

“Irretrievable Breakdown of Marriage: A Critical Study”

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ABSTRACT

This paper aims at studying the requisites of marriage in specific religions, namely Hindu, Muslim, Parsi, Jew and Christians.

A failed marriage leads to divorce. One important ground of divorce is irretrievable breakdown of marriage. The paper deals with a critical study of the irretrievable breakdown of marriage in the religions above mentioned. A judicial journey of presentation of irretrievable breakdown of marriage as a ground for divorce is also dealt with in the paper.

The focus of the paper is also on a comparative study of matrimony and divorce in Hindu and Muslim Laws.

KEY WORDS: Irretrievable breakdown, divorce, marriage, separation, ground, fault, no fault, Hindu, Muslim, Christian, Parsi, Jew.

1. INTRODUCTION

Marriage of two people was seen as opposed to a contract. So far as the Marriage Act for Hindus was not introduced, divorce was not permitted. It was believed that marriage is permanent and everlasting. Since marriage was considered endless, the demand of estrangement was nothing near consideration.

“In the society of a country like India, the notion of irretrievable breakdown did not find sustenance believed that a lady shall not be restrained with a gentleman who is fully bereft of all the qualities that a judicious husband should have.”¹

With time, as the societies became complex, the laws have given equal rights to men and women. There has been clear judicial intervention in the matrimonial laws, thus divorce that was considered as a vile, has collated into loosened laws.

“The Hindu Marriage Act, for the initial spell allowed filing of a petition on convinced specified grounds.”² “These grounds were built on the share of the respondent. There are

¹ “Irretrievable Breakdown of Marriages, available at
: http://www.legalserviceindia.com/articles/break_mar.htm (last visited on 16/05/2020 at 12:48 AM)”

² “Law Commission of India – 71st Report on Hindu Marriage Act, 1955 (April, 1978)”

specified grounds on which the parties can seek a decree of divorce from a competent court having authority to entertain such a petition.”³

Irretrievable Breakdown of Matrimonial Relationship is not per se a basis for divorce. Eventually it is for the legislative government to embrace irretrievable breakdown of marriage as a reason for separation.

2. LITERATURE REVIEW

“Saema Jamil (2015) concluded that the legislature of the country India has been vulnerable to the outline of new basis on which divorce can be required according to the changing practices in the society. Yet, major discussions couldn’t lead to an agreement on whether irretrievable breakdown of marriage as a ground for divorce should be initiated or not. The Law Commission of India presented a report on the issue in 1978 and endorsed the starter of such a ground in the Act. It was perceived that a separation for at least three years required for filing a petition for divorce on the ground of irretrievable breakdown.”⁴

Priti Rana (2012) concluded that Law couldn’t be fixed in the face of the subtleties of life. The laws and their application should have a link with the goals and wants of the society. Law shall be revised from time to time, so as to cope with the fast changing society and needs of the people. The people also advance with time and soon become aware of all their rights. She concluded that if two people are unhappy with each other and even after repeated tries, the two cannot live together, there is really no reason for them to still stick together. They shall be definitely allowed to break the wedlock. The addition of irretrievable breakdown of marriage as a ground for divorce by “The Marriage Laws (Amendment) Bill, 2010” is the best possible solution for the future of broken marriages where continuance of marital relations is for namesake only. She exclaimed that such a provision is the need of the hour and it will turn out as a blessing for the society. There is no reason of continuing a shattered wedlock.

V.S Jaya (2017) concluded that if the marriage is lifeless ardently and actually and there is no likelihood of its repair, the marriage should be dissolved without further delay. There is no purpose of living a life full of mental torture in a case where there is no scope of repair of the matrimony.

Vijender Kumar (2010) in his work stressed upon the point that marriage is a relationship of two individuals and there should be satisfaction and happiness in a marriage for it to survive. But if a couple is not able to live harmoniously with each other and they see no scope of repair of the marriage, there is no point of continuing a fatal marriage.

