
IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A SEPARATE GROUND FOR DIVORCE UNDER THE HINDU LAW

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ABSTRACT

The concept of divorce has been obscure to the Indian mythology of marriage and union from time immemorial. Marriage has been and is considered as the epitome of compromise and sacrifice which can only breakdown on certain extremely restricted grounds as mentioned under Section 13 of the Hindu Marriage Act, 1955. However, the modern times have time and again taught us that while such outdated ideologies were set in stone and were religiously followed in the past, the same cannot be practically applied to the rather independent era of equality and togetherness. While the breakdown theory, which proposes irretrievable breakdown of marriage as a ground for divorce goes in line to this modern ideology, the same has not been inculcated in our Indian Hindu law or any law for that matter, rather our law on marriage and divorce finds its significant basis from Fault theory. Therefore, the present paper makes an attempt to hit these main issues regarding irretrievable breakdown of marriage being a separate ground of divorce. The paper ensues with understanding the basic divorce law under Hindu Marriage Act, 1955 on the lines of theoretical basis of the grounds of divorce. Further, the author tries to understand the concept of irretrievable breakdown of marriage and traces its development in India and how its addition has been significantly recommended by courts and the parliament. After this, there is an analysis of the consequences of this addition and what all institutions does this amendment affects. Finally, based on this analysis and research, a conclusion along with recommendations has been provided by the author to go ahead with the amendment while simultaneously maintaining sensitivity towards Indian morals and customs and position of women and children.

INTRODUCTION

“Human life has a short span and situation causing misery cannot be allowed to continue indefinitely.”¹

Hindu Marriage is considered a sacrament which finds its foundation in compromise and adjustment. The ancient laws on marriage do not recognize any kind of dissolution of marriage. The expectation of adjustment and tolerance is inclined more towards women where they are not allowed to act even in a bigamous marital setup of her husband. In the present times, the marriage and divorce law find its existence in Section 13 of the Hindu Marriage Act, 1955² which is predominantly based on the fault theory of divorce. The Act only partially recognizes Irretrievable breakdown theory which dictates that there is no requirement of establishment of fault of either party within the bounds of matrimonial offences of Section 13. A couple can claim divorce if they are convinced that the marriage has broken down irreparably and without any scope of reconciliation. This principle, in its entirety, has been time and again proposed to be added in the statute to match the modern-day ideology of marriage and a progressive thought of line. However, this proposed amendment has erupted a debate with two opinions being formulated on this change. While a few opine that the amendment would be a progressive step leading to change in divorce laws which will improve the status of women and will allow parties to be set free from an unhappy and strained relationship, others opine that the amendment will not only attack the moral strength of Indian society but will negatively affect women and will be a tool of easy divorce which will be misused by the husbands for exploitation of their partners. This change and with certain recent cases in India which have granted divorce on the ground of irretrievable breakdown, the debate of whether it is feasible to add irretrievable breakdown of marriage as a ground of divorce to the Hindu Marriage Act, 1955?

On these lines of research and analysis, the present paper aims to present Irretrievable breakdown of marriage as a ground of divorce. The chief aim of the paper is to analyze the consequences of such amendment and compare it with the situation before such legislative action. The paper ensues with understanding the basic divorce law under Hindu Marriage Act, 1955 on the lines of theoretical basis of the grounds of divorce. Further, the author tries to understand the concept of irretrievable breakdown of marriage and traces its development in

¹ Law Commission of India, *The Hindu Marriage Act, 1955- Irretrievable Breakdown of Marriage as a Ground of Divorce* (Law Com No 71,1978)

² Hindu Marriage Act 1955, s 13

India and how its addition has been significantly recommended by courts and the parliament. After this, there is an analysis of the consequences of this addition and what all institutions does this amendment affects. Finally, based on this analysis and research, a conclusion along with recommendations has been provided by the author to go ahead with the amendment while simultaneously maintaining sensitivity towards Indian morals and customs and position of women and children.

