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Judicial Criteria For Irretrievable Breakdown Of Marriage In India: An Examination Of Supreme Court Guidelines And The Treatment Of Non-Consummation.

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Abstract:

Though 'irretrievable Breakdown of marriage' is not a ground of divorce under the Hindu Marriage Act and Special Marriage Act. The Supreme court of India on dt. 4th oct. 2019 in **civil appeal No. 4696/2013 R. sriniwaskumar V. R. Shametha**[1] has, in significant ruling, said divorce can be granted if a marriage is totally unworkable, emotionally dead and beyond salvage.

Coming to the rescue of a man fighting a legal battle for divorce for a last two decades as his plea was bench of Justice S.K Kaul and MR shah invoked the SC's inherent power under article 142 to do "Complete Justice" and allowed the petition saying the marriage had broken irretrievably.

In the case before the SC, the couple had been living 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 unamended, and divorce is denied even if the couple are not living together for years and their relationship bruised beyond repair. This effective 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 regards to "Irretrievable breakdown" whereas "wedlock become 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 recognize the ground of divorce. "The Court, in a series of judgment's, has exercised its inherent power under article 142 of the Constitution of India [2]for dissolution of a 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 divorce could be granted", the court said. The SC said, "In present case, admittedly, 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, we are of the opinion that while protecting the interest of the respondent wife and compensate her by way of lump sum permanent alimony, this is a fit case to exercise the power under Article

[1] R. Srinivas Kumar v. R. Shametha , AIR 2019 SUPREME COURT 4919, 4TH OCTOBER 2019.

[2] Article 142 of the Indian constitution grants the Supreme Court the extraordinary power to pass any order necessary to ensure "complete justice" in any matter before it.

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 a reunion because of the strained relations between the parties. "If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties does not agree… only then the power under Article 142 of the Constitution of India is required to be invoked to do the substantial justice between the parties, considering the facts and circumstances of the case".

Introduction to Irretrievable Breakdown of Marriage.

Marriage is often said to be made in heaven and solemnized on earth. Marriage is the very basis of social organization. It is the foundation of a family and in turn society in which no civilization can exist.

Marriage is regarded as a sacrament under Hindu Law which is eternal and indissoluble. The law regarding marriages has been codified by the Parliament as the Hindu Marriage Act 1955. Hindu Law strictly insists on Monogamy. Prior to the enactment of the Hindu Marriage act, divorce was not a recognized means to put an end to a marriage, the only exception being where it was recognized by a custom, which meant that the rules of dissolution of marriage and monogamy were subject to a valid custom to the contrary.

Under the Sharia Law, marriage Nikah is the Arabic word literally means the "union of the sexes" and in law this term meaning "marriage". In Baillie's digest marriage has been defined "a contract for the purpose of legalizing sexual intercourse, and procreation of children".

Nikah is a sanctified contract which is solemnized on the payment of Mehr from the husband to the wife. In the Muslim law, polygamy is not unconditionally conferred and is based on the precedent condition about the capacity of the husband to do justice between his co-wives.

Modern society has become quite complex coupled with changes in socio-economic conditions seconded by the disintegration of the joint family structure as well as rapid industrialization and urbanization, education and employment. Moreover, the laws have given equal status and right to women have had tremendous impact on the institution of marriage which is no longer treated as an indissoluble union. There has been considerable legislative and judicial interference in the gamut of matrimonial laws all over the world.

Divorce (also known as dissolution of Marriage) is the process of terminating a marriage or marital union. Divorce usually entails the canceling or reorganization of the legal duties and responsibilities of marriage, thus dissolving the bonds of matrimony between a married couple under the rule of law of the country or state. It can be said to be legal dissolution of a marriage by a court or other competent body. It is the legal process of ending marriage.

Divorce laws vary considerably around the world, but in most countries, divorce is a legal process that requires the sanction of a court or other authorities. Which may involve issues of **distribution of property**[3],

[3] Division of property, also known as **equitable distribution**, is a division of property and debt between spouses when the marital relationship is ending. It may be done by agreement, through a **property settlement**, or by judicial decree.

child custody[4], **alimony (spousal support)**[5], **child visitation/access**[6], **parenting time**[7], **child support**[8], and division of debt. In most countries, **monogamy** is required by law, so divorce allows each performer partner to marry another person.

which was earlier regarded as evil, has codified laws which are being substantially modified and liberalized.