³ “Hindu Marriage Act, 1955 (Act 25 of 1955), s.13”

⁴ “An Analysis of Irretrievable Breakdown of Marriage as a Ground for Divorce, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672107 (last visited on 16/05/2020 at 4:10 PM)”

3. CONDITIONS OF MARRIAGE

3.1 CONDITIONS OF HINDU MARRIAGE

For a marriage to be considered legal under the Hindu Marriage Act, 1955, The following conditions must be fulfilled i.e., “No party shall not have an existing spouse at the time of the wedding. The parties have to be proficient of providing approval and should be of sound mind; If the parties are able to give consent, none of them should be mentally unfit; Neither party shall be subject to recurrent attacks of insanity⁵; The groom shall be at least 21 years of age and the bride must be 18 years of age. The spouses must not be within levels of forbidden relationships. The parties must not be sapindas of each other.”⁶

3.2 CONDITIONS OF MUSLIM MARRIAGE

Conditions are as follows –

1. Proposal and Acceptance: Marriage just similar to any contract is a system of offer and acceptance. One party makes an offer and other accepts it. The marriage is concluded when both conditions are satisfied. The confrontations of proposal and agreement must be said in the attendance of both allies or in the presence of their agents. “Nikah under Muslim Law is a deal where only requirement is that persons entering into marriage should consent to such marriage in presence of witnesses and Kazi’s presence is a must at the marriage ceremony and other religious ceremonies”⁷. “The entire proposal and acceptance shall be completed in one meeting. A proposal made in one meeting and acceptance at another meeting does not form a valid marriage.”⁸
2. Competent Parties: The competency of parties refers to that both the parties should be Muslim and must follow Islamic religion, although they might belong to different sub sectors. The second aspect for competence of parties is that at the time of marriage, they both must be of sound mind. According to the third aspect, a person attains the legal age for marriage when he or she reaches puberty.
3. No Legal Disability: The parties shall not be legally disabled. Provided are the provisions. These prohibitions are –

⁵ “Hindu Marriage Act, 1955 (Act 25 of 1955), s.5”

⁶ Hindu Marriage Act, 1955 (Act 25 of 1955), s.5”

⁷ *Khazi Mohd. Abbas Ali v. Andhra Pradesh Wakf Board*, AIR 1979 AP 116

⁸ “Marriage under Muslim Law, available at <http://www.helpline1aw.com/family-law/MMUL/marriage-under-muslim-law.html> (last visited on 15/05/2020 at 6:05 PM)”

- a) Absolute incapacity or prohibition
- b) Relative incapacity or prohibition
- c) Prohibitory incapacity or prohibition
- d) Directory incapacity or prohibition

3.3 REQUISITES OF A PARSI MARRIAGE

For a Parsi Marriage to be held legal in the eyes of law, certain conditions must be fulfilled: “Spouses should not be of forbidden relationships; Such wedlock should be honored rendering to the Parsi system of ritual named ‘Ashirvad’ by a priest; There shall be two Parsi witnesses apart from the priest; A male of 21 years of age and a female of 18 years of age can marry.”⁹

3.4 CONDITIONS OF JEWISH MARRIAGE

“Marriages are celebrated in Bermuda according to the rites and ceremonies of Jewish faith; and any such marriages are referred to as Jewish Marriages.”¹⁰

“Common characters of a Jewish wedding include a ketubah (wedding contract) which is signed by two witnesses, a chuppah (or huppah; wedding canopy), a ring owned by groom that is given to the bride and breaking a glass.”¹¹

3.5 CONDITIONS OF CHRISTIAN MARRIAGE¹²

1. Groom must be 21 years of age.
2. Bride must be 18 years of age.
3. Agreement between the parties must be voluntary.
4. There must be two eye witnesses

4. IRRETRIVABLE BREAKDOWN OF MARRIAGE UNDER VARIOUS LAWS

4.1 IRRETRIVEABLE BREAKDOWN OF MARRIAGE UNDER HINDU MARRIAGE ACT, 1955

In 1964, Hindu Law saw a growth when the courts finally recognized irretrievable breakdown of a marriage as a ground for divorce and separation.

⁹ “The Parsi Marriage and Divorce Act, 1936, s.6”

¹⁰ “Jewish Marriage Act, 1946, s.2”

¹¹ “Conditions of Jewish Marriage, available at www.alamy.com visited on 15/05/2020 at 2:55 PM”

¹² “Section 60 of The Christian Marriage Act, 1872”

It was trusted that if the marriage has reached a position that is irretrievable, maybe on due to of fault of one, both or neither, there is no sense in continuing this relationship. The court should take into consideration such reality and free the parties from a state that has become unbearable.

In the case where no solution can be reached between the spouses, and their relationship has become unbearable for them to live in, then the court should terminate such marriage without any delay.