UNDERSTANDING THE LAW ON DIVORCE IN INDIA

Hindu mythology has time and again dictated that a marriage is a sacred union of two people. The concept of divorce has been obscure to the Hindu customs since ancient times with *Shastric* laws pronouncing “once a marriage is always a marriage”.³ Women have been especially a victim to these principles and rules are till now referred as *Ardhangini* where the wife cannot be released by the husband either by sale or by desertion.⁴ Being a sacrament, marriage has always been considered as a union of compromise and sacrifice where even a second marriage did not lead to divorce with the first wife. This conservative line of thought was gradually changed due to the presence of various other religions like Christianity and Muslim law which introduced this concept of divorce in India.⁵ The application of Divorce Law distinctively under Hindu law came through the formulation of the Hindu Marriage Act, 1955. The act consolidates the law relating to marriage of Hindus. Divorce laws for Hindus in this way began being governed, but not limited to, by the Hindu Marriage Act, 1955. Section 13 of the act provides the grounds based on which either party can claim a divorce. These grounds predominantly find their basis in the fault theory which dictates that a party can seek divorce on the fault of the other party.⁶ The matrimonial offences as mentioned in Section 13 form the basis of decree of divorce. A precondition to this theory, however, is the complete innocence of the party seeking divorce as no one can take advantage of its own fault. The grounds under Section 13 include adultery, cruelty, desertion, insanity, renunciation, venereal disease which is communicable and not heard from for seven years or more. Some grounds are explicitly available to women which include pre-bigamous marriage, sodomy, rape and bestiality on the part of the husband.

³ Mahmood Tahir, *Principles of Hindu law* (2014)

⁴ P.V. Kane, “History of Dharam Shashtra” (1975)

⁵ Vijender Kumar, ‘Irretrievable Breakdown of Marriage: Right of A Married Couple’ (2015) Nalsar Review <<http://www.nalsar.ac.in/pdf/Journals/Nalsar%20Law%20ReviewVol.%205.pdf>> assessed 5 October 2022

⁶ Kusum, ‘Irretrievable Breakdown of Marriage: A Ground for Divorce’ (1978) 20(2) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43950531>> accessed 22 September 2022

In 1964, a further liberation of divorce law was witnessed with a step towards the breakdown theory with inclusion of Section 13 (1A).⁷ This section included judicial separation and restitution of conjugal rights as grounds of divorce on the condition that there has been no resumption of both the decrees for a periods of one year or more.⁸ This amendment allowed either party to apply for a divorce, as opposed to only the decree holder being able to apply prior to 1964, with the aim to end the bitter relationship and the stalemate. With this, a small step was taken towards breakdown theory of divorce. These grounds did not eliminate fault theory in its entirety as the “*inquiry into the conduct of the parties leading to such breakdown has not been made altogether irrelevant.*”⁹

A further step on these same lines of breakdown principle was inclusion of Section 13B as a ground of divorce in 1976.¹⁰ The section allowed the parties to obtain divorce on the pre-condition of free consent of both the parties. This is based on the consent theory of divorce which dictates that the husband and wife are free to dissolve the marriage as they are to enter in one.¹¹ The doubts of obtaining divorce too easily or collusion were cleared in a way that the parties do not obtain divorce right away. After six months of presenting the petition, the parties make a motion and if the petition has not been withdrawn, the parties are granted divorce after deliberating scrutinization of evidence and satisfaction of obtainment of free consent of both the parties.¹² This amendment was a strong attempt towards excluding fault of either party altogether. The ground, however, could not provide an exhaustive remedy towards a liberal divorce law. Discrepancies like financial hardship, no consent by other party or other stigmatic notions governing Indian women led to a failure of this ground as a way of easy and certain divorce free of any humiliation or wastage of financial and emotional investment.

A marriage has a twofold objective viz. maintenance of a stable sexual relationship and care and protection of children. If these two objectives are at risk due to constant humps in married

⁷ Hindu Marriage Act 1955, s 13 (1A)

⁸ *Ibid*

⁹ Justice V.S. Deshpande, ‘Divorce Under the Hindu Marriage Act - A Conflict of Principles’ (1971) All India Reporter Pvt. Ltd. <<https://www.aionline.in/legal-articles/Divorce+under+the+Hindu+Marriage+Act+-+A+Conflict+of+Principles>> assessed 5 October 2022

¹⁰ Hindu Marriage Act 1955, s 13B

¹¹ ‘Different Theories of Divorce’ (Shodhganga) <https://shodhganga.inflibnet.ac.in/bitstream/10603/39005/12/12_chapter%204.pdf> accessed 20 September 2022

