



IRRETRIEVABLE BREAKDOWN OF MARRIAGE: AN ANALYSIS OF SUPREME COURT RULING ON THE GRANT OF DIVORCE UNDER ARTICLE 142 OF THE INDIAN CONSTITUTION

Dr. Pramita Gurung Assistant Professor Department of Law
Sikkim University, Gangtok, East Sikkim

ABSTRACT

The concept of "irretrievable breakdown of marriage" refers to a situation in which a couple is no longer able to cohabit as husband and wife. The two individuals involved in the case, together with one additional individual, are required to present evidence to the court indicating that the marital relationship has experienced such severe deterioration that the possibility of reconciliation is highly unlikely. To date, the prevailing legal framework in India pertaining to the matter of marital separation has not recognized a scenario when spouses find themselves in a situation where, despite cohabiting, their marriage is akin to a state of separation. Currently, there remains a lack of legislation pertaining to the irreparable dissolution of a marital union. Section 13 of the Hindu Marriage Act delineates certain grounds for the dissolution of marriage. However, due to shifts in social norms and evolving societal views on the institution of marriage, the Supreme Court has expressed significant concern with the inclusion of irretrievable collapse of marriage as a valid reason for divorce. The Supreme Court, in an effort to achieve fairness and reduce the suffering of the parties involved in protracted legal battles, has ordered the dissolution of the marriage. Indeed, these instances were exceptional, as the legal framework does not specifically provide for the dissolution of marriage on grounds other than those stipulated in the Hindu Marriage Act of 1955. The dissolution of a marriage due to irretrievable breakdown is not recognized as a legal reason for divorce under the provisions of the Hindu Marriage Act, 1955. Due to variations in circumstances and in order to address a significant range of scenarios when marriages are effectively defunct, unless this concept is incorporated into services, divorce cannot be granted. Ultimately, the decision to include irretrievable breakdown of marriage as a valid reason for divorce lies with the Legislature. However, the Supreme Court in set a significant ruling, said divorce can be granted if a marriage is totally irrevocable, emotionally dead and beyond salvage. Thus, this

paper tries to analyse the Supreme Court power under Article 142 of the Constitution on irretrievable breakdown of marriage.

INTRODUCTION

The Hon'ble Supreme Court, composed of a Constitution Bench consisting of Sanjay Kishan Kaul, Sanjiv Khanna, A.S. Oka, Vikram Nath, and J.K. Maheshwari, Justices, has determined that it possesses the discretionary power to dissolve a marriage through the issuance of a divorce decree based on mutual consent. This discretion is not constrained by the procedural requirement of a second motion, as long as the conditions and requirements established in the cases of Amardeep Singh v. Harveen Kaur¹, and Amit Kumar v. Suman Beniwal², are met. Furthermore, it has been determined that the Supreme Court of India possesses the authority, as granted by Article 142(1) of the Constitution, to exercise its discretion in dissolving a marriage based on the premise of irretrievable collapse.

THE PRESENT DISCOURSE AIMS TO DELVE INTO SEVERAL ISSUES: A COMPREHENSIVE STUDY

The present inquiry pertains to the extent and jurisdiction of power vested in the Supreme Court as delineated by Article 142(1) of the Constitution of India.

The Court acknowledged the presence of Article 142 of the Constitution and observed that this provision appears to be distinctive, as it lacks a comparable counterpart in the majority of prominent written constitutions worldwide. Moreover, it is noteworthy that Article 142(1) of the Constitution of India confers expansive and comprehensive authority upon the Supreme Court to administer 'full justice' in any case or matter. This provision becomes significant as the Supreme Court's verdict effectively concludes the legal dispute between the involved parties.

The Constitutional Bench opined that Article 142 confers legal jurisdiction upon the Supreme Court to accord priority to principles of equity over statutory law. The exercise of this authority, similar to all authorities conferred by the Constitution, must be subject to containment and regulation. It has been established that equitable remedies should not overlook the essential legal requirements grounded on fundamental principles and specific concerns of public policy.

Moreover, the court stated that the essential overarching principles of public policy pertain to the fundamental rights, secularism, federalism, and other fundamental characteristics

¹ (2017) 8 SCC 746

² 2021 SCC OnLine SC 1270

outlined in the Constitution of India. The concept of specific public policy can be defined as a clearly stated and fundamental ban inside substantive law, rather than mere provisions and obligations within a specific statutory framework. The statute should adhere to a basic and non-derogable principle.

The Hon'ble Court further asserted that there has been no uncertainty or contention regarding the authority of this Court, as granted by Article 142(1) of the Constitution of India, to administer 'complete justice' without being constrained by the applicable procedural provisions, provided that such deviation from the established procedure is deemed necessary to achieve 'complete justice' for all parties involved.

