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**IRRETRIEVABLE BREAKDOWN OF MARRIAGES IN INDIA -
ANALYZING ITS NATURE AND THE SUPREME COURT DECISIONS**

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Abstract

In India, generally, a divorce is granted under the Hindu Marriage Act 1955 and Special Marriage Act 1954 if there is any fault on one party of a marriage on grounds such as adultery, cruelty, desertion, conversion to another religion, mental disorder, communicable diseases and if a person has not been heard for more than 7 years. The parties of the marriage can also get a divorce by mutual consent if both agree to dissolve the marriage. But, there are some circumstances where the marriage has deteriorated to a point where it cannot be repaired, even if one party does not agree to the divorce. The marriage is beyond repair, and there are no chances for reconciliation if spouses are living separately for a prolonged period of time. In such cases, the marriage has completely broken down emotionally and physically. The Supreme Court of India also shows its concern for marriages, which have been completely broken down through its various judicial pronouncements under article 142 to do complete justice. However, to date, there is no explicit provision for including the irretrievable breakdown of marriage as a ground for divorce. This paper will explore the notions of fault and no-fault divorces and analyze the key case laws of the Supreme court to analyze the implications of the present legal framework. This paper also seeks to suggest some measures that must be taken into account if the irretrievable breakdown of marriage added as a ground for divorce in India. The researcher will use the doctrinal method of research by referring to primary and secondary sources.

Keywords: Divorce, Hindu Marriage, Irretrievable Breakdown, Supreme Court,

Legal Framework

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Introduction

Marriage in India is considered as sacramental and everlasting in character. Divorce was considered as a social evil in ancient days and not accepted. But later firmly and steadily this concept did not find favour with social reformers, who wanted that a woman must not be confined with a man who is completely lack of all the moral values that a reasonable husband should have.² Divorce was included in laws such as Hindu Marriage Act 1955 and Special Marriage Act 1954 to protect the lives of spouses whose marriages had been destroyed. The legislature has been conscious of the social developments and the need for making the remedy of divorce available in more and more situations. However, it is to be noted that none of the grounds enumerated in section 13 of the Hindu Marriage Act speaks of the irretrievable breakdown of marriage as a ground for divorce.³

Irretrievable Breakdown of Marriage is defined as: "The situation that exists when either or both spouses are no longer able or willing to live with each other, thereby destroying their husband and wife relationship with no hope of resurgence of spousal duties." In other words, an Irretrievable breakdown of a marriage can be defined as a failure in the conjugal relationship or such situations adverse to that relationship that no reasonable probability remains of the spouses remaining together as husband and wife for mutual happiness and support.⁴ In India, only the Supreme Court has the power to grant a divorce under this ground in certain exceptional situations. The court, unlike in divorces based on mutual consent in which both parties agree to dissolve their marriage it, can grant a divorce even if one party does not consent for such. So, the Supreme Court uses its inherent power under Article 142 of the Constitution to administer full justice to the parties.

The irretrievable breakdown of marriage in India can be traced from the 71st Law Commission Report of India 1978, which deals with the notion of Irretrievable Breakdown of Marriage. The Report raised questions as to the magnitude and conditions on how Irretrievable Breakdown of Marriage can be added as a ground for divorce under the Hindu Marriage Act. The report also dealt with the merits and demerits of the irretrievable

² Family Law: A Husband's Guide to Matrimonial Disputes Pg.no:36

³V.S., Jaya. "IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS AN ADDITIONAL GROUND FOR DIVORCE." Journal of the Indian Law Institute 48, no. 3 (2006): 439–44. <http://www.jstor.org/stable/43952052>.

⁴ Divya K., A Bird's Eye View on Irretrievable Breakdown of Marriage in India with Special Reference to Landmark Judgments, 3 INDIAN J.L. & LEGAL RSCH. 1 (2021).

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breakdown with some suggesting amendments in existing legal framework. But, the report had not come into existence due to some practical difficulties. The Law Commission of India once more proposed in its 217th Report from 2009 that irretrievable collapse of the marriage can be added to the list of grounds for divorce. In response to that and the recommendations of the Apex court, the Marriage Laws (Amendment) Bill 2010 and the Marriage Laws (Amendment) Bill 2013 were subsequently introduced. But according to the present legislative language, a marriage's simple breakdown cannot be used as a justification for divorce under Indian personal law. As a result, there have been numerous instances when the marriage was actually irreparably broken, but the courts, constrained by legal formalities, were unable to provide the parties with any substantial remedy.⁵