¹² Reetika Bansal, ‘Irretrievable Breakdown of Marriage: A Remedy for Easy Separation’ (July 2020) <<file:///C:/Users/hp/Downloads/IrretrievableBreakdownofMarriage.pdf>> accessed 25 September 2022

life, it is bound to go bitter with no scope of reconciliation.¹³ The existing grounds of divorce did not consider these issues efficiently. All these discrepancies and doubts regarding the existing grounds of divorce led to the question of feasibility of addition of Irretrievable breakdown of marriage as a ground of divorce under Hindu Marriage Act, 1955. Divergent views regarding this amendment were observed by various judges and academicians. While a few preached this would be a regressive step for the Hindu culture and norms, others took it as a progressive step of modernity allowing a couple to take decision irrespective of the limitations of fault or matrimonial offences. A few opined that the ground of mutual consent fulfils the vacuum of long due liberalisation of divorce law, ignoring the differences between the grounds. This ground, though does not eliminate fault altogether, widens the scope of divorce and the basis of fault of either party. The development of this concept in India can be witnessed through law commission reports and predominantly through judicial pronouncements under the power of Article 142. The complexity and modern approach of present India has rekindled the question that “Whether Irretrievable Breakdown of Marriage as a ground of divorce is a good option for a complex historic country like India?”

EVOLUTION OF THE CONCEPT OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE IN INDIA

Marriage, as already established, is a union, the foundation of which is tolerance, compromise, and respect towards each other. When there is no scope of reconciliation due to the strained relationship of the husband and wife, they should be free to end that union without any restriction of establishing fault of either party. This is very efficiently achieved by the concept of irretrievable breakdown of marriage. It articulates that if the foundation of a marriage is shattered beyond the point of repair or reconciliation and the spouses have been living in a state of bitterness and hostility for a long time, the marriage is dead and should be dissolved. The theory disregards establishment of fault of either party for a decree of divorce. In the Indian Context, the concept first found its recognition in the case of *Abubacker Haji v. Mamu Koya* wherein J. VR Krishna Iyer observed that. “...*While the stream of life, lived in married mutuality, may wash away smaller pebbles, what is to happen if intransigent incompatibility of minds breaks up the flow of the stream? In such a situation, we have a breakdown of the marriage itself and the only course left open is far law to recognize what is a fact and accord*

¹³ Kusum, ‘Irretrievable Breakdown of Marriage: A Ground for Divorce’ (1978) 20(2) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43950531>> accessed 22 September 2022

a divorce.”¹⁴ The theory in a simple understanding, identifies the unhappy situation of the couple and articulates that if the court is convinced that the marriage has broken down irretrievably, the marriage shall be dissolved whatever may be the cause.¹⁵ It asserts that breakdown of marriage is not necessarily confined to one act or omission or a ground for dissolution. A marriage can be irreparably broken down due to a series of acts influenced by social, economic, behavioural or sexual factors over a period of time.¹⁶

1. EVOLUTION THROUGH JUDICIAL PRONOUNCEMENTS

In 1978, the 71st law commission report presented its stance on the Hindu Marriage Act, 1955 and asserted the importance of adding irretrievable breakdown of marriage as a ground of divorce in the statute. Although, this debate of introducing irretrievable breakdown of marriage is old, this report was a major proponent in this direction. It provided, “...*Living together is a symbol indicating the negation of such sharing. It is indicative of a disruption of the essence of marriage breakdown and if it continues for a fairly long period, it would indicate destruction of the essence of marriage irretrievable breakdown.*”¹⁷ The report, while providing that human life is short and should not be subjected to misery indefinitely, articulated eight conditions for irretrievable breakdown of marriage to be added as a ground in the Hindu Marriage Act, 1955 according to Indian preconditions and cultural requirements.¹⁸

But this is not the first time this concept has been applied. Although the concept of irretrievable breakdown was not recognised initially, there has been a gradual shift from a fault theory to a no-fault theory. Earlier, after obtaining an order for restitution of conjugal rights, the party which was at fault could not obtain divorce; only the person who was wronged could file for divorce if the restitution was not executed. And if both parties were at fault, there was no recourse.

Progress began with the (*New Zealand*) *Divorce and Matrimonial Causes Amendment Act, 1920*, wherein separation for a span of three or more years was added as a ground for divorce, depending on the discretion of the courts.¹⁹

¹⁴ 1971 KLT 663

¹⁵ Basant Kumar, “*Hindu Law*” (3rd edn, 2011)

¹⁶ “The Seven Pillars of Divorce Reform”, Law Society Gazette, 344 (Law Society of England and Wales, London, June 1965).

