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IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND FOR DIVORCE: ITS VALIDITY IN TODAY'S INDIAN SOCIETY

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ABSTRACT

The idea that a marriage that has completely fallen apart should be legally dissolved, not because someone did something wrong, but simply because it has no substance left, lies at the heart of the doctrine of irretrievable breakdown. In India, this idea has been discussed for decades, debated in parliamentary sessions, examined by law commissions, and shaped by court judgments. Yet, it still does not constitute a statutory ground for divorce under the Hindu Marriage Act, 1955¹. This paper looks at whether recognising irretrievable breakdown as a formal ground for divorce makes sense in today's Indian society. It traces the arguments for and against its formal inclusion, studies how courts have dealt with it, and finally argues that the time has clearly come for Parliament to step in and give this ground its rightful place in Indian personal law.

INTRODUCTION

Marriage in India has always been more than just a connection between two individuals. It is deeply tied to family, religion, community, and social status. For a very long time, Indian society treated marriage as permanent and dissolving it was seen as a failure both of the individuals and of the family. The law largely reflected this idea. When the Hindu Marriage Act was passed in 1955, the grounds for divorce were all fault-based, like cruelty, adultery, desertion, and so on. The idea was that unless someone did something wrong, the marriage should continue.

¹ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

But the reality of marriage is messier than the law ever acknowledged. Couples drift apart without either person being a villain. People end up living under the same roof as strangers without any "fault" that can be proven in a court of law. The fault-based system couldn't handle such new, complex situations.

The concept of irretrievable breakdown of marriage refers to a situation where the relationship between the spouses has deteriorated to such an extent that it is no longer possible for them to live together as husband and wife. It is different from other grounds for divorce because it does not require proof that anyone was at fault. It only asks whether the marriage, as a living reality, still exists or it's just a legal shell.

Despite multiple recommendations made by the Law Commission of India in 1978² and 2009³, India has not given proper recognition to this ground of divorce. This paper argues that such recognition is not just desirable but genuinely necessary in today's India, where marriages are changing, and it's unjust to ask the parties to continue such a relationship.

THE EXISTING LEGAL FRAMEWORK FOR DIVORCE IN INDIA

To understand why the absence of irretrievable breakdown as a statutory ground matters, it helps first to understand the grounds that currently exist. Under Section 13 of the Hindu Marriage Act⁴, 1955, a spouse can seek divorce on specific fault-based grounds: adultery, cruelty, desertion for at least two years, conversion to another religion, mental disorder, a communicable disease, and a few others. Section 27 of the Special Marriage Act, 1954⁵ similarly provides grounds for the grant of divorce in the case of a marriage solemnised under the Act. However, the said Acts do not provide "irretrievable breakdown of marriage" as a ground for divorce.

There is also Section 13b⁶, which allows divorce by mutual consent. Under this provision, both parties can jointly apply for divorce if they have been living separately for at least one year and

² Law Comm'n of India, *71st Report: The Hindu Marriage Act, 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce* (1978).

³ Law Comm'n of India, *217th Report on Irretrievable Breakdown of Marriage – Another Ground for Divorce* (2009).

⁴ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India), § 13.

⁵ The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India), § 27.

⁶ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India), § 13(b).

both agree to end the marriage. After filing the joint petition, there is a mandatory waiting period of six months, which is called the "cooling off" period, before the divorce can be finalised.

The problem is obvious. What happens when the marriage has clearly broken down, both parties have been living apart for years, there is no love or cohabitation, children have grown up in a divided household, but one party refuses to give consent? Or what happens when neither party technically committed a "fault", but they have grown apart? The existing law offers no clean answer to either question. The party seeking a divorce is then forced to either wait endlessly or try to fit the facts of their case into one of the existing fault-based grounds, sometimes leading to exaggerated or false allegations to obtain legal relief.

Getting a divorce on the mere basis of a marital ground or on the grounds based on "fault-based theory" recognised by law is not only time-consuming, but it also includes a huge amount of both mental and physical agony by inducing harassment and shame on both parties. This gap in the law is what the doctrine of irretrievable breakdown is meant to fill.

HISTORICAL DEVELOPMENT OF THE CONCEPT IN INDIA

Law Commission Reports

The idea of bringing irretrievable breakdown into Indian divorce law is not new. It has been sitting in the law reform pipeline for nearly five decades.