In India, with regards to the Hindu Marriage Act and Special Marriage Act, the Government of India has attempted to include "Irretrievable Breakdown of Marriage" as aground of divorce as per the Irretrievable Breakdown of Marriage is defined as:

"The Situation that exists when either or both spouses are no longer able or willing to live with each other, thereby destroying their husband-and-wife relationship with no hope of resumption of spousal duties."

In other words, Irretrievable breakdown of marriage can be defined as failure in the matrimonial relationship or such circumstances adverse to that relationship that no reasonable probability remains of the spouses remaining together as husband and wife for mutual comfort and support.

In **Naveen Kohli v. Neelu Kohli** [9]the Supreme Court of India 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 divorce in the following words:" "Before we part with this case, on the consideration of the totality of facts, this Courts Would like to recommend the Union of India to seriously consider bringing an amendment in the Hindu marriage Act, 1955 to incorporate irretrievable breakdown of marriage as aground for the grant of divorce. A copy of these Judgments be sent to the secretary, Ministry of Law& Justice, Department of Legal Affairs, Government of India for taking appropriate steps."

Earlier, in **Ms. Jorden Diengdeh v. S.S. Chopra**[10] the Supreme Court observed:" it Appears to be necessary to introduced irretrievable breakdown of marriage and mutual consent as ground of divorce in all cases. We suggest that the time has come for the intervention of the legislature in those matters top provide for a Uniform Code of Marriage and divorce and to provide by law for a way out of the unhappy situation in which couples like the present have found themselves."

It is pertinent to notice that the Law Commission of India has already submitted a very comprehensive 71st Report on irretrievable breakdown of marriage [11]as a ground of divorce. The matter had been taken up by the commission as a result of a reference made by the Government of India. The Law Commission under the Chairmanship of Shri Justice H.R. Khanna presented its report on April 7, 1978. The Report considered the suggestion and analyzed the same in extenso. Before embarking upon further action on the suggestion that irretrievable breakdown of marriage should be made as a ground for divorce, The Law Commission considered it appropriate to invite views on the matter by issuing a brief questionnaire. The Commission in

[4] **Child Custody** describes the legal and **practical relationship between a parent or guardian** and a child in that person's care. Its legal Custody, which is the right to make decisions about the child, and Physical Custody, which is the right and duty to house, provided and care for the child,

[5] **Alimony**, also called **aliment** (Scotland), **maintenance** (England, Republic of Ireland, Northen Ireland, Wales, Cananda, New Zealand), **Spousal support** (U.S., Cananda) and **spouse maintenance** (Australia), is a **legal obligation** on a person to provide **financial support** to their spouse **before or after marital separation or divorce.**

[6] In family Law, Contact, Visitation and access are synonym terms that denotes the time that a child spends with the noncustodial parent, according to an agreed or court specified parenting schedule. Unsupervised visitation is the most common type, when the parent may take the child to his or her home or enjoy any outing with child.

[7] Parenting Time is the **amount of time each parent spends with their children** when parents separate.

[8] Child Support (or Child maintenance) is an ongoing, periodic payment made by a parent for the financial benefit of a child (state or parent, caregiver, guardian) following the end of a marriage or other similar relationship.

[9] Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558.

[10] Ms. Jordan Diengdeh v. S.S. Chopra , 1985 AIR 935, 1985 SCR supl(1) 704, 1985 SCC (3) 62.

[11] 71st Law Commission of India report, which dealt with the Irretrievable Breakdown of Marriage as aground for divorce -April 1978 (submitted).

its 71st Report have accepted in principle irretrievable breakdown of marriage as a ground of divorce and examined the introduction of such ground should be coupled with any safeguards. The Commission also in Chapter II of the said Report considered present law under the Hindu marriage Act, merits and demerits of the theory of irretrievable breakdown of marriage in Chapter IV and retention of other grounds of divorce in Chapter V. In Chapter VI the Commission also considered the requirement of living apart and suggested many safeguards like welfare of children, Hardship and recommended amendments to section 21A, 23(1)(a) and recommended insertion of new section 13C, 13D and 13E.

History of Irretrievable Breakdown of Marriage.

