IRRETRIEVABLE BREAKDOWN OF MARRIAGE: A NEED FOR LEGAL RECOGNITION AS A GROUND FOR DIVORCE

by

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I.ABTRACT

The institution of marriage has evolved from primitive society to the present era through reforms over time. Marriages, whether considered a contract or a sacrament, confer the status of husband and wife on the parties, legitimacy on the children of the marriage, and certain mutual spousal rights and obligations. Over time, marriages have changed significantly. Many changes have occurred in the legal forms and conditions of marriage. Before the Hindu Marriage Act of 1955, uncodified Hindu Law did not acknowledge divorce; however, the Act introduced significant, transformative changes to Hindu marriage law by establishing Section 13, which outlines the grounds for divorce. Like the broader changes in the concept of marriage, divorce law has also changed dramatically. There has been a shift from fault-based divorce to mutual consent divorce. Divorce by mutual consent marked a significant shift in divorce legislation, but over time, the need for divorce based on irretrievable breakdown has been promoted to eliminate the complications associated with fault-based criteria and to terminate a relationship that is no longer sustainable. Irretrievable breakdown of marriage, though, is not a ground for divorce as of now, but the Honourable Supreme Court, through various judgments, has exercised the power under Article 142[1] of the Constitution of India by dissolving the marriage while emphasising the need for consideration for it to be recognised as a ground for divorce, and the Law

[1] Jorden Diengheh v. S.S Chopra *(1985) 3 SCC 62: AIR 1985 SC 935*

Bhagat v. D. Bhagat *(1994) 1 SCC 337: AIR 1994 SC 710*

Naveen Kohli v. Neelu Kohli *(2006) 4 SCC 558*

K. Srinivas Rao v. D.A. Deepa *(2013) 5 SCC 226*

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Commission of India,[2] through reports, has advocated that it should be added as a ground for divorce. Nonetheless, it is the responsibility of the Legislature to determine if irretrievable breakdown of marriage should be recognised as a valid reason for divorce under the Hindu Marriage Act of 1955.

II. Keywords

Marital dissolution, divorce, Irretrievable breakdown of Marriage, Hindu Marriage Act, Special Marriage Act

III. Introduction

Marriage is the cornerstone of a family and, in turn, an essential tenet of society. In Hinduism, marriage stems from a deep cultural tradition. The belief in the sacredness of marriage made it unbreakable under Hindu Law. However, with the codification of laws, the Hindu Marriage Act of 1955 granted both partners the right to divorce on specified grounds. Over time, to adapt to societal needs, the legislature introduced various amendments. One such substantial amendment came in 1976[3], which incorporated "mutual consent" as a ground for divorce. The Hindu Marriage Act identifies limited causes for marital dissolution under Section 13. Nonetheless, due to shifting social norms and the changing views on marriage, the Supreme Court has expressed significant concern about acknowledging the irretrievable breakdown of marriage as a valid reason for divorce. A marriage that is completely unworkable, emotionally dead, beyond saving, and has irretrievably broken down is referred to as having an "irretrievable breakdown of marriage". In words of Justice Krishna Iyer, "*Daily trivial differences get dissolved in the course of time and may be treated as the teething trouble of early matrimonial adjustment. While the stream of life lived in married mutuality may wash away small pebbles, what is to happen if intransigent incompatibility of minds breaks up the flow of stream? In such a situation we have the breakdown of marriage itself and the only course open for law is to recognize what is a fact and accord a divorce"*[4]

Journal of Multi-Disciplinary Legal Research

[2] Law Commission of India 71st report on "The Hindu Marriage Act, 1995-Irretrievable breakdown of marriage as a ground for divorce", April 7, 1978, Chairman: Justice H. R Khanna

Law Commission of India 217th report on "Irretrievable breakdown of marriage- Another Ground for Divorce", 30th March, 2009, Chairman: Dr. Justice A. R Lakshmanan

[3] The Marriage Laws(Amendment)Act, 1976, section 13B to the Hindu Marriage Act, 1955 was amended

[4] Paras Diwan, *Marriage and Divorce Law Reforms [The Marriage Laws (Amendment) Act, 1976] (1977) 2 SCC (Jour) 1*

As a result, when a marriage loses its fundamental nature and becomes lifeless, an irretrievable breakdown is unavoidable. The Hindu Marriage Act of 1955 and the Special Marriage Act of 1954 do not acknowledge this as a valid reason for divorce, which has sparked a prolonged discussion and thus requires re-evaluation.