The Law Commission of India, in its 71st Report titled "The Hindu Marriage Act, 1955 : Irretrievable Breakdown of Marriage as a Ground of Divorce"⁷, recommended amendments in the Hindu Marriage Act to make irretrievable breakdown of marriage as a new ground for granting divorce among the Hindus. This report came out in 1978 and was a landmark in Indian legal thinking. The Commission recognised that keeping people locked in empty marriages served no social purpose. It also recommended that a separation period of around three years should be treated as a strong indicator that the marriage had broken down.

⁷ Law Comm'n of India, *71st Report: The Hindu Marriage Act, 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce* (1978).

Based on this report, a Marriage Laws (Amendment) Bill was introduced in Parliament in 1981. It failed. Some groups felt that husbands would desert their wives and profit from this provision. The fear was that men would walk out of marriages, leaving women with nothing, and then use this provision to get a divorce without facing any consequences.

Thirty years later, the Law Commission took up the issue again. The 71st Report (1978) and the 217th Report⁸ (2009) strongly advocated the inclusion of irretrievable breakdown, arguing that forcing individuals to remain in irretrievably broken marriages violates personal autonomy and mental well-being. The 217th Report was more detailed and took into account the concerns raised about women's vulnerability. It tried to build safeguards to prevent the provision from being easily misused.

THE MARRIAGE LAWS (AMENDMENT) BILL, 2010

Following the 217th Report, the Government of India introduced the Marriage Laws (Amendment) Bill, 2010. The Bill adds a provision to both Acts that allows both parties to file for divorce on the grounds of irretrievable breakdown of marriage. Both parties must live apart for at least 3 years before filing such a petition. The wife has the right to oppose the grant of a divorce on the ground that the dissolution shall result in grave financial hardship. The court shall consider all circumstances, including the conduct of the parties and the children, before deciding whether a divorce would result in hardship.

The Rajya Sabha passed this bill however, the Bill never made it through the Lok Sabha. It lapsed when the Lok Sabha was dissolved before the 2014 general elections. Despite being passed in one House, it never became law. As things stand today, there is still no statutory provision for irretrievable breakdown in the Hindu Marriage Act or the Special Marriage Act.

HOW THE COURTS HAVE FILLED THE GAP

⁸ Law Comm'n of India, *71st Report: The Hindu Marriage Act, 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce* (1978).

In the absence of a statutory provision, courts and, in particular, the Supreme Court have played an important role in developing this doctrine through case law. Their approach has been creative and, in some cases, quite bold.

Early Judicial Recognition

In *Ms. Jorden Diengdeh v. S.S. Chopra* (1985)⁹, the Supreme Court recommended comprehensive reform of marriage laws, including introducing irretrievable breakdown as a divorce ground. Justice V.R. Krishna Iyer recognised that incompatibility between spouses, when it goes deep enough, makes the continuation of a marriage pointless. This was an early signal from the judiciary that the law needed to catch up with reality.

Over the years, the courts began invoking Article 142¹⁰ of the Constitution to grant divorce in cases that could not be resolved under existing law. Article 142 gives the Supreme Court the power to pass any decree or order necessary for "complete justice" in any matter before it. The Supreme Court also in *Naveen Kohli v. Neelu Kohli* (2006)¹¹ recommended that the Hindu Marriage Act, 1955¹² be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. In this case, the court looked at the circumstances like years of separation, total breakdown of the marital relationship, the wife living with another man and concluded that the marriage was dead. It strongly urged Parliament to change the law.

In *V. Bhagat v. D. Bhagat*¹³ and *Saroj Sharma v. Sarvendra Sharma*¹⁴ (2006), the court similarly acknowledged that where a marriage has completely collapsed, forcing the parties to stay legally married serves no purpose and only causes more suffering. Currently, courts may consider irretrievable breakdown as a factor but cannot grant divorce solely on this basis without meeting other statutory requirements.

THE LANDMARK JUDGMENT OF 2023 : SHILPA SAILESH V. VARUN SREENIVASAN

⁹ Ms. Jorden Diengdeh v. S.S. Chopra, AIR 1985 SC 93.

¹⁰ INDIA CONST. art. 142.

¹¹ Naveen Kohli v. Neelu Kohli, AIR 2006 SC 1675.

¹² The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

¹³ V. Bhagat v. D. Bhagat, AIR 1994 SC 710.

¹⁴ Saroj Sharma v. Sarvendra Sharma, (2006) 10 SCC 439.

The most significant development in recent years came in May 2023, when a five-judge Constitution Bench of the Supreme Court delivered its judgment in *Shilpa Sailesh v. Varun Sreenivasan*¹⁵. This case raised the question of whether the Supreme Court can exercise its powers under Article 142¹⁶ of the Constitution to grant a decree of divorce on the ground of irretrievable breakdown of marriage, even when one party does not consent.