The 71ST report submitted by the Law Commission of India submitted in 1978 deals with the concept of Irretrievable Breakdown of Marriage. The report is based on the prima facie[12] question as to the extent and conditions on which Irretrievable Breakdown of Marriage can be included as ground for divorce under the Hindu Marriage Act.

Aper the Report in 1920, New Zealand [13]was the First of the Commonwealth countries to introduce that a separation agreement of three or more years could become a ground to file divorce before the courts[14]. In 1921, the first divorce on the ground of Irretrievable Breakdown of Marriage was granted by the Court in New Zealand. 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 the women bound as husband and wife in law." The court also added that "in the event of such separation, the essential purpose of marriage is frustrated, and its further continuance is not merely useless but mischievous." This led to the formulation of the breakdown theory in Matrimonial law.

In England, the commencement of this theory was opened in the case of **Masarati v. Masarati**[15], where both the parties to the marriage had committed adultery. The Court of appeal, on wife's petition for divorce observed breakdown of marriage. The law commission of England in its report said, 'the objective of good divorce laws are two: one to buttress rather than to undermine the stability of marriage and two, when regrettably a marriage has broken down, to enable the empty shell to be destroyed with maximum fairness, and minimum bitterness, humiliation and distress.' On the recommendation of the law commission, Irretrievable Breakdown of marriage was made the sole ground for divorce under Section 1 of the Divorce Law reforms Act, 1973.'

The Matrimonial Causes Act, 1959 of the commonwealths of Australia provided for divorce on the grounds of breakdown of marriage.

In its report, the Law Commission observed that the provision restricting divorce to matrimonial disability results in injustice in cases whether neither party is at fault or the fault is of such nature that neither party wishes to divulge it and yet the marriage has ceased to exist. In other words, Irretrievable Breakdown of Marriage refers to a situation whether emotional bonds, respect, etc., which is the very foundation of a marriage have disappeared and only a facade in the name of marriage remains.

In conclusion, the law commission mentions where a marriage has ceased to exist both in substance and divorce must be taken as a solution to escape from difficult solution. The provisions of such a divorce should be primarily concerned with bringing the parties and the children to accept the new situation and to work

[12] "Prima Facie" means that there is enough evidence to support a claim or argument "at first sight" based on the initial presentation of facts.

[13] In 1920, a "report" in effect came from New Zealand's government when its enacted the **Divorce and Matrimonial Causes Amendment Act, 1920,** which included a provision that a separation agreement of three or more years could be aground for divorce.

[14] New Zealand first introduced the concept of divorce due to an "Irretrievable Breakdown of Marriage" through 1920 Divorce and Matrimonial causes Amendment Act.

[15] Masarati v. Masarati [1969] 1 WLR 393, CA or (1969) 1 All ER 923 (CA).

out a satisfactory basis for regulating relationships in the wake of the changed circumstances, rather than finding faults during the divorce proceedings.

Theories of Divorce:

1. **Fault Theory**- Under Fault Theory or the Offences theory or the guilt theory, marriage can be dissolved only when party to the marriage has committed matrimonial offence. It is necessary to have guilty and an innocent party, and only innocent party can seek the remedy of divorce. However, the most striking feature and drawback is that if both parties have been faulted, there is no remedy available,
2. **Consent Theory**- The Consent Theory accepts that parties to a marriage could together decide to end the relationship. This is the Concept of "divorce by mutual consent." The procedure for divorce under this theory is that the parties live apart for a specified period and require that such application be made in two stages, before the divorce is confirmed. Importantly, related but critical issues such as maintenance, distribution of common properties and custody of children are expected to be decided by the parties.
3. **No Fault Theory**- The Institution of Marriage being distinct as regards its socio-economic and legal footing, it will be unjust if the laws ignore the importance attached it. However, one must also take consideration of the fact that it is the choice of the parties to a valid marriage to understand the importance of the institution and to preserve its sanctity. With the changing requirements, attitude and aptitude, society has drastically changed, and it is very difficult for married couples to cope with change. While adjusting in a new atmosphere in the matrimonial home, spouse may commit, knowingly or unknowingly, with or without intention, whether economically dependent, some kind of mistakes which may lead to a communication gap between them and create havoc in the matrimonial home. Where both the parties of a valid marriage are at fault of any kind of matrimonial offence, it is difficult to prove which one is aggrieved party. According to the Doctrine of Recrimination[16], no remedy can be granted to the party who is at fault. It is imperative in law to have one party as innocent and another at fault to provide a matrimonial relief. In case of no-fault theory of divorce, it is not necessary to prove which party is at fault. There may be many reasons based on which sweetness of matrimonial relationship is at risk. If the parties prove reliable evidence on record that their marriage is beyond all possible repairs, then law should understand the reality of the fact and should help the parties to the marriage which has broken down irretrievably.