A. Statement of Problem

The idea of irretrievable breakdown of marriage recognises that there are times when a husband and wife reach a point where they can no longer coexist, with no chance of reconciliation. Continuing such a marriage would only mean continued distress and hardship, especially when conventional grounds for divorce are difficult to prove; the need here is to introduce irretrievable breakdown of marriage as a formal ground for divorce under the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954. It is also crucial to examine the Supreme Court's stance on dissolving marriages under Article 142 of the Constitution of India as we assess whether the existing laws sufficiently deal with marriages that no longer exist in essence

Research Objective

The endeavour of the researcher through this article is :

- To analyse the different theories of divorce along with the evolution of irretrievable breakdown of marriage as a ground for divorce and its long-awaited incorporation in the Hindu Marriage Act, 1955.
- To scrutinise Law Commission reports of 1978 and 2009 and the Marriage Laws (Amendment) Bill, 2010 and 2013
- To critically analyse Supreme Court judgments on the irretrievable breakdown of marriage
- To analyse the challenges in incorporating Irretrievable Breakdown of Marriage as a ground for divorce.

B. Research Questions

a) Whether there is a need for the incorporation of the ground of breakdown of marriage in the Hindu Marriage Act, 1955?

b) What has been the approach of the Supreme Court of India towards irretrievable breakdown of marriage as a ground for divorce?

c) Whether the incorporation of the ground of irretrievable breakdown of marriage is enough to deal with the cases of broken marriages without providing sufficient economic measures for the wife?

C. Research Methodology

The present research is doctrinal. As part of the doctrinal research, the researcher has collected data from various sources, i.e., primary and secondary sources such as books, reports, journals, magazines, Legislative and Judicial pronouncements, declarations, conventions, treaties, and information available on the internet, etc. This study analytically examines Supreme Court case law, statutory regulations, and Law Commission reports to understand the current status of the breakdown of marriage as a ground, as well as the potential for its inclusion.

Literature Review

The concept of irretrievable breakdown of marriage has received considerable attention in Indian matrimonial law, particularly because the Hindu Marriage Act, 1955 does not expressly recognise it as an independent ground for divorce. The 71st Law Commission report[5] on *The Hindu Marriage Act,1955- Irretrievable breakdown of marriage as a ground of divorce*, recommended introducing irretrievable breakdown as a ground where the marital relationship had completely failed and there was no reasonable possibility of reconciliation. This recommendation was reiterated in the 217th Law Commission report[6], *Irretrievable breakdown of marriage-Another ground of divorce*, which advocated amendment of the Hindu Marriage Act and the Special Marriage Act while protecting the financial interests of spouses and children.

Paras Diwan, in his book *Family Law: Hindus, Muslims, Christians, Parsis and Jews*[7]discusses the movement from the fault theory towards the breakdown theory of

[5] Law Commission of India 71st report on "The Hindu Marriage Act, 1995-Irretrievable breakdown of marriage as a ground for divorce", April 7, 1978, Chairman: Justice H. R Khanna

[6] Law Commission of India 217th report on "Irretrievable breakdown of marriage- Another Ground for Divorce", 30th March, 2009, Chairman: Dr. Justice A. R Lakshmanan

[7] Paras Diwan, "Family Law: Hindus, Muslims, Christians, Parsis and Jews", 6th ed., *Allahabad Law Agency, 2001*
Paras Diwan, "Hindu Law", 2nd ed., *Orient Publishing Company*, *2005, p. 563*

divorce and the need to recognise marriages that have ceased to exist in substance. His detailed examination is beneficial because it situates irretrievable breakdown within the broader shift in matrimonial law from a largely fault-oriented framework to acknowledging the disintegration of the marital relationship itself. He also clarifies the limitations of existing statutory grounds where the parties have effectively ceased to have a matrimonial relationship, but the facts do not fit neatly into a prescribed statutory category.