The Court responded in the affirmative, holding that under Article 142 of the Constitution of India, it may dissolve a marriage on the ground of irretrievable breakdown, even though the Hindu Marriage Act, 1955, does not provide for such a ground. The bench, led by Justice S.K. Kaul, also clarified that in cases where the marriage was clearly beyond repair and the parties had been living apart for many years, continuing the marriage in name only was not just pointless but could itself amount to a form of mental cruelty.

The court also addressed the six-month cooling-off period. The court held that Article 142 would enable it to grant reliefs that may bypass the procedural requirements set out in the Hindu Marriage Act, including the six-month waiting period stipulated under Section 13-B(2)¹⁷ for a mutual consent divorce. The Court was careful to stress that this power should be used sparingly and with caution. Article 142¹⁸ is not a shortcut to bypass the legal process. The court laid down a list of factors to be considered before invoking Article 142¹⁹ in matrimonial disputes, including the duration of the marriage, the length of the parties' separation, attempts at reconciliation, and the welfare of any children involved.

The 2023 judgment is a major step forward. But it comes with a significant limitation. Relief under Article 142²⁰ is available only at the Supreme Court level. This creates an uneven situation in which relief depends on access to the apex court, a time-consuming and costly endeavour. Ordinary people who cannot afford to fight their cases all the way to the Supreme Court are still left with no direct remedy under the law.

¹⁵ *Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544.

¹⁶ INDIA CONST. art. 142.

¹⁷ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India), § 13(b)(2).

¹⁸ INDIA CONST. art. 142.

¹⁹ INDIA CONST. art. 142.

²⁰ INDIA CONST. art. 142.

THE CASE FOR RECOGNISING IRRETRIEVABLE BREAKDOWN IN TODAY'S INDIA

The arguments in favour of formally including irretrievable breakdown as a ground for divorce are strong, and they have only become stronger as Indian society has changed.

India is not the country it was in 1955 when the Hindu Marriage Act was passed. Urbanisation, education, women's economic independence, and exposure to different ways of living have all changed how people think about marriage and what they expect from it.

In metropolitan cities, divorce rates have surged by 30-40% over the past decade. One of the most significant catalysts for increasing divorce rates is the growing financial autonomy of women. Women are no longer economically forced to stay in broken marriages. When they have their own income, careers, and social networks, they are better able to leave a marriage that is not working. This is a good thing, but the law needs to be ready for this and to offer fairer processes.

THE HUMAN COST OF FAULT-BASED DIVORCE

When two people want to end a marriage but cannot prove any statutory ground, what typically happens? One of two things: either they file a false case or allege cruelty or desertion, because that is the only way out, or they wait for years in a legal limbo. Both options are deeply unfair.

If, after a lengthy and exhaustive struggle, the evidence fails to prove the marital fault, the petitioner is not only denied the remedy demanded, but it also leads to severed ties between the two parties due to the allegations and harassment faced during the trials. The process of a contested fault-based divorce drags people through years of emotionally damaging litigation, forces them to air private grievances in open court, and often leaves both parties worse off than when they started. Children caught in the middle of prolonged divorce litigation suffer particularly. When parents are fighting a legal battle for five, seven, or even ten years, the stress and instability affect children deeply. A faster and more honest process of ending a marriage that has genuinely broken down would, in many cases, be less harmful to children than the drawn-out alternative.

INDIVIDUAL DIGNITY AND PERSONAL AUTONOMY

The Constitution of India protects personal liberty and dignity as fundamental rights. The theory posits that when a marital relationship deteriorates beyond the point of reconciliation, the marriage should be terminated. It argues that maintaining shared rights and responsibilities is unjustified when a marriage cannot endure. Forcing someone to remain legally bound to a person they have not lived with for years, someone they have no emotional or physical relationship with, is a form of state-imposed suffering that is hard to justify in a modern legal system.

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. In such cases, keeping the marriage alive in name only serves no meaningful purpose and can actually amount to cruelty.

THE ARGUMENTS AGAINST, AND WHY THEY CAN BE ADDRESSED

The concerns raised against formally including irretrievable breakdown as a ground for divorce deserve serious attention. These arguments have shaped the debate for decades and, at various points, have prevented legislative change.

THE RISK TO WOMEN

The most significant objection is that husbands could misuse this ground to abandon their wives. The fear, which was voiced clearly during the 1981 debate, is that a man could walk out of a marriage, stay away for three years, and then use the "breakdown" of the marriage as a reason to get a divorce, leaving the wife with little or nothing.