¹⁷ Law Commission of India, *The Hindu Marriage Act, 1955- Irretrievable Breakdown of Marriage as a Ground of Divorce* (Law Com No 71, 1978)

¹⁸ *Ibid*

¹⁹ Paras Diwan, *Marriage and Divorce Law Reforms* (2002) 558

In India, however, marriage was considered an eternal union. As a result, divorce was only allowed in cases where one party was at fault, and irretrievable breakdown was out of the question. Hence, in 1975, in the case of *Dastane v. Dastane*²⁰, where the two parties had been involved in judicial proceedings for over a decade, the divorce petition was dismissed, but it helped start the conversation about the necessity of the concept of irretrievable breakdown.

A few years later in 1978, when the 71st Report of the Law Commission of India came out, this topic was brought to the forefront. The recommendations of this Report have been covered under the section explaining the concept of irretrievable breakdown. It uncovered how a fault-based theory of divorce would be unfair to those couples stuck in marriages where neither party was at fault, but the marriage was no longer functional.²¹

Maintaining the spirit of the above recommendations, in the *Ms. Jorden Diengdeh v. S. S. Chopra*²² case of 1985, the Supreme Court, while granting divorce, recognised the necessity of introducing irretrievable breakdown of marriage and a uniform code of marriage to provide recourse for couples in dead marriages.

Despite these recommendations, in the cases of *Smita Dilip Rane v. Dilip Dattaram Rane*,²³ *Suresh Prasad Sharma v. Rambai Sharma*,²⁴ and *Asha v. Krishan Lal*²⁵, irretrievable breakdown was not considered a valid ground for divorce. In *Smita Dilip Rane*, which took place in 1990, even though divorce was granted, the Court held that there was no scope for the argument of irretrievable breakdown as it was neither factually applicable to the case, nor was there a relevant legislation to support it.

In the 1999 case of *Suresh Prasad*, the divorce appeal was dismissed. According to the Court, if a statute did not provide for irretrievable breakdown as a ground for divorce, the facts of the case were not sufficient reason to grant a decree for divorce. In this case, the appellant was held responsible, and the Court upheld the fault theory by dismissing the appeal on the ground that he should not benefit from his own wrong.

²⁰ AIR 1975 SC 1534

²¹ Law Commission of India, *The Hindu Marriage Act, 1955- Irretrievable Breakdown of Marriage as a Ground of Divorce* (Law Com No 71,1978)

²² AIR 1985 SC 935

²³ AIR 1990 Bom. 84

²⁴ 1 (1999) DMC311(MP)

²⁵ 1990 Del. 1

In 1990, in *Asha v. Krishan Lal*, divorce was not granted, and irretrievable breakdown was not recognised because it was not part of any statute. Change began to take place soon after; although irretrievable breakdown was recognised, it was usually considered a ground for divorce in conjunction with other grounds. In the 1993 case of *Chanderkala Trivedi v. S.P. Trivedi*,²⁶ while the term ‘irretrievable breakdown of marriage’ was not explicitly used by the Court while granting divorce, the marriage was defined as ‘dead’.

In 1994, in *V. Bhagat v. D. Bhagat*,²⁷ the Supreme Court dissolved the marriage and held that while irretrievable breakdown was not a ground for divorce by itself, coupled with the other evidence on record, it was definitely relevant. In 1996, in *Kanchan Devi v. Promod Kumar*,²⁸ the parties were living apart for more than ten years and every attempt at reconciliation had failed. The court invoked *Article 142* of the Constitution, as was done in the present case as well, and while it was a case of divorce by mutual agreement, the court reiterated the validity of irretrievable breakdown of marriage while granting divorce.

In the 1997 case of *Tapan Kumar Chakraborty v. Jyotsna Chakraborty*,²⁹ the Calcutta High Court held that the Court cannot grant divorce on the mere ground of irretrievable breakdown of marriage. Hence, a decree of judicial separation was granted and not of divorce. The new millennium brought further changes in attitudes of society, which were reflected in the judgments of that time. In 2001, in *Sanghamitra Singh v. Kailash Singh*,³⁰ the court observed that neither party wanted the marital bond to be restored. Thereby, the doctrine of irretrievable breakdown was applied, and a decree of divorce was granted upon consent of both the parties.

