

RECENT JUDGMENTS IN THE DOMAIN OF PERSONAL LAWS

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ABSTRACT

Irretrievable Breakdown of Marriage means the situation that when both the spouses are no longer able or willing to live with each other and thereby destroying or spoiling their relationship with no hope to resumption of spousal duties. As of now it is not a ground for divorce in all the personal laws in India, but the judicial decision is there and because of this only the case is numbered in the courts to some extent. The Article 141 of the Constitution of India speaks that Law rendered by the Hon'ble Supreme Court to abide by all the subordinate courts in India. When there is no specific provision in the law which has been one of the grounds raised by the parties. That case may be pending before the Supreme Court or any other court then the Supreme Court can use inherent powers given under Article 142 of the Constitution of India to render the complete Justice to the parties. Likewise, the Hon'ble Supreme court mentioned and given a direction to the Government, to make the specific provision for the ground of Irretrievable Breakdown of Marriage in a catena of Judgments. Not only the court direction and also the Law commission report³ also speak about the existing personal law to amend and insert the Irretrievable Breakdown of Marriage as a ground of divorce.

Keywords: *Judicial decision in Breakdown Theory, Judicial decision in Non-recognition of Breakdown Theory, Breakdown theory in International view.*

INTRODUCTION

Irretrievable Breakdown of Marriage means the situation that when both the spouses are no longer able or willing to live with each other and thereby destroying or spoiling their relationship with no hope to resumption of spousal duties. As of now it is not a ground for

³ 217th Law commission report by Chairmanship of Justice Dr.A.R.Laksmanan

divorce in all the personal laws in India, but the judicial decision is there and because of this only the case is numbered in the courts to some extent. The Article 141 of the Constitution of India speaks that Law rendered by the Hon'ble Supreme Court to abide by all the subordinate courts in India. When there is no specific provision in the law which has been one of the grounds raised by the parties. That case may be pending before the Supreme Court or any other court then the Supreme Court can use inherent powers given under Article 142 of the Constitution of India to render the complete Justice to the parties. Though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, and Special Marriage Act, in a significant ruling the Supreme Court has said divorce can be granted if a marriage is totally unworkable, emotionally dead and beyond salvage. Forcing people to continue in unhappy marriages does not good to anybody. Far from strengthening the institutions of marriage and family the constant misery and strife it entails undermines them like little else can. There is good reason for the law to make it as easy and painless as possible for people unhappy in a marriage to end it.

JUDICIAL DECISION IN BREAKDOWN THEORY

The 217th Law commission report reiterated the 71st report of the title –Irretrievable breakdown of marriage as ground for divorce. The irretrievable breakdown of marriage first introduced in case of *Mr. Jorden Diengdeh v. S.S. Chopra*⁴ as a ground for divorce. The divorce granted by the Hon'ble Supreme Court by using inherent power in the case of *Kandhan Devi v. Pramod Kumar mottal*⁵ held that, there was no possibility of reconciliation, therefore, the court uses the powers under Article 142 of the Constitution of India thereby direct that the marriage between the appellant and respondent shall stand dissolved by a decree of divorce. *Savitri Pandey v. Prem Chandra Pandey*⁶, the court again used the inherent power and held the marriage between the parties cannot be dissolved only on the averments made by one of the parties that as the marriage between them as broken down, no useful would be served to keep it alive as a case would pending between them. *Naveen Kohli v. Neelu Kohli*⁷ the supreme court recommended to the union of India to bring an amendment in the divorce law and to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. *Vinita Saxena v. Pankaj Pandit*⁸ the court held that the marriage between the

⁴ AIR 1985 SC 935.

⁵ AIR 1996 SC 3192

⁶ AIR 2002 SC 591

⁷ AIR 2006 SC 1675

⁸ JT 2006 (3) SC 587

Vinita saxena and her husband Pankaj Pandit was dissolved by an order of the supreme court. *Sanghamitra Ghosh v. Kajal Kumar Ghosh*⁹ in this the supreme court held that irretrievable breakdown of marriage is a ground for divorce. *SAMAR Ghosh v. Jaya Ghosh*¹⁰ in this case the Supreme court referred to the 71st report of the Law Commission of India on irretrievable breakdown of marriage with approval and the divorce should be granted on the fault of the parties. The former is known as the matrimonial offence theory or fault theory. Latter has come to known as the breakdown theory.