Judicial rulings, particularly from the esteemed Supreme Court in numerous cases[8]have underscored the necessity for reform in marriage laws regarding the legislative acknowledgement of irretrievable breakdown of marriage as a valid reason for divorce. In the landmark judgment of *Naveen Kohli v. Neelu Kohli*[9]The Supreme Court highlighted the practical scenario of marriages which are practically dead and distinguished between breakdown of marriages and the existing statutory grounds. The court held: "*A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage; the public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto"* In another landmark judgment, *Shilpa Shailesh v. Varun Sreenivasan*[10] The Supreme Court ruled that the six-month cooling-off period under Section 13- B (2) can be waived and "irretrievable breakdown of marriage" can be considered as a valid ground for divorce under Article 142, irrespective of mutual agreement for the same. The court stated that forcing a couple to stay legally married when they have been mentally, emotionally and physically separated for many years is both unfair and unproductive.

Journal of Multi-Disciplinary Legal Research

However, even after many reiterations by courts in a plethora of cases, the literature and jurisprudence demonstrate a continuing need for legislative reform introducing irretrievable breakdown as a carefully regulated ground for divorce, subject to safeguards concerning reconciliation, maintenance, financial security and the welfare of children.

IV. Concept and Theoretical Foundation of Irretrievable Breakdown of Marriage

[8] Jorden Diengdeh v. S.S Chopra, *AIR (1985) SC 935*
V. Bhagat v. D. Bhagat, *(1994) 1 SCC 337*
Samar Ghosh v. Jaya Ghosh, *(2007) 4 SCC 511*
K. Srinivas Rao v. D.A Deepa, *(2013) 5SCC 226*

[9] AIR 2006 SC 1675

[10] 2023 5 S.C.R 165

Marriage defines the true commitment of social connection. The Hindu Marriage Act of 1955 views marriage as an everlasting ritual. In Hinduism, marriage is one of the holiest and most important rites of passage, or sanskars. "Every Hindu must marry" is one of Manu's most important ideas. According to the Veda, a man's duty to his wife is to follow Dharma[11] because marriage is a sacramental union. 'Divorce' is the "Disintegration of a substantial marriage in law". The Hindu Marriage Act, 1955 revolutionised the entire concept of divorce and provided grounds based on different theories for obtaining divorce. Various theories of divorce have been propounded from time to time, such as[12]-

a) **Divorce at will theory-** According to this theory, one can divorce one's spouse whenever one pleases. This theory was recognised by Hindu Shastric Law, but the Hindu Marriage Act does not recognise this. Mohammedan law recognises this.
b) **Frustration of Marriage Theory (Section 13(1), HMA,1955 & Section 27(1), SMA, 1954-** Under this theory, when the marriage is frustrated due to physical ailment or mental unsoundness of mind, where one spouse has renounced the world, has changed his religion or has disappeared for a long period, the other spouse is at liberty to obtain divorce on the above grounds.
c) **Fault or Offence Theory(Section 13(1A),HMA & Section 27(1A), SMA, 1954-** Under this theory, when one spouse commits a marital offence, the other spouse can seek divorce. The grounds recognised under Hindu Marriage Act are- Adultery, Desertion, Cruelty etc.
d) **Divorce by Mutual Consent Theory (Section 13-B, HMA & Section 27(2), SMA,1954)-** If both parties agree to have a divorce, they can file a petition and get a divorce. This theory is opposite to the fault-based theory.
e) **Irretrievable breakdown of marriage Theory -** Under this theory, when the union between husband and wife is not workable, there is no purpose of such a marriage. When there is not an iota of hope that the issues between the parties can be reconciled, whatever may be the cause, it can be considered an irretrievable breakdown of marriage. Irretrievable breakdown of marriage, though, is not a ground for divorce, but the Law Commission and various Supreme Court judgments have emphasised the need for its legislative recognition.

