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# Irretrievable Breakdown of Marriage

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## ABSTRACT

*The Indian Legislature and Judiciary have attempted to include 'Irretrievable Breakdown of Marriage' as a ground of divorce with reference to Law Commission Report of India. The Irretrievable Breakdown of Marriage is a concept defined through a point of time when the marriage is not persistent and jurisprudentially such a marriage in the eyes of law has come to an end. The rationale for such a marriage dissolution is that the spouses are no more eligible or willing to live together for the Indian family concept, and as per the legal prudence personal law shall not force the spouse to live together without their willingness. Furthermore the research paper details the development of the concept of Irretrievable Breakdown of Marriage. The judiciary by precedent have developed a well-structured format to judge the breakdown extent in terms of saving the society, marriage and the peace between the spouses.*

*Furthermore, it is advised by the judicial system and report to the Indian legislature to introduce the Irretrievable Breakdown as an official ground to grant a decree of divorce in the light of justice, equity and good conscience towards society as a whole with the parties in dispute, which would also empower jurisdiction and orders of the judiciary with no conflict in the instances of broken down marriages beyond repair. The research paper enlightens the breakdown concept to be drafted for the purpose of uniform laws for all the variety of facts to different case laws, and discusses the requisite to establish an Irretrievable Breakdown of Marriage as a legal and justiciable ground of divorce.*

## I. INTRODUCTION

All around the World, it be a myth or truth that the vision of marriages is seen in heaven as meeting of two souls to create a living for themselves as well as make the cycle of living work for generations. And this vision as a mission seems to be accomplished on Earth between two parties, which by evolution and development in social understandings have turned such a soulful relation to a contractual relation. Wherein parties are deemed to fulfill such contractual obligation as following the performance of a valid contract, otherwise the Marriage will come to an end through a legal procedure of Divorce.

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## II. IRRETRIEVABLE BREAKDOWN OF MARRIAGE

The ground of Irretrievable Breakdown of Marriage is not been provided in the Hindu marriage act. Yet one can avail this ground for divorce. A collective definition of the Irretrievable Breakdown of Marriage can be called from the **71<sup>st</sup> Law Commission Report** and also from the **217<sup>th</sup> Law Commission Report**;

"Such failure in matrimonial relationship or such adverse circumstances to relationship that no reasonable probability remains for spouses living together again as husband and wife."<sup>2</sup>

In other words the relationship is broken beyond repair. Irretrievable Breakdown of Marriage can be another ground for divorce even though the ground is not provided in the Hindu marriage act of 1955 officially, i.e., no formal ground of irretrievable breakdown of marriage. Per se Hindu Marriage Act both the husband and the wife have been given a right to get their marriage dissolved by a decree of divorce on more than one ground as enumerated in Section 13. The legislature has been conscious of the social developments and the need for making available the remedy of divorce in more and more situations. However, it is to be noted that none of the grounds enumerated in section 13 speaks of irretrievable breakdown of marriage as a ground for divorce.<sup>3</sup>

Even though the ground does not formally exist in the statute the court often grants divorce on this ground when it is clear that any further legal proceedings will only lead to a long-drawn costly legal battle, with corresponding no benefit to the relationship. In India, the Law Commission in its 71st Report has recommended that irretrievable breakdown of marriage should be a separate ground for divorce.<sup>4</sup> As to the Irretrievable Breakdown of Marriage, it is submitted that the marital relationship had broken down in cases wherein the parties had ceased to cohabit and if one or both of them intend not to resume the cohabitation. However in the case of divorce by consent u/s 13 of Hindu Marriage Act, that most probably anyone of the spouse would be willing to take permanent action, such as for dissolving the marriage, until and unless period of time had been given for reconsideration and unless any of the attempt at reconcile has been made as might be reasonably prudent to do in the given circumstances of a particular case. Followings are a few examples of the different kind of evidences that the court has and/or will accept as proof for the irretrievable breakdown within the marriage:

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<sup>2</sup> 71<sup>st</sup> Report of the Law Commission of India, 1978 & 217<sup>th</sup> Report of the Law Commission of India, 2009

<sup>3</sup> B.D. Agarwala, Irretrievable Breakdown of Marriage as a Ground for Divorce- Need for Inclusion (1997)8 SCC (J) 11.

<sup>4</sup> 71<sup>st</sup> Report of the Law Commission of India, 1978.

- The couple has not lived together as each other's spouse or as husband and wife for a particular and continuous period of time.
- One of the partners had sexual intercourse with somebody else (other than his/her spouse) and because of which the other partner finds it impossible to continue living together as husband and wife.
- One of the partners is imprisoned after being declared as a habitual criminal. (This means he or she keeps committing crimes continuously, and because of which he or she was sentenced for 10-15 years of imprisonment.)
- One of the partners deserted the other.
- One regularly abused the other amounting to assaults and mental agony, for example the wife keeps assaulting the husband at home or workplace or at social gatherings.
- One of the partners is an addict to alcoholic or drugs or any immoral substance.
- The partner's don't love each other for any long; this might be due to a lot of differences and misunderstandings before and after marriage, or they married when they were too young. One of the partners finds it impossible to live together as husband and wife for any other non-enumerated reasons.