In the same year, in *Krishna Banerjee v. B. Bandopadhyay*,³¹ where the husband was harassed by the wife by physical and mental cruelty, coupled with the fact that they had been living separately for 16 years, as is the case in the present matter, the court granted divorce, as the marriage had completely broken down. However, the following year, in 2002, in *Swapan Kumar Ganguly v. Smritikana Ganguly*,³² the Court maintained the importance of the status of being a married woman in Indian society, a fact which could not be denied even where the parties could not live together. Divorce was not granted. In the following sections, our case

²⁶ (1993) 4 SCC 232

²⁷ AIR 1994 SC 710

²⁸ AIR 1996 SC 3192

²⁹ AIR 1997 Cal. 134

³⁰ AIR 2001 Ori. 151

³¹ AIR 2001 Cal.154

³² AIR 2002 Cal. 6

analysis will further discuss the ramifications of the concept of irretrievable breakdown on women.

In 2005, in *A. Jayachandra v. Aneel Kaur*,³³ the Supreme Court granted divorce by deducing irretrievable breakdown of marriage and concluded that when the respondent gave priority to her profession over her husband's freedom it suggested there was "disharmony, diffusion and disintegration of marital unity."

In 2006, the landmark judgment of *Naveen Kohli v. Neelu Kohli*³⁴ emphasised the need for inclusion of irretrievable breakdown of marriage as a ground for divorce. While granting divorce, an amendment to the Hindu Marriage Act was strongly advocated, to include irretrievable breakdown of marriage as a reason to seek divorce. The Bench comprising Justice B. N. Agarwal, Justice A. K. Mathur and Justice Dalveer Bhandari said, "Where there has been a long period of separation it may fairly be surmised that the matrimonial bond is beyond repair."

As a result, the Law Commission in its 217th Report took note of the above case laws, especially the *Naveen Kohli* case and the *Ms. Jorden Diengdeh v. S. S. Chopra* case and further recommended irretrievable breakdown of marriage as a ground for divorce.³⁵

An attempt to make a legislative inclusion of this ground was made in the Parliament, through the Marriage Laws (Amendment) Bill of 2010 and again in 2013, but these were rejected by the Lok Sabha after being passed by the Rajya Sabha. In 2013, it had been initiated by the UPA government, but with the NDA coming into power in 2014, the Lok Sabha got dissolved. The Bill was rejected in 2015 per the representations of senior citizen groups and NGOs like Save Indian Family and Centre for Reforms, who felt there would be a "fall of the institution of marriage and family values".

With this we return to the present case, a benchmark judgment which will hopefully be a step forward towards reconciling the growing importance of irretrievable breakdown of marriage as a ground for divorce with the evolving maturity of society and the courts.

³³ (2005) 2 SCC 22

³⁴ AIR 2006 SC 1675

³⁵ Law Commission of India, *Irretrievable Breakdown of Marriage – Another Ground for Divorce* (Law Com No 217, 2009)

2. MUTUAL CONSENT V. IRRETRIEVABLE BREAKDOWN OF MARRIAGE

The parties started off the legal battle of divorce on the ground of cruelty which eventually turned into the ground of irretrievable breakdown of marriage. Even though the non-willingness of both the parties to compromise or adjust was conspicuous, the respondent was reluctant to get a decree of divorce. The Court decided that the case is quintessential for ground of irretrievable breakdown of marriage as the parties have nothing but bitter memories and the marriage had irreparably broken. A fine line of distinction seems to have been meted out from the judgement on when a case is fit for irretrievable breakdown of marriage and what factors set mutual consent apart from this ground. Therefore, it becomes essential to draw a line of difference between divorce by mutual consent and divorce on the ground of irretrievable breakdown of marriage.

The ground of mutual consent was added in the Hindu Marriage Act, 1955 in 1976.³⁶ This was accepted as a welcome step taken to move from fault theory to the breakdown principle. While the inclusion erupted various debates regarding the validity and conformity of the ground to the Hindu customs and standards, it was an initiation towards the liberalization of divorce law in India. The ground is predominantly based on Consent theory which dictates that if both the husband and wife agree to separate from the matrimonial ties, they should be permitted to get their marriage dissolved.³⁷ On the other hand, the ground of irretrievable breakdown of marriage is based on the breakdown theory of divorce which preaches that a completely broken down marriage without any iota of repair or reconciliation should be dissolved without looking at the fault of either party.³⁸ Mutual consent fails to work where one of the parties do not want or consent to divorce due to any social or economic issue, despite the broken marriage. This situation is noticeably evident in the present case as the parties, despite mutual differences, opt for different grounds of divorce instead of divorce by mutual consent. In such situations, the ground of irretrievable breakdown of marriage comes into play, wherein the Court has the liberty to decide whether the marriage has broken down irretrievably, unlike mutual consent, wherein the court has no role to play in examining the reasons of breakdown of marriage and it is parties who solely decide to not live together in matrimonial ties.

