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IRRETRIVABLE BREAKDOWN OF MARRIAGE **THEORY & ITS RELEVANCE IN INDIAN** **PERSONAL LAWS**

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1. Abstract:

This paper delves into the aspect of *Irretrievable breakdown theory* wherein, the husband and wife never again reside together, according to the definition. The two accomplices and one accomplice must convince the court that the marriage has irretrievably broken down and there is no realistic situation of reconciliation. Although the life partners share a roof, the prevalent rules in regards to subject of separation has not yet recognised a scenario where their marriage is analogous to a division even though they are living together. Subsequently, the paper analyses the personal laws and connotes the concept of irretrievable breakdown theory and its relevance in the Personal Laws.

Personal law is defined as a legislation that applies to a specific group of people, a group of people, or a person depending on their cultures, beliefs, and political views. Everyone in India is a member of a different caste, practises a different religion, and holds unique beliefs. Several sets of laws determine what they believe and when making these regulations, the various practises of that faith are considered. Further, the paper discusses numerous scenarios in which the provision might be used and how *Article 142* should be interpreted in light of the Indian Constitution. The author further explores the specific concept and its application while clarifying the definition and interpretation of the phrase "full justice" using supporting case law.

The author discusses the court's reasoning regarding the contentious claim that Article 142 violates statutory laws since the powers granted by this particular article cannot supersede an existing statutory law by citing a number of court decisions. This paper focuses on the concept of irretrievable breakdown of marriage in particular and the theories of divorce in general and along with its history, merits and demerits with special reference to personal laws underneath

Part III of the Constitution of India and analysing its relevance along with the landmark judgements and their drawbacks.

Keywords: Irretrievable Breakdown, Marriage, Personal Laws, Divorce, Restoration, Constitution.

2. Introduction:

With the rapid industrialization, urbanisation, education, the modern society has adapted the new changes. Earlier, Divorce was not permitted and thus, two persons entering into a marriage were considered irrevocably bound to stay together till death. For the first time a legislation was passed that allowed individuals to file a divorce petition on a list of predetermined reasons. In the past, there were not enough grounds for divorce due to it being stigmatized and not condoned. Women were generally deprived of the right to divorce and were compelled to live their entire lives alongside their spouses and in-laws. Even if they got a divorce, their economic status was frequently overlooked in society. However, as an outcome of the *Hindu Marriage Act, 1955* both may now divorce. There have been two main categories for divorce theories:

Firstly, the *Fault theory* which is a traditional theory wherein one party approaches the court of law seeking divorce due to the fault of the other party and the ground for divorce on the basis of fault that is straight forwardly directed against the party are 'cruelty', 'desertion', 'adultery', 'bigamy', 'rape', 'Sodomy' or 'bestiality' and Conversion, insanity or psychological disorder, venereal disease, abandonment of the world, and being absent for a minimum of seven years are grounds for divorce that aren't attributable directly to the other spouses.

Secondly, the *No side* need be declared guilty or at fault according to the no-fault theory. It is regarded as the "breakdown of marriage," and based on this concept, a divorce originating from an irretrievable breakdown of marriage can be performed with just the mutual assent of the parties involved or even without the agreement of the different parties. However, even under no-fault theory, somehow or the other fault of either of the parties does come into the picture.

There is also a '*theory of consent*' which is mentioned in the *Section 13 B* of the *Hindu Marriage Act, 1955*. This approach primarily asserts that when both parties indicate their willingness, the union can be terminated without attempting to exhibit misconduct. The simple rationale behind this theory is that since two individuals can marry each other as per their own free will, they can

also choose to move out of the marriage based on their own free will.

1.1 Background of Irretrievable Breakdown of Marriage:

Over the past several years, the Indian legislature has been open in adopting new grounds for divorce in response to the changing social norms. The subject of utilizing dissolution of a union as a basis for divorce. India's Law Commission's report on the subject, which again was submitted in 1978, recommended incorporating such a ground to the Act 4, but no decision was taken for nearly 50 years. This same report's foremost objective was to figure out whether and within what criteria the irretrievable breakdown of a marital relationship can be considered as a valid ground for divorce.