   The Breakdown Theory of Divorce [17]which is inherently attached with no fault theory of divorce represents the modern view of divorce. Under this theory, the law realizes a situation and say to the unhappy couple: If you can satisfy the Court that your marriage has broken down, and that you desire to terminate situation that has become intolerable, then your marriage shall be dissolved, whatever may be the cause. The marriage can be said to be broken when the objects of the marriage cannot be fulfilled. When there is not an idiom of hope that parties can be reconciled, it can be considered as irretrievable breakdown of marriage.

[16] The Doctrine of Recrimination under Hindu Law is a Defense in divorce cases where the respondent argues that the petitioner is also of matrimonial offense, thus disqualifying the petitioner from getting a divorce. It act as a complete bar to relief essentially stating, "**you, too, are at fault**."

[17] The Breakdown theory of divorce, also known as the **"Irretrievable Breakdown"** theory, is based on the premise that a marriage can and should be dissolved when it has become unworkable and beyond repair, without one spouse to prove the other was at fault.

Theory of Irretrievable Breakdown.

An irretrievable breakdown of marriage is defined as a failure in the matrimonial relationship where no reasonable probability remains for the spouses to live together as a husband and a wife.

There is currently no explicit legislative provision in India relating to this theory of divorce.

- **Guidelines**

The Supreme Court of India has evolved ground for granting divorce based on irretrievable breakdown, considering factors such as:

- Duration of cohabitation.
- Time since last cohabitation.
- Allegations made by parties against each other.
- Orders passed in legal proceedings between the parties.
- Attempts made for dispute settlement by family.
- Separation period exceeds 6 years.

Supreme Court's Inherent Jurisdiction Under article 142 of Constitution of India:

Our Constitution conferees wide power on the Supreme court of India [18]such as power to grant Special Leave against the orders or decrees from any court, or Tribunal in the country or to have exclusive jurisdiction to decide the disputes of the President or Vice President.

The law laid down by the Hon'ble Supreme Court is no doubt the laws of the Land binding on all the courts in the country. The Constitution of India confers power upon the Supreme Court to ensure that courts do not suffer from any jurisdictional difficulties to do justice between the parties before it.

Article 142 of the Constitution of India is one of such provisions which empowers the Supreme Court to pass such "Decree or Order" as may be necessary for doing complete justice between the parties.

In other words, article 142 supplement the power already conferred upon the Supreme Court of India under the Constitution top ensure that justice is done and in doing so, the Court is not prohibited by lack of jurisdiction or authority of law.

The supreme Court has exercised its power under Article 142 of the Constitution even in the case Of matrimonial matters that have been pending for long time in the Tribunal/High Court. The reason is that the matter is adjourned from time to time on account of reconciliation between the parties, but ultimately that has not happened. Hence it is indeed an observation of the court that marriage status should, as far as possible, as long as possible and whenever possible, be maintained.

Replying on the Judgment on the Hon'ble Apex court in **Sangamitra Ghose v. Kajal Kumar Ghose,2007**[19], wherein it has been held as "we are fully convinced that the marriage between the parties has irretrievably broken down because of incompatibility of temperament. In fact, there has been total disappearance of emotional substratum in marriage. The matrimonial bond between the parties beyond repair and that the marriage has been wrecked beyond the hope of salvage and therefore public interest and interest of all concerned lies in the of the recognition of the fact and to declare defunct de jure what is already defunct de facto.

In the case of **Navin Kohli v. Neelu Kholi**, the Supreme court made a strong plea to the Union of India for incorporating irretrievable breakdown of the marriage as a separate ground for divorce under Section 13 of the Hindu Marriage act 1955 and amending the Hindu Marriage act.

It should be noted that no Court in the country except the Supreme Court can grant divorce on the ground of Irretrievable Breakdown of matrimonial relationship.

[18] The Constitution of India confers power to the Supreme Court of India under Article 142, which grants the power to pass orders for "complete Justice".

