



Irretrievable Breakdown of Marriage: A Socio Legal Study

Gurvinder Singh

Assistant Professor, CDLU Sirsa

ABSTRACT

Marriage is known as sacred and capable institution in Indian society. In typical Hindu culture it is described as bond of seven lives. But in modernism and post modernism trends, scope of divorce has increased irrespective of past beliefs. It is most obvious that if marriage is not working out between married couple then divorce must be granted to prevent future complications on social as well as legal platform. In books of Indian personal laws different grounds are provided and discussed upon which divorce can be fetched, for example – mutual consent, cruelty, adultery, vulnerable disease, renouncement of world etc. But in recent times another concept is taking shape in India which is known as ‘Irretrievable Breakdown of Marriage’ on global level. It is widely discussed as another ground of divorce as need of hour in 71st and 217th report of Law Commission of India. When marriage between a couple is broken beyond the hope of salvage, marriage appears practically to be dead so that there is no chance repair and resettlement and it becomes impossible for one to live and co habitat with spouse then it is known as irretrievable breakdown of marriage. As there is no imaginable method in which any spouse be forced to carry on marriage consortium. There is no benefit to compel couple to live together when wedlock in reality doesn’t exist. Short span of Human life must not be indulged in conditions causing misery for indefinite period of time. There must be an end point at some stage. Law neither can close eyes to such conditions, nor can it refuse to provide appropriate remedies to the aggrieved. It has been strongly recommended by Supreme Court to the Union of India in Naveen Kohli vs. Neelu Kohli³ to work on amending Hindu Marriage Act, 1955 and to introduce irretrievable breakdown of marriage as a ground for divorce.

Keywords: Marriage, Irretrievable Breakdown, Law Commission, Resettlement, Supreme Court

Introduction: In India there are personal laws resourced from customs, religious literature, social reforms and judicial precedents. These all personal laws are almost very clear and specific about solemnization of marriage. On other side socially relevant rituals are also recognized which may be different in different geographical and cultural areas. So that’s why legal as well as socially relevant rituals are also performed. In Hindu’s marriage is known as establishment of relationship between two families. Beside solemnization of marriage it is also need of hour to describe grounds of dissolution of marriage clearly to tackle divorce cases of different societies. That’s why grounds of judicial separation as well as divorce are also recognized on socio-legal level. But there is a ground of divorce which is still missing from books of Indian personal laws and that is – Irretrievable breakdown of marriage.

What is Irretrievable Breakdown of Marriage?

Definition: Legally speaking, Irretrievable Breakdown of Marriage is defined as:

“The typical condition of a marriage when either one or both spouses are no longer willing or able to live with each other, thereby destroying their husband and wife relationship with no hope of resettlement left behind of resuming marital obligation.”

In other words, Irretrievable breakdown of marriage can be described as such level of failure in the matrimonial relationship or such circumstances to a wedlock relationship which are extremely adverse that no reasonable probability remains of the spouses remaining together as husband and wife for mutual cohabitation and support. Without touching available grounds of divorce in some cases it becomes impossible for spouses to live together because the spirit of living together has gone from their minds forever. Now if there are no grounds available to one or both of them then their life will not be less than hell. The principles of natural justice can also never support such socio legal rules to be preserved which requires forceful cohabitation. At the point when the subject of consideration of hopeless breakdown of marriage as a ground for separate is mooted, the rivals contend that "separate from by common assent" presented in the Hindu Marriage Act in 1976 more than covers what is going on. It is vital to take note of that 'shared assent' requires the assent of both the gatherings and in the event that either doesn't coordinate, the said ground isn't accessible. 'Lost breakdown of marriage', then again, is a ground which the Court can look at and in the event that the Court, on current realities of the case, reaches the resolution that the marriage can't be fixed or saved, separation can be conceded. The award of separation isn't subject to the volition of the gatherings however on the Court arriving at the resolution, on the realities argued, that the marriage has hopelessly broken down.⁴

Origin of Irretrievable Breakdown of Marriage

¹ 7th April, 1978

² 30th March, 2009

³ AIR 2006 SC 1675

⁴ 217th Report of Law Commission of India



According to reports the first ever divorce on the ground of Irretrievable Breakdown of Marriage was granted in 1921 in New Zealand by a court of law. That court held that it is not in interest of parties as well as society to keep a man and woman as husband and wife in law and society when matrimonial relations are vanished. The court also said that in such kind of cases it is not only useless but mischievous to keep parties living together.

