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Irretrievable Breakdown of the Marriage

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ABSTRACT

This study aims to investigate impact of irretrievable breakdown of marriage in a society. A failed marriage leads to a divorce. The paper deals with critical study of the irretrievable breakdown of marriage in the religions. The focus of the paper is also on a comparative study of matrimony and divorce in Hindu and Muslim laws. The Research paper also nourishes the breakdown concept to be drafted for aim of uniform laws for all the category of facts to different case laws and discussions.

Keywords: *Irretrievable breakdown, divorce, marriage, ground, fault, no fault, separation, judiciary.*

I. INTRODUCTION

Marriage of two people was considered as sacred bond among people in the society sometimes they were forced to live as a happy couple in order to satisfy their society and to save their reputation existing among the people. Since marriage was considered endless the demand of estrangement was nothing near consideration. The stress of being in an unhappy marriage may contribute to depression or anxiety as well as general feeling of hopelessness. Sometimes it may lead to trauma for the couple and which can negatively impact in numerous way. It is better to live separate rather than being in a toxic or broken down relationship. Broken marriage may make the couple to crave care, love and concern that person do not get from their partner anymore. There is no point of living together when marriage is completely broken down.³

II. WHAT IS IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE

An irretrievable breakdown of the marriage is a legal term used to describe a situation in which a marriage has broken down beyond repair. It is a broad ground for divorce that is predicated on the development of incompatibility between marriage partners and that is used in many state as the sole ground of no-fault divorce. It is a legal term used to describe a situation in which a marriage has broken down beyond repair. This means that there is no hope of reconciliation.⁴

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³ Irretrievable Breakdown of Marriages, available at https://www.legalserviceindia.com/articles/break_mar.htm

⁴ Irretrievable Breakdown of Marriages, available at <https://indianexpress.com/article/india/sc-irretrievable-breakdown-of-marriage-amounting-to-cruelty-a-ground-for-divorce-8580082/lite/>

III. RESEARCH DISCUSSION

The ground of irretrievable break down of marriage is not been provided in the Hindu Marriage Act yet on can avail this ground for divorce. A collective definition of the irretrievable breakdown of marriage can be called from the 71st law commission and also from the 217th law commission report. Irretrievable break down of marriage can be another ground for divorce even though the ground is not provided in the Hindu Marriage Act of 1955 officially.

Here are some examples of different kind of evidences that the court may or will accept as proof for the irretrievable breakdown within the marriage.

- A. The couple has not living together for particular and continuous period of time.
- B. One of the party sexual intercourse with someone other than their spouse.
- C. One of the party addicted to drugs.
- D. Both a party do not love each other.
- E. One of the party creating toxic environment.
- F. Usage of abusive words.
- G. One of the partner deserted the other.
- H. One of the partner is in imprisoned after being declared as a habitual criminal.
- I. One of the partners indulging in crimes.⁵
- J. One of the partners finds it impossible to live together as husband and wife for any other non-enumerated reasons.

In *V Bhagat vs. D Bhagat*, It was held that severe failure of marriage was not a basis for divorce.⁶

In *Ajay Desai vs Rajshree Desai*, The supposed grounds were not proved the petitioner could not plead irretrievable breakdown of marriage.⁷

In *Rishikesh Sharma vs. Saroj Sharma*, The court detected that the respondent wife was living unconnectedly from the year 1981 and the wedding has been destroyed down irretrievably with no prospect of the parties living jointly again. The court further spotted that it will not be 1... for the parties to live together therefore there was no purpose in gripping both parties to living. The best option was to suspend the marriage by passing a decree.⁸

⁵ Irretrievable Breakdown of Marriages, available at <https://legalfundi.com/legal-question/irretrievable-breakdown-in-a-marriage/>

⁶ AIR 1994 SC 710

⁷ AIR 2005 B com 278

⁸ I (2007) DMC 77

In Sukhendu Bikash Chatterjee vs Anjali, It was held that ground for irretrievable breakdown of marriage can be used in incomparable cases.⁹

In Dr. N.G. Dastane vs Mrs. S. Dastane, The parties fought for many years. Husband's petition for judicial separation was discharged on strict grounds of co-ordination. The marriage in this case totally exhausted. The case announces irretrievable breakdown of marriage as a district ground of divorce.¹⁰

ARTICLE 142 OF THE INDIAN CONSTITUTION - ENFORCEMENT OF DECREES AND ORDERS OF SUPREME COURT AND ORDERS AS TO DISCOVERY, ETC.

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of a India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

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 justice is the key word. Because of this issue there are lot of couples existing in the society as an unhappy married couple. Because of economical factors, people are not in the position to file a case in a Supreme Court in order to dissolve their marital relationship. In the same way we cannot assume that Supreme Court will dissolve the marriage in the ground of irretrievable breakdown of marriage. There are numerous way in which Supreme Court has not granted divorce in the course irretrievable breakdown of marriage.¹¹

SUPREME COURT BAR ASSOCIATION V UNION OF INDIA

The bench held that Article, even with the width of its amplitude cannot be used to build a new edifice where none existed earlier, by ignoring the express statutory provisions dealing with a

⁹ (1996) 1 DMC 388

¹⁰ AIR 1975 SC 1534

¹¹ The Hindu Marriage Act of 1955, The Indian Constitution

subject and thereby to achieve something indirectly which cannot be achieved directly.