### **III. JURISDICTION TO GRANT DIVORCE ON THE GROUND IRRETRIEVABLE BREAKDOWN OF MARRIAGE:**

The opportunity to grant divorce on the grounds of irretrievable breakdown of marriage is available only with the Supreme Court of India under **Article 142 of the Constitution of India**, which provides that any appropriate order may be passed to do complete justice in any case and complete and complete justice is the key word. This has been held by the Honorable Supreme Court itself in the case of **Anil Kumar Jain v. Maya Jain**<sup>5</sup>, and also in the case of **Manish Goel v. Rohini Goel**<sup>6</sup>. So no other court can grant divorce on the ground of irretrievable breakdown of marriage except for Supreme Court of India under Article 142 of the Constitution. However, many believe that Section 13(1A) of Hindu Marriage Act, 1955 added in 1964 is a small step in the direction of ground of irretrievable Breakdown of marriage, though the ground officially does not exist.

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<sup>5</sup> Anil Kumar Jain v. Maya Jain (2009) 10 SCC 415.

<sup>6</sup> Manish Goel v. Rohini Goel (2010) 4 SCC 393.

#### IV. JUDGMENTS OF DIVORCE ON THE GROUND OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

The Supreme Court has refused to grant divorce on the ground of Irretrievable Breakdown of Marriage in a number of cases, for example in case of **Savithri Pandey v. Prem Chand Pandey**<sup>7</sup>, The Supreme Court held that no circumstance exists for the exercise of power under **Article 142** of the Indian Constitution.

On the other hand the Supreme Court has granted divorce in many cases on the ground of irretrievable breakdown of marriage, for example, in case of **Samar Ghose v. Jaya Ghose**<sup>8</sup>, the Supreme Court held that the parties have been living separately since 1990 and the decision was of 2007 and they further held that there is no emotion or feeling left between the parties in the marriages irretrievably broken down. So there is no to plank onto it and it's better to grant divorce.

In **A. Jayachandra v. Aneel Kaur**,<sup>9</sup> the Supreme Court examined the cases where the marriage has come to an end and there remains no scope for the couple to cohabit together in love and peace. In this case of 2004, the Apex Court had held, "To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'."

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 husbands in this case complained about the "obnoxious and humiliating" behavior of the wife and seek divorce by mutual consent under section 13 of the Hindu Marriage Act, 1955 so as to avoid any further 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.

All in all, when the respondent gives priority to her profession over her husband's freedom it

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<sup>7</sup> Savithri Pandey v. Prem Chand Pandey (2002) 2 SCC 73.

<sup>8</sup> Samar Ghose v. Jaya Ghose (2007) 4 SCC 511.

<sup>9</sup> A. Jayachandra v. Aneel Kaur (2005) 2 SCC 22.

points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage. The Court found the marriage irretrievably broken down and granted divorce to the husband. This is however very surprising, as many a times in the similar circumstances the court, rather than granting a decree for divorce has ordered for the restitution of conjugal rights holding the notion of a Hindu marriage being sacrosanct as the very foundation of decree for restitution.

The idea behind the declaration of irretrievable breakdown of marriage is also based on the consent as it play a major role in the occurrence of a valid marriage. Since consent is accorded primacy at the time of marriage, it follows that when one or both parties believe that the marriage has broken, they can petition for divorce. When both parties agree the marriage has failed, they can apply for divorce by "mutual consent". When only one of the parties believes that the marriage is failing, it would be enabling for the party to seek divorce arguing that the marriage has broken down, despite the unwillingness of the other party to end the relationship.

The most important landmark judgment of irretrievable breakdown of marriage is the case of **Naveen Kohli v. Neelu Kohli**,<sup>10</sup> delivered on 21st March 2006 by a 3 judge bench and written by Justice Dalveer Bhandari. In this case the parties married in 1975 and had 3 sons, for whom they established three factories the husband alleged due to the ill-temper and rude behaviour of the wife he cannot continue with the marriage and moved out of the house in 1994 and started living in a rented accommodation. After that there were multiple FIRs lodged between the parties and many civil and criminal proceedings, finally the matter reached Supreme Court of India and after much considerations Supreme Court in paragraph 17 of the judgment held that "Even at this stage, the respondent doesn't want divorce by mutual consent. From the analysis an evaluation of the entire evidence it that the respondent has resolved to live in agony only to make life a miserable hell for the Appellant.

A marriage between the parties is only in name. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond. Hence the Supreme Court of India granted divorce on the grounds of irretrievable breakdown of marriage holding that there was nothing left in the marriage to continue to hold on to it would be a sham and would be counterproductive. They have been many recommendations to add the ground of irretrievable breakdown of marriage in the statute book officially, as sometimes the marriages just can't work. However no work has still

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<sup>10</sup> Naveen Kohli v. Neelu Kohli Appeal (civil) 812 of 2004.

been done on it.