The Hon'ble Court, in reference to the case of Supreme Court Bar Assn. v. Union of India³, asserted that the Supreme Court is not limited in its jurisdiction when it renders a decision and resolves a disagreement in a 'cause or matter'. Although the Court is not empowered to replace existing substantive law or disregard explicit provisions of statutory law, it does play a role in resolving issues that arise in ambiguous domains. The exercise of power and discretion under Article 142(1) is considered lawful and in accordance with the Constitution of India, as long as it achieves the needed 'full justice' for the 'cause or issue' at hand, without compromising fundamental principles of general or specific public policy.

Moreover, the Hon'ble Court observed that the rationale for the lack of specificity and categorization in the power granted by Article 142(1) of the Constitution is to allow for flexibility in shaping remedies to accommodate specific circumstances. Therefore, the Court determined that it possesses the authority to deviate from both procedural and substantive legislation when making decisions that are influenced by fundamental principles of both general and specific public policy. When deliberating on the exercise of discretion, the Supreme Court is obligated to take into account the substantive measures that have been established and must not disregard them. The Supreme Court serves as a mediator in resolving disputes by ensuring a fair distribution of rights and interests among competing parties. However, it is important to note that this authority is to be utilized specifically in a "cause or matter."

IS IT POSSIBLE TO WAIVE THE MANDATORY SIX-MONTH WAITING TIME FOR DIVORCE BY MUTUAL CONSENT?

³ (1998) 4 SCC 409

In its analysis of Section 13-B of the Hindu Marriage Act, 1955 (referred to as 'HMA'), the Court observed that Section 13-B(2) HMA stipulates that following the initial motion, the couple must proceed to the Court for the second motion within a period of six to eighteen months, provided that the petition has not been withdrawn in the interim. The parties are prohibited from taking any action until a period of six months has elapsed since the initiation of the first motion.

According to the Hon'ble Court, the inclusion of sub-section (2) to Section 13-B of the Hindu Marriage Act (HMA) is based on the legislative intention to provide the couple with a period of reflection and deliberation prior to the initiation of the second motion for separation. Nevertheless, there exist instances of extraordinary adversity in which, following a prolonged period of contentious legal proceedings and enduring distress, the involved parties, in an effort to begin over, collectively petition the Court for the dissolution of their marriage and request exemption from the requirement to proceed with the second motion. Therefore, because to the presence of irreconcilable disagreements, mutual allegations, involvement

of family members, and the occurrence of many litigations, including criminal proceedings, the continuation of the marital connection is deemed unfeasible.

The inevitability of divorce is a widely acknowledged reality, and the implementation of a cooling-off period, if implemented at all, has been observed to result in significant emotional distress and suffering, without yielding any discernible advantages or positive outcomes.

According to the Hon'ble Court's perspective, in this case, the procedural aspects should be subordinate to the broader societal and individual interests of the parties involved in resolving the dispute. This is due to the emotional distress and anguish caused by the formal issuance of a divorce decree, considering that the marriage had effectively terminated prior to this formal declaration.

According to the Hon'ble Court, the purpose of the cooling off time is not to unnecessarily prolong the dissolution of a marriage that has already deteriorated, nor to needlessly extend the suffering and distress of the parties involved in cases where the prospects of the marriage being successful are nonexistent. Hence, after exhausting all attempts to preserve the marital union and determining that reconciliation and shared living arrangements are no longer feasible, the Court possesses the authority to facilitate an alternative course of action, namely the granting of a divorce. The granting of a waiver is contingent upon the Hon'ble Court's determination, based on substantial evidence, that the marriage has irreparably deteriorated, rather than being granted only upon request.

The Hon'ble Court expressed its view that Section 13-B of the Hindu Marriage Act does not place any restrictions on the authority of the Hon'ble Supreme Court to issue a divorce decree based on mutual consent through a joint application, provided that the essential requirements of the Section are met and the Court is convinced that granting the divorce decree is appropriate. Therefore, embracing an excessively technical perspective may prove to be ineffective, since the delay itself leads to anguish, distress, and mistreatment. Consequently, it is incumbent upon the Court to guarantee the amicable resolution of marriage issues, so bringing a stop to the suffering. Therefore, the Court determined that the Supreme Court possesses the authority to terminate the marriage by the issuance of a divorce judgment based on mutual consent, without being obligated to adhere to the procedural prerequisite of filing a second request. The exercise of this power should be approached with careful consideration, taking into account the factors mentioned in the cases of *Amardeep Singh*⁴ and *Amit Kumar*⁵ (supra). It is important to consider the impact on ongoing legal proceedings related to the Protection of Women from Domestic Violence Act, 2005, Section 125 of the Code of Criminal Procedure, 1973, or criminal prosecution primarily under Section 498-A and other provisions of the Penal Code, 1860. Drawing upon the precedents of *Gian Singh v. State of Punjab*⁶, and *Jitendra Raghuvanshi v. Babita Raghuvanshi*⁷, (2013) 4 SCC 58, the Court further asserted that in instances where a settlement has been reached between the involved parties, it is permissible to nullify and dismiss other legal proceedings and orders, such as criminal cases and First Information Reports, when granting a decree of divorce by mutual consent. However, it is crucial to adhere to the specific conditions outlined in the aforementioned judgments in order to exercise this prerogative. The authority of the Supreme Court to award divorce is derived from Article 142(1) of the Constitution of India. This power can be exercised in

cases when there is a total and irreversible breakdown of the marriage, even if the opposing spouse objects to the request. The Court acknowledged the provisions of Section 13(1)(i-a) HMA and Section 23(1)(a) HMA and provided an interpretation of the term 'cruelty' by referencing previous judgments. It emphasized that the Supreme Court's granting of divorce based on irretrievable breakdown of marriage is not an automatic entitlement, but rather a discretionary decision that