As a matter of fact, the term was first introduced in New Zealand in the year 1921, under which the court held that “*when matrimonial relations have ceased to exist, it is not in the interests of the parties nor in the interest of the public to keep the man and woman bound as husband and wife in law*”, “*in the event of such separation, the essential purpose of marriage is frustrated and its further continuance is not merely useless but mischievous*”.

This particular theory arose in the case of “*Masarati v. Masarati*¹”, where the situation aroused as to both the husband and wife committed the offence of adultery.

Law Commission also observed that if neither party is at fault, or if there is a defect, it is of a kind that neither party wants to admit, but the marriage has nonetheless dissolved, the rule that limits divorce to matrimonial disability creates injustice. In other words, an irretrievable breakdown of marriage occurs when the essential parts of the marital relationship ties, respect, etc.—have vanished and only the façade of a marriage remains.

It basically concludes that in instances where the marriage has stopped existing not only in reality but also in substance, then divorce must be seen as an inevitable option in order to avoid any difficult scenario. The primary motive of the provision is to basically bring solidarity among the parties involved and the children, if any, in order to bring them to terms with their new scenario and operate amicably for the regulation of their relationship, regardless of the changed circumstances.

¹ MASARATI v. MASARATI, [1969] 1 WLR 393

2.2 The Benefits and Drawbacks of Irretrievable Breakdown of Marriage:

Prior to analysing the advantages and drawbacks of this theory, it is essential to acknowledge the question that arises as to whether the “Hindu Marriage Act” can be amended with the perspective of turning this theory as a valid ground in order to grant a decree of divorce? Subsequently, in order to come to a conclusive answer to this question would be to analyse the constant changing nature of families and how by the passage of time, they are becoming more liberal and progressive. Therefore, it is crucial that the legal legitimacy for the coalition to be repealed if it cannot be constituted.

It is not unusual that all sort of claims is freely tossed around in the courtroom so under the present independent judiciary. We are not required to abide on the path of an obsolete divorce law that mandates that both men and women must be found guilty or innocent. The primary objection that this viewpoint of a marriage that has irrevocably broken-down theory is an ambiguous one has already been addressed.

One of the major drawbacks of this concept could be that it authorised the spouses, or even merely one person, to discontinue the marriage at any point, altering marital relationship from a partnership for life to a partnership that can be discontinued at the couple's pleasure. Secondly, it is a well-established fact that no person can take advantage or benefit of his own wrongdoing; a spouse who precipitated the disintegration of the marriage may not use it as rational basis for pursuing a divorce against the other spouse's inclinations.

The legislation will have finally established official recognition of the idea that a person may gain by his or her own wrong permitting any spouse to divorce someone else without the other's approval will after a set threshold is reached of separation.

Further, according to *Section 13 of The Hindu Marriage Act, subsection (1A), clause (ii), 1955*, Subsequently, under this provision, Therefore, it should not be contended that under the Hindu Marriage Act's provision as they currently hold, no one may benefit by his own wrongdoing.

However, it would be unfair for the law to overlook the fact that it would be extremely contagious for the society and whenever a legally binding contract is attempted to be established despite the absence of an emotional ground, it is detrimental for the parties' concerns.

Also, it is reasonable to assert that the marital relationship is irreversibly damaged when spouses have been apart for a long time. The marriage just happens to be merely a fiction, tied by legal authorities.

The High Court, in numerous cases has criticized or expressed mere disagreement against the breakdown theory as a valid ground for granting divorce. According to the High Court's denial, one of the assertions made there is that a wife and a husband would never cohabit just because they have been separated. At this time, it does not seem that there is any likelihood of them doing so.

However, this claim is extremely difficult to prove. Contrarily, it claims that it does not imply that the marriage has ended automatically. simply because of the very reason that they have not been sharing the same roof.

Also, it is an extremely subjective concept since what might be irretrievable for one person might not be for the other. However, such a circumstance cannot remain forever, and there must arrive a stage when either of the parties should be authorized to acquire the court's verdict on whether or not there is a likelihood the marriage could be saved.

