

IRRETRIEVABLE BREAKDOWN OF MARRIAGE: SUPREME COURT SHOULD EXERCISE IT'S POWERS UNDER ARTICLE 142 OF THE CONSTITUTION OF INDIA

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The breakdown theory happens to be one of the most discussed topics to be included as a ground for dissolution of marriage and it is one of the most awaited review of the powers of the Supreme Court. Excitement now doubles with the whole matter being live streamed for the first time by the Supreme Court which can be seen as a step towards citizens' involvement & transparency.

Whenever breakdown theory was mooted, opponents argued that divorce by mutual consent introduced in the Hindu Marriage act in 1976 covered it all, but in reality it did not. We have existing laws that fail to subsume some of the categories that fall outside the grounds mentioned in the Hindu Marriage Act. Among numerous other situations cases like a) where both the parties are at fault, b) where none of the parties is at fault but one spouse is withholding the consent, c) where the petitioner is at fault but respondent is neither ready to resume cohabitation nor is filing for divorce need to be understood and subsumed in the Acts. Hence the desperation to include all this at the earliest.

In its 71st Report, The Law Commission of India in 1978, for the first time considered 'irretrievable breakdown of marriage' as a ground for divorce and submitted a very comprehensive report but though, down the years, irretrievable breakdown acquired an informal validity as a principle evoked in myriad cases to do complete justice to grant the relief of divorce to parties, it did not become a ground as expected.

The Law Commission of India, Report No. 217, in 2009, had submitted its recommendations to

introduce an amendment in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 for inclusion of 'irretrievable breakdown of marriage' as another ground for grant of divorce but it did not endeavor to achieve a step towards the Uniform Civil code because it did not make it recommend it to cover other personal laws too.

'Irretrievable breakdown of marriage', is a ground wherein the Court examines facts of the case, comes to the conclusion that the marriage cannot be repaired/saved and then grants divorce. The grant of divorce is not dependent on the volition of the parties but on the Court coming to the conclusion, based on the facts pleaded, about the irretrievably broken-down of marriage. There is no future when a marriage is broken down and must be dissolved instantly without a second blink so that the bondage no longer serves.

Spouses owe rights and duties in their relationship and must act reasonably. It is to be considered when the couples whether they live under the same roof or not, do not live as husband and wife and are more strangers to each other for years. The breakdown is visible and understood even from responses given in the Court. Thus facts reveal the breakdown in a marriage even if there's no ground to specifically pin it down.

The level of maturity shown by the spouses in a marriage may seem to show all the external appearances of marriage but have none in reality, so it's not always necessary that both the spouses have to be arguing, plotting, abusing, fighting and getting violent with each other. There may be an understanding silent separation or a friendly parting where the spouses spew no venom and are still friendly yet may not resume cohabitation. As is often put pithily, such marriage is merely a shell out of which the substance is gone. It is pertinent in such cases to note that these facts accompanied with a lengthy duration proves a marriage dead even if there's no cruelty, desertion, adultery etc.

When it is proved by the facts of the cases, failure of mediations and by the opinion of the marriage counsellor, that the parties apparently expressed no emotion of love, have no history of pleasant times and the only feelings they carry are that of resentment arising from the several court cases being filed to harass the other then it is obvious that the relationship has deteriorated and revenge tactics are at work. Where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact and must not compel parties to stay together, no matter what. They should have a choice to break free and the Courts cannot take that away just because it does not exist as a ground etc.

Despite irretrievable breakdown of the marriage, if one of the spouse is not willing to consent to the divorce, and indicates that he or she is willing to consent only if demands are met, especially when such a spouse is at fault, then its evidence of another ploy to harass by misuse of laws. It can also be an attempt to extort exorbitant sums as alimony. The sanctity of marriage surely cannot be left at

the whims of one of such annoying spouse. Any misuse of law with an attempt to create a marketplace situation in the Court must be prevented. No one must be allowed to benefit from legal loopholes. The Courts must not allow the innocent spouse to suffer endlessly, because the ramifications are not just on the spouse, but also on the extended family and also on the nation's happiness and social wealth.