In United Kingdom this kind of situation was seen in *Masarati v. Masarati*⁵ where both of spouses accused each other for adultery. Irretrievable Breakdown of Marriage was made sole ground of divorce on recommendation of Law Commission of England under section 1 of Divorce Law Reforms Act 1973.

Australia provided it as a ground of divorce in The Matrimonial Causes Act, 1959 when their Law Commission in its report found that the provision of limiting divorces to matrimonial disability leads to injustice in cases where none of the party is at fault or the fault is of such a nature that neither party wants to accept it and consequently the wedlock has ceased to exist. In other words, Irretrievable Breakdown of Marriage is a condition whether emotional bonding, mutual respect, etc, which are fundamental to a marriage have vanished and only an empty shell in the name of marriage left behind. At end, the Law Commission mentioned that where wedlock has ceased to exist both in substance and de facto, divorce is need to taken as last resort to abstain from a difficult socio-legal situation. Instead of focusing on fault finding during the divorce process, the provisions of such a divorce ought to primarily focus on making the parties and the children accept the new situation and establishing a satisfactory foundation for regulating relationships in light of the new circumstances.

Scope in India

In India, Law commission submitted its 71st report on 7th April 1978 to Government of India titled '*The Hindu Marriage Act 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce*'. In that report amendments were recommended in Hindu matrimonial laws to add a new ground of divorce in addition to fault grounds. A lot of things were discussed in that report regarding germ of breakdown theory, international legal and judicial trends, need of introduction, expert's consultations, merits and demerits of recommended amendment etc. Beside this welfare of children was also discussed. Many reasons were given for making such recommendation. Many cases were quoted in which same is supported by different courts of law. Full bench decision of Delhi High Court was quoted *Ram Kali v. Gopal Das*⁶ where it was observed:

"it would not be a practical and realistic approach, indeed it would be unreasonable and inhumane, to compel parties to keep up the façade of marriage even though the rift between them is complete and there are no prospects of their living together as husband and wife."

In the year of 1981, a Bill was introduced in legislature to give effect to irretrievable breakdown as a ground for divorce, but it did not get acceptance as some jurists apprehended that unscrupulous husband would desert their wives and take undue advantage of this provision.

Law commission again took cognizance of this matter in its 217th report to Ministry of Law and Justice on 30th March, 2009 titled '*Irretrievable Breakdown of Marriage – Another Ground for Divorce*'. In this report also many judgments were quoted where serious view was demanded from law makers. Famous case of *Naveen Kohli v. Neelu Kohli*⁷ was quoted in which 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. A copy of this judgment be sent to the Secretary, Ministry of Law & Justice, Department of Legal Affairs, Government of India for taking appropriate steps."

In 217th report both Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 were referred for inclusion of 'irretrievable breakdown of marriage' as another ground for grant of divorce. But vis a vis it was described that the amendment can also suggest that the court of law before granting a decree for divorce on the ground of irretrievably broken down marriage have examined whether parties and children get adequate financial arrangements.

Indian Judicial Trends

Beside *Naveen Kohli*'s case there are so many other cases in which Irretrievable Breakdown theory of Marriage has been discussed in positive as well as negative way. Like in *V. Bhagat v. D. Bhagat*⁸ the Supreme Court held:

⁵ Paras Diwan, Family Law, 6th edition, 2001, p.29

⁶1971 I.L.R. 1 Delhi 10

⁷ AIR 2006 SC 1675

⁸ AIR 1994 SC 710



“Irretrievable breakdown of the marriage is not a ground for divorce by itself. But while scrutinizing the evidence on record to determine whether the ground(s) alleged is made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind.”

Earlier, in *Ms. Jordan Diengdeh v. S. S. Chopra*⁹ the Supreme Court observed:

“It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds 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 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.”

In *Kanchan Devi v. Pramod Kumar Mittal*¹⁰, however, the Supreme Court held:

“The marriage between the appellant and the respondent has irretrievably broken down and that there was no possibility of reconciliation, we in exercise of our powers under Art. 142 of the Constitution of India hereby direct that the marriage between the appellant and the respondent shall stand dissolved by a decree of divorce.”