The Marriage Laws Amendment Act, The Hindu Marriage act of 1955, and latter of which offer additional sufficient grounds for "Irretrievable breakdown of marriage" for the reasons of divorce proceedings, both were used to further criticize this theory.

The Indian government's Ministry of Education and Department of Social Welfare have also affirmed their dissent with this theory. Since there is no legal way to force a spouse to continue living with the consort, trying to keep the parties indefinitely bound to a union that has failed will not accomplish anything.

Marriage is a commitment to a lifetime of living alongside and when the prospects of continuous cohabitation have been ended, the legal relationship should be abolished.

3. Review of Literature:

The Article *“Irretrievable Breakdown of Marriage”* written by Ashish Jain in *International Journal of Legal Service and Innovation* delves into the aspect of Irretrievable breakdown of marriage as a point of time wherein the marriage is not persistent and jurisprudentially such a marriage in the eyes of the law has come to an end. with regards to the various grounds and the sole jurisdiction of the Supreme Courts to grant divorce on the ground of Irretrievable Breakdown of Marriage.

The Article also considers various Judicial Precedents that has helped evolve the concept of Irretrievable Breakdown of Marriage. The Article emphasis on the need of the Indian Legislature to introduce the concept of Irretrievable breakdown of marriage as an official ground of divorce to grant decree of divorce in the light of justice, equity, and good conscience.

The paper *“Irretrievable Breakdown of Marriage: A Critical Study”* delves into the study of requisites of marriage in specific personal laws and religions, namely Hindu, Muslim, Parsi, Christian. The author deals with a critical study of the concept of Irretrievable breakdown of marriage as an important ground of divorce in the religions above mentioned.

The paper studies the various conditions and requisites of marriages under various personal laws along with the importance of Divorce as a part of the Marriage as a contract. Considering the aspect of changing times and subsequently the laws becoming complex. The paper also focuses on the Judicial Intervention in the matrimonial laws.

4. Aims & Objectives:

- To delve into the concept of Irretrievable breakdown of Marriage and its relevance in Indian Personal Laws.
- To study and understand the concept in the light of Constitutional perspective.
- To study and analyse the concept of Irretrievable Breakdown of Marriage in every Indian Personal Laws.

5. Hypothesis:

With change in times and subsequent complex changes in the societies have also led to the evolvement of laws overtime. From considering divorce as a long due taboo, the society has come

long way with regards to the aspect of accepting it in the realm of several grounds. Irretrievable Breakdown of Marriage being one such concept that the judiciary has looked into as a legitimate ground of divorce which has helped open the doors of multiple matrimonial cases wherein the spouses are compelled to live under the same roof despite the irrevocable differences.

6. Research Question:

- Whether, and how under what circumstances the irretrievable breakdown of a marriage may be used as a basis for divorce under that Act?
- Whether it would be harmful to women's interests to include the doctrine of irretrievable breakdown as grounds for divorce?

7. Methodology:

Doctrinal Research Paper was conducted for this research article. The intricacies was collected through different books, articles and papers. The main sources for this research are online papers and publications by various scholars.

8. Constitutional Perspective:

8.1. Article 142 of the Indian Constitution & the Supreme Court's Inherent Jurisdiction

The Indian Constitution's Article 142 grants the Supreme Court exclusive authority to: authority to "complete justice" in whatever decision it makes. But in recent years, the aforementioned Article 142 has grown significantly, and the Supreme Court frequently uses it to determine cases and provide "full justice." Furthermore, the statute does not contain any particular guidelines or rules that would specify when, when, or under what conditions the Apex Court might use the aforementioned article to "complete justice."

According to our constitution, the Supreme Court is given vast authority and has the power to issue exceptional leave in defiance of rulings or directives from anybody. According to the Indian Constitution, the Honourable Supreme Court has the power to declare that courts have always had sufficient jurisdiction to resolve disputes between parties who appear before a court, and all other courts in the country are required to follow the standards it has established. The nation and the sole jurisdiction to hear civil matters of the President or Vice President.

