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IRRETRIEVABLE BREAKDOWN OF MARRIAGE THEORY: NEED OF THE HOUR

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Introduction

Marriage has traditionally been regarded as a sacred and socially significant institution within Indian society. Indian matrimonial law, particularly under the Hindu Marriage Act, 1955, historically emphasized the preservation of marital relationships and recognized divorce primarily on fault-based grounds such as cruelty, adultery, desertion, and conversion. However, changing social realities and increasing matrimonial disputes have exposed the limitations of traditional divorce theories in addressing situations where marriages have completely collapsed emotionally and practically, despite the absence of conventional fault grounds. This has led to growing support for the doctrine of irretrievable breakdown of marriage.

The theory of irretrievable breakdown proceeds on the principle that when a marriage has ceased to function as a meaningful partnership and there exists no possibility of reconciliation, the law should permit dissolution rather than compel parties to continue a dead relationship. Although the doctrine has not yet been formally incorporated as a statutory ground for divorce in India, the Supreme Court has increasingly relied upon its principles while exercising powers under Article 142 of the Constitution to dissolve marriages in exceptional cases. Decisions such as *Naveen Kohli v Neelu Kohli* and *Shilpa Sailesh v Varun Sreenivasan* demonstrate the judiciary's recognition that rigid adherence to fault-based theories may sometimes prolong unnecessary suffering and litigation.

At the same time, the introduction of irretrievable breakdown as a statutory ground for divorce remains controversial. Supporters argue that it promotes individual dignity, judicial efficiency, and realistic resolution of failed marriages, while critics fear that it may weaken the institution of marriage and adversely affect financially or socially vulnerable spouses. This article therefore examines the evolution, judicial interpretation, and contemporary relevance of the doctrine of irretrievable breakdown of marriage while analysing whether its formal legislative recognition has become a necessity within modern Indian family law.

Evolution of Divorce theories and breakdown of marriage theory

1. Fault Theory of Divorce

Traditional matrimonial law developed primarily upon the fault theory of divorce, under which dissolution of marriage was permitted only when one spouse committed a matrimonial offence against the other. Grounds such as adultery, cruelty, desertion, conversion, or mental disorder were treated as violations of marital obligations justifying termination of the relationship. The fault theory reflected the classical understanding of marriage as a permanent social institution whose dissolution could only be justified through proof of serious misconduct by one of the parties.

The Hindu Marriage Act, 1955 (HMA) substantially incorporated this approach by recognizing specific fault grounds under section 13 for the grant of divorce. Under this framework, matrimonial litigation became adversarial in nature because parties were required to establish blame and wrongdoing before obtaining relief. Paras Diwan observes that the fault theory treated divorce as a remedy against a guilty spouse rather than as a solution to failed marital relationships.¹

However, the fault theory gradually revealed serious practical limitations. In many matrimonial disputes, marriages had effectively collapsed emotionally and socially even though neither party could conclusively establish statutory fault. Courts often encountered situations where spouses had lived separately for prolonged periods, shared no meaningful marital relationship, and possessed no realistic possibility of reconciliation, yet remained legally bound because fault could not be adequately

¹ Paras Diwan & Peeyushi Diwan, *Modern Hindu Law* (26th ed. 2023).

proved. This frequently prolonged bitterness, humiliation, and unnecessary litigation between parties.

Critics also argued that fault-based divorce proceedings encouraged exaggeration of allegations and promoted hostility between spouses. For eg, one common pattern which is seen in matrimonial disputes is both parties filing domestic violence and cruelty cases against each other and their families due to this animosity developed between them.

The fault theory often compels parties to publicly accuse one another in order to secure legal relief, thereby undermining the possibility of dignified settlement of matrimonial disputes.² Consequently, scholars and courts increasingly began questioning whether matrimonial law should continue to focus exclusively upon blame rather than the practical reality of marital breakdown.

2. Consent Theory and Changing Matrimonial Jurisprudence

The limitations of fault theory contributed to the development of alternative approaches toward matrimonial dissolution, particularly the consent theory of divorce. Under this theory, marriage is viewed as a voluntary union based upon mutual companionship and cooperation; therefore, when both spouses agree that the relationship can no longer continue, the law should permit dissolution without requiring proof of fault.