This fear is not unfounded, particularly given the economic reality of many Indian women, especially those in rural areas, who may have given up paid work to manage the home and raise children, and who may have little financial security outside of the marriage. The economic vulnerability of women who have not participated in formal employment makes these settlements especially consequential for post-divorce survival.

However, the answer to this concern is not to deny people a way out of broken marriages. It is to build strong financial protection into the law. The Marriage Laws (Amendment) Bill, 2010,

provides the wife with the right to oppose a husband's plea for divorce on the ground that it would result in grave financial hardship. This kind of safeguard, where a court can refuse to grant a divorce if doing so would leave the wife in serious financial difficulty, is exactly the right approach.

Courts have been moving in this direction, too. In landmark 2025 judgments, the Supreme Court has significantly enhanced maintenance standards. In the Rakhi Sadhukhan case, permanent alimony was increased from ₹20,000 to ₹50,000 per month with a 5% increase every two years. Courts are increasingly ordering property transfers as part of divorce settlements. A well-designed law that includes irretrievable breakdown as a ground, paired with robust alimony and property division provisions, can protect women far better than the current system, which often leaves them trapped in miserable marriages with no realistic exit.

THE CONCERN ABOUT MISUSE

A related concern is that couples who have a temporary fight or go through a rough patch will rush to use this ground. Critics worry it will make divorce too easy and that the seriousness of marriage as an institution will be undermined.

This concern, while understandable, overestimates how quickly people actually decide to end their marriages and underestimates the safeguards that a well-drafted law can include. The requirement of a minimum three-year separation period, as proposed in the 2010 Bill, provides a built-in cooling-off mechanism. Three years is a long time. If a couple has been apart for three years and one of them still wants a divorce, it is safe to say the marriage has genuinely broken down. This is not impulsive decision-making. Additionally, courts can and should play an active role in ensuring that reconciliation is genuinely attempted before granting a divorce on this ground. The existing system of family courts and mediation centres can be strengthened to support this.

THE QUESTION OF UNILATERAL DIVORCE

Perhaps the most uncomfortable aspect of the doctrine is the possibility of a one-sided or unilateral divorce, where one person wants to end the marriage, and the other does not. The Marriage Laws (Amendment) Bill, 2010 sought to address this by giving the wife a right to oppose, but not the husband. This asymmetry itself created controversy.

The Shilpa Sailesh judgment of 2023 made it clear that the Supreme Court can grant a divorce even over the objection of one spouse but only when the breakdown is genuinely complete and irreversible. This is a reasonable position. The irretrievable breakdown of marriage represents a compassionate and progressive approach to marital disputes, prioritising individual autonomy and mental well-being. Allowing one person to keep another legally bound to a dead marriage for an indefinite period is not a protection of marriage as an institution it is a misuse of the institution as a means of punishment or leverage.

THE LEGISLATIVE VACUUM AND THE NEED FOR PARLIAMENTARY ACTION

Despite the Supreme Court's position and despite decades of recommendations from the Law Commission, Parliament has not acted. This legislative gap has several serious consequences. First, the current situation creates deep inequality in access to justice. While the Court has provided a constitutional remedy, legislative action is essential to formalise it as a statutory ground for divorce. Relief under Article 142 is available only at the Supreme Court level, creating an uneven situation in which relief depends upon access to the apex court, a time-consuming and costly endeavour.

Second, the absence of a clear law means that lower courts have no authority to grant a divorce on this ground. They are bound by the statute. As the grounds for divorce under the HMA and SMA are exhaustive, a divorce on the grounds of an irretrievable breakdown of marriage cannot be granted in the absence of an enabling legislative provision. The gap can only be filled properly by Parliament amending the law, not by relying on the Supreme Court's discretionary use of Article 142²¹.

Third, the lack of clarity in the law creates pressure on litigants to game the existing system. When parties know there is no clean legal remedy for a dead marriage, they are pushed towards manufacturing grounds, making false allegations of cruelty, filing Section 498A²² cases as a bargaining chip, or dragging the divorce proceedings out as a pressure tactic. A clear, honest

²¹ INDIA CONST. art. 142.

²² The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India), § 498A.

statutory ground for divorce when a marriage has genuinely ended would reduce much of this distortion.

The irretrievable breakdown of marriage should be recognised by the Parliament of India as a valid basis for divorce, as forcefully staying married to someone in such a situation can be dangerous. The word "dangerous" here is not an overstatement. There have been cases where individuals trapped in dead marriages have faced prolonged psychological abuse, financial manipulation, and in some instances, physical violence. The law's insistence on keeping them legally married offers no protection and only compounds their suffering.