Fault and No-Fault Theory of Divorce

Fault Theory

The fault theory of divorce is one of the principle theories adopted in the Hindu Marriage Act 1955, which basically relies upon the fault of any one of the parties on the grounds of adultery, cruelty, and desertion and on the wife's petition to bigamy, certain sexual offenses and failure to pay maintenance.⁶ So, here a party has to prove the fault on the other party in order to get a divorce, which has to be established on the rule that there should be a personal injury to the marital relationship of the spouse. Under this theory it is substantial for one party to be innocent to seek a decree of divorce. If by any means the act of the guilty party is excused by the aggrieved party, the divorce cannot be granted.⁷ There are sometimes court can put an end to a marriage without the involvement of any offense but actually on some supervening circumstances if the condition of the other spouse baffles the marriage on the ground specified under section 13(1)sub-clauses (iii), (iv), (v), (vi) which includes any physical illness or unsoundness of mind, or converts his religion or renounces the world or disappears for a very long period. This theory is called as the frustration of marriage theory.

No Fault Theory

⁵ Srivatsav, P.S., 2024. An Evaluative Study on Irretrievable Breakdown of Marriage: A Pressing Requirement for Its Inclusion as an Extra Basis for Divorce Under Hindu Law. *Journal of Family & Adoption Law*, 7(1), pp.15-25p.

⁶ <https://www.scribd.com/doc/316315713/Law-Commission-Report-No-71-The-Hindu-Marriage-Act-1955>

⁷ Modern Hindu Law Paras Diwan, (3rd Edition.), Pg.no.61-75.

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In contrast with fault theory, the distinct feature of this theory is that irrespective of the fault or position of the parties, divorce is to be granted if the marriage has actually broken down. New Zealand is the first country which recognizes no fault marriages with a provision indicating that a separation agreement for three years or more constituted a foundation for filing a petition with the court for divorce and that the court had discretion over whether or not to grant divorce was introduced into the (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920.⁸ It is also recognized in UK in a case law *Masarati v. Masarati*⁹ where both the parties to the marriage had been involved in the offense of adultery. The court of appeal, on wife's petition for divorce, noticed breakdown of marriage. The Law Commission of England, in its report, stated that the objectives of good divorce law are two¹⁰ First, to support, and second, to enable the empty shell to be destroyed when a marriage has sadly ended with the least amount of bitterness, humiliation, and anguish. This theory addresses a situation where none of the parties is at fault or the parties do not want to divulge it, yet there has been a circumstance in which marriage cannot be worked. So there is hardly any utility in maintaining the marriage as a facade, when emotional and other bounds which are of the essence of marriage have disappeared and it can be inferred that once the parties have separated and such separation has continued for long time when one of the parties presented a petition for divorce it can be well presumed that the marriage has broken down.¹¹ The logic behind granting divorce on the breakdown of marriage is that what could not be mended should be ended.¹²

Supreme Court Decisions on Irretrievable Breakdown of Marriage in India

V.Bhagat v. D.Bhagat,¹³ the Supreme Court observed that the irretrievable breakdown of the marriage is not a ground per se. But while reviewing the evidence on record to find whether the ground purported are made out and in analyzing the relief to be granted, the said circumstances can certainly be kept in mind, the usual steps the one taken by the court herein

⁸ Irretrievable Breakdown of Marriage: A Remedy for Easy ... - Researchgate. Available At: https://www.researchgate.net/profile/reetikabansal/publication/342766335_irretrievable_breakdown_of_marriage_a_remedy_for_easy_separation/links/5f05ab6592851c52d62081e0/irretrievablebreakdown-of-marriage-a-remedy-for-easy-separation.pdf?origin=publication_detail

⁹ Family Law- Paras Diwan 6th edition 2001, Pg.no:29

¹⁰ "The Seven Pillars of Divorce Reform", Law Society Gazette, 344 (Law Society of England and Wales, London, June 1965).

¹¹ Supra note at 5

¹² Anam Abrol, "Irretrievable Breakdown of Marriage as a Ground for Divorce" CULR 1988(12) at 71.