Irretrievable breakdown has the following versions –

1. The law lays down that the marriage has been broken down and it should be dissolved.
2. The legislations laid down criteria for breakdown, once the criteria is satisfied, the court has no option but to dissolve the marriage.
3. The parties are not ready to live together even after judicial separation.

Thus, divorce is no longer a reward for marital virtue or penalty for marital delinquency. It is the acceptance of a factual situation –

- “Breakdown of marriage : defact of both, a failure of marital too : oneship, dissolution of marital togetherness.”
- “In Yusuf v. Sowramma, a scholarly justice of Kerala High Court emphasized on the point, “While there is no rose with no thorns but if you hold all thorns and no rose, better throw it away.”¹³
- “In Naveen Kohli v. Neelu Kohli, the Supreme Court has encouraged the Union of India to utterly deliberate to amend the existing Act to add the ground of irreparable failure of wedding. The standards or gauge that a marriage has broken down irretrievably should be the long period of separation.”¹⁴

4.2 IRRETRIVABLE BREAKDOWN OF MARRIAGE IN MUSLIM LAW

“Concept of Divorce under Islamic Law came into existence through interpretations of provisions of Muslim Law.”¹⁵

¹³ “AIR 1971 Ker 261”

¹⁴ “AIR 2006 SC 1675”

¹⁵ “Concept of Divorce under Muslim Law, available at: <http://www.legalserviceindia.com/article/l393-Divorce-under-Muslim-Law.html>, (last visited on 02/05/2020 at 1:13 PM)”

“In Umar Bibi v. Md. Din, it was argued that the wife hated the husband so much that she could not perhaps live with him and there was absolute mismatch of temperaments. The court however declined to grant decree for divorce.”¹⁶

“Later in Noor Bibi v. Pir Bux, an effort was made to grant of divorce on the ground of irretrievable breakdown of marriage. This time the court allowed divorce.”¹⁷

Therefore, where there is total irreconcilability between the spouses, divorce is granted.

4.3 IRRETRIVABLE BREAKDOWN OF MARRIAGE IN CHRISTIAN LAW

“The 15th Report of the Law Commission made a suggestion for reorganization of the Divorce Act. The Government of drafted a Bill and referred it to the Law Commission again.”¹⁸ “In its 22nd Report in 1961, it was taken that the duos of terribly broken marriages are still deprived of a reinforcement.”¹⁹

“Divorce is deliberated to be malevolent, it must be dodged as far as possible. But in some situations, this converts into a necessity. When it is dreadful for the parties to carry on their combination with mutual love and fondness, it is better to allow them to be separate instead of compelling them to live together in an atmosphere of hatred and sufferings. Moreover, it is necessary to insert the new ground of “irretrievable breakdown of marriage”. It will be obliging to the complaining couple for their closure of marriage as soon as possible, due to which they may live happily in their life.”²⁰

“In Amarthala Hemalatha v. Dasari Balu Rajendra Varaprasad, the High Court of A.P. held that there was no provision in the Divorce Act, 1869, which allows the spouse to seek divorce in the manner as, is provided in the Hindu Marriage Act.”²¹

¹⁶ “AIR 1945 L”

¹⁷ “AIR 1950 Sind 8”

¹⁸ “Divorce under Hindu, Muslim and Christian Law, available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/71410/12/12_chapter%203.pdf, (last visited on 04/05/2020 at 10:00 PM)”

¹⁹ “Marriage Laws & Family Courts Act by E.L. Bhagiratha Rao, 10th edn, 2013, published by Asia Law House, Hyderabad.”

²⁰ “Divorce under Hindu, Muslim and Christian Law, available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/71410/12/12_chapter%203.pdf, (last visited on 04/05/2020 at 10:00 PM)”

²¹ “AIR 1990 AP 220”

5. IMPACT OF IRRETRIVABLE BREAKDOWN OF MARRIAGE

Marriage was earlier considered as an indissoluble union. The complication of modern society and its possible influence from western culture lead to a great impact on the institution of marriage.