³⁶ Hindu Marriage Act 1955, s 13B

³⁷ 'Different Theories of Divorce' (Shodhganga) <https://shodhganga.inflibnet.ac.in/bitstream/10603/39005/12/12_chapter%204.pdf> accessed 20 September 2022

³⁸ Kusum, 'Irretrievable Breakdown of Marriage: A Ground for Divorce' (1978) 20(2) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43950531>> accessed 22 September 2022

Mutual consent is based on the premise that parties are free to dissolve a marriage as they are to enter it while the irretrievable breakdown of marriage understands the modern situation and provides that if the marriage is so much broken that there is no scope of compromise or a patch up, it should be dissolved irrespective of the fault of either party or their consent for a divorce, which is evident in the present case.³⁹ In the former situation, it is not necessary that a marriage has failed or completely broken down. It can be an amicable situation where the parties mutually decide the fate of their marriage independent of Court's interference. In the latter situation, either the parties conclude that the marriage has completely broken down without any scope of reconciliation or the Court analyses the situation and reaches a logical and final conclusion. In this situation, the marriage is mandatorily broken irrespective of the fault of the parties or their consent on divorce, which is apparent in the present case.⁴⁰

On a similar note, in the grounds of judicial separation and restitution of conjugal rights, while the breakdown of marriage has been made the principal ground for divorce, the inquiry into the conduct of the parties leading to such breakdown has not been made altogether irrelevant.⁴¹ This implies that fault theory has not been let go all together by the divorce laws in India. Mutual Consent and other mentioned grounds of divorce are only a partial step towards introducing the concept of irretrievable breakdown of marriage. The mentioned grounds are a part of the Hindu Marriage Act 1955 and an amalgamation of fault theory, unlike the ground of irretrievable breakdown of marriage which is still on its way to find its place in the divorce law. Currently, divorce on the ground of irretrievable breakdown of marriage is provided and limited to SC under Article 142 of the Constitution⁴² while Mutual Consent is governed by Section 13B of the Hindu Marriage Act, 1955.⁴³

3. HOW IT AFFECTS WOMEN AND WHY IT SHOULD BE INCLUDED IN THE STATUTE

The Respondent, in the present case, was predominantly reluctant in getting a decree of divorce. While the reason for such reluctance was not furnished by her, the Court interpreted this as a way of avoiding the decree to be passed against the Appellant to frustrate his endeavor of getting a decree of divorce. In a general interpretation, women are often subjected to various

³⁹ 'Divorce by Consent and Divorce for Breakdown of Marriage' (1967) 30(2) *The Modern Law Review* <<https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1967.tb01142.x>> accessed 27 September 2022

⁴⁰ Reetika Bansal, 'Irretrievable Breakdown of Marriage: A Remedy for Easy Separation' (July 2020) <<file:///C:/Users/hp/Downloads/IrretrievableBreakdownofMarriage.pdf>> accessed 25 September 2022

⁴¹ Kusum, 'Irretrievable Breakdown of Marriage: A Ground for Divorce' (1978) 20(2) *Journal of the Indian Law Institute* <<https://www.jstor.org/stable/43950531>> accessed 22 September 2020

⁴² Constitution of India 1950, art 142

⁴³ Hindu Marriage Act 1955, s 13B

social stigmas when it comes to divorce. Hindu marriages being considered a sacrament, there is always an expectation of compromise and adjustment in a marriage despite the differences and non-conformity of ideas and thoughts. These expectations are customarily supposed to be fulfilled by women viz. the wives as compared to husbands. This becomes noticeable with women being identified as *Ardhangini* and absence of the concept of dissolution of marriage in *Shastric laws* even after death.⁴⁴ In the present case, this general interpretation tends to fit in given the various arguments put forth by the respondent on compromising and adjusting in the marriage despite the knowledge about the alleged affair of her husband. The reluctance was manifestly ignored by the Court in the present case when divorce was granted on the grounds of irretrievable breakdown of marriage. This brings forth the dilemma of the effect of inclusion of this ground in the Indian culture where women are considered a comparatively weaker and dependent sex both socially and economically.