[11] Manu Smriti, *ix. 96*; Paras Diwan, Hindu Law, *Orient Publishing Company, Allahabad*, *2nd ed. 2005, p. 547.*
[12] Dr Paras Diwan, "Hindu Law of Marriage and Divorce", *2023, Lexis Nexis, p. 68*

> "*During the last twenty years or so, in many countries of the world, a very important question has engaged the attention of lawyers, social scientists and men of affairs, namely, should the grant of divorce be based on the fault of the party, or should it be based on the breakdown of the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory*"[13]

To understand the concept of irretrievable marriage, it is equally important to understand what retrievability in a marriage is and the difference between the two. The key difference lies in the possibility of reconciliation and the legal implications. A retrievable breakdown suggests hope and potential for reconciliation, while an irretrievable breakdown indicates that attempts to salvage the marriage have been unsuccessful, leading to the recognition that the relationship cannot be saved. The term retrievable breakdown would connote that there is still a possibility left for saving the marriage through counselling, therapy, legal interventions or other interventions aimed at resolving the issues in the marriage.

Over the past two decades, a significant issue has captivated the interest of lawyers, social scientists, and business professionals in numerous countries: should divorce be granted based on the wrongdoing of one party, or should it be determined by the disintegration of the marriage? The former is called the matrimonial offence theory, or fault theory, while the latter is called the breakdown theory. The 'theory of irretrievable breakdown of marriage' looks beyond the stipulated grounds of 'fault-based' divorce laws. It seeks to analyse, as far as a court can, the actual status of the marriage relationship in question. As such, neither party is 'against' the other; rather, they seek to establish that the marital relationship is broken beyond repair. This is the essence of this theory.

Journal of Multi-Disciplinary Legal Research

The marriage has all the external appearances of marriage, but none of the reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. "*In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a facade, when the emotional and other bounds which are of the essence of marriage have disappeared*."[14]

Difference between Fault Theory versus Breakdown Theory

Fault Theory	Breakdown Theory

[13] 71st Law Commission report, 1995
[14] 71st Law Commission report, 1995

Focuses on matrimonial misconduct	Focuses on condition of the marriage
Requires proof of fault/ground	Focuses on whether marriage has irretrievably failed
Adversarial in nature	Potentially less blame-oriented
Examples: cruelty, adultery, desertion	Irretrievable breakdown
Individual conduct is central	State of the relationship is central

The theoretical justification for recognising irretrievable breakdown of marriage as a ground for divorce has, by now, become well established among legal scholars and practitioners. Some argue that restricting divorce to particular matrimonial offences or recognised legal disabilities could lead to unfairness in cases where neither partner is to blame, or when the type of wrongdoing is such that the individuals involved are reluctant to reveal it. Restricting the grounds of divorce to a particular offence or matrimonial disability, it is urged, causes injustice in those cases where the situation is such that although none of the parties is at fault[15] Nevertheless, a situation may arise in which the marital relationship has deteriorated to such an extent that the marriage can no longer be meaningfully sustained or effectively worked.

Journal of Multi-Disciplinary Legal Research

V. Judicial Approach Towards Irretrievable Breakdown of Marriage

The Indian Constitution has bestowed the Supreme Court with ample powers in order to protect an individual's rights and to do justice. This is also why judicial review is an indispensable facet of the administration of justice[16]. Article 142[17] of the Indian Constitution allows the Supreme Court of India to exercise its jurisdiction where it is necessary to do complete justice. The Supreme Court of India possesses the power to decree divorces citing the concept of

[15] Ashok Hurra v. Rupa Ashok Bipin Zaveri, *AIR 1997 SC 1266*
[16] Keshavanand Bharti v. State of Kerala, *AIR 1973 SC 1461*

[17] Article 142: *Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc (1)- The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India.*

irretrievable breakdown of marriage, despite it not being explicitly listed as a reason for divorce under Section 13 of the Hindu Marriage Act, 1955. The Supreme Court has repeatedly sanctioned divorces on the basis of irretrievable breakdown of marriage

The Supreme Court of India in *Shilpa Sailesh v. Varun Sreenivasan*[18]has explained the scope and nature of its powers under Article 142. A five-judge Constitutional Bench held that Article 142 authority can be used to grant divorce where the marriage has irretrievably broken down. It emphasised that Article 142 does not bestow a right to divorce merely because the marriage is fractured; instead, it is a discretionary power that the Supreme Court may exercise only after assessing various factors. These factors may include the period of separation, the nature of allegations made by the parties and how many times the courts have intervened.