The consent theory significantly influenced modern matrimonial reforms across several jurisdictions and eventually found recognition within Indian law through the introduction of divorce by mutual consent under section 13B of the HMA by the Marriage Laws (Amendment) Act, 1976. This provision represented an important departure from strict fault-based jurisprudence because it acknowledged that marital relationships may fail without the existence of legal wrongdoing by either spouse.

Despite this development, mutual consent divorce also possesses certain limitations. Since the remedy depends upon the agreement of both parties, one spouse may unreasonably refuse consent even when the marriage has completely collapsed in

² Kusum, Irretrievable Breakdown of Marriage: A Ground for Divorce, 20(2) J. Indian L. Inst. 288 (1978).

substance. In such circumstances, parties often remain trapped in prolonged matrimonial disputes despite the absence of any genuine marital relationship. This limitation exposed the inadequacy of both fault theory and consent theory in resolving certain categories of matrimonial conflicts.

The growing recognition of individual autonomy, personal dignity, and changing social conditions further contributed to demands for a more realistic approach toward matrimonial dissolution. Courts increasingly began acknowledging that preservation of legally dead marriages serves little social purpose when reconciliation has become impossible. These developments created the intellectual foundation for the emergence of the breakdown theory of marriage.

3. Breakdown Theory of Marriage

The breakdown theory of marriage proceeds upon the principle that the law should recognize the factual reality of marital collapse rather than compel parties to continue a relationship that has ceased to exist in substance. Under this theory, the central question is not which spouse is guilty of matrimonial misconduct, but whether the marriage itself has irreversibly failed beyond the possibility of reconciliation.

The doctrine of irretrievable breakdown of marriage emerged as a response to the inadequacies of fault-based divorce jurisprudence. Supporters of the doctrine argue that when spouses have lived separately for prolonged periods and all emotional, social, and practical aspects of marriage have disappeared, continued legal recognition merely perpetuates suffering and unnecessary litigation. Matrimonial law should prioritize practical justice and social realities rather than insist upon preservation of marriages that are functionally dead.³

The Law Commission of India strongly supported this approach in its Seventy-First Report on the Hindu Marriage Act, 1955. The Commission recognized that fault theory often failed to provide relief in situations where marriages had completely broken down despite the absence of provable fault. It therefore recommended incorporation of irretrievable breakdown as an independent ground for divorce within Indian matrimonial law.⁴

³ J. V. S., *Irretrievable Breakdown of Marriage as an Additional Ground for Divorce*, 48(3) J. Indian L. Inst. 439 (2006).

⁴ Law Comm'n of India, 71st Report, *The Hindu Marriage Act, 1955—Irretrievable Breakdown of Marriage as a Ground of Divorce* (1978).

The breakdown theory also reflects broader transformations in modern family law. Marriage is increasingly viewed not merely as a sacramental institution but also as a partnership dependent upon mutual respect, emotional compatibility, and companionship. Where these essential foundations disappear permanently, forcing parties to remain legally bound may conflict with principles of dignity, liberty, and individual well-being.

Nevertheless, the doctrine remains controversial. Critics argue that easy dissolution of marriage may weaken family stability and encourage misuse of divorce laws. Concerns are also raised regarding the protection of economically dependent spouses, particularly women, who may suffer financial and social disadvantages following dissolution. Thus, while the breakdown theory seeks to provide realistic solutions to failed marriages, it also raises important questions concerning the balance between personal autonomy and preservation of matrimonial stability.

4. Comparative International Perspective

Several foreign jurisdictions have formally recognized irretrievable breakdown of marriage as a ground for divorce. In United Kingdom, matrimonial reforms gradually shifted away from strict fault-based divorce toward recognition of breakdown principles, culminating in modern no-fault divorce legislation like *Matrimonial Causes Act, 1973* whose section 1 provides for irretrievable breakdown as sole ground for divorce. Similarly, many states within the United States adopted no-fault divorce systems permitting dissolution upon proof that the marriage has irreparably failed like *California Family Law Act, 1969* which allowed divorce on basis of “irreconcilable differences” between spouses..

