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IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND FOR DIVORCE: ANALYSING ITS VALIDITY IN INDIA

~Sneha Sethi

ABSTRACT

The laws of divorce can be said to operate under two main theories: the fault theory and the no-fault theory. While the fault theory requires proof of fault or misconduct on the part of either spouse on the basis of specific statutory grounds, the no-fault theory does not intend to place blame on either party but rather examines the nature of the marital relationship. If the marriage is characterised by irreconcilable differences, divorce may be granted on the basis of a unilateral or joint petition by the parties. Since the late 20th century, there has been a gradual shift from the fault-based regime, which is characterised by prolonged litigation and great mental agony for the parties, to the recognition of no-fault grounds. In this context, this research paper examines the concept of no-fault divorce and irretrievable breakdown of marriage. The paper further aims to analyse the legal framework, landmark judgements, and the existing literature on irretrievable breakdown of marriage as a ground of divorce in India and around the world.

INTRODUCTION

In India, under the Hindu Marriage Act, 1955, and other statutory legislations governing marriage, divorce can be granted on various grounds like adultery, cruelty, desertion, petition based on mutual consent, etc.¹ Divorce is therefore granted only in cases where the fault of one spouse is proved or where it is sought through the joint petition of spouses. This heavy reliance on the fault-based regime of divorce often results in lengthy and agonising litigation, which at times is coupled with criminal charges, whether valid or mala fide. In an effort to curb the same, countries like the UK, USA, and New Zealand have introduced the concept of divorce

¹ Hindu Marriage Act, 1955, § 13, 13B, No. 25, Acts of Parliament, 1955.

based on the irretrievable breakdown of marriage, either upon the unilateral or joint petition of spouses. Such framework is characterised by complete breakdown of marriage due to irreconcilable differences and absence of cohabitation, which further proves the latter. In India, however, the position is slightly different. While the Supreme Court, in the exercise of its extraordinary powers under Article 142², has granted divorce on the ground of irretrievable breakdown of marriage, such ground is yet to be given statutory recognition under the marriage laws.

THE CONCEPT OF NO-FAULT DIVORCE

Within the realm of the traditional view of marriage, especially in colonial India, statutory divorce was not permissible. Once married, women were viewed as the property of their husbands and were therefore financially dependent on them. With the rise of movements aimed at the liberation of women, characterised by the right to work for pay, the right to own property, universal suffrage and other rights, the concept of divorce for women finally became viable. Gradually, in the Western world and eventually in India, divorce became legally permissible, but the same was limited to fault grounds. Since marriage is considered a sacramental union that is said to concern the whole of society, divorce was granted only upon strict proof of guilt or misconduct by one party in the form of adultery, cruelty, desertion, renunciation of religion, etc. To fit into such a narrow concept, people had to necessarily prove or, in some cases, concoct grounds of fault by one party to obtain divorce³. The commission of perjury to obtain divorce within the fault-based divorce system became common, undermining judicial credibility.⁴ In cases where the marriage was affected by irreconcilable differences or the decision to divorce was based on mutual consent, where no fault could be attributed to one party, divorce could not be sought on such grounds.

In 1917, the Bolshevik government of the USSR viewed traditional marriage as a symbol of the bourgeoisie, riddled with inequality between men and women and the poor and the rich. In an effort to dismantle the same, the government brought forth marriage reforms like the recognition of civil marriages, equitable treatment of legitimate and illegitimate children, and, most importantly, no-fault divorce without any requirement of proof. No-fault divorce required

² INDIA CONST. art. 142.

³ India A. Butler, *"Fault" in Divorce: Its History and Current Role (and a Recommendation for the Future)*, 37 J. AM. ACAD. MATRIM. LAW. 439, 443-444 (2025).

⁴ Jane J. Felton & Barbara A. Schweiger, *Toward a More Perfect Dissolution: The History of American Divorce Law and Its Ghosts in Contemporary Practice*, 37 J. AM. ACAD. MATRIM. LAW. 501, 518-520 (2025).

only registration with the local bureau of statistics, after which the other spouse would receive notification thereof three days later. Such divorces were referred to as “postcard divorces”. As expected, due to the lack of adjudication and the requirement of proof, divorce, especially at the instance of men, became increasingly common. In 1936, Joseph Stalin, in an effort to increase the birth rate, reversed such changes and made divorce subject to the adjudication of the courts⁵. While the policy of no-fault divorce proved disastrous in the Soviet Union, arbitrary blame cannot be placed on the concept itself but rather on the irresponsible implementation of the same without providing adequate safeguards for the protection of women.

In New Zealand, separation-based grounds for divorce were introduced. Under the Divorce and Matrimonial Causes Act 1908, divorce was granted on the basis of proof of adultery, desertion, cruelty, etc., by either spouse. In 1920, the Act was amended and a new no-fault ground for divorce was added. Divorce could be granted on proof of separation for at least three years, whether based on mutual consent or otherwise. In pursuance of the Amendment Act of 1920, in 1921, no-fault divorce based on prolonged separation was granted for the first time in *Lodder v. Lodder*.⁶ Justice Salmond observed that when, as a result of continued separation, the matrimonial relationship has ceased de facto, it should, unless there are special reasons to the contrary, also cease de jure. When cohabitation, which is an essential element of marriage, is done away with, forcing the spouses to remain in a marriage is useless and harmful.