The Supreme Court and various High Courts of India across the country have often reiterated that the divorce law under the Hindu Marriage Act and Special Marriage Act needed a fresh perspective regarding the inclusion of irretrievable breakdown of marriage as a ground for divorce. The question arose before Supreme Court in *Jorden v. Chopda*[19]. The court held that *"a full reform of marriage law and the creation of unified laws that apply to everyone, no matter their religion or caste, Apparently, the time has come for a comprehensive overhaul of marriage legislation. Important divorce grounds include "irreparable dissolution of the marriage".*

Many High Courts have found such cases at their disposal that were clearly facing a dead end. In *Suprabha Joel (Capt.) v. Dr. Joel Solomon*[20] The Bombay High Court decided that the marriage could not be saved because of the facts of the case. First, the wife asked for a divorce because her husband couldn't have children. Then, the husband asked for a divorce because his wife had been unfaithful. *"If a marriage has already ended because of what one or both people did or didn't do, there's no point in trying to keep it going"*
*I*n *Amma Khatoon v. Kashim Ansari*[21], the Jharkhand High Court granted a decree of divorce on the ground of irretrievable breakdown under section *2(ix*[22]*)of the Dissolution of Muslim Marriages Act, 1939*. The court held that it is reasonable to conclude that the marriage has

[18] 2023 *SCC OnLine SC 544*.

[19] 1985 *(3) SC 62*
[20] AIR *1997 Bom.171*
[21] A.I.R. *2001 Jhar 28*
[22] Section 2 - Grounds for decree for dissolution of marriage, *(2(x))- on any other ground which is recognised as valid for the dissolution of marriages under Muslim law*

failed when a breaking point has been reached, and the partners have been living in frustration for a significant period. "*The law must recognise that the marriage has been broken down in reality and have the effect of dissolving the marital status*."[23] Under Muslim law, only the wife can dissolve the marriage as per Section 2 of the Dissolution of Muslim Marriages Act, 1939, but Section *2(x)* recognises and preserves this ground as a saving provision.[24]

The Supreme Court in the case *Samar Ghose v. Jaya Ghose*[25] The Supreme Court determined that the petitioner experienced mental cruelty inflicted by the respondent (the wife), which led to irreversible damage to the marriage, and the couple had been separated for over sixteen years.

In the landmark case of *Naveen Kohli v. Neelu Kohli*[26], the couple had been living apart for over ten years and had become unable to fulfil their marital responsibilities due to extended and contentious legal battles, including various civil and criminal actions initiated against one another. Supreme Court held that "*Laws about divorce that only look at who did what wrong are not enough to deal with a failed marriage. When both people in a marriage decide to split up, live apart for a long enough time and then one person files for divorce, it is likely that the marriage is over. With these things going on, the marriage is doomed to fail"*. The Supreme Court in this instance encouraged the Union Government to think about modifying the Hindu Marriage Act, 1955, to acknowledge irretrievable breakdown of marriage as a distinct basis for divorce. The case involved a marriage of approximately thirty years, during which the parties had lived separately, and their relationship had deteriorated beyond meaningful reconciliation. The Court observed that several other jurisdictions had recognised irretrievable breakdown as a ground for divorce and, in view of changing social realities, recommended incorporating the expression "irretrievable breakdown of marriage" into the Hindu Marriage Act, 1955. The Court also forwarded a copy of its judgment to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India, for consideration of the necessary legislative measures.