These reforms were largely motivated by the recognition that fault-based litigation unnecessarily intensified hostility between spouses and failed to address the realities of modern matrimonial relationships. Comparative jurisprudence increasingly accepted that the primary purpose of divorce law should be equitable resolution of failed marriages rather than punishment of guilty spouses.

Judicial Recognition of Irretrievable breakdown of marriage

1. Absence of Statutory Recognition

Despite increasing judicial recognition of the doctrine of irretrievable breakdown of marriage, Indian matrimonial legislation has not formally incorporated it as an independent ground for divorce. Hence, courts frequently encounter situations where marriages have completely failed in practice, yet parties remain unable to obtain relief because statutory requirements are not fully satisfied.

Recognizing this difficulty, the Law Commission of India in its Seventy-First Report recommended the introduction of irretrievable breakdown as a separate ground for divorce. The Commission observed that compelling spouses to continue legally dead marriages often prolonged emotional suffering and unnecessary litigation.⁵ However, Parliament has yet not enacted formal legislative recognition of the doctrine.

As a result, the Supreme Court increasingly relied upon constitutional powers under Article 142 in exceptional cases to dissolve marriages where reconciliation appeared impossible. This judicial approach gradually transformed irretrievable breakdown from a theoretical doctrine into a practically recognized principle within Indian matrimonial jurisprudence.

2. Judicial Developments through Supreme Court Judgments

The doctrine received major judicial recognition in the case of *Naveen Kohli v Neelu Kohli*.⁶ In this case, severe matrimonial disputes had continued between the parties for several years. The husband and wife had filed multiple civil and criminal proceedings against each other, including allegations of cruelty and harassment, resulting in complete deterioration of their relationship. The Supreme Court observed that the marriage had become emotionally dead and that continuation of the legal relationship would serve no meaningful purpose. While granting divorce on the ground of cruelty, the Court strongly recommended that irretrievable breakdown of marriage should be incorporated as an independent statutory ground for divorce in India. The judgment marked a decisive shift toward reality-oriented matrimonial justice.

⁵ Id

⁶ *Naveen Kohli v Neelu Kohli*, (2006) 4 SCC 558 (SC).

The Supreme Court further expanded this approach in *Samar Ghosh v Jaya Ghosh*.⁷ The dispute involved prolonged matrimonial discord and allegations of mental cruelty between the spouses. The parties had remained separated for a considerable period and reconciliation appeared impossible. While the principal issue before the Court concerned mental cruelty, the judgment recognized that prolonged separation and continuous bitterness may indicate complete breakdown of marriage. The Court adopted a more pragmatic approach toward matrimonial disputes by acknowledging the psychological and emotional realities of failed marriages rather than limiting itself strictly to technical fault analysis.

A similar approach was adopted in *R Srinivas Kumar v R Shametha*.⁸ In this case, the spouses had lived separately for more than two decades and all attempts at reconciliation had failed. The Supreme Court observed that continuation of such a marriage would merely prolong agony and litigation between the parties. Exercising powers under Article 142, the Court dissolved the marriage on the basis that it had irretrievably broken down. The judgment emphasized that matrimonial law must respond to practical realities rather than preserve purely legal relationships lacking emotional substance.

The most significant recent development occurred in *Shilpa Sailesh v Varun Sreenivasan*.⁹ This Constitution Bench judgment clarified the scope of the Supreme Court's powers under Article 142 in matrimonial disputes. The Court held that it possesses authority to dissolve marriages on the ground of irretrievable breakdown even in the absence of explicit statutory recognition where complete justice so requires. The judgment recognized that forcing parties to remain in marriages that had completely failed would undermine individual dignity and perpetuate emotional suffering. At the same time, the Court emphasized that such powers must be exercised cautiously and only in exceptional circumstances.

These judicial decisions collectively demonstrate the gradual transformation of Indian matrimonial jurisprudence from rigid fault-based analysis toward recognition of practical marital realities. Although irretrievable breakdown remains outside the

⁷ *Samar Ghosh v Jaya Ghosh*, (2007) 4 SCC 511 (SC).