The applicant's senior counsel, Dushyant Dave, submitted that the court should use its inherent powers under Article 142 of the constitution or Section 148 of the Civil Procedure Code (CPC) to treat the partial deposits made within the deadline as due compliance with its order and extend the time limit accordingly.

The Bench, however, rejected the submission saying it is contrary to Rule 9 of the SARFAESI Rules, according to which the balance amount of purchase price payable has to be paid by the purchaser to the authorised officer on or before the 15th day of the confirmation of sale or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not extending three months.

"It cannot be gainsaid that the court in the exercise of powers under Article 142 cannot ignore any substantive statutory provision dealing with the subject," the Bench observed. Even Section 148 of CPC does not permit the court to extend the time limit beyond 30 days of the time limit fixed by the court earlier.

Having held so, the Bench dismissed the applicant's miscellaneous application seeking direction against the appellant bank for the issuance of the sale certificate on the ground that the applicant had made full and final payment of the auction amount with interest in terms of the order dated May 12, 2020, as not maintainable.

The Bench recalled that the trend emerging in the Supreme Court of filing repeated applications, styled as miscellaneous applications (MAs), without any legal foundation has been strongly deprecated by the Supreme Court earlier. The court had held that filing MAs was becoming a preferred course for those with resources to pursue strategies to avoid compliance with judicial decisions.

"A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly," the court had held in *SUPER TECH LIMITED V EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION AND OTHERS (2021)*.

The Bench, however, permitted the Applicant to take recourse to any other remedy permissible under the law for the prayers sought in the application, or to file appropriate proceedings seeking

refund of the amount deposited with the bank, as may be permissible under the law.¹²

SAVITHRI PANDEY V PREM CHAND PANDEY

The Supreme Court held that no circumstances 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.¹³

For instance, in case of *SAMAR GHOSE V JAYA GHOSE*, 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 of feeling left between the parties in the marriages irretrievably broken down. So there is no ... onto it and its better to grant divorce.¹⁴

IV. CONDITIONS FOR MUSLIM MARRIAGE

- 1. Proposal and Acceptance:** Marriage just similar to any contract is a system of offer and acceptance. The entire proposal and acceptance shall be completed in one meeting.¹⁵
- 2. Competent Parties:** The competency of parties refers to that both the parties should be Muslim and must follow Islamic religion. The second aspect for competence of parties is that at the time of marriage, they both must be of sound mind and legal age for marriage when he or she reaches puberty.
- 3. No Legal Disability:** The parties shall not be legally disabled.

V. IRRETRIEVABLE BREAKDOWN OF MARRIAGE UNDER MUSLIM LAW

“Idea of divorce under Muslim Law came in era through interpretation of provision of Muslim Laws.”¹⁶

“In *UMAR BIBI V MD. DIN*, it was argued that the wife hated the husband so much that she could not perhaps live with him and there was absolute mismatch of temperaments. The court however declined to grant decree for divorce.”¹⁷

“Later in *NOOR BIBI V PIR BUX*, an effort was made to grant of divorce on the ground of irretrievable breakdown of marriage. This time the court allowed divorce.”¹⁸

¹² Supreme Court Bar Association v Union of India (AIR 1998 SC 1895)

Super tech Limited v Emerald Court Owner Resident Welfare Association [Civil Appeal No. 5041 of 2021 (Arising out of SLP © No. 11959 of 2014)]

¹³ AIR 2002 SC 591, (2002)2SCC 73

¹⁴ (2007) 4 SCC 511

¹⁵ Marriage under Muslim Law, available at <https://blog.pleaders.in/marriage-under-muslim-law/>

¹⁶ Concept of Divorce under Muslim Law, available at <http://www.legalserviceindia.com/article/1393-Divorce-under-Muslim-Law.html>

¹⁷ AIR 1945 L

¹⁸ AIR 1950 Sind 8

Therefore, where there is total irreconcilability between the spouses, divorce is granted.

VI. CONCLUSION

The granting of divorce on the grounds of irretrievable breakdown of marriage is a hectic and complicated process. This process consume lot of time of the people. Sometimes it may lead to mental depression, agony, stress and trauma for the couple. Parliament can make law or amendment in order to grant divorce on the grounds of irretrievable breakdown of marriage in the family courts and other lower courts. So that people can get their relief quickly and easily. They may get away from the problem and they can lead their life happily with less struggles and obstacles. The pre supposes the existence of a platform build on the basis of understandings between the spouses. If this understanding is missing between the spouse and the marriage is a continuous difficulty, then it is desirable that the marriage should be dissolve with the intrusion of the court with lesser time and affordable cost.¹⁹

“If someone constantly makes you unhappy that you must build up the courage to let that person go”

¹⁹ Irretrievable breakdown of marriages, available at <https://lawctopus.com/clatalouge/clat-pg/irretrievable-breakdown-of-marriage-as-a-ground-for-divorce/>