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## Case Comment: Naveen Kohli vs Neelu Kohli: Inadequacy of Divorce Laws in India

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### INTRODUCTION

### FACTUAL BACKGROUND

The appellant Naveen Kohli married the respondent Neelu Kohli on 20.11.1975, and three sons were born out of wedlock. However, within a few years of the marriage, the parties fell out. The appellant alleged that he had found the wife in a compromising position with another man, and the wife alleged that the appellant had a concubine. Additionally, the respondent initiated a number of civil and criminal proceedings against the appellant whereas, the appellant filed a civil suit against her and was living separately for more than ten years. Subsequently, the appellant filed a petition under the HMA<sup>1</sup> in the Family Court, Kanpur City seeking a divorce.

The contentions raised were, thus, mainly that of cruelty and adultery. After careful scrutiny of the evidence, the trial court held that the nature of allegations was such that there was no cordiality left between the parties, and the animosity made it impossible for them to cohabit.

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<sup>1</sup> Hindu Marriage Act 1955

The court thus passed a decree for divorce under s.13(1)(i-a),<sup>2</sup> HMA on the grounds of cruelty and ordered the appellant to deposit a sum of Rs. 5,00,000 as permanent maintenance of the Respondent. Aggrieved by the said decision, the Respondent preferred an appeal before the Allahabad High Court, which quashed the decree passed by the Family Court. Aggrieved by the reversal, the Appellant further appealed to the Supreme Court through a Special Leave Petition, which was granted.

## LEGAL ISSUES INVOLVED

“Cruelty” under the HMA as a ground for granting a decree of divorce in the instant case.

The concept of “irretrievable breakdown of marriage” to be incorporated in the HMA as a ground for divorce considering the circumstances due to which divorce was sought in the first place.

## CRUELTY AS A GROUND FOR DIVORCE UNDER THE HMA

In deciding the issue, the Supreme Court upheld the findings of the Family Court, which adjudicated that the appellant was mentally, physically, and financially tortured by the respondent that it resulted in severing their marital tie beyond repairs. In doing so, the Court delved into various judicial decisions to understand the scope of cruelty defined therein. To establish “cruelty” in matrimonial issues, the intention is not always a pre-requisite. The cruelty so alleged may also arise from cultural/socio-economic differences. The word thus has to be taken in its ordinary sense and for the purposes of s.13(1)(a),<sup>3</sup> HMA can include in its purview physical, mental, intentional, or unintentional.<sup>4</sup>

With this background in mind, while expounding on cruelty as a matrimonial offense,<sup>5</sup> the Court highlighted the fact that irretrievable breakdown of marriage was increasingly taken to be a weighty consideration by the judges while granting divorce on fault and cruelty grounds,<sup>6</sup> as

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<sup>2</sup> Hindu Marriage Act 1955, s 13(1)(i-a)

<sup>3</sup> Hindu Marriage Act 1955, s 13(1)

<sup>4</sup> *Shobha Rani v Madhukar Reddy* [1988] AIR 121

<sup>5</sup> *Swati Verma v Rajan Verma* AIR [2004] SC 161

<sup>6</sup> *Kanchan Devi v Promod Kumar Mittal* [1996] 8 SCC 90

taken from several cases cited in its judgment<sup>7</sup>. To substantiate this finding, one important authority used by the Court was *V Bhagat v. D Bhagat*<sup>8</sup> which stated that the allegations made by both parties were so callous that it was obvious that the marriage was dead and there was no possibility of cohabitation. Hence, due to circumstances showing that there was an irretrievable breakdown of marriage, the Court in *Bhagat* granted a divorce without a trial. Similarly, in *Naveen Kohli v. Neelu Kohli*<sup>9</sup>, the fact that parties had been living separately for a considerable number of years, allegations of misconduct were made on both sides, the refusal of the respondent to give a mutual consent divorce and efforts to harass and torture the appellant (advertisement published in the English National Newspaper 'Pioneer'), leaves no doubt that the respondent's conduct amounted to "mental cruelty" under the gambit of precedential rules. In the background of such factors, it can adequately concur that the perpetual bitterness and continuous bickering went beyond the "ordinary wear and tear of married life" to be so "grave and weighty."<sup>10</sup> that the appellant, on the preponderance of all possibilities, cannot be reasonably expected to live with the consort. In other words, the conduct was such so as to fall within the parameters of cruelty under the HMA.

Recounting the overall scenario, as also reiterated by the Court, the marriage can be viewed as a reflection of the breakdown of their relationship, and drawing from the 71<sup>st</sup> Law Commission Report<sup>11</sup>, the Court was right in stating that restriction of divorce grounds to a particular offence causes grave injustice to those parties who are unable to live together as spouses but are unwilling to impose matrimonial fault on each other. The sanctity of a marriage, therefore, does not lie in refusing to sever the marital tie but rather wisdom lies in recognition of this fact and ultimately "declaring defunct de jure what is already defunct de facto."<sup>12</sup> It was on this reasoning it appealed to the legislature to consider amending divorce laws to include "irretrievable breakdown" as a valid ground.