In recent times, there has been a substantial widening of the scope of the matrimonial laws by the legislature and judicial authority. “In views of changing times, divorce laws are being substantially modified and liberalized.”²²

“The breakdown rule of separation is considered the contemporary view of divorce. Under this theory, law realizes a condition and suggests to the doomed couple that if they can please the Court that their marriage has broken down, and that they plea to terminate a scenario that has become intolerable, then marriage shall be liquefied, anything may be the reason.”²³

“The concept of irretrievable breakdown of marriage was introduced in the Hindu Law by virtue of “The Hindu Marriage Laws (Amendment) Act, 1976.” According to the amendment it was stated that if the parties had been living separately for a since a substantive amount of time and they had filed cases against the other party, then it can be perceived that the marriage had been irretrievably broken and they do not stand a chance to come back together; in such a case, they must be entitled to a decree of divorce.”²⁴

The Islamic religion encourages that its people should try to sustain their matrimony as long as they can and shall avoid the dissolution of their marriage.

When nothing such as *talaq, ila, zihar, lian, talaq – i – tafweez* or *khula* is taken into consideration, there is irretrievable breakdown of marriage, i.e. if there is total reconcilability between the spouses, it is better to end the marriage.²⁵

The introduction of the concept of irretrievable breakdown of marriage has been a challenge since the most of the individuals still believe that divorce is an evil and are not mentally ready to accept it as a ground for divorce. However, irretrievable breakdown of marriage is a fairly valid reason for divorce if the marriage has been broken down to such an extent that it is beyond repair.

“In *V Bhagat v. D Bhagat*, it was held that severe failure of marriage was not a basis for

²² “Irretrievable Breakdown of Marriages, availavle at :

http://www.legalserviceindia.com/articles/break_mar.htm (last visited on 16/05/2020 at 12:48AM)”

²³ “Irretrievable Breakdown of Marriage : Right of a Married Couple, available at www.nalsar.ac.in (last visited on 15/05/2020 at 3:15 PM)”

²⁴ “The Hindu Marriage Laws (Amendment) Act, 1976”

²⁵ “Irretrievable Breakdown of Marriages, availavle at :

http://www.legalserviceindia.com/articles/break_mar.htm (last visited on 16/05/2020 at 12:48AM)”

divorce.”²⁶

“In *Ajay Desai v. Rajshree Desai*, the supposed grounds were not proved and the petitioner could not plead irretrievable breakdown of marriage.”²⁷

“In *Rishikesh Sharma v. Saroj Sharma*, the court detected that the respondent wife was living unconnectedly from the year 1981 and the wedding has been destroyed down irretrievably with no prospect of the parties living jointly again. The court further spotted that it will not be likely for the parties to live together therefore there was no purpose in gripping both parties to live together. The best option was to suspend the marriage by passing a decree.”²⁸

JUDICIAL JOURNEY

A law of divorce comes into picture to deal with a broken marriage. It is required to prove guilt under fault theory.

The irretrievable breakdown of marriage was not measured to be an isolated ground of divorce by the situation. But while examining the confirmation on record to govern whether the sources on which divorce is sought are made out, the circumstances can be taken into deliberation.

The irretrievable breakdown of marriage is still not considered to be a sufficient reason for divorce. But while hearing the case and taking the evidence into consideration, it is the discretion of the court whether to consider this irretrievable breakdown as a ground for divorce or not. Even then, the decree of divorce cannot be accorded on the sole basis of irretrievable breakdown; it must be accompanied by other grounds that are specifically mentioned in the statute.

However, irretrievable breakdown of marriage can be the sole ground for divorce if the parties have leveled such allegations against each other that it is clear to the presiding judge that the marriage has already ended and the parties cannot live together under any circumstances. But this power available to the court must only be exercised in exceptional circumstances with due care and only if such a decision will be in the interest of the parties involved.

“In *Tapan Singh Chakraborty v. Jyotsna Chakraborty* it was held by the Calcutta High Court that the Magistrate cannot allow divorce on the ground that the marriage is permanently broken down, as it has not been made a reason for divorce as yet.”²⁹

“In *Reynold Rajamoni v. Union of India* the Supreme Court highlighted that when provisions

²⁶ “AIR 1984 SC 710, p721”

²⁷ “AIR 2005 Bcom 278”

²⁸ “I (2007) DMC 77”

²⁹ “AIR 1997 Cal. 134”

of the legislature specify basis for separation, they are the conditions that the court has jurisdiction to grant the divorce. If at all any grounds need to be established, it is of the legislature and not the court.”³⁰

“In Vishnu Dutt Sharma v. Manju Sharma, the Supreme Court held that a announcement of divorce between the parties cannot be settled only on purpose of marriage having been permanently broken down and Court cannot add a new ground in the surviving list of grounds as presented in Section 13 of the Hindu Marriage Act 1955 or any other Statute dealing with matrimonial remedies.”³¹

