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BEYOND REPAIR: EXPLORING IRRETRIEVABLE BREAKDOWN AS A GROUND FOR DIVORCE

- Gunjan Sethia

INTRODUCTION:

Without marriage, society and the family cannot function, and civilization cannot exist. The law intervenes once the relationship is established and binds the parties to a number of duties and liabilities under it. Section 13 of the Hindu Marriage Act, 1955 grants both the husband and the wife the ability to obtain a divorce decree that dissolves their marriage on multiple grounds. The legislature has been aware of societal changes and the necessity of providing the divorce remedy in an increasing number of circumstances. It should be observed, nonetheless, that irretrievable collapse of marriage is not included as a basis for divorce in any of the grounds listed in section 13.

The general public has a strong stake in the preservation of marriage as an institution. This fundamental foundation requires that there be a platform between the couples that is based on mutual understanding; if this is lacking, the marriage will only cause them ongoing suffering, and it is therefore preferable that the marriage be dissolved with the help of the courts. One possible explanation for the transition from the "guilt theory" to the "divorce by mutual consent" (consent theory) could be this. In some nations, an irretrievable disintegration of marriage is recognized as a distinct basis for divorce.¹

WHAT IS THE SITUATION IN INDIA?:

In its 71st report, the Law Commission of India proposed that Hindus' irretrievable breakdown of marriage be considered a separate reason for divorce. The 1981 Marriage Law Amendment Bill was presented in Parliament, but it was defeated by certain women's organizations. The Supreme Court ruled in a recent decision that miserable circumstances should not be allowed to last forever. The parties in *Naveen Kohli v. Neelu Kohli* were married in 1975, however the union disintegrated after a short while. Both sides accused one another of misbehavior, cruelty, and adultery, among other things.² Thus, it was determined that their marriage could not be salvaged.

The court stated that the accusations were so serious that there was no longer any hope of mending the married life chain between the parties or any cordiality between them. The husband was granted a divorce by the trial court, but the high court asserted that this was an error that occurred because the evidence was not properly considered and assessed. While examining the idea of an irretrievable marriage collapse in an appeal, the Supreme Court also covered other topics, such as physical and psychological abuse in divorce case.

¹ Irretrievable breakdown of marriage as grounds for divorce (2015) Wilkinson & Finkbeiner, LLP.

² Case analysis: Naveen Kohli v. Neelu Kohli Air 2006 SC 1675. (2023) VidhiNama.

The court determined that it is reasonable to assume that a marriage is irreparably damaged when there has been an extended time of continuous separation. The legal connection must end when the marriage turns into a myth. In extraordinary circumstances, breakdown of marriage theory should gradually replace the guilt or fault theory of divorce. A marriage may fail due to the fault of neither party, of both parties, or of any combination of the three. In the best interests of both parties and society as a whole, it is preferable in such a case to end the partnership by a divorce order based on the irretrievable breakdown of the marriage, without placing blame on either party. It is good to give de jure recognition to what exists de facto to enable them to resettle their life. The supreme court has been providing relief to the parties by using its plenary powers under article 142 of the Indian Constitution in the absence of legislative recognition of this cause.³ However, it is doubtful that the Supreme Court can ignore the clear language of the law and the rights of parties in order to use such extraordinary powers under this article. Is it possible to employ Article 142 to construct a new building where none previously stood and so accomplish an indirect goal that is impossible to accomplish directly?

WAY FORWARD:

Can the Supreme Court use its authority under Article 142 to give relief in the interest of justice in exceptional circumstances, even if that is the case in every case? One could argue that in cases when there is an irretrievable breakdown of marriage, the court, as the guardian of justice and rights, should be seen as the best arbiter of the case and granted the authority to award a divorce while adhering to legal formalities. The public interest requires that marital status be preserved whenever, wherever, and for as long as practicable. However, maintaining an artificial link between the parties is not in the public interest when a marriage has irretrievably broken down. The law cannot ignore these circumstances or refuse to adequately address the needs that result

from them. Therefore, as advised by the Law Commission of India, it would be preferable if irretrievable breakdown of marriage was recognized as a basis for divorce under section 13 of the Hindu Marriage Act, 1955.

³ Amit Anand Choudhary / TNN / Updated: Oct 10, 2019, Marriage can be dissolved if it breaks down irretrievably: Supreme Court: India News - Times of India, The Times of India.