In short, The Article 142 of The Indian Constitution is a provision that authorises the jurisdiction

to pass a particular “Decree or Order” which is essential in order to attain absolute righteousness. It ultimately reinforces the Supreme Court's pre-existing power to assure that justice is carried out while protecting the court from being constrained.

In light of the fact that matrimonial proceedings are often delayed due to reconciliation between the parties, the Supreme Court of India has utilized this jurisdiction even in cases of matrimonial disputes that have been ongoing in the Tribunal or court. Considering marriage status should be perpetuated whenever, wherever, and for as long as possible, this is in court observation.

8.2 Personal law constraints & Part III of The Constitution of India:

Higher authorities, including Supreme Court of India, have been obligated since the Indian Constitution's creation to find a workable middle ground between two extremes: personal laws that support religious practises and Part III of the Indian Constitution, which is the chapter on fundamental rights.

There have been instances where the constitutional validity of Personal laws has been questioned. To reconcile the application of personal laws and based on religious beliefs along with matters of women's equality as well as legal fairness is always problematic for the court. It is essential to bring up the Shah Bano case since it has inaugurated a new paradigm of judicial interpretation of personal laws, which were traditionally seen as a fragile area of the law.

One of the major drawbacks that drew from the analysis of personal law was that it was extremely gender discriminating; In court, numerous women from various regions have appealed the legitimacy of the personal laws' biased component. While dealing with problems like infidelity, polygamy, monogamy, separation, child custody, inheritance, and incest in their matrimonial homes, their primary worries are the possibility of forced marriage, deadly situational circumstances of inter-caste, inter-class, and inter-religious marriages, and property battles.

The notions outlined in Part III of the Constitution have since been ruled to not apply to personal laws that are based on religious doctrine and common practise. As a result, personal laws don't appear to be laws in effect under Article 13 of the Constitution. Further, considering the aspect of religious faith and belief, if religious practices collide with established and effective morality, health, or welfare reforms, those must be reformed before the state's primary legislative branch may commence.

In the light of the judicial review; Certain constitutional goals, such as the Uniform Civil Code, have always accompanied the idea of reviewing. While addressing the constitutionality of personal law and worrying about the Uniform Civil Code, the courts were unable to avoid acknowledging it. Further, other sectors have legislation' constitutionality or logic under scrutiny. Finding a balance between personal rules based on religion and worries about gender justice and the fairness of the law is a constant challenge for the judiciary.

Numerous instances exist where personal laws or legal requirements were contested for the reasons outlined above. In a few instances, courts made it a point to order the Union of India to include UCC as a component of the system even if they had not reached a decision on the subject of the constitutionality of personal legislation.

A specific modern path of justice with regard to personal laws of the law passed after the Constitution's adoption is to evaluate them in light of the various sections of Part III without delving into the technical issue of whether the personal law is a law. There will be no valid claim regarding the intention to employ Part III's provision to learn personal rules.

In a community where exploitation, discrimination, and the denial of unconditional acclaim are commonplace, the pursuit of equality, freedom, and security is of utmost importance. A fair and impartial legal relationship shall be established under various individual laws through the application of Part III.

This is preferable than arguing about the idea of teaching by the same community code. It will be simpler to obey the Uniform Civil Code if the ideas of justice and freedom have been introduced into the sphere of human law.

9. Interrelationship & relevance of Irretrievable Breakdown

Theory in Indian Personal laws:

9.1 Hindu Personal Laws

Divorce under the Hindu Personal Law, as per the *Section 2 of the Hindu Marriage Act of 1955*, divorce is recognized under Hindu personal law for every person who designates as a Hindu in any of its forms or developments, a Buddhist, Jain, or Sikh, in addition to anyone located in the areas allowed by law who is not a Muslim, Christian, Parsi, or Jew. Either spouse might very well

make an application before the relevant court for a decree of dissolution of the marriage or divorce under *Section 13* of the Act. Any spouse may file for divorce on one of two reasons based on the "break-down" theory: that once the court separation decision is issued, there must be a one-year waiting time before cohabitation can resume. Thus, following the passing of the decree for restitution of marital rights, there will not be any restitution of conjugal rights for a period of one year or longer.