It has been observed by different court of laws at different times that there is no utilization of keeping two people tied by the marital relationship when they can't live calmly. Where the bounds of marriage has become a stop, since parties are living independently, and after marriage the spouse has resided exclusively for a couple of months in the marital home, spouse having made charges of brutality and renunciation against the endlessly spouse having made counter-claims against her, the court in *Krishna versus Som Nath*¹¹ held that marriage is hopelessly broken and it is in light of a legitimate concern for equity that declaration of separation be conceded so both the gatherings can live in harmony. At the point when the court tracks down in realities as well as from discusses resettlement or compromise between parties that there was no chance of get-together among a couple and refusal of declaration of separation would as it were delay the desolations of the life partners, it can break down the marriage on this ground. Where the spouse and the wife are residing independently from each other throughout the previous 19 years and there is no possibility of settlement between the parties a pronouncement for separation can be conceded. Where there was no fulfillment of marriage, spouse being unfavorable to dwelling together, wife resisted guidelines of the court to go through clinical assessment to demonstrate that marriage had not fulfilled, there was obscene way of behaving of spouse to her parents in law mirroring her psychological irregularity, and the gatherings have been living independently for a time of 16 years with practically no serious endeavor for compromise, a declaration dissolving the marriage would be legitimate.

Merits and Demerits of Irretrievable Breakdown Approach

Like every other socio legal approach this theory of irretrievable breakdown of marriage also has certain merits as well as demerits. In merits following things can be mentioned:

1. Divorce for those couples will become easier who are not covered under any existing ground of divorce but the foundation of their marriage has collapsed forever.
2. Beside fault theories it will become easier for family courts to grant divorce expeditiously to those couples who are not having any other resort.
3. Families will become more democratic and egalitarian.
4. A law of divorce based mainly on fault is inadequate to deal with broken marriage where it eventually becomes very difficult to prove the guilt.
5. Those who have to cohabit forcefully just because they are not covered by any ground of divorce, a gate of hope will be opened to them.

On other side in demerits following points can be undertaken:

1. This theory allows anyone or both of spouses to end the marriage at will, which will change the nature of marriage from union for life to one which can be ended at pleasure consequently reducing the importance of this social institution.
2. It is contrary to basic principle that no man should be allowed to take advantage of his own wrong, a spouse who is responsible for such irretrievable breakdown of marriage should not be able to rely on such breakdown in order to take divorce against his/her partner's will. By authorizing one spouse to take divorce against the will of other will give him undue advantage.
3. Whenever any divorce is granted the future of children is always on stake. Increasing one ground will increase such issues in society.

Conclusion

At end it can be said that marriage is a social as well as sacred institution which is initial step towards formation of family. It is source of happiness for every individual and give them a lot of support to challenge problems of life.

⁹ AIR 1985 SC 935

¹⁰ AIR 1996 SC 3192

¹¹ (1996) DMC 667 (P&H)



However when expectations between spouses break apart and mutual trust is lost then this beautiful institution turns into sorrow of all time. In that case marriage remains only on papers and loose its spirit. Due to rapid change in society, industrialization, urbanization and changing needs of society where equal status and opportunity is given to women by law, it has affected marriages a lot. The concept of marriage is changing from sacrament to contract. So couples should not be forced to live together if they are not happy with each other. Justice Krishna Iyer in the case of Aboobacker v. Manu¹² stated while the stream of life, lived in marital mutuality, may wash away smaller pebbles, what is to happen if intransigent incompatibility of minds break up the flow of stream. When friends can break their friendship then why can't couples end up unnecessary relationship?

As far as safety and maintenance of children is concerned, safeguarding provisions for welfare of them can be made just like other kind of divorce cases.

Whether it is a man or a woman, the right to peaceful and dignified life is undisputable and unchallengeable. The same must be respected at every cost. If two people are unable to live with each other then they must be separated after exhausting with all the available remedies. After all end of marriage is not end of life. If trust dies, so does the relation. It is needless to mention that irretrievable breakdown of marriage as a ground of divorce has been recommended by jurists, academicians, judges, lawyers and even Law Commission of India.

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¹² AIR 1971 KLT 663