriage Act in the past. According to clause (ii) of sub section (1A) of section 13 of the Act, either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or afterwards after the passing of a decree for the restitution of conjugal rights in proceedings to which they were parties. This provision clearly contemplates that even the party which has been in the wrong in so far as it has failed to comply with a decree for restitution of conjugal rights can also apply for a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of the decree for restitution of conjugal rights in a proceeding to which they were parties. Such a party, though at fault, would thus be taken advantage of its own fault. It cannot therefore be said that under the provision of the Hindu Marriage Act, as they stand at present, no person can be allowed to take advantage of his own wrong.

Thus, once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties if the legal bond is sought to be maintained notwithstanding the disappearance of the emotional substratum. Such a course would encourage continuous bickering perpetual bitterness, and may often lead to immorality. Where there has been a long period of continuous 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 that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. Public interests demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but also that the court should be empowered to declare defunct de jure what is already defunct de jacto, where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than dissolution of the marriage bond.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist. Marriage is lifelong cohabitation in the home. When the prospect of continuing cohabitation has ceased, the legal tie should be dissolved.

IV. PRESENT POSITION OF THE THEORY

The Law Commission presented its 217th give an account of 30th day of march 2009 on this report the Law commission expressed that "the unrecoverable breakdown of marriage isn't a ground for separate without anyone else's input however while investigating the proof on record to decide if the grounds on which separate is searched are made out, the conditions can be thought about. No separation can be allowed on the ground of lost breakdown of marriage if the gathering looking for separate on this ground is himself/herself to blame. The announcement of separation on the ground that the marriage has hopelessly separated can be conceded in those situations where both the gatherings have leveled such charge against each other that the marriage gives off an impression of being essentially dead and the gatherings can't live respectively. The energy of the court to give separate on

the ground of hopeless breakdown of marriage ought to be practiced with much care and alert in extraordinary conditions just in light of a legitimate concern for both the gatherings.

The Marriage Law's (Amendment) Bill, 2010 was affirmed by the parliament in March, 2012 with the presentation of the Section 13C, 13D and 13E. Section 13C(1) states the use of hopeless breakdown of marriage as another ground for separate nearby Section 13C(2) which requires the gatherings to have been living independently for at the very least a time of 3 years before the gatherings documented the appeal.

The announcement of articles and reasons of the Amendment charge additionally express that:

"The rights to apply for separate on the ground that co-residence has not been continued for space of 2 years or more, from date of declaration for compensation of marital rights, ought to be accessible to both, a couple, as in such cases, unmistakably marriage had demonstrated an entire disappointment. In this manner, there is no avocation binds the gatherings to the obligation of marriage"

Consequently, at last Irretrievable breakdown of Marriage has at last been enlisted as a ground for separate in the Indian lawful setting. Four decades after the first run through the idea being conveyed to the fore by the 71st Law Commission Report and after various judgments re-repeating its need, this idea has been acquainted with comprehend the changing needs of the general public.

Some of the leading cases are as follow

1. Naveen Kohli v. Neelu Kohli

the Supreme Court, clearly and strongly while permitting dissolution of thirty year old mismatch, urged the Government of India to amend Hindu Marriage Act in order to make Irretrievable break down of marriage a valid ground for divorce. The court held that "irrevocable break down of marriage" as a ground for divorce was prevalent in many other countries

1. Ramesh Chander v. Savitri

Supreme Court without going into the merits of the case cut short the matter on the basis that, "the marriage is dead emotionally and practically. Continuance of marital alliance for name sake is prolonging the agony and affection the marriage being dead the continuance of it would be cruelty and in exercise of the power under Article 142 of the Constitution of India the court dissolves the marriage."

2. Jorden v. Chopra

Whether divorce may be granted on a ground which has no place in Hindu Marriage Act. The Court observed that, "surely the time has now come for a complete reform of law of marriage and make a uniform law applicable to all people irrespective of religion and caste. It appears to be necessary to introduce irretrievable break down of marriage as ground for divorce in all cases. The Supreme Court have granted divorces on the ground of irretrievable break down of marriage in various case, but the said ground is not available independently in any statutory law. The Supreme Court has granted divorces on the ground of irretrievable break down of marriage while exercising its powers under Article 142 of the Constitution of India.

V. CONCLUSION

Separation in India is either given through common assent or through conjugal wrongs. Nonetheless, with the presentation of this idea of unrecoverable breakdown, we have moved towards the model of no blame hypothesis. This correction gives extension to people to exploit their own particular wrong as even the failing party can refer to this ground for a separation request. In this way, it may cultivate divorces rates with ladies being a casualty to careful life partners who can utilize the alteration further bolstering their good fortune.

In any case, it must be noticed that hopeless breakdown of marriage is an idea that is important to be perceived judicially. This idea unquestionably prompts separate being given by the courts all the more effectively yet it additionally important to underline the way that as indicated by the arrangements, such separations must be allowed simply after an exhaustive comprehension of the conditions by the courts and an appraisal if the marriage is really broken unrecoverable. Inferable from the present comprehension of marriage which is part sacrosanct and part authoritative, it is to be comprehended that a marriage which isn't working and does not have any substance hopelessly is in an ideal situation broken. Since decades, there have been various judgments that reiterated the requirement for this idea and having at long last been ordered, this change comes as a gift for various couples stuck in a broken marriage with no response.

REFERNECES

- 1) The Hindu Marriage Act 1955
- 2) The Dissolution of Muslim Marriage Act 1939
- 3) The Constitution of India, 1950
- 4) The Special Marriage Act, 1872
- 5) The Parsi Marriage and Divorce Act ,1936

- 6) The Protection of Women from Domestic Violence Act, 2005
- 7) The Muslim Women (Protection of Rights On Divorce) Act
- 8) Law Commission of India, 71nd Report, 'irretrievable Breakdown Of Marriage - Another Ground For Divorce' Government of India, Ministry of Law, March,2009
- 9) Law Commission of India, 45th Report, "Hindu Marriage Act 1955", Ministry of Law, Justice and Company Affairs, 2000
- 10) Law Commission of India, '217nd Report on Review of Irretrievable Breakdown of Marriage, March, 2010.