[19] SANGHAMITRA GHOSH v. KAJAL KUMAR GHOSH (November 20, 2006) 2 SCC 220.

Jurisdiction: Impact on the Hindu Marriage Act and Special Marriage Act.

As the grounds under the Hindu Marriage Act,1955 and Special marriage act,1954 are exhaustive, a divorce on the grounds of an irretrievable breakdown of marriage cannot be granted in the absence of an enabling legislative provision.

Article 142 of the Indian Constitution allows the Supreme Court of India to exercise its jurisdiction where it is necessary to do complete justice. The Supreme Court of India has, time and again, granted divorce on the ground of irretrievable breakdown of marriage.

The Supreme Court of India in **Shilpa Sailesh v. Varun Sreenivasan**[20], has explained the scope and nature of its power under Article 142. The Five Judge Constitution Bench has laid down that the power under Article 142 can be exercised to grant divorce in case of irretrievable breakdown of marriage.

The Supreme Court of India has clarified that Article 142 does not confer a right to divorce on the parties if the marriage has broken down, rather it is a matter of discretion that only the supreme Court can exercise by analyzing the various factors. These Factors may include the period of separation, the nature of allegation made by the parties, how many time the courts have intervened, etc.

Exercise of Power by the Supreme Court of India.

In the recent case of **Rajib Kumar Roy v. Sushmita Saha**[21], the Supreme Court of India granted divorce as "continued bitterness, dead emotions and long separation." In the given facts and circumstances of the case, tantamount to irretrievable breakdown of marriage.

Similarly, in **Poonam v. Surrender Kumar**[22], the Supreme Court of India observed that since the parties were living apart for more than 19(nineteen) years, they could not subserve the very objective of marriage i.e., companionship for each other. Hence, divorce was granted on the ground of irretrievable breakdown of marriage.

However, the Supreme Court of India has also warned against a hard and fast approach. In the recent case of **Nirmal Singh Panesar v. Paramjit Kaur Panesar**[23], the Supreme court of India declined to grant relief on this ground as the wife was ready and willing to undertake her obligations under the marriage. In **Delma Lubna Coelho v. Edmond clint Fernandes**[24]**,** the Supreme Court of India noted, "we do not find this to be a fit case for exercise of power under Article 142 as good sense may prevail on the parties. They had lived together only for 40 days."

In effect, the Supreme Court of India has not provided for a straitjacket formula, rather they exercise the power under Article 142 on a case-by-case basis. Further, as the power under Article 142 is discretionary, the Supreme Court may reject the relief of divorce.

Non-Consummation as a Basis for irretrievable breakdown of marriage.

Technically, consummation of a marriage requires 'ordinary and complete', rather than 'partial and imperfect' sexual intercourse. 'Impotency' must be physical or psychological and must be permanent and incurable. The Fact that the parties may have had successful intercourse before the marriage is irrelevant if the incapacity existed at the time of the marriage.

The term impotency is often confused with infertility. Legally, impotency refers to the inability to consummate a marriage through natural and completes sexual intercourse. On other hand, infertility

[20] Shilpa Sailesh v. Varun Sreenivasan, petition(civil) No. 1118 of 2014, 2023 INSC 468.

[21] Sushmita Saha v. Rajib Kumar Roy. Crl Rev. P No. 35 of 2019.

[22] POONAM v. SURENDER KUMAR, 2021 SC 903 , civil appeal: 9545 of 2010.

[23] Dr. Nirmal Singh Panesar v. Paramjit Kaur Panesar, civil appeal no. 2045 of 2011, judgment on October 10,2023.

[24] DELMA LUBNA COELHO v. EDMOND CLINT FERNANDES, 2023 INSC 389.

(inability to conceive) does not amount to impotency and is not a valid ground for annulment. Under the Hindu Marriage Act, 1955, a marriage can be declared voidable if either spouse is proven to be impotent at the time marriage and remains so at the time of filing the petition. If the marriage was never consummated due to the respondent's impotency, the aggrieved spouse can seek an annulment (not divorce).

So, by consummation we mean capacity to do sexual intercourse. It has nothing to do with ability to procreate. So, Marriage is very well consummated even though the person is sterile or infertile, or the wife has no uterus.

