
IRRETRIEVABLE BREAKDOWN OF MARRIAGE THEORY

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INTRODUCTION:

1. Marriage is a fundamental social institution that forms the bedrock of family and, in turn, society. It is essential for the sustenance of civilization and is upheld as a matter of public interest.
2. Under the Hindu Marriage Act, 1955¹, a legally solemnized marriage—whether before or after its enactment—can only be dissolved through a decree of divorce based on the grounds specified in Section 13 of the Act.
3. Until a marriage is legally dissolved, neither spouse can enter into a subsequent marriage. This emphasizes the principle of monogamy, which is strictly enforced under modern Hindu law.
4. Even in Muslim law, although polygamy is permitted, it is not an unconditional right. A Muslim husband is permitted to have multiple wives only if he can ensure justice and fairness among them.²³
5. In July 2010, reports surfaced regarding the Cabinet's approval of a Bill proposing the inclusion of Irretrievable Breakdown of Marriage (IBM) as a ground for divorce under both the Hindu Marriage Act and the Special Marriage Act.

HISTORICAL BACKGROUND:

The concept of Irretrievable Breakdown of Marriage was extensively analyzed in the 71st Report of the Law Commission of India, submitted in 1978. The report examined the feasibility

¹ The Hindu Marriage Act, 1955

² Muslim law and other personal laws by S R Myneni

³ The Muslim women (protection on rights of divorce) Act, 1986

and conditions under which this principle could be incorporated into the Hindu Marriage Act.

New Zealand was the first Commonwealth country to recognize this concept in 1920. It allowed separation agreements lasting three or more years to serve as valid grounds for divorce. In 1921, the first divorce under this principle was granted, with the court ruling that when matrimonial relations cease to exist, it is neither beneficial for the individuals nor in the public interest to maintain a legal marital status. The court also emphasized that in such circumstances, the continuation of the marriage is not just meaningless but can also be detrimental.

In England, this doctrine gained prominence in the case of *Masarati v. Masarati*,⁴ where both spouses had engaged in adultery. The Court of Appeal, upon reviewing the wife's petition for divorce, recognized the breakdown of the marriage. Subsequently, the Law Commission of England, in its report, highlighted two objectives of a sound divorce law: first, to uphold the stability of marriage, and second, when a marriage has irreversibly broken down, to dissolve it with fairness and minimal distress. Based on these recommendations, the Divorce Law Reforms Act, 1973, made Irretrievable Breakdown of Marriage the sole ground for divorce under Section 1 of the Act.

In Australia, the Matrimonial Causes Act, 1959, also incorporated this principle as a ground for divorce.⁵

The Law Commission of India observed that restricting divorce solely to cases involving matrimonial offenses often leads to injustice, especially in cases where neither party is at fault or where the fault is of such a nature that neither spouse wishes to disclose it. The Commission emphasized that an irretrievable breakdown implies the disappearance of emotional bonds, mutual respect, and affection—the very foundation of a marriage—leaving only a legal facade.

The report concluded that when a marriage has ceased to exist in reality, granting a divorce is a pragmatic solution. Instead of focusing on assigning blame, the law should facilitate an amicable resolution, ensuring that both spouses and any children involved can adjust to their new circumstances.

⁴ *Masarati v Masarati* - Case Law - VLEX 792541169

⁵ Matrimonial Causes Act, 1959

KEY ELEMENTS CONSIDERED BY THE LAW COMMISSION:

1. The spouses have lived separately for a significant duration and no longer function as husband and wife.
2. One spouse has engaged in extramarital relations, making cohabitation intolerable for the other partner.
3. One spouse has been convicted as a habitual criminal and sentenced to 10-15 years of imprisonment.
4. One spouse has deserted the other without justifiable cause.
5. Instances of domestic abuse or repeated physical violence inflicted by one spouse on the other.
6. Alcoholism or drug addiction by one spouse, leading to marital discord.
7. Complete loss of love and compatibility, with irreconcilable differences or youthful indiscretion leading to an unsustainable marriage.

MERITS, DEMERITS, AND CRITICISM OF THE IRRETRIEVABLE BREAKDOWN THEORY:

The traditional fault-based divorce system has been deemed inadequate for addressing marriages that have completely failed. Under this system, guilt must be established, compelling courts to scrutinize personal grievances, which often leads to public exposure of private conflicts. Consequently, judges and lawyers are burdened with dissecting the most painful aspects of a marriage, further aggravating emotional distress.

A major advantage of the Irretrievable Breakdown principle is that it allows individuals trapped in dysfunctional marriages to move on with dignity. When a marriage is beyond repair, persisting with legal formalities only fosters bitterness, prolonged disputes, and in some cases, immorality.

However, critics argue that allowing a marriage to end on the sole basis of irretrievable breakdown effectively transforms marriage into a contract that can be terminated at will,

undermining its sanctity. Additionally, concerns have been raised that individuals responsible for the breakdown may exploit this provision to their advantage, obtaining a divorce against the will of their spouse.

The Hindu Marriage Act does not strictly adhere to the principle that a person cannot benefit from their own wrongdoing. For instance, under Section 13(1A)(ii), even a spouse who fails to comply with a decree for restitution of conjugal rights can seek divorce on the grounds that cohabitation has not resumed for one year. This demonstrates that the existing legal framework already permits certain forms of unilateral divorce.

If a marriage is truly irreparable, refusing to legally dissolve it does not uphold its sanctity; rather, it disregards the emotional realities of the individuals involved. Long periods of separation indicate that the marriage has become a mere legal fiction, serving no meaningful purpose.

CRITICAL ANALYSIS:

Judicial Criticism:

Several High Courts have opposed the introduction of Irretrievable Breakdown of Marriage as a ground for divorce. Judges have argued that a temporary rift between spouses should not be mistaken for a permanent breakdown. What may seem irreparable at one point could later be resolved, and courts should not hastily assume that reconciliation is impossible⁶.

Government Perspective:

The Government of India, through the Ministry of Education and Department of Social Welfare, has expressed skepticism regarding the necessity of adding Irretrievable Breakdown as a distinct ground for divorce. It argues that the existing provisions of the Hindu Marriage Act and the Marriage Laws Amendment Act, 1976, sufficiently address such situations.

CONCLUSION:

Marriage is a vital institution that shapes the foundation of society. It is based on mutual

⁶ National Judicial Data Grid

understanding and commitment. However, when a marriage deteriorates to the point where reconciliation is impossible, it serves no constructive purpose to insist on its legal continuation.

While the shift from the traditional fault-based system to divorce by mutual consent marks progress, incorporating Irretrievable Breakdown as a separate ground remains a contested issue. The objective of matrimonial laws is to preserve the sanctity of marriage, and the introduction of such a ground could lead to an increase in divorce petitions, potentially destabilizing the institution of marriage.

A balance must be struck between protecting individual freedoms and preserving societal values. While the Irretrievable Breakdown theory provides a pragmatic approach to dissolving unworkable marriages, its implementation must be carefully structured to prevent misuse and to uphold the dignity of the institution of marriage.