INTERNATIONAL LEGAL STANCE ON IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND FOR DIVORCE

Presently in New Zealand, divorce based on irretrievable breakdown of marriage is governed by the Family Proceedings Act of 1980 and the Domestic Violence Act of 1995. Under Section 44 of the Family Proceedings Act, an application for divorce must be preceded by separation for at least two years. While the waiting period is provided to ensure that divorce is granted only after the failure of reconciliation and where there is no scope for resolution, proof of attempts to maintain a marital relationship is not required. The Court looks for evidence of the complete breakdown of the marriage rather than attributing fault to one spouse, while also

⁵ Joe Carter, *The Communist Roots of No-Fault Divorce*, THE GOSPEL COALITION (Sept. 18, 2015), <https://www.thegospelcoalition.org/article/the-communist-roots-of-no-fault-divorce/>.

⁶ *Lodder v. Lodder*, [1921] NZLR 786.

taking into consideration the welfare of children born out of the said wedlock and the division of assets⁷.

In the USA, the Family Law Act, 1969, in California implemented a shift from the fault-based system of divorce to the no-fault regime, including the ground of irreconcilable differences in marriage. Following the Family Law Act of California, other states began formulating similar laws but with different cooling off periods. Texas introduced no-fault grounds in 1970, followed by Washington in 1973. Eventually, New York was the only state that had not adopted no-fault divorce and by 2010, it permitted divorce on the ground of irreconcilable differences causing the breakdown of the marriage for at least six months⁸. Subsequently, amongst conservative legislators and jurists, there was an increase in opposition to the no-fault regime. The critics considered such framework to be detrimental to men and society in general. However, dissolution of marriage based on irreconcilable differences cannot be said to be an easier or shorter path to divorce as compared to the fault-based framework. In order to obtain a divorce, strict proof of the complete breakdown of marriage or substantial incompatibility, coupled with lack of cohabitation for a period of at least three months, is required, depending on the state. After filing for divorce, observance of a cooling-off period is also mandatory in most cases. Therefore, the no-fault regime cannot be said to be an easier or a shorter path to divorce, but rather a more amicable procedure compared to the fault regime, where unnecessary villainization and reputational harm are avoided to a large extent.

In England and Wales, the ground of irretrievable breakdown of marriage was codified in a different manner. Under the Matrimonial Causes Act of 1973⁹, irretrievable breakdown of marriage was the only ground for divorce, containing both fault and no-fault clauses. In order to obtain divorce, at least one of the following five facts had to be proved: -

- Adultery
- Unreasonable behaviour due to which the petitioner cannot be reasonably expected to live with the respondent.
- Continuous desertion for at least two years.
- Separation of parties for at least two years in case of divorce by mutual consent.

⁷ Tanveer, Ajaz and Yadav, Raj Kumar, *The Role of Courts in Divorce Cases Under Irretrievable Breakdown of Marriage in New Zealand, Financial implications of divorce in New Zealand, Legal reforms in divorce law: New Zealand's shift toward no-fault divorce*, SSRN (Feb. 09, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5129961.

⁸ Felton & Schweiger, *supra* note 4.

⁹ Matrimonial Causes Act, 1973, c. 18, § 1 (U.K.).

- Separation of parties for at least five years between parties in case of unilateral divorce.

The Act was replaced by the Divorce, Dissolution and Separation Act of 2020¹⁰, under which the five facts or grounds for divorce were removed. Under the new Act, divorce can be granted on the basis of unilateral or joint statement regarding the irretrievable breakdown of marriage. Such statement is treated as conclusive proof and cannot be contested by the other party. Divorce can be sought after a minimum of one year of marriage. Further, after the filing of an application for divorce, a waiting period of 20 weeks is reserved for reflection before a conditional order is passed. Thereafter, a waiting period of six more weeks is observed before the final order of divorce is passed. Such reforms have resulted in the simplification of divorce and the removal of the need to prove the culpability of the other spouse within the narrow five-fact regime of the previous law. However, the lack of a standard of proof regarding the irretrievable breakdown of marriage has been criticised by many. The rationale is that such oversimplification of divorce would discourage reconciliation and lead to an unreasonable increase in divorce rates.

INDIAN SCENARIO

THE HINDU MARRIAGE ACT

With the implementation of the Hindu Marriage Act, 1955, divorce among Hindus was given formal statutory recognition, but such relief could only be availed on limited fault grounds such as adultery, leprosy, renunciation of religion, etc. In 1964, the Act was amended, and divorce could be sought in cases of non-compliance with a decree for restitution of conjugal rights or non-resumption of cohabitation after the decree of judicial separation for one year or more.