WHAT A GOOD LAW SHOULD LOOK LIKE

If Parliament were to act, what should the law look like? Based on the Law Commission's recommendations, the 2010 Bill, and the judicial developments since then, a few key features are essential.

First, a minimum separation period of ideally three years should be required before this ground can be used. This acts as a genuine filter, preventing impulsive use of the provision.

Second, the wife should retain the right to oppose a divorce petition on this ground if it would result in genuine financial hardship. The court should have the power to refuse a divorce where the financial situation of the wife or children has not been adequately secured.

Third, property division and maintenance must be treated seriously. The trend towards stronger alimony awards is welcome, and clear guidelines should accompany a law on irretrievable breakdown on how property and financial support should be handled in such cases.

Fourth, the provision should be available in family courts and district courts, not just the Supreme Court. Accessibility is key to fairness.

Fifth, and most importantly, courts should be required to make a genuine attempt at reconciliation before granting a divorce on this ground. The purpose of the three-year waiting period and the

judicial process is not just to slow things down; it is to create a space where reconciliation remains possible.

SOCIETAL PERSPECTIVE: HAS INDIA CHANGED ENOUGH?

One question that runs through all of this is: has Indian society changed enough to accept this ground? Is there a real need, or is this a solution in search of a problem?

The answer is clearly yes, there is a real need. India has traditionally maintained one of the world's lowest divorce rates, with official statistics showing approximately 1% of marriages ending in divorce. However, in metropolitan cities, divorce rates have surged by 30-40% over the past decade. The gap between the formal divorce rate and the actual state of Indian marriages is large. Many couples are separated in practice, living apart, in separate cities, sometimes for years, but unable to formalise that separation because the legal process is so difficult. They exist in a kind of grey zone, not married in any real sense but not legally free either.

A range of social, economic, and cultural factors influences the rising divorce rate in India. As traditional norms evolve, modern challenges such as financial independence, changing gender roles, and shifting norms are playing a huge role. The old social stigma around divorce, while still present, has weakened considerably in urban India. Young people today are less likely to tolerate an unhappy marriage simply because leaving it would disgrace the family. This is a genuine cultural shift, and the law needs to reflect it.

There is also the question of the plurality of personal laws. India has different personal laws for different religious communities. The Muslim Personal Law, for example, already allows divorce through talaq. Christians can seek divorce under the Indian Divorce Act²³. The lack of a clear, secular no-fault ground for divorce applies most sharply to Hindus, governed by the Hindu Marriage Act, and those married under the Special Marriage Act. In a country moving towards a debate over a Uniform Civil Code, having a rational, humane divorce law that works for everyone is more important than ever.

²³ The Divorce Act, 1869, No. 4, Acts of Parliament, 1869 (India).

CONCLUSION

The doctrine of irretrievable breakdown of marriage has been waiting patiently at the door of Indian law for nearly fifty years. The Law Commission has recommended it twice, and the Supreme Court has used its power under Article 142²⁴, yet Parliament has not acted.

The arguments for recognizing this ground are compelling: the rising incidence of genuinely broken marriages, the unfairness of fault-based divorce in cases where no real fault exists, the human cost of prolonged litigation, the growing autonomy of women who no longer need to be protected from honest divorce laws, the international consensus that no-fault divorce is the more humane approach, and the simple moral fact that keeping people legally bound to a marriage that exists only on paper serves no one.

The arguments against it focus mainly on the risk of harm to economically dependent women, which are genuine but can be answered through carefully designed safeguards, strong maintenance provisions, and judicial oversight. The 2010 Bill showed one way to do this. Courts have shown another.

The irretrievable breakdown of marriage represents a compassionate and progressive approach to marital disputes, prioritising individual autonomy and mental well-being. While Indian courts have taken significant strides in recognising this principle, legislative action is essential to formalise it as a statutory ground for divorce. By aligning legal provisions with evolving societal values, India can create a more just and equitable framework for matrimonial law. The Shilpa Sailesh judgment of 2023 was a judicial push to Parliament, a clear signal from a constitutional bench that the law needs to change. The question is whether Parliament will listen. Given how much Indian society has already changed, and how much human suffering is caused every year by the absence of this provision, the case for legislative action is not just strong but urgent. Marriage is a living institution, and when there's no substance left in it, the law should allow people to move on. This isn't a radical idea rather a humane approach.

²⁴ INDIA CONST. art. 142.