In *Vishnu Datt Sharma v. Manju Sharma*[27], the court held that the husband sought dissolution of the marriage on the ground of irretrievable breakdown of marriage. The case involved

[23] Ibid
[24] Kusum, Family Law Lectures, *181 (3rd ed. 2012)*
[25] AIR (*2007) 4 SCC*
[26] AIR *2006 (4) SCC 558*
[27] AIR *2009 SC 2254.*

allegations of cruelty, including severe physical abuse inflicted by the husband upon his wife. The Supreme Court looked into whether irretrievable breakdown can serve as an independent basis for divorce under the Hindu Marriage Act of 1955. The Court noted that Section 13 of the Act does not acknowledge irretrievable breakdown of marriage as a legal ground for issuing a divorce decree. The Supreme Court declined to introduce such a ground judicially, holding that *"We cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature."* The ruling reiterated that including irretrievable breakdown of marriage as a separate legal ground belongs to the legislature.

In the case of *Shilpa Shailesh v. Varun Srinivasan*[28]*, the* Honourable Supreme Court ruled that it alone possesses the jurisdiction to render decisions under Article 142 of the Constitution in pursuit of complete justice. Furthermore, the court has the ability to waive or reduce the six-month waiting period outlined in section 13(B) of the Hindu Marriage Act if it is persuaded that the marriage is emotionally lifeless, unworkable, and irreparable. Additionally, in related matters, the court clarified that the power to dissolve a marriage due to irretrievable breakdown is a discretionary authority conferred by Article 142(1) of the Indian Constitution. This power can be exercised when there is no chance of reconciliation and living together. Therefore, this authority must be wielded with utmost caution and prudence.

The judicial approach of Indian courts towards irretrievable breakdown of marriage reflects a gradual evolution from judicial recognition of the practical realities of marital failure to a constitutionally controlled exercise of judicial discretion. The Supreme Court has consistently recognised that a marriage that has entirely and irreparably deteriorated may have minimal social or legal significance, but it has also upheld that the irretrievable breakdown of a marriage does not constitute a statutory ground for divorce under *Section 13 of the Hindu Marriage Act, 1955.* Through various judgments, the Court has emphasised that it must exercise this power cautiously, considering factors such as the duration of separation, the nature and extent of litigation, the possibility of reconciliation, the interests of children, and the financial and social consequences for the parties. Thus, the judicial approach to Irretrievable Breakdown of Marriage represents a careful balance between individual dignity and autonomy, preservation of marriage, protection of vulnerable spouses and children, and respect for the legislative domain, with Article 142 operating as an exceptional constitutional mechanism rather than a substitute for statutory reform.

Journal of Multi-Disciplinary Legal Research

[28] AIR *2023 SC 544*

VI. Law Commission's Approach to Irretrievable Breakdown of Marriage

The 71st Law commission report was published on April 7,1978 under the Chairmanship of Justice H.R Khanna. The report was based on "The Hindu Marriage Act, 1955- Irretrievable Breakdown of Marriage as a Ground of Divorce". The Law Commission also invited views on the matter by issuing a brief questionnaire before making its final recommendation on irretrievable breakdown of marriage as a ground for divorce. This report indicated that the current legislation was largely founded on the fault theory, where divorce relied on proving particular marital offences like cruelty, adultery, or desertion. It considered that this approach could become inadequate where the marital relationship had completely broken down, even though establishing a specific matrimonial offence might be difficult or unnecessary. The Law Commission report referred to *Blunt v. Blunt*[29] case and quoted Viscount Simon, L.C, *"To these four considerations, I would add a fifth of a more general character, which must indeed be regarded as of primary importance, viz., the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations that make it contrary to public policy to insist on the maintenance of a union that has utterly broken down. It is noteworthy that in recent years this last consideration has operated to induce the courts to exercise favourable discretion in many instances where, at an earlier time, a decree would certainly have been refused."*[30]

The Commission proposed and reported the following:

- A "three-year period of continuous separation" as an important safeguard before a marriage could be treated as having irretrievably broken down. The court acknowledged that simply being physically apart does not necessarily indicate an irretrievable breakdown of the marriage; it must evaluate whether the breakdown is truly irretrievable and if there is still a chance for reconciliation.
- The Report also placed considerable emphasis on the welfare of children. The existence of children was not recommended as an absolute bar to divorce, but the court was expected to take their interests into account and ensure adequate arrangements for their maintenance, education and welfare.

