

## **Campaign against Irretrievable Breakdown of Marriage Bill**

### **The Issue**

We are concerned with the news reports that the Cabinet has cleared the Bill to make Irretrievable Breakdown of Marriage a ground for divorce under the Hindu Marriage Act and the Special Marriage Act. The same is scheduled to be introduced in the forthcoming session of the Parliament.

### **Our demand**

A discussion on women's right to matrimonial property should go alongside the discussion on irretrievable breakdown of marriage so that safeguards for women can be built into the provision.

### **Irretrievable Breakdown of Marriage**

Irretrievable breakdown of marriage is an attempt to introduce one sided divorce. Once it is passed, either spouse would not have to prove any matrimonial fault against the other, in order to get a divorce. Unfortunately, this Bill is being promoted as a beneficial provision to women.

We need to understand that marriages function on a gendered premise where there is wide disparity between the roles, functioning and responsibilities of husbands and wives. While men's contribution to the marriage relationship is mainly economic, most women contribute to the marriage in non-economic terms as home makers and primary care takers of their children. At the time of divorce, women's non-economic contribution is not taken into account as we still follow the old English system of dividing the property based on title.

When husbands file for divorce on the ground of women's cruelty, adultery or desertion, a great deal of bargaining takes place in and out of courts during 'settlement' meetings. If the husband himself is guilty of adultery, bigamy, cruelty or desertion, a principle that is used is that 'no one will be allowed to take advantage of one's own wrong'.

These concepts help women to negotiate economic settlements in proceedings for divorce filed by the husband. The husband is usually aware that he may not succeed in proving these allegations and hence he is willing to provide a lump sum settlement to his wife, in order to obtain the desired divorce. Introducing the ground of irretrievable breakdown of marriage will take away this negotiating power from the woman concerned.

Based on our long term work in defending women in trial court litigation, not just in Mumbai but in smaller district towns of Maharashtra, most women whose husbands file for divorce come from middle and lower economic strata where women are primarily home makers and the petitions are filed by husbands who have abandoned the wives and are in a new relationship. When allegations of cruelty, desertion or adultery hurled at their wives cannot be substantiated, the ground that the marriage is 'broken down irretrievably' is advanced.

While understanding that one cannot cling to a marriage which has become 'dead wood' (a phrase often used in judgments) we need to spell out the non-economic contribution of the wife to the marriage while arriving at divorce a settlement. Today the negotiation depends vastly on the need of the husband for a divorce and the woman's power of resisting the divorce. In the event that this power is being taken away from women, it needs to be replaced by certain statutory protection in terms of distribution of property / assets of the spouses. Only then will we be able to secure the rights of a vulnerable class of women.

We would like to explain that, it is not our position that such a legislation should not be introduced at all. This principle is being invoked since 1993 by the Supreme Court and various High Courts on a selective, case to case basis.

Our concern is that if this ground is introduced by way of an amendment to the matrimonial law, and if used indiscriminately, it will impoverish, many women who have been in long term marriages and have contributed to the marriage, only as home makers. It will render these women destitute and totally dependent upon their natal family, which may or may not support them, after several years of marriage.

It is not our case that some women will not be benefited by this introduction. It will be beneficial to those women who want to be out of their marriages, and need no economic support from their husbands. However, a large number of women are outside of this framework and need to negotiate economic support at the time of divorce. Issues such as whether it has been a long term or short term marriage, whether the wife is a wage earner and also a home maker or merely a home maker, and which of the spouses is desirous of obtaining a

divorce and is keen to move on in life become key concerns in this discourse. Other factors such as age and class also play a part.

Hence we wish to protest against the introduction of the proposed Bill in the Parliament and propose that a discussion over women's right to matrimonial home and property should proceed alongside the discussion on irretrievable breakdown of marriage so that certain safeguards can be built into the proposed legislation to secure women's rights.

### **The way forward**

The National Commission for Women has committed to hold a day-long meeting in Mumbai on 31st July 2010 and invites concerned individuals and organizations to discuss the issue. Those who wish to attend this meeting can register their names at [majliscampaigns@gmail.com](mailto:majliscampaigns@gmail.com) or contact Ms. Sindhu at 022 26661252 / 26662394.

Please help generate as much awareness about this issue as possible.

Thank you.

Flavia Agnes