“In Dastane v. Dastane, the parties fought for many years. Husband’s petition for judicial separation was discharged on strict grounds of condonation. The marriage in this case was totally exhausted. The case announces irretrievable breakdown of marriage as a distinct ground of divorce.”³²

“In Suhendu Bikash Chatterjee v. Anjali Chatterjee, it was held that ground for irretrievable breakdown of marriage can be used in incomparable cases.”³³

“In Romesh Chandre v. Savitri, the appellant and the respondent had been matrimonial for an era of 25 years but during this period, the male was guilty of committing adultery. The differences and problems between the husband and wife have given way to the divorce. Repeated apologies by the husband too couldn’t fix the marriage. Their marriage had reached a stage of no return and thus needed to be dissolved. The divorce was granted to the parties.”³⁴

“In Chandralekha Trivedi v. Dr. S.P Trivedi, the couple was in contradiction of the decree of divorce on the argument that it is not apt for a Hindu lady to be a divorcee. The Supreme Court held that although it is not judicious for a Hindu lady to be a divorcee but under the existing occurrences not paying much attention to the lawfulness of the accusations but simply that their relationship had become so bitter and harsh for accusing each other of such deprived behaviour that it would be in the interest of both the parties to be separated than to live unhappily with humiliation in the nuptial home. Thus, the Court in view of the complete collapse of marriage maintained the decree of divorce by letting irretrievable breakdown of marriage by a back door entry.”³⁵

“In Abha Agarwal v. Sunil Agarwal, the appellant-wife was accused of cruelty by her husband. The husband first approached the Court and filed for divorce but later withdrew it on being asked to give the marriage a second try by the wife’s relatives. There was no change

³⁰ “AIR 1982 SC 1261”

³¹ “AIR 2009 SC 2254”

³² “AIR 1975 SC 1534”

³³ “(1996) 1 DMC 388”

³⁴ “AIR 1995 SC 851”

³⁵ “(1993) 4 SC 232”

in the behavior of his wife even the second time, cruelty against the husband and his family continued. The wife in her statement replied to this by stating that the husband and his family used to treat her badly by continually asking for dowry. However, it was proved to be false in the Court. Thus, the Supreme Court finally held that the decree of divorce must be given on account of cruelty, both mental and physical, and also because the marriage had completely broken in all aspects at least for one party.”³⁶

“In Chetan Dass v. Kamla Devi, the appellant required an annulment of marriage from his wife on the grounds of cruelty, precisely mental cruelty. Though, when investigated, his allegation was found to be dishonest. The wife further said that her husband had an extra marital affair with a nurse from his hospital. This however, turned out to be true but even then, the wife maintained that she would not like to be divorced if the husband cut his relations with the said nurse. But this was not accepted by the Court as the husband wanted to take divorce in the first place to be with the nurse and hence, this deal would not work out despite further trials. Therefore, the only proper solution out of this deadlock would be to get the two parties divorced as there is a clear case of irretrievable breakdown of marriage.”³⁷

“In Naveen Kohli v. Neelu Kohli, the Supreme Court has once again made a strong plea for including irretrievable breakdown of the marriage as a separate ground of divorce under Section 13 of the Hindu Marriage Act 1955. The husband had filed a petition for divorce from his wife on various grounds of cruelty, alleging that the wife had criminal complaints against her. In a casing it was a rancorous Court battle devoid of any sympathy and decency. The couple was nothing but simply unhappy with one other’s presence and desperately wanted to part ways. The Court held that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to the parties and no use of continuing the matrimonial bond which is beyond repair.”³⁸

“In Anil Kumar Jain v. Maya Jain, the parties had been living separately for seven years. The parties filed a joint petition for divorce by mutual consent in a trial Court in Madhya Pradesh. As the wife withdrew her consent later, the Court dismissed the petition. A single judge bench of Madhya Pradesh High Court at Jabalpur also dismissed the appeal. The Supreme Court allowed the appeal and held that it is empowered to grant divorce by mutual consent under Section 13-B of the Hindu Marriage Act 1955 even if the wife or the husband withdraws it during the proceedings in the Lower Court prior to passing of the order. Though under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition came up for orders and a decree for divorce was finally passed. The Supreme Court made it clear that the doctrine of irretrievable breakdown of marriage was not available to the High Courts, which do not have powers similar to those exercised by the Supreme Court under