[29] (1943) 2 *All ER 76 (78) (HL)*
[30] Law Commission of India, *supra note 33*

- Another important safeguard concerned financial hardship to the respondent spouse. The Commission recommended that particularly where the wife was the respondent, the court should have discretion to refuse divorce where dissolution would cause grave financial hardship and, in all the circumstances, it would be unjust to dissolve the marriage
- The Commission further recommended amendments to ensure that the fault principle would not defeat a petition based on Irretrievable breakdown of marriage. Specifically, it suggested that cases related to this issue be excluded from the application of *Section 23(1)(a) of the Hindu Marriage Act*, as once a marriage has irretrievably deteriorated, assigning blame for the breakdown should not alone hinder the dissolution.

Law Commission's 217th report on *"Irretrievable Breakdown of Marriage: Another Ground for Divorce*" was published in March, 2009 under the Chairmanship of Dr. Justice A R Lakshmanan. It examined whether irretrievable breakdown should be incorporated as an additional ground for divorce under the *Hindu Marriage Act, 1955* and the *Special Marriage Act, 1954*. The Commission observed that divorce by mutual consent is insufficient where one partner does not agree, while irretrievable breakdown of marriage enables the court to assess whether the marriage has become irreparable.

The Report observed that, in Commonwealth countries, the origins of the breakdown theory can be traced to legislative and judicial developments dating back to an earlier period. A major development occurred in New Zealand with the passing of the *Divorce and Matrimonial Causes Amendment Act 1920,* which established that a separation agreement in effect for three years or longer could serve as a ground for submitting a divorce petition. The legislation vested the court with discretion to determine whether to grant a divorce, without prescribing specific criteria for exercising that discretion. The court later considered and applied this discretionary power in *Lodder v. Lodder*.[31]

Following a review of previous Law Commission suggestions and different Supreme Court rulings, the 217th report emphatically advocated for the legal acknowledgement of irretrievable breakdown of marriage, highlighting the need for judicial prudence, the safeguarding of children, and the financial security of the involved parties as crucial protective measures.

[31] 1921 *New Zealand Law Reports 786*

VII. Principal Characteristics of "The Marriage (Amendment) Bill,2010"

The Marriage Laws (Amendment) Bill, 2010, was presented in the Lok Sabha on August 4 by Shri M. Veerappa Moily, Minister of Law and Justice which proposed to amend The Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 which proposed adding "irretrievable breakdown of marriage" as a valid ground for divorce, requiring couples to live apart for at least three years before filing[32]. The Rajya Sabha approved the Bill in August 2010; however, it was not approved by the Lok Sabha and ultimately lapsed in 2014 with the dissolution of the 15th Lok Sabha. The proposal was to incorporate Section 13(C) into the Hindu Marriage Act of 1955, which included the following provision:

- Either spouse may submit a request for marriage dissolution to the district court, citing the reason that the marriage has irreparably failed.
- The court needs to ensure that the spouses have lived separately for a minimum of three continuous years before the petition can be filed to terminate the marriage based on irretrievable breakdown.
- The court will issue a divorce order if it determines that the marriage has irretrievably broken down.

On the basis of the 71st report, the Marriage Laws (Amendment) Bill, 1981 was also introduced in parliament to amend the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, but was allowed to lapse on account of opposition by some women's organisations. [33]

Journal of Multi-Disciplinary Legal Research

VIII. Status of Irretrievable Breakdown of Marriage in Other Countries

- **Australia-** The Matrimonial Causes Act of 1959 in the Commonwealth of Australia outlines the conditions for divorce, requiring a one-year separation period. According to the Royal Commission on Marriage and Divorce, either party can obtain a divorce if they have lived separately for seven years. In that case, both parties must agree.
- **Sweden-** If a year has passed since the judicial separation decree was issued and both parties have been living separately during that time, a divorce will be granted.