¹³ V.Bhagat v. D.Bhagat 1994 SCC (1) 337

can be resorted only to clear up an insoluble mess when the court finds it in the interest of both the parties.¹⁴

The ruling, in the case of **Ashok Hurra v. Rupa Bipin Zaverin**¹⁵ holds importance regarding the breakdown of marriage as it highlights the intricacies involved in terminating a marriage and the significance of agreement in such matters. This instance as discussed by the Supreme Court it involved a scenario where the marriage had essentially disintegrated, with both individuals residing apart for a duration. Even though the Court made a decision on the mutual consent divorce according to Section 13B of the Hindu Marriage Act, it recognized that irretrievable breakdown might play a role in divorce cases. The Court highlighted that while irretrievable breakdown itself is not a basis for divorce, it should be taken into account during the evaluation when considering a divorce plea. The court decision underscores the changing view of judges on the breakdown of marriage by emphasizing that courts can take into account the condition of the marriage particularly if one party withdraws consent and supporting the need for laws to officially acknowledge breakdown as a legitimate reason for divorce in India. This case is crucial in conversations about recognizing breakdowns in divorce proceedings in India.

In the case of **Naveen Kohli v. Neelu Kohli**¹⁶ the Supreme Court made a strong appeal to the Union of India to incorporate irretrievable breakdown of the marriage as a separate ground for divorce under Section 13 of the Hindu Marriage Act 1955 and thereby to make amendment to the Hindu Marriage Act. It should be worth to noting that no court in the country except the Supreme Court can grant a divorce on the ground of irretrievable breakdown of a matrimonial relationship.

The Supreme Court recently dissolved a marriage in **Munish Kakkar v. Nidhi Kakkar**¹⁷ by using its inherent powers under Article 142 of the Constitution, despite the fact that it noted that there is no statutory law in India that recognizes irretrievable breakdown of marriage as a ground for divorce. After acknowledging that the Supreme Court had previously used its inherent authority under Article 142 to grant a divorce on the grounds of an irretrievable breakdown of marriage, the Bench of Justices Sanjay Kishan Kaul and KM Joseph rendered a

¹⁴Supra note at 3

¹⁵Ashok Hurra v. Rupa Bipin Zaverin AIR 1997 SC 1266

¹⁶Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558

¹⁷Munish Kakkar v. Nidhi Kakkar, (2020) 14 SCC 657

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decision to this effect. Furthermore, the Court observed that this was carried out in situations in which the parties had ultimately consented to do so before this Court as well as in other circumstances.

R Srinivas Kumar v. R Shametha¹⁸ has once again restated explicitly and elegantly that it can exercise its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where it finds that the marriage is totally unworkable, emotionally dead, beyond salvage, and has broken down irretrievably, even if the facts of the case do not administer a ground in law on which the divorce could be allowed. This has been recognized earlier also many times by the Apex Court in its various judgments where it had invoked Article 142 of the Constitution to dissolve the marriage. Earlier in this case the High Court had rejected the petition of a husband who sought a decree of divorce on the ground of irretrievable breakdown of marriage.¹⁹

In a significant judgement **Shilpa sailesh v. varun sreenivasan**²⁰ supreme court held that it has the only authority to grant divorce on the irretrievable breakdown of marriage. It stresses that there is a need to make reforms to the law to address contemporary realities, moving away from adversarial proceedings towards the efficient processes. Even though the judgment does not create it as a ground for divorce, it reflects the Supreme Court's willingness to be involved in this kind of situations. It reiterated that individuals whose marriage become source of misery, so by considering the well-being and personal autonomy, the marriage have to be dissolved.

The above-mentioned cases show that there is actually a need for the inclusion of irretrievable breakdown of marriage as a ground for divorce and also the Supreme Court's concern over the present legislation.

Conclusion

The Supreme Court can give a divorce under the irretrievable breakdown of marriage looking upon some conditions mentioned in the shilpa sailesh case, such as the Length of post-marriage cohabitation, the last time the parties shared housing, the specifics of the accusations made by the parties against one another, efforts to resolve differences between

¹⁸R. Srinivas Kumar v. R. Shametha, (2019) 9 SCC 409

¹⁹Supra note at 3

²⁰Shilpa sailesh v. varun sreenivasan, 2023 SCC OnLine SC 544,

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the parties and a suitable amount of time has passed since the last contact. It is to be suggested that the court must also take into account alimony for the wife and children after granting a divorce decree and the amount of maintenance that has to be withdrawn if the husband fails to pay. The above recommendations, if implemented and upheld, can be beneficial for the appropriate application of the law when examining the various regulations pertaining to the irretrievable breakdown of marriage because, as is rightly stated, "justice should not only be done, but it seems to be done." In order to make the law clear and consistent, it might be determined that the issuance of a divorce decision based on the irretrievable dissolution of a marriage should be codified. The Indian Supreme Court presently has the authority to declare a marriage irretrievably broken and then grant a divorce, per Article 142 of the Indian Constitution.