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<sup>7</sup> *Chandrulekha Menon v Vipin Menon* [1993] 2 SCC 6

<sup>8</sup> *V Bhagat v D Bhagat* AIR 1994 SC 710

<sup>9</sup> Hindu Marriage Act 1955, s 13(1)

<sup>10</sup> *Ibid*

<sup>11</sup> Hindu Marriage Act 1955

<sup>12</sup> *Ibid*

## IRRETRIEVABLE BREAKDOWN OF MARRIAGE

In India, despite recommendations made by judicial authorities, the idea of granting a divorce based on no particular fault of either of the spouses seems somewhat hard to digest by our Legislature, who simply refuses to account for a “realistic assessment of marriages.”<sup>13</sup> and introduce this concept under s.13, HMA.<sup>14</sup> It is indeed a cause of grave concern that our laws fail to cater to instances wherein a marriage has become totally devoid of its substance, yet no provision of seeking divorce is legally available.

The court, once again, impressed upon the need to legitimize the breakdown theory, in the present case, all the while exposing the limitations of the existent grounds stipulated under s.13, HMA.<sup>15</sup> It recounted the facts and circumstances of the case as a reflection of a dead marriage. Additionally, it critiqued the High Court in refusing to sever a tie in law that no longer served the sanctity of marriage. However, even though the Court recognised this lacuna in the law, it refused to exercise its power under Art. 142<sup>16</sup> to grant a divorce on the grounds of “irretrievable breakdown” and relying on previous judgements<sup>17</sup>, made a mere suggestion for its inclusion. Thus, clearly reflecting the inconsistency in activism shown by the Judiciary over and above the Legislature regarding its acceptance, even in exceptional cases like *Naveen Kohli v. Neelu Kohli*<sup>18</sup>.

The trajectory, however, of the Legislative inconsistency can be traced at two probable levels: Firstly, it will open the flood gates for litigation and give rise to hasty divorces based on minor maladjustments in the marital relationship<sup>19</sup>. Secondly, it might be discriminatory against women... where only a right to maintenance and not matrimonial property is recognized<sup>20</sup>.

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<sup>13</sup> *Ibid*

<sup>14</sup> Hindu Marriage Act 1955, s 13

<sup>15</sup> *Ibid*

<sup>16</sup> Constitution of India, art 142

<sup>17</sup> Hindu Marriage Act 1955, s 23(2)

<sup>18</sup> Hindu Marriage Act 1955, s 13(1)

<sup>19</sup> *Ibid*

<sup>20</sup> K Chandru, ‘Divorce! Do We need a Change in The Law, in Justice for Women’ [1996] Personal Laws, Women's Rights & Law Ref 183, 183-186

The first argument given is flawed since 'minor maladjustments' are limited to what the courts perceive. By refusing its inclusion, the legislators are taking away the right of individuals to decide for themselves what they want out of a marital relationship.<sup>21</sup> Additionally, the 'floodgates for litigation' which might be opened can be easily remedied since there are already primary processes enshrined in the Arbitrary Dispute Resolution sector, like mediation. Only when a couple attempts and breaks through this process can it be allowed to move to the courts.

Secondly, the solution to the lack of right to matrimonial property lies in changing laws in that area. It is not a sufficient reason to curtail divorce. In essence, the problem of dependency of women in a marriage should not necessarily mean refusal of divorce.<sup>22</sup> The constructive solution, therefore, lies in strengthening maintenance laws rather than retaining insufficient and inadequate divorce laws on a rather subjective basis.

The impact of not having such a law in place overshadows judicial concerns over its inclusion. The need, therefore, to legislate on the subject is imperative, especially with judicial will apparent, as also observed in the case.<sup>23</sup> However, while introducing such an amendment, due regard should be given to the nature of marriages under Indian personal laws, and adequate safeguards must consequently be established to protect feminine interests.

## CONCLUSION

Considering the fact that marriage is the foundation of Indian society, it is important for legislators to understand that only when such broken marriages cease to exist will our society become more stable, tolerant, and progressive. Broken marriages do not contribute to the well-established system of society that legislators try to retain. Rather, they inversely affect independence. Relying on various judicial pronouncements, the Court, yet again in *Naveen Kohli v. Neelu Kohli*.<sup>24</sup> Recognised a situation wherein the marriage had irretrievably broken down but did not exercise it due to lack of legislative recognition. Instead, it ultimately granted the divorce

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<sup>21</sup> *Ibid*

<sup>22</sup> Chandru (n 32)

<sup>23</sup> *Ibid*

<sup>24</sup> *Naveen Kohli v Neelu Kohli* AIR 2006 SC 1675

on the grounds of cruelty. It is only logical that in scenarios like the present case, the divorce laws in India should adequately allow courts to grant relief to couples caught in a sham of marriage even in the absence of any matrimonial offence or consent of both parties.<sup>25</sup>

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<sup>25</sup> *Ibid*