BLOGS

Irretrievable Breakdown of the Marriage as a Ground for Divorce

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Introduction

An irretrievable breakdown of the marriage is a legal term used to describe a situation in which a marriage has broken down beyond repair. This means that the couple is no longer able to live together as husband and wife and that there is no hope of reconciliation. In many jurisdictions, the irretrievable breakdown of the marriage is considered grounds for divorce.

Why is it difficult to prove an irretrievably broken marriage in court?

One of the challenges of an irretrievable breakdown of the marriage is that it can be difficult to prove in court. Unlike other grounds for divorce, such as adultery or cruelty, the irretrievable breakdown of the marriage does not require a specific event or action to have taken place. Instead, the court must determine whether the marriage has broken down beyond repair based on the evidence presented.

In some jurisdictions, couples may be required to undergo counselling or mediation before they can file for divorce based on the irretrievable breakdown of the marriage. This is intended to give them one last chance to try to work things out and save their marriage. However, if these efforts are unsuccessful, the court may grant the divorce.

Once a divorce based on the irretrievable breakdown of the marriage has been granted, the couple will need to address a number of issues, such as property division, spousal support, and child custody and support. Depending on the jurisdiction, these issues may be resolved through negotiation, mediation, or litigation.

Concept of Irretrievable Breakdown of Marriage under the Hindu Marriage Act

In Hindu personal law, the concept of an irretrievable breakdown of marriage is not recognized as a ground for divorce. Instead, there are several grounds for divorce listed under the Hindu Marriage Act of 1955 **[*Read: Grounds for Divorce under Hindu Marriage Act, 1955*].**

The grounds for divorce under the Hindu Marriage Act include:

1. Adultery: If either party has sexual relations outside of the marriage, this may be considered grounds for divorce.
2. Cruelty: If one spouse treats the other with cruelty, either physical or mental, this may be grounds for divorce.
3. Desertion: If one spouse abandons the other without any reasonable cause, this may be grounds for divorce.
4. Conversion: If one spouse converts to another religion, this may be grounds for divorce if the other spouse does not want to convert.
5. Mental disorder: If one spouse has a mental disorder that makes it difficult to live with them, this may be grounds for divorce.
6. Venereal disease: If one spouse has a venereal disease that is communicable, this may be grounds for divorce.
7. Presumption of death: If one spouse has been missing for a period of seven years or more, they may be presumed dead, and the other spouse may be able to obtain a divorce.
8. The Hindu Marriage Act also allows for divorce by mutual consent, where both parties agree to end the marriage. In this case, the parties must have been living separately for a period of at least one year before filing for divorce.

It is important to note that under Hindu personal law, divorce is considered a last resort and discouraged. The emphasis is on preserving the sanctity of marriage and maintaining the family unit. As such, there are various efforts made to encourage reconciliation between spouses, including counselling and mediation. However, if reconciliation is not possible, the law provides for divorce on specific grounds.

Inclusion of Irretrievable Breakdown of Marriage under the Hindu Marriage Act, 1955

In its 71st Report, the Law Commission of India recommended the inclusion of irretrievable breakdown of marriage as a separate ground for obtaining divorce under the Hindu Marriage Act of 1955. The report was submitted to the Ministry of Law and Justice in 1978, and since then, there have been several attempts to amend the law to include this ground for divorce.

The Law Commission's recommendation was based on the recognition that the current grounds for divorce under the Hindu Marriage Act were inadequate and did not reflect the realities of modern marriages. The report noted that in many cases, marriages had broken down irretrievably, but the parties were unable to obtain a divorce because they could not prove any of the existing grounds for divorce.

The inclusion of irretrievable breakdown of marriage as a separate ground for divorce would make it easier for parties to obtain a divorce without having to prove any fault on the part of the other spouse. This would be particularly beneficial in cases where one party is unwilling to grant a divorce or where the parties have been living separately for a long period of time and there is no chance of reconciliation.

However, despite the Law Commission's recommendation, the Hindu Marriage Act has not been amended to include the irretrievable breakdown of marriage as a separate ground for divorce. There have been several attempts to amend the law over the years, but these attempts have been met with opposition from various quarters, including some religious and conservative groups.

Objections to the Inclusion of Irretrievable Breakdown of Marriage as a ground of divorce

One of the main objections to the inclusion of the irretrievable breakdown of marriage as a ground for divorce is the fear that it will lead to an increase in the divorce rate and undermine the institution of marriage.

However, proponents of the change argue that the recognition of irretrievable breakdown of marriage as a ground for divorce would actually strengthen the institution of marriage by allowing parties to obtain a divorce when the marriage has broken down irretrievably, rather than forcing them to remain in a dysfunctional and unhappy marriage.