Legally, this aspect was catered by the law commission in its 71st report wherein, Section 13D was recommended to be added along with Section 13C.⁴⁵ Section 13D provided that if any financial hardship is deemed to be faced by the wife, the Court can dismiss the petition of divorce prayed for under Section 13C.⁴⁶ This was reiterated in 217th law commission report that requisite arrangements should be made for the parties and the children.⁴⁷ Another argument advocated in this debate was the removal of concept of “maintenance” in the statute if the ground of irretrievable breakdown of marriage is to be added.⁴⁸ The laws ensuring equal matrimonial property and not just maintenance became vital for avoiding exploitation of women in these circumstances. Many pressure groups have doubted the expedience of the ground as women are prone to financial drainage after divorce and fail to fulfill basic needs of children and themselves. The ground undermines the status of women more than men because gender disparities have created an overly patriarchal society which often ignores the plight of

⁴⁴ ‘Concept and History of Divorce: With Reference to Irretrievable Breakdown of Marriage’ (*Shodhganga*) <https://shodhganga.inflibnet.ac.in/bitstream/10603/208551/8/08_chapter3.pdf> accessed 27 September 2022

⁴⁵ Law Commission of India, *The Hindu Marriage Act, 1955- Irretrievable Breakdown Marriage as a Ground of Divorce* (Law Commission Report No. 71, 1978)

⁴⁶ Law Commission of India, *The Hindu Marriage Act, 1955- Irretrievable Breakdown Marriage as a Ground of Divorce* (Law Commission Report No. 71, 1978)

⁴⁷ Law Commission of India, *Irretrievable Breakdown of Marriage-Another Ground of Divorce* (Law Commission Report No. 217, 2009)

⁴⁸ ‘Feasibility of incorporating ‘Irretrievable Breakdown of Marriage as Ground’ for Divorce under Hindu Law’ (*Shodhganga*) <https://shodhganga.inflibnet.ac.in/bitstream/10603/208551/10/10_chapter5.pdf> accessed 1 October 2022

women in a distasteful marriage.⁴⁹

Looking at the other side of the coin, the ground is a major step for modern women who are breaking the shackles of stigma and ridicule of divorce particularly attached to them. Women have, to some extent, succeeded in convincing the society of the need to detach oneself from a broken marriage irrespective of the gender and identify a personality of independence and social acceptance. This change is majorly seen in the urban areas where working women are no longer dependent socially and financially on their husbands. Here, a divide between rural, sub-urban and urban women is made as the ground hits differently to these three categories. Rural and sub-urban women are firstly, brought up in a comparatively orthodox environment with higher possibility of financial dependence.

Professor Kusum, while commenting on 71st report in this regard observed that “*howsoever laudable the idea of protecting a wife's financial interests may be, yet debarring a husband to obtain a divorce even after the marriage has broken down would defeat the very object of the proposed amendment.*”⁵⁰ According to her, the consequence of this ground is some kind of pecuniary gain for the wife but the husband is left with nothing but utter loss and coercion of living in a failed marriage. A financial liability can be catered to through maintenance by the husband, but he will not be allowed to separate solely on the basis of financial hardships. All in all, financial issue which is anyways going to be addressed cannot be an obstacle for the aggrieved party in a decree for divorce. Amidst this chaos, what is ignored is the situation of children. The mental and financial situation of the children was addressed by the report which provided that divorce under Section 13C should be provided when adequate consistency to the financial situation of both the parties.⁵¹

After accommodating all the issues and opinions on the ground of irretrievable breakdown of marriage in Indian context, the question which the present case and various other cases posed is whether this ground should be finally included in the Hindu Marriage Act, 1955?

The judicial activism in this issue and strong opinions issued by High Courts and the Supreme Court point the urgent and important need of inclusion of this ground. The reason of the

⁴⁹ Jaya V.S., ‘Irretrievable Breakdown of Marriage as an Additional ground for divorce’ (2006) 48(3) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43952052>> accessed 22 September 2022

⁵⁰ Kusum, ‘Irretrievable Breakdown of Marriage: A Ground for Divorce’ (1978) 20(2) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43950531>> accessed 22 September 2022