⁸ *R Srinivas Kumar v R Shametha*, (2019) 9 SCC 409 (SC).

⁹ *Shilpa Sailesh v Varun Sreenivasan*, (2023) 14 SCC 1 (SC).

statutory framework, the Supreme Court has increasingly treated the doctrine as an important principle for ensuring equitable resolution of matrimonial disputes.

3. Judicial Activism and Use of Article 142

The growing judicial reliance upon Article 142 in matrimonial disputes has generated significant debate regarding the relationship between judicial activism and legislative authority. Article 142 empowers the Supreme Court to pass orders necessary for doing “complete justice” in matters before it. Through this constitutional provision, the Court has repeatedly dissolved marriages where reconciliation was impossible despite the absence of formal statutory grounds.

Supporters of this approach argue that judicial intervention became necessary because existing matrimonial legislation failed to adequately address dead marriages. According to this view, strict adherence to fault theory often compels parties to continue relationships that exist only in legal form while causing prolonged emotional and psychological hardship. Judicial recognition of irretrievable breakdown therefore represents an attempt to harmonize matrimonial law with social realities and constitutional principles of dignity and personal liberty.

Critics, however, argue that repeated invocation of Article 142 effectively allows the judiciary to create new divorce grounds without legislative sanction. Since Parliament has not formally amended the Hindu Marriage Act, 1955 to include irretrievable breakdown, some scholars contend that extensive judicial reliance upon the doctrine risks disturbing the constitutional balance between courts and legislatures. Concerns are also raised that excessive judicial discretion may create uncertainty within matrimonial law and encourage inconsistent application of principles.

Nevertheless, the Supreme Court’s evolving jurisprudence demonstrates increasing recognition that matrimonial law must adapt to changing social realities. The continued judicial acceptance of irretrievable breakdown strongly indicates the growing inadequacy of purely fault-based divorce systems in resolving modern matrimonial disputes.

CONCLUSION

The doctrine of irretrievable breakdown of marriage represents one of the most significant shifts within modern matrimonial jurisprudence from rigid fault-based adjudication toward a more realistic and humane understanding of marital relationships. Contemporary matrimonial disputes increasingly demonstrate that marriages may completely collapse emotionally, socially, and practically even where traditional fault grounds cannot be conclusively established. In such circumstances, compelling parties to remain legally bound often serves no constructive social purpose and merely prolongs hostility, mental suffering, and unnecessary litigation.

Indian matrimonial law continues to retain a predominantly fault-oriented framework under the Hindu Marriage Act, 1955 despite repeated judicial recognition of the limitations associated with fault theory. Through decisions such as *Naveen Kohli v Neelu Kohli* and *Shilpa Sailesh v Varun Sreenivasan*, the Supreme Court has increasingly acknowledged that preservation of legally dead marriages undermines the broader objectives of justice, dignity, and individual well-being. The judiciary's repeated reliance upon Article 142 to dissolve irretrievably failed marriages itself demonstrates the inadequacy of the present statutory framework.

Several foreign jurisdictions have gradually shifted toward breakdown-based or no-fault divorce systems in recognition of changing social realities and the limitations of adversarial matrimonial litigation. Comparative developments in jurisdictions such as the United Kingdom and the United States indicate that modern family law increasingly prioritizes practical resolution of failed relationships over formal continuation of marriages lacking any real substance.

At the same time, concerns regarding misuse of liberal divorce provisions and protection of economically vulnerable spouses cannot be ignored. However, such concerns justify careful regulation rather than complete rejection of the doctrine itself. Appropriate safeguards relating to maintenance, alimony, child welfare, and judicial scrutiny can adequately address potential misuse while still recognizing the realities of marital breakdown.

Therefore, formal statutory recognition of irretrievable breakdown of marriage appears to be a necessary reform within contemporary Indian family law. The law must ultimately respond to social realities rather than preserve legal fictions. Where a marriage has completely failed beyond the possibility of reconciliation, insistence

upon its continuance neither protects the institution of marriage nor advances justice. Instead, recognition of irretrievable breakdown would provide a more equitable, dignified, and realistic framework for resolving modern matrimonial disputes.