

HINDU LAW OF DIVORCE – A JOURNEY FROM ‘GUILT’ TO ‘IRRETRIEVABLE BREAKDOWN’

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ABSTRACT

Bringing in ‘irretrievable breakdown of marriage’ as a ground for getting divorce, through an amendment to the Hindu Marriage Act, 1955, has been gaining momentum since later part of 1960s, as the existing grounds prove to be inadequate to address certain situations. The legislative lacuna received the attention of the judiciary, the government, the Law Commission and the people equally paving the way for bringing in the Marriage Laws (Amendment) Bill, providing for irretrievable breakdown of marriage as a ground for divorce in 1981, 2010 and 2013. But in spite of repeated legislative endeavor, the Bill could not get through the legislative scanner owing to one reason or other which signifies the undeniable fact that the proposed Bill has great potential to impact the institution of marriage, the rights of the parties to the marriage, the welfare of the children and ultimately on the social fabric of the nation in a multifarious ways. On one hand there is a heavy pressure from the Law Commission of India and the Apex court to bring an amendment in the Hindu Marriage Act, 1955, as a progressive measure of matrimonial reform and on the other hand there is a mixed response from the community for whom the proposed reform is intended. Some women’s organizations oppose it saying that the Bill, if enacted, has the potential of misuse by the unscrupulous husbands who would desert their wives and children and take advantage of this easy provision to take divorce. Representations from various men’s organizations say that the Bill in the present form, if enacted would result in misuse of law by wife to the disadvantage of the husband. Some groups who believe in preservation of the sanctity of marriage contend that the proposed amendment would de-stabilize the institution of marriage and encourage non-marital live-in-relationships. There are voices which want the amendment to come in, so as to rescue spouses from broken down marriages and the shelving of it would be an unwarranted concession to moral conservatism. The government is sandwiched between the various pressures and the subject receives all the more importance in the light of the government’s recent decision to shelve the Bill for the present to prevent a hasty legislation. In view of strong arguments on either side of the issue, a meaningful public debate is not possible without a grasp of the subject in its entirety.

The author in this article tries to highlight the existing law on divorce governing the Hindus under Hindu Marriage Act, 1955, how it is deficient to address ever growing situations of breakdown of marriages, whether the proposed but shelved Bill is a correct prescription to fill the lacuna and how the Bill can be made gender neutral and have smooth legislative passage in future with minimum resistance. Though the Bill proposed to bring changes in Hindu Marriage Act as well as Special Marriage Act, the author limits the scope of this article to Hindu marriage Act only.

KEYWORDS: Matrimonial Fault or Guilt, Mutual Consent, Breakdown of Marriage, Irretrievable Breakdown of Marriage, Restitution of Conjugal Rights and Judicial Separation