³⁶ “AIR 200 All 377, 384”

³⁷ “AIR 2001 SC 1709”

³⁸ “AIR 2006 SC 1675”

Article 142. The Court further held that no purpose would be served by prolonging the agony of the parties to a marriage, which had broken down irretrievably, and the curtain had to be rung down at some stage. The Court has to take a total and broad view of the ground realities while dealing with adjustment of human relationships.”³⁹

7. COMPARATIVE STUDY (BETWEEN HINDU AND MUSLIM SEPARATION)

In the earlier times when there were no Statutes or Acts to govern marriages, the teachings of Mitakshara and Dayabhaga Schools used to operate the Hindu Marriages. Later, their teachings were converted into legal statutes that now govern Hindus. The Statute is popularly known as “Hindu Marriage Act, 1955.”

“Marriages in the cases of Muslims are formalized as per the Muslim Personal Law (Shariat) Application Act, 1937 which deals with the marriages, divorce, the law of inheritance and succession. Fundamentally, Muslims recognize the Quran as the most important source because Muslims believe that it entails of words and actions of the Prophet Mohammed. He believed that divorce is the worst practice and should be avoided as much as possible. Shariat Law was a result of interpretations given by different scholars and schools of Muslim Law.”⁴⁰

“Nevertheless at some occasions, this evil becomes a necessity, when it’s not possible for the parties to the wedding to hold on their union with sympathy and love then it is higher to permit them to urge separation than compel them to measure along in an environment of emotion and disaffection. the premise of divorce in Islamic law is that the inability of the spouses to measure along instead of any specific cause (or guilt of a party) on account of that the parties cannot live together. A divorce is either by the act of the husband or by the act of the married person. If marriages are solemnized with validity below Muslim law, then a husband and woman each are liberated to offer divorce to every different.”⁴¹

The conditions for a valid Hindu marriage are that “no party should have a legal partner at the time of the marriage. The parties should be capable of giving consent and should be of sound mind; Even if the party is able to part consent, none of them should be suffering from a mental disorder. Neither party shall be subject to recurrent attacks of insanity; The male and female should be atleast 21 and 18 years of age respectively; The parties must not be sapindas of each other i.e. they must not be part of forbidden relationships.”⁴²

Conditions of Muslim marriage are- Proposal and Acceptance i.e - Marriage like any other contract is constituted by question and answer. One partner to the marriage must make a proposal to the other party. The marriage is considered complete when the other party has

³⁹ “II (2009) DMC 449 (SC)”

⁴⁰ Comparative study between Hindu and Muslim Law, available at: www.blog.ipleaders.in (last visited on 15/05/2020 at 3:37 PM)”

⁴¹ “Comparative study between Hindu and Muslim Law, available at: www.blog.ipleaders.in (last visited on 15/05/2020 at 3:37 PM)”

⁴² “Hindu Marriage Act, 1955 (Act 25 of 1955), s.5”

accepted the offer. The verses conveying proposal and acceptance must be expressed in each other's attendance. The entire proposal and acceptance shall be constituted in one sitting. If proposal is made at one meeting and acceptance at another meeting does not establish a valid marriage. The parties involved shall be competent. Muslim who is of stable state of mind and mature can enter into a contract of marriage and no legal disability shall be there.

“Marriages in cases of Hindu were considered as permanent union which has been expressed by Manu as well as by various sages and paraphrasers of Hindu texts and said that Hindu law does not contemplate divorce and thus divorce was not recognized in the ancient Hindu law, they said that marriage once sanctified has to be continued till seven lives. It was after the Hindu Marriage Act 1955 which recognized Divorce as a ground for dissolution of marriage.”⁴³

Earlier, Irretrievable breakdown was not considered a ground for divorce. It was decided in *Naveen Kohli v. Neetu Kohli*⁴⁴ that it should be a valid ground for divorce. It was always a ground for divorce under Muslim Law.⁴⁵

Another point of difference under Islamic Law and Hindu Law is their take on bigamy. Islamic Law allows the Muslim men to have more than one wife without separation from the other wife, whereas the Muslim women can have only one spouse. Hindu Law prohibits Bigamy, neither the woman nor the man shall be in a relationship at the time of marriage.

There is difference between the ceremonies; for example, the Muslims don't have to do pheras or vermilion. But it is mandatory for Hindus to do so. Similarly, Hindus do not have to read Nikah. But the Muslims have to read Nikah. Also, divorce in Hindu Law and Muslim Law differ in scenarios.