Therefore, the idea of marriage also depends on the personal law that a particular person practises, even though some religions consider it to be a sacrament and take the form of a contract. The same personal laws, which are typically codified, apply to the dissolution of such marriages as well. Subsequently, we can understand the fact that attaining a divorce purely on the basis of a marital ground or on the legalised "fault-based theory" grounds involves large amounts of both mental and physical suffering because it subjects both parties to harassment and disgrace in addition to being time-consuming and nerve-wracking. The main argument against "irretrievable breakdown of marriage" as a separate ground for divorce is that it is "divorce by mutual consent" under the Hindu Marriage Act, 1955 primarily covers certain relevant territory, as well as adding the earlier ground will only result in complicating the system for the courts and the parties filing the lawsuit.

9.2 Christian Personal Laws:

The Indian Divorce Act, 1869 regulates the rules and procedures with regards to divorce under the Christian Religion along with other marriage provisions. This Act holds validity and is applicable when one of the parties to the marriage is Christian by religion.

The 15th Law Commission Report suggested for reorganisation of the Divorce Act and further in the 22nd Report it was concluded that the marriages that have been demolished to such an extent that reconciliation is not possible under any circumstance, such are still deprived of a reinforcement.

Wherein it was stated that Divorce indeed must always be a last resort but in certain situations it turns out to be a necessity wherein it becomes impossible for the parties to live under one roof with mutual love and respect and thus it is for the betterment to allow them to be separate and not compel them to reside under one roof surrounding with hatred and animosity. Moreover, it has become an essential aspect to include the ground of "irretrievable breakdown of marriage."

9.3 Muslim Personal Laws:

The concept of Divorce under Muslim Law has evolved through various interpretations of the provisions and statutes of Muslim Law along with the Judicial precedents being of great significance. Since, for a long period of time Divorce under Muslim Law was not granted merely on the ground that there was huge level of hatred among the spouses and that of such an extent that they cannot live together.

However, in "*Noor Bibi v. Pir Bux*²", an effort was made to grant divorce on the ground of irretrievable breakdown of marriage. This time the court allowed Divorce."

9.4 Parsi Personal Laws:

The Parsi Marriage & Divorce Act, 1936 regulates the rules and procedures with regards to divorce along with other marriage provisions. Parsis have their own distinct personal law, practising Zoroastrian religion, who have diverse beliefs from the Hindus, Muslims, Christians of India.

10. Conclusion:

The idea of "irretrievable breakdown marriage" as a different premise for the marital relationship was subject to a great deal of discussion regarding both benefits and drawbacks, but it ultimately had to be dropped due to persistently strong opposition. However, "mutual consent" as a basis for divorce has already been incorporated into a number of personal laws to provide the parties who have been wronged with some swift recourse.

Overall to conclude, Irretrievable breakdown did not eventually become official law, but it did gain tacit acceptance as a basis cited in numerous divorce court rulings.

The Law Commission once again proposed that irretrievable breakdown be added to the list of reasons for divorce in its 217th Law Commission of India Report, which was issued in March 2009. The Law Commission took up the issue again as a Suo motu subject.

The point that needs to be taken into account in this situation is that it is quite unreasonable for the law to ignore the marriage's irretrievable breakup, which is detrimental to both the interests of the parties and society as a whole.

² Mt. Noor Bibi v. Pir Bux, 1949 SCC OnLine Sind CC 1

Due to the judiciary's firm stance on the necessity of including "irretrievable breakdown of marriage" as a separate ground for divorce, this led to the ability to provide justice in certain cases over time; however, the main gap still exists as a result of the absence of adequate laws on the subject.

Therefore, it is therefore imperative to examine, alter, and implement the Special Marriage Act of 1954 and the Hindu Marriage Act of 1955 so that the "irretrievable collapse of marriage" is one of the justifications for breaking the couple's marriage.