“A divorce case based on breakdown should involve the determination of four questions:

- (a) Has the marriage broken down?
- (b) If so, is there any reasonable prospect of reconciliation?
- (c) If not, is there any reason of public policy, including particular justice to the parties and to the children, why marriage should not be dissolved?
- (d) If so, what are the appropriate consequential arrangements to be made regarding the parties and the child?”<sup>11</sup>

## V. CRITICISM

The granting of divorce on the grounds of irretrievable breakdown of marriage has been criticized by many including Justice Markandey Katju in the case of **Vishnu Dutt Sharma v. Manju Sharma**<sup>12</sup>, delivered by a two judge bench, Justice Markandey Katju criticized the fact that the court was granting divorce on a ground not existing in the statute and hence effectively taking over the work of making laws. However, since the Neelu Kohli judgement was by a bigger bench of three judges and not like the two judge bench of Vishnu Dutt Sharma. The Neelu Kohli judgement still continues to hold good vision of the varied aspect of the Irretrievable Breakdown of Marriage.

The Ministry of Education, Government of India, Department of Social Welfare, have a view that making irretrievable breakdown a ground for a decree of divorce is fired in consideration of the fact that sufficient grounds covering ‘irretrievable breakdown of marriage’ exist in the Hindu Marriage Act and the Marriage Laws Amendment Act, 1976, for the purpose of seeking a divorce.

Even, it has been noticed that the Indian Judicial System assumes that it is better for the children of unhappily married parents that the marriage shall not dissolve. This is mostly what is argued against divorce of parents with children on any ground what so ever. If the interests of the children shall outweigh, divorce for a matrimonial offence, or for breakdown of marriage, or by consent, are all equally objectionable. Whereas, some argue that if the parents are unhappily married, divorce is in the best interests of the children.

## VI. IRRETRIEVABLE BREAKDOWN OF MARRIAGE IN UK

In England and Wales, there exists only reason for divorce, which is the irretrievable

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<sup>11</sup> Reform of the Grounds of Divorce (1966), Cmnd. 3123.

<sup>12</sup> Vishnu Dutt Sharma v. Manju Sharma (2009) 6 SCC 379.

breakdown of marriage. However, one is required to prove that the marriage has been broken down irretrievably based on any of these 5 facts:

- Unreasonable Behaviour
- Adultery
- 2 year separation
- 5 year separation
- Desertion

Irretrievably broken down means that one or both of the spouse are unable or simply not willing to carry on living as being in a marriage/marital relationship. Therein the relationship can no longer be retrieved and has come to an end.

Essentially the irretrievable breakdown of your marriage alone is not an acceptable reason for divorce. That's why one is asked to prove it using one of the five facts. The no-fault divorce is accepted in some countries but England & Wales is not one of them.

Constant arguing, frequent conflicts and different opinions may lead to the irretrievable breakdown. The following are common problems:

1. Lack of trust
2. Reduction of sexual intimacy
3. Finances and debt problems
4. Problems communicating
5. Different parenting ideas
6. Family conflicts
7. Disagreements involving household chores
8. A stressful job or frequent nights away
9. Growing apart
10. Clashing personality's<sup>13</sup>

## **VII. CONCLUSION**

All in all, marriage is an institution in the maintenance of which the large public has interest. It is the foundation of every family and sequentially a base of the social infrastructure without

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<sup>13</sup> The Matrimonial Causes Act, 1973.

which civilization can't persist. The relationship presupposes the existence of a platform built on the basis of understandings between the spouses. If this understanding is missing between the spouses and the marriage is a continuous difficulty, then it is desirable that the marriage should be dissolved with the intrusion of the court of law. Continuing such a marriage won't serve any useful purpose. Thus, on the basis of "irretrievable breakdown theory" such marriage should be dissolved for the common betterment of both the spouses and their families.

Hence, it would be unrealistic for the law of land to not consider the fact of a marriage broken beyond repair, and the tokenistic effects of the same towards society as a whole and the parties involved. Such legal perspective may lead to the encouragement of sourness in the relations and may also lead to immorality. Where there has been a long period of continuous separation, it may be fair to conjecture that the matrimonial bond is beyond repair.

It is also presumed as a reason why the attitude of legislature changed from the "guilt theory" to the "divorce by mutual consent" (the consent theory). A case might arise wherein the relation of the parties has broken down irretrievably and there is no scope of reconciliation with the parties not ready for divorce by mutual consent. In that eventuality continuing such relation is futile and as per Irretrievable Breakdown of Marriage theory such marriage should be dissolved in the betterment of social structure. Accordingly, it is high time to appreciate the need of Irretrievable Breakdown of Marriage theory so that spouses can have a new and better life instead of wasting their young life in courts. Hence, it is advisable to the legislature to introduce the Irretrievable Breakdown as an official ground to grant a decree of divorce in the light of Justice, Equity and Good Conscience towards society as a whole with the parties in dispute, which would also empower jurisdiction and orders of the judiciary with no conflict in the instances of broken down marriages beyond repair. Even the judicial overload in the family court could be reduced by escaping the unnecessary complications in the marital relations and long stretched procedure could be avoided for the welfare of the society.

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