

News

Courts must determine who ended the marriage; living apart is not grounds for divorce: Supreme Court



The Court stated that a marriage cannot be deemed to have "irretrievably broken down" in order for a divorce to be granted unless there is convincing proof of willful desertion or refusal to live together.

According to a recent ruling by the Supreme Court, judges cannot assume that a marriage has "**irretrievably broken down**" or award a divorce on that basis just because the spouses are living apart without first figuring out who caused the separation.

A bench of Justices Surya Kant (now Chief Justice of India) and **Joymalya Bagchi** critically noted in a November 14 order that there has been a tendency for judges to conclude that a

marriage has irretrievably failed just because the spouses do not live together.

According to the Bench, before determining that a marriage cannot be saved, judges must carefully consider whether one partner abandoned the other on purpose or was forced to live apart because of uncontrollable circumstances.

"Courts, in recent times, often observe that since the parties are living separately, the marriage should be taken to have broken irretrievably. However, before jumping to such a conclusion, it is imperative upon the Family Court or the High Court to determine as to who out of the two is responsible for breaking the marital tie and forcing the other to live separately," it stated.

The Court stated that a marriage cannot be deemed to have "irretrievably broken down" in order for a divorce to be granted unless there is compelling evidence of willful desertion or unwillingness to cohabit.

The Court further stated that when a child is involved, this matter takes on particular significance.

"Unless there is cogent evidence for willful desertion or refusal to cohabit and/or look after the other spouse, the finding of marriage having been broken irretrievably is likely to have devastating effects, especially on the children. The arrival of such a conclusion puts the Courts under an onerous duty to deeply analyse the entire evidence on record, consider the social circumstances and the background of the parties, and various other factors," the decree stated.

The statement was given by the Court in a case that started in 2010 when a man filed for divorce on the grounds of cruelty, but he later withdrew. He filed a second petition in 2013, alleging that his wife had abandoned him.

In 2018, the trial court found no proof of desertion and dismissed the petition. But in 2019, the Uttarakhand High Court gave him a divorce judgment, overturning the lower court's ruling. The top court was then shifted by the wife.

The Supreme Court pointed out that prior to ending the marriage due to cruelty, the High Court neglected to examine important problems.

It criticized the High Court for accepting the husband's oral testimony while disregarding the wife's allegation that she was ejected from their marital residence and raised their child by herself.

The Bench also noted that the High Court had disregarded a number of legal issues that directly affected the case, such as whether the husband could not file a second divorce petition on the same cause of action after withdrawing an earlier one on similar grounds and whether the wife had been cruelly denied access to her marital home and child maintenance.

The top court ruled that before making a decision in a marriage dispute, judges have a heavy burden to thoroughly examine all of the available information, take into account the parties' backgrounds and socioeconomic situations, and take into account a number of other considerations.

It then overturned the divorce decree and returned the case to the High Court for reconsideration.