Although in both the laws, marriage is considered to be sacramental and they both encourage parties to sustain their marriage, from this it can be concluded that marriage for Hindus as well as Muslims is essential but their requirements, process and basic deals differ to a great extent.

“Also as far as divorce is apprehensive, in case of Hindu it became as a new perception because among Hindus it was believed that Marriage once solemnized has to be continued till generations of life so some new grounds in Hindu Marriage Act to get the marriage renounced and also the conditions and essentials of lawful divorce and marriage came into force, but in the cases of Muslim it was a very orthodox concept so there were few alterations

⁴³ “Comparative study between Hindu and Muslim Law, available at: www.blog.ipleaders.in (last visited on 15/05/2020 at 3:37 PM)”

⁴⁴ “AIR 2006 SC 1675”

⁴⁵ “Irretrievable Breakdown of Marriage, available at: www.legalserviceindia.com (visited on 11/05/2020 at 12:58 AM)”

in it, like some grounds for women were introduced so that they may also give divorce because Muslim Law was silent on this aspect and gave all powers of Divorce to men.”⁴⁶

CONCLUSION

Marriage is a relationship that binds two people together for life and beyond. Every marriage is one of a kind and has its own social dimensions. The essence of marriage lies in the happiness of the married couple and once that essence has vanished, it may be difficult for the couple to sustain this sacramental relationship and therefore they resort to divorce.

Marriage is a union between two people, who share love, care and purity. It was earlier believed that marriages should be sustained forever, even if it meant being bound in a relationship that has no love because separation and divorce was a social evil. However, the situation has changed and the society accepts the concepts of divorce with an open mind and believes that everyone has the right to happiness and should not continue to bind themselves to a marriage that has no meaning.

The society has slowly started to accept the fact that it is not a sin if the marriage did not work out. Before it gets further miserable, it is better to part ways and have a happy life rather than living miserably for the rest of your life. Nevertheless, it is of no benefit to the spouse, or the society to continue a terribly fatal and failed marriage, which has broken to shatters.

If the marriage is broken and both the husband and wife have a common say on it, then there is no idea of continuing the wedlock. It would only further create hatred and misunderstanding between the parties if the divorce is not granted under reasonable time. No two unhappy people shall be made to spend their life together.

It was only after due consideration by the court that the concept of irretrievable breakdown of marriage was considered as a ground for divorce since many a times, the parties do not have any specific problem with each other and neither party has broken the trust of the other but they seek divorce on the simple ground that they are not compatible with each other and living together would only lead to further misery and bitterness.

“It is clear that law of divorce under scrutiny in all the legal systems of the world. Laws of Divorce provide quick remedy for couples that want to separate. Apart from divorce, the law is also taking care of ancillary remedies of the parties and providing proper care and protection to the children of divorced couples. However, individual freedom and independence have been regarded more than preserving social interests, security and

⁴⁶ “Comparative study between Hindu and Muslim Law, available at: www.blog.ipleaders.in (last visited on 15/05/2020 at 3:37 PM)”

solidarity in general.”⁴⁷

“The Supreme Court of India has granted divorce in many cases not only on the basis of adultery, cruelty or desertion but more so because in their opinion the marriage between the two parties had completely broken down; lost faith, love, care; emotional break down; and failed to control their feelings. Though, there is no explicit provision of ‘irretrievable breakdown of marriage’ as an independent ground of divorce in Section 13 of the Hindu Marriage Act 1955 or Section 23 of the Special Marriage Act 1954, yet the Supreme Court used its power vested in it by Article 142 of the Constitution towards administration of absolute justice for the parties in the matrimonial proceedings.”⁴⁸

Even though from the above research it can be seen that there are different conditions and validations required to constitute a legal marriage in the eyes of law, but the one thing in common is that they all believe in the sanctity of marriage and expect their followers to consider marriage to be sacred and only seek for divorce if it is impossible to retrieve the love in the marriage. Hindu, Muslim and Christian Laws have specifically incorporated irretrievable breakdown of marriage in their statutes but to grant a divorce on this ground, the court should make sure that the marriage has in fact broken beyond repair. Whereas Jew and Parsi Laws are silent on the concept.

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⁴⁷ “Irretrievable Breakdown of Marriage : Right of a Married Couple, available at www.nalsar.ac.in (last visited on 15/05/2020 at 3:15 PM)”

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