⁵¹ Law Commission of India, *Irretrievable Breakdown of Marriage-Another Ground of Divorce* (Law Commission Report No. 217, 2009)

inclusion is not only the modern culture and present society but also avoiding the long procedures making the process of divorce cumbersome and emotionally and physically challenging. Currently, only the SC is empowered to provide divorce on this ground by virtue of Article 142. It took more than 16 years to reach a final decision and there have been various cases where even decades of bitter fighting resulted in an unwanted compromise or waste of time and resources. The inclusion would be relief window to tired couples who are awaiting the Court's validation of separating them from tiresome marriage. It would significantly reduce the long process of passing of decree where the parties are unable to reach a conclusion themselves despite endless efforts made from both the sides. Sensitivity to the issue of financial and social hardships should be duly made but it should not, in any way, hinder the husband's endeavor of freeing himself from an unhappy bondage. The undue advantage of this ground taken by errant husbands should be addressed with separate strict provisions and criteria in evaluating the case based on this ground. The ground is noticeably a welcome move and a significant shift from the orthodox basis of divorce laws in India.

CONCLUSION

The cotemporary arena is significantly influenced by modernization, westernization, and urbanization. Men and women are progressing towards a more liberal line of thought. With a significant demographic of women taking up steady jobs and making themselves financially and socially independent, the social stigma related to the conception of marriage and divorce is gradually fading. Women have, to some extent, succeeded in convincing the society of their capability of living independently and breaking free the shackles of social stigma and conservative line of thought attached to divorce. The conception of marriage has significantly changed where the expectation of compromise and adjustment is not only made from women but is equally made from men. The sacramental status of the marriage is being maintained but simultaneously the unhappy situation, bitter relationship and stalemate is also being recognized as a reasonable ground of dissolution of the martial union. It has become utterly essential that a marriage should be dissolved if there is no scope of reconciliation even if the matrimonial offences or faults cannot be proved. Analysing the consequences of this amendment in the Hindu Marriage Act, 1955, it can be safely concluded that the possible outcomes of this progressive step outweigh the negative outcomes. It is, therefore, need of the hour to include irretrievable breakdown of marriage as a ground of divorce. The position of women will certainly become independent, the social stigma and the orthodox mindset will gradually start

melding its way to a more liberal approach and the society will certainly become for understanding and inclusive. This amendment, however, cannot be applied in its pure sense. In India, although the society is progressing, but a major stratum of this society is still governed by orthodox thinking and financially interdependence. The amendment majorly affects women who are socially and economically dependent on their husbands and are reluctant to claim divorce. It is established that in such situation, mere security of 'maintenance' cannot be satisfactory for a woman. The ground can be misused at the whims of the husband giving rise to exploitation and harassment of the wife. The maintenance of children also becomes a major issue in such situations. The argument of this ground being a tool of easy divorce and hence, ruining the sanctity of marriage and its foundation still stands strong in Indian dynamic.

Due to this dichotomy, it is suggested that the laws are implemented cautiously where the court should be provided with a convincing and strong evidence that marriage has broken down beyond repair. The power of this ground should be exercised only in exceptional cases where the decision will cause a relief to the parties and no kind of hardship. A firm and good law on the maintenance of the dependent spouse and the children should be mandatorily made to protect the interest of both the parties. There is a need to maintain balance between protecting individual interests of the parties and sanctity of the institution of marriage.⁵² Indian ethos is embedded with moral and cultural values and the emulation of western principles in matrimonial matters of India is not appreciable and must not be adopted easily by our community.⁵³ The introduction of the ground of irretrievable breakdown of marriage needs caution and it must come out with certain safeguards so that the said provision cannot be misused.⁵⁴ The ground must be definitely included in the divorce law regime of India but certain safeguards and sensitivity towards women, children and overall cultural norms should be kept in mind while formulating the laws which do not cause any discrimination and benefit everyone in a similar way.

⁵² 'Conclusions and Suggestion' (Shodhganga) <https://shodhganga.inflibnet.ac.in/bitstream/10603/237655/14/14_chapter%206.pdf> accessed 5 October 2022

⁵³ Jaya V.S., 'Irretrievable Breakdown of Marriage as an Additional ground for divorce' (2006) 48(3) Journal of the Indian Law Institute <<https://www.jstor.org/stable/43952052>> accessed 22 September 2022

⁵⁴ 'Concept and History of Divorce: With Reference to Irretrievable Breakdown of Marriage' (Shodhganga) <https://shodhganga.inflibnet.ac.in/bitstream/10603/208551/8/08_chapter3.pdf> accessed 27 September 2022