Additionally, Sections 13(1-A) and 13-B of the Hindu Marriage Act, 1955, are considered inadequate to counter every situation concerning remedies in marriage. Under the fault grounds of divorce theory, though the marriage may have broken down, the parties are expected or largely compelled to live with each other in wedlock.

It is important to recognize divorce not as a mere tool for breaking sacramental ties but rather as a solution and an escape route to move out of an unbearable situation created due to high levels of tension and uncertainty in the wedlock, making it impossible to stay in it.

Contemporary developments in Law

In recent years, there has been renewed interest in amending the law to include the irretrievable breakdown of marriage as a ground for divorce.

In the cases of ***Naveen Kohli v. Neelu Kohli*** and ***N.G. Dastane v. S. Dastane***, the Supreme Court advised the government to consider including the irretrievable breakdown of marriage as a reasonable ground for granting divorce. The cases emphasize the importance of including this ground, particularly for the sake of young children, who are major sufferers stuck in the middle of their parents' irretrievable marriage.

Finally, the case also notes that many developed nations have recognized the irretrievable breakdown of marriage as a separate ground for divorce and that divorce laws have evolved over time to provide married couples with a fast legal remedy.

The recent ruling by the Supreme Court in the case of ***Shilpa Sailesh vs. Varun Sreenivasan*** has significant implications for divorce law in India. The court ruled that it has the power to dissolve a marriage if it is irretrievably broken down, even if one of the parties is not willing, and can waive the mandatory six-month waiting period for divorce under the Hindu Marriage Act.

This allows parties to bypass the waiting period and approach the Supreme Court directly for a divorce on grounds of irretrievable breakdown, providing a speedy solution for parties who are unable to live together and have mutually agreed that the marriage should be dissolved.

The judgement is significant as irretrievable breakdown of marriage is not yet a ground for divorce under the Hindu Marriage Act, which recognizes only a few grounds for dissolution of marriage. The 5-judge bench also highlighted the need to move away from the fault theory and accusatorial principle of divorce under Section 13(1) of the Act, which prescribes divorce on grounds where one of the spouses can be held guilty of certain misdeeds such as cruelty, adultery, or desertion.

The ruling does not imply that people can rush straight to the Supreme Court for a quick divorce. The grant of divorce on the ground of irretrievable breakdown of marriage is discretionary and needs to be exercised with great care and caution. Parties cannot file a writ petition and seek relief of dissolution of marriage on the ground of irretrievable breakdown of marriage directly from the court.

Overall, the ruling signals a shift towards a more no-fault approach to divorce, where the focus is on the breakdown of the marriage rather than assigning blame to one of the parties.

Concept of Irretrievable Breakdown of Marriage across the World

In many jurisdictions, including several countries, the concept of an irretrievable breakdown of marriage is recognized as a ground for divorce. This means that if a marriage is irretrievably broken and there is no chance of reconciliation, a party may seek a divorce on this ground alone without having to prove any other fault on the part of the other spouse.

One such jurisdiction where the concept of irretrievable breakdown of marriage is recognized is the United States. Most states in the U.S. have some form of no-fault divorce law, which allows a party to seek a divorce based solely on the grounds that the marriage is irretrievably broken. Some states require a period of separation before granting a no-fault divorce, while others do not.

Another country where the concept of irretrievable breakdown of marriage is recognized is Australia. The Family Law Act of 1975, which governs divorce in Australia, allows for divorce on the grounds of irretrievable breakdown of marriage. A party can apply for a divorce on this

ground if they can show that they and their spouse have been separated for a period of at least 12 months and that there is no reasonable likelihood of reconciliation.

In Canada, the concept of irretrievable breakdown of marriage is also recogniezd as a ground for divorce. The Divorce Act of 1985 allows a party to seek a divorce on this ground if they can show that there has been a breakdown of the marriage and that there is no chance of reconciliation.

Several other countries also recognize the concept of an irretrievable breakdown of marriage as a ground for divorce, including New Zealand, Ireland, and South Africa. In some jurisdictions, such as England and Wales, the concept of an irretrievable breakdown of marriage is recognized, but it is not a standalone ground for divorce. Rather, a party must prove one of several specific facts, such as adultery or unreasonable behavior, in order to obtain a divorce based on an irretrievable breakdown of marriage.

Conclusion

The recognition of the irretrievable breakdown of marriage as a ground for divorce is a significant development in family law, as it allows parties to seek a divorce without having to prove any fault on the part of the other spouse. This can make the divorce process less adversarial and help parties move on with their lives more quickly and easily.

However, it is important to note that the recognition of the irretrievable breakdown of marriage as a ground for divorce does not mean that divorce is always easy or straightforward. There may still be issues such as property division, child custody, and spousal support that need to be resolved, and these issues can be complex and contentious.