Such situations have been brought up before the Supreme Court and it was observed in one of its judgment, that "...the relationship appears to have deteriorated to such an extent that both parties see little good in each other; though the respondent insists that she wants to stay with the appellant. In our view, this insistence is only to somehow not let a decree of divorce be passed against the respondent. This is only to frustrate the endeavor of the appellant to get a decree of divorce, completely losing sight of the fact that matrimonial relationships require adjustments from both sides, and a willingness to stay together. The mere say of such willingness would not suffice We have noticed above that all endeavors have been made to persuade the parties to live together, which have not succeeded. For that, it would not be appropriate to blame one or the other party, but the fact is that nothing remains in this marriage. The counselor's report also opines so. The marriage is a dead letter."

Another classic case of consent being withheld by a spouse just for harassing the other spouse was that of *Naveen Kohli vs. Neelu Kohli* and in this case the Supreme Court had granted relief to the husband and 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 grant of divorce.

Again in, *N Rajendran Vs S Valli*, the Supreme Court had observed that consent of both parties is not necessary to dissolve the marriage under Article 142 of the Constitution of India based on irretrievable breakdown of marriage. The Supreme Court had granted divorce stating even consent of wife was not needed to grant divorce. It has been stated that 'if both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both parties can move to the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, the powers under Article 142 of the Constitution of India are required to be invoked to do substantial justice between the parties, considering the facts and circumstances '. But, it would also be in the fitness of things and towards complete justice that the Article 142 should also be allowed to be invoked at any early stages, the sooner the better, including when it's a matter of transfer petition because speedy disposal also matters equally.

Just as the breakdown of any relationship is too complicated to ascribe all the blameworthiness on any one spouse, likewise adjustments from both sides are required to salvage it. It would not be acceptable to compel one spouse to resume life with the unwilling other, because it amounts to

depriving the rights granted by the Constitution of India to each.

Decree of divorce on the ground of irretrievable breakdown of marriage can easily be granted where both the parties have levelled such allegations against each other as the marriage is admitted to be practically dead and the parties cannot live together. The age factor is also very essential to be kept in mind because the longer it takes to end, not much opportunity is available and there is no compensation for loss of precious years. When parties have no way to proceed, they may be tempted to evade the law and resort to prohibited methods like collusion, adultery, bigamy, live-in relationships etc.

In *N Rajendran Vs S Valli*, it was also contended that, 'A long and continuous separation, the marriage is as of today only a legal fiction. It is a tie beyond repair, the entire substratum having evaporated. when there is nothing to stop the divorce decree being granted the continuity is harmful to society and injurious to the interest of the parties.'. Based on this observation, it can be said that even if the duration of the marriage is short, and there are no substantial assets to divide nor children involved, the divorce process must be the shortest once the initial efforts at pre-litigation i.e. marriage counsellor & mediations prove unsuccessful. The couples must be allowed to divorce immediately.

On the other hand, in more complicated cases, when there are children involved, effort should be made to make this process easy and speedy in a more amicable way so that the parents can be helped to cooperate in their parenting roles post-divorce. Likewise, when there are assets to be divided, it should be kept in mind that the financially weaker spouse needs financial support until the divorce is granted but providing for it should not come in the way of granting speedy divorce in case of irretrievable breakdown of marriage.

Marriage as an institution is being destroyed, the number of fake cases have risen, people are boycotting marriages and going on marriage strikes. There is an increasing number of cases of honey trapping and cases where delayed divorce proceedings it lead to other legal proceedings being filed senselessly. All these complexities witnessed by the society increases feelings of animosity towards life, the system, the laws, the society, spouse, family and the institution of marriage in general.

There is a lot of expectation that the review would be a favorable nod because continuity of irretrievable marriage, is fruitless and to endure it till the competent court grants the decree of divorce is meaningless and traumatic leading to loss of money, age, quality of life. Just because one of the spouses does not consent, in an irretrievably broken down marriage, the other must not be made to suffer because both have come before the Supreme Court to seek justice which in this case can be done in the interests of complete justice. The onus therefore lies on the legislature to

promptly remove legal restriction from divorce on the premise of irretrievable breakdown of marriage and the Supreme Court must exercise its powers under Article 142 of the Constitution of India to set aside a marriage between two parties even when one party does not consent and most importantly it should be free from gender bias. Supreme Court of India must be gender neutral and support to dissolve broken down marriages without back referral to smaller courts to do the needful where often pressure tactics get utilized and must at all times dissolve broken down marriages under Article 142 and protect India's families without being embroiled in litigations endless.

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