- **Grounds of non-consummation:**

There are two possible situations for non-consummation of marriage:

1. **Impotency** (It is ground for making Voidable under **Section 12(a) of Hindu marriage Act, 1955**), meaning that on this ground you get your marriage declared void by the court.
2. And it has been judicially recognized a part of **Cruelty** Under **section 13(1)[i] of Hindu Marriage Act.**
3. Persistent refusal to have marital intercourse (Amount to Cruelty)

Impotency[25] must have existed at the time of consummation of marriage. By impotency we mean practical impossibility of consummation of marriage i.e., inability to perform or permit performance or performance of the complete act of sexual intercourse. Thus, partial or imperfect, difficult and painful intercourse amounts to impotency.

However, sexual intercourse, which is incomplete occasionally, does not amount to impotency.

Impotency is usually either Physical or mental. The latter includes emotional, psychological or moral repugnance or aversion to the sexual act. If impotency can be cured by medical treatment or surgery, it would not amount to impotency unless the person refuses to undergo treatment.

- **Irretrievable Breakdown of Marriage Concept.**

Irretrievable breakdown is not a Universal Statutory ground, while the concept is widely discussed and recognized in modern law, it is not always a distinct, codified ground for divorce in all countries, matrimonial laws (e.g., in India, it is not directly statutory ground under the Hindu Marriage Act, Though the Supreme Court of India uses it special power under Article 142 to grant divorce on this basis).Evidence of Breakdown in a marriage has failed to consummated, it provides strong evidence that matrimonial bond has broken down beyond repair. If the Parties have separated and have been unable or unwilling to live together as husband and wife, the non-consummation supports the claim that the marriage is "dead" and beyond salvage.

Therefore, the **inability to consummate marriage** can be a **strong indication** and, in effect, a reason for the **irretrievable breakdown of marriage**. While "**irretrievable breakdown**" itself may not be a standalone legal ground for divorce in all jurisdictions, non-consummation due to one spouse's willful refusal or impotency is often successfully used to prove a specific statutory ground. Specifically, the persistent, unjustified denial of sexual relations can constitute mental cruelty, which is a recognized ground for divorce. Furthermore, if the marriage was consummated due to a party's permanent impotency, the marriage is often considered voidable, allowing the other spouse to seek a decree of **nullity(annulment).**

In both these legal scenarios-cruelty or annulment due to non-consummation-the court recognizes that the fundamental component of the marital relationship has failed, demonstrating that marriage has, in fact, broken down beyond any reasonable hope of salvage.

[25] **"Impotency of a marriage"** refers to a legal ground for annulment, where one or both parties are physically or mentally incapable of performing a normal, complete sexual intercourse to consummate the marriage.

Concluding Remarks.

A law of divorce based mainly on fault in adequate to deal with a broken marriage. Under the faulty the guilt must be proved; divorce courts present concrete instances of human behavior as bring the institution of marriage into disrepute. Because of the divorce of matrimonial offence, judges and lawyers are sometimes reduced to the role of scavenger. The Lawyer has to look for and expose and the judges, and lawyers are confronted with, the worst obscenities within a married life. It is therefore not surprising that with the present adversary system all types of allegations are freely hurled across the courtroom. We need not stand on an old divorce law demands that men and women must found innocent or guilty.

One cannot say that it is an enhancement of the respondent for marriage if there are tens of thousands of men and women desperately anxious to regularize their position in the community and they are unable to do so. People should be able to marry again where they can obtain a death certificate in respect of a marriage already long since dead.

The objection that irretrievable breakdown as aground of divorce is vague has been already dealt with. Irretrievable breakdown allows the spouse, or even one spouse, to terminate the marriage at will, thus transforming marriage from a union for life into one which can end at pleasure.

The Supreme Court's approach in granting divorce on the ground of irretrievable breakdown of marriage despite the absence of statutory in the **Hindu Marriage Act,1955** and **Special Marriage Act, 1954**, reflects a nuanced and pragmatic understanding of the irretrievable breakdown of marriages, the supreme court of India has demonstrated a commitment toa case-by-case analysis, avoiding rigid formulas and underscoring the need for a careful exercise of judicial discretion. Therefore, the Supreme Court's caution's role in addressing the challenges posed by irretrievable breakdown of marriage remains pivotal in shaping family jurisprudence in India. Furthermore, this goes on to shows that marriages under HMA and SMA are still considered as a scared union, which can be declared irretrievable only by the Highest Court of the Country.

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