⁴ supra

⁵ Supra

⁶ (2012) 10 SCC 303

⁷ (2013) 4 SCC 58

must be made with careful consideration. The Court emphasized the importance of considering various factors to ensure that both parties receive fair and equitable treatment, in order to achieve a sense of 'complete justice'. The Court must thoroughly ascertain and ascertain that marriage is entirely impracticable, devoid of emotional vitality, and irreparable, thereby rendering dissolution of marriage the appropriate and sole recourse.

Additionally, the Hon'ble Court emphasized the importance of considering the economic and social circumstances of the parties involved when evaluating these facts. This includes taking into account their educational backgrounds, whether they have children, their ages, educational qualifications, and the extent to which the other spouse and children are dependent. It is crucial to assess how the party seeking divorce intends to provide for and support the spouse and children in such cases. The Court emphasized the necessity of exercising unusual care and caution, asserting that the Supreme Court should refrain from reviewing or interfering with the appealed decision unless it is proven that exceptional and special conditions are present, indicating the occurrence of significant and severe injustice. The Court would refrain from issuing an order that violates or disregards a statutory provision, or solely based on compassionate reasons. In the context of the power bestowed upon the Supreme Court of India by the Constitution to administer "complete justice" under Article 142(1), the Court examined and analyzed the judgments rendered in *Savitri Pandey v. Prem Chandra Pandey*⁸, *Manish Goel v. Rohini Goel*⁹, *Neelam Kumar v. Dayarani*¹⁰, *Hitesh Bhatnagar v. Deepa Bhatnagar*¹¹, *Darshan Gupta v. Radhika Gupta*¹², , and other relevant cases. Therefore, it was determined that the authority to administer "complete justice" is not restricted by the principle of guilt and blame, which is applicable to divorce petitions under Section 13(1)(i-a) of the Hindu Marriage Act.

IS IT POSSIBLE FOR A PARTY TO IMMEDIATELY PRESENT THE ARGUMENT OF IRRETRIEVABLE BREAKDOWN BEFORE THE SUPREME COURT BY SUBMITTING A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION?

The Hon'ble Court emphasized the significance of the Poonam v. Sumit Tanwar case¹³, and expressed its view that parties should not be allowed to bypass the established procedure

⁸ (2002)2 SCC 73

⁹ (2010) 4 SCC 393

¹⁰ (2010) 13 SCC 298

¹¹ (2011) 5 SCC 234

¹² (2013) 9 SCC 1

¹³ (2010) 4 SCC 460

by seeking recourse to the writ jurisdiction under Article 32 or 226 of the Constitution of India. This is because Article 32 is specifically intended for seeking redressal for violations of rights conferred by Part III of the Constitution, and such violations must be proven. Hence, it is not permissible for a party to submit a writ petition pursuant to Article 32 with the objective of immediately seeking the dissolution of a marriage from the Supreme Court.

Therefore, the Hon'ble court determined that it possesses the authority, as granted by Article 142(1) of the Constitution of India, to exercise its discretion in dissolving a marriage based on the irreparable breakdown of the relationship. The exercise of discretionary power is intended to achieve a state of 'complete justice' for the parties involved. This occurs when the Supreme Court is convinced that the established facts indicate a complete breakdown of the marriage and that there is no likelihood of the parties reconciling and living together. In such cases, it is deemed unjustifiable to continue the formal legal relationship. Moreover, it has been asserted that the Court, functioning as a court of equity, is obligated to consider and weigh the circumstances and contextual factors in which the party contesting the dissolution is situated.

CONCLUSION

In conclusion, it can be asserted that marriage is an institution that garners significant interest from the general public due to its preservation and significance. The institution of family serves as the fundamental building block of society, playing a crucial role in the development and maintenance of civilizations. The underlying premise of this foundation is predicated upon the presence of a platform constructed around a solid comprehension between the marital partners.

In cases when there is a lack of mutual understanding between spouses and the marriage is characterized by persistent distress, it is preferable for the dissolution of the marriage to be facilitated through legal means, such as judicial intervention. Continuing such a marriage does not serve any practical purpose. Therefore, according to the "irretrievable breakdown theory," it is argued that marriages of this nature should be terminated in order to benefit all parties involved.

The recognition of the Irretrievable Breakdown of Marriage idea is necessary in order to acknowledge the necessity for spouses to pursue a fresh and improved life, rather than squandering their valuable time within judicial proceedings.