JUDICIAL DECISION IN NON-RECOGNITION OF BREAKDOWN THEORY

In these cases the catena of judgments the breakdown theory has not been recognized *V.Bhagat v. D.Bhagat*¹¹ the supreme court is not recognized in the case irretrievable breakdown of marriage as a ground for divorce. In *Tapan Kumar Chakraborty v. Jyotsna Chakraborty*¹² the Calcutta high court said that the divorce cannot be granted on the mere ground of irretrievable breakdown of marriage. But even after this the Supreme Court recognized the irretrievable breakdown of marriage as a ground for divorce.

BREAKDOWN THEORY IN INTERNATIONAL VIEW

The irretrievable breakdown of marriage was first recognised in the case of *Lodder v. Lodder*¹³ in this the Justice Solmond said that “ The legislature must, I think, be taken to have intended that separation for three years is to be accepted by this court, as prima facie a good ground for divorce. When the matrimonial relation has for that period ceased to exist de facto, it should, unless there are special reasons to the contrary, cease to exist de jure also. In general, it is not in the interest of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law. When for a lengthy period they have ceased to be such in fact. In the case of such a separation the essential purposes of marriage have been frustrated and its further continuance is in general not merely useless but mischievous”.

⁹ 2007 (2) SCC 220

¹⁰ (2007) 4 SCC 511

¹¹ AIR 1994 SC 710

¹² AIR 1997 CAL 134

¹³ 1921 New Zealand Law Reports

MARRIAGE CAN BE DISSOLVED IF IR BREAKS DOWN IRRETRIEVABLY

The Supreme Court came to the rescue of a man fighting a legal battle for divorce for the last two decades as his plea was rejected by a lower court and Andhra Pradesh High Court after his wife refused to consent for separation, a bench of Hon'ble Justices S.K. Kaul and M.R. Shah invoked the Supreme Courts inherent powers under Article 142 of the Constitution of India to do complete Justice and allowed the petition saying the marriage had broken irretrievably. In the case before the Supreme Court, the couple had been living separately for the last 22 years after their relationship ran into rough weather just a few years after marriage in 1993. The apex court in a series of verdicts has asked the centre to amend the law to introduce irretrievable breakdown as a ground of divorce but the law remains unamend and divorce is denied even if a couple are not living together for years and their relationship bruised beyond repair. This effectively denies them an opportunity to explore life afresh as their marriage survives in law even if not in substance.

Even the law commission in its reports in 1978 and 2009 recommended the centre to take immediate action to amend the laws with regard to irretrievable breakdown where a wedlock became a deadlock. As the centre failed to act on the suggestion the apex court has from time to time invoked Article 142 to grant divorce even though existing laws do not recognise the ssground for divorce. This court in a series of Judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of marriage where the court 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 provide a ground in law on which the divorce could be granted the court said. The Supreme court said, in the present case, the husband and wife have been living separately for more than 22 years and it will not be possible for the parties to live together. Therefore, the supreme court opinion that while protecting the interest of the respondent wife to compensate her by way of lump sum permanent alimony this a fit case to exercise the powers under Article 142 to dissolve the marriage between the parties. The bench rejected the wife's plea that the marriage cannot be dissolved without her consent and granted relief to husband after noting that all efforts to continue the marriage had failed and there was no possibility of reunion because of the strained relations between the parties. Where one of the parties does not agree only means that the powers under Article 142 of the Constitution of India are required to be invoked to do the substantial justice between the parties considering the facts and circumstances of the case.

CONCLUSION AND SUGGESTIONS

As far the irretrievable breakdown of marriage is not a ground for divorce in the existing personal laws but the apex court ruling favoured for the parties can invoke the irretrievable breakdown of marriage by way of the Article 142 in the form of the Complete Justice. Therefore, in view of this lacuna in the existing personal law and to curtail this the apex court ruling should be implemented to in a swift manner by making the amendment.

1. The recommendation of the 217th Law commission report should be implement
2. While amend the Hindu Marriage Act, Special Marriage Act and should amend all the religion personal laws like Indian Divorce Act, Muslim Dissolution of Marriage Act. The amendment should be brought in the existing personal laws in view of obey of the direction of the Hon'ble Supreme Court.