[32] PRS Legislative Research: "The Marriage Laws(Amendment) Bill, 2010"

[33] Paras Diwan, Modern Hindu Law, *23rd ed.,supra note 7 at 77, Allahabad Law Agency*

- **New Zealand-** Divorce will be granted if one year has passed since the judicial separation decree and the parties have been living separately during that time.
- **United Kingdom-** The law permits divorce based on irretrievable breakdown of marriage, historically proven through facts like separation or unreasonable behaviour.[34]

IX. Proposed Reforms for Recognising Irretrievable Breakdown of Marriage

1) **Statutory Recognition**- Irretrievable breakdown of marriage should be expressly incorporated as an independent ground for divorce under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, so that parties are not required to rely on strained interpretations of existing grounds. The law should outline specific standards for assessing if a marriage has irreparably failed, including extended periods of separation, the lack of a marital connection, ongoing unsuccessful attempts at reconciliation, and the unlikelihood of restoring the marriage.
2) **Judicial Safeguards-** Few safeguards are essential before granting divorce under irretrievable breakdown of marriage-
   a. The court should be satisfied that the marriage has broken down completely and permanently, with no reasonable possibility of reconciliation.
   b. The court should examine the overall circumstances of the marriage, including the duration of separation, nature of the relationship, previous attempts at reconciliation, and the conduct of the parties
   c. Where appropriate, reasonable efforts at mediation or reconciliation should be undertaken before concluding that the marriage is beyond repair.
   d. A spouse should not be permitted to rely on circumstances substantially created by their own serious misconduct to obtain dissolution without the court examining the resulting injustice to the other spouse
   e. A ruling founded on the irretrievable breakdown of marriage must include specific justifications that illustrate why the court believes the marriage cannot be reasonably restored.
3) **Protection of Financial Interest-** Before dissolving a marriage on this ground, the court should ensure appropriate arrangements for maintenance and other financial entitlements, particularly where one spouse is economically dependent on the other. Divorce affects the husband and the wife in very different way especially

[34] The Matrimonial Causes Act ,1973

Journal of Multi-Disciplinary Legal Research

financially. A man may continue to be financially sound and capable while divorced women may have issues in even fulfilling her basic needs

4) **Welfare of Children-** The presence of children should not be an absolute bar against granting a divorce under this ground, the best interest of the children should undoubtedly be taken into account. Provisions should be made for giving financial, educational, maintenance and support to the children.

X. Conclusion

The institution of marriage, regarded as a fundamental pillar of human society, has undergone significant transformation in response to the complex and rapidly evolving socio-economic conditions of modern life. Historically regarded as a lasting and fundamentally inseparable bond, marriage has been progressively shaped by significant societal transformations, such as the erosion of joint and communal family systems, urban development, increased educational and job opportunities for women, and the rise of legal systems that support gender equality. These developments have necessitated a broader reconsideration of the nature of marital relationships and the legal framework governing their formation, continuation, and dissolution. The acknowledgment of irretrievable breakdown of marriage as a new reason for divorce has grown more essential due to the evolving dynamics of marital relationships and the inadequacies of the current legal grounds for divorce. The present fault-based grounds may not adequately address situations in which a marriage has ceased to function as a meaningful relationship, despite the absence of sufficient proof of a specific statutory matrimonial offence. Continuing such marriages may result in prolonged litigation, emotional distress, and the perpetuation of relationships that have no reasonable prospect of restoration. However, the introduction of irretrievable breakdown should not be undertaken without careful consideration of its potential consequences. It should be preceded by thorough discussions in the Legislature, guided by the suggestions of the Law Commission of India and judicial experience, to set clear standards and sufficient safeguards. In particular, the interests of the economically weaker spouse and children, financial security, maintenance and the possibility of reconciliation must be appropriately protected. A carefully structured statutory framework would therefore enable the law to recognise genuinely dead marriages while ensuring that the

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introduction of irretrievable breakdown does not result in injustice or arbitrary dissolution of marriage.