In 1976, the no-fault concept of divorce was finally adopted under the Hindu Marriage Act in the form of divorce by mutual consent and lack of cohabitation for one year or more. Under this provision, divorce is granted after the expiry of a waiting period of six to eighteen months from the presentation of the petition¹¹. Further, as a result of the 1976 amendment, divorce, which could earlier be granted only after a minimum of three years of marriage, could now be granted after one year. Presently, this requirement can be waived in situations where a spouse suffers exceptional hardship or cruelty due to the subsistence of the marriage. The amendments brought about to the Hindu Marriage Act, coupled with the decriminalisation of adultery, signified a departure from the patriarchal framework of marriage, which facilitated the

¹⁰ Divorce, Dissolution and Separation Act 2020, c. 11, § 1 (U.K.).

¹¹ Hindu Marriage Act, 1955, §§ 13, 13(1A), No. 25, Acts of Parliament, 1955.

suffering of spouses, especially women, under the guise of societal and cultural responsibilities. However, while no-fault divorce was introduced under the Act, the consent of both parties was required. A unilateral decision to seek divorce based on the irretrievable breakdown of marriage is still not expressly provided as a ground for divorce under the Hindu Marriage Act, 1955.

OTHER LAWS

Under the Dissolution of Muslim Marriages Act, 1939¹², fault grounds on which women can seek divorce, like cruelty, failure to perform marital obligations or pay maintenance, impotency, etc., are provided. The Act, however, contains a residual provision wherein divorce on any other ground is recognised, provided that it is considered valid for the dissolution of marriages under Muslim law. Under Muslim personal law, divorce is deemed valid on the basis of compliance with the religious procedures rather than the reasons for seeking divorce. Unilateral divorce by men in the form of Talaq-e-Ahsan and Talaq-e-Hasan is a valid form of extra-judicial divorce in India, provided that the procedural requirements of successive waiting periods and cessation of cohabitation are satisfied. Therefore, in this regard, divorce can be sought by men by reason of irretrievable breakdown of marriage. Further, divorce in the form of khula can be sought by women with the consent of the husband without assigning any reason for such divorce. When it comes to unilateral divorce initiated by women, the question regarding the validity of divorce on the ground of irretrievable breakdown of marriage comes into play. According to the traditional interpretation of Muslim law, khula cannot be sought solely by a woman. However, in judgments of various High Courts, including the Kerala High Court, khula has been considered ‘akin to talaq’,¹³ and it has been stated that the husband’s consent is not required in such cases. In such context, it may not be necessary to expressly recognise irretrievable breakdown of marriage as a ground for divorce under the Dissolution of Muslim Marriages Act, 1939. However, the said judgment has been challenged before the Supreme Court and is pending adjudication¹⁴. If the Supreme Court takes a contrary view and holds that khula cannot be unilaterally initiated by a Muslim woman without the husband’s consent, there may arise a need to recognise irretrievable breakdown of marriage as an independent ground for divorce for Muslim women under the Dissolution of Muslim Marriages Act, 1939. Such a reform would also align with the Supreme Court’s approach in *Rukaiya*

¹² Dissolution of Muslim Marriages Act, 1939, § 2, No. 8, Acts of Parliament, 1939.

¹³ *X v. Y*, 2021 SCC OnLine Ker 2054.

¹⁴ *X v. Y*, Special Leave Petition (Civil) No. 8936-8937 of 2024 (SC, Feb. 2, 2026).

Farhan v. Mohd. Islam¹⁵, where the Court, while exercising its powers under Article 142, dissolved a Muslim marriage after observing that the marriage had irretrievably broken down, thereby indirectly recognising the need for a no-fault divorce regime in Muslim law.

Under the Special Marriage Act, 1954¹⁶, and the Indian Divorce Act¹⁷ for Christians, the grounds for divorce are similar to those under the Hindu Marriage Act. Divorce can be sought on grounds like adultery, cruelty, desertion, mutual consent, etc. However, divorce on the ground of irretrievable breakdown of marriage upon a unilateral petition is not recognised under their purview.

LAW COMMISSION REPORTS

In its 71st Report titled “The Hindu Marriage Act, 1955 - Irretrievable Breakdown of Marriage as a Ground of Divorce”,¹⁸ the Law Commission, under the chairmanship of Justice H. R. Khanna extensively examined the validity of irretrievable breakdown of marriage as a ground for divorce under the Hindu Marriage Act. Under Section 13(1A) of the Hindu Marriage Act, upon the absence of cohabitation for at least a year after a decree of judicial separation or restitution of conjugal rights is passed, a divorce petition may be filed. At the outset, this constitutes a no-fault ground of divorce, since separation is the only element necessary for granting divorce. However, in the Report, it was observed that such separation must be preceded by a decree of judicial separation or restitution of conjugal rights and in order to obtain such decree, fault or misconduct by one spouse must be proved. In the Report, therefore, it was held that the ground of irretrievable breakdown of marriage must be introduced under the Hindu Marriage Act. When divorce on such ground is sought, the court must take into consideration the following elements: -

- Continuous period of separation for at least three years
- Sufficient evidence proving that marriage has broken down beyond repair rather than proving fault or fixing any responsibility on either spouse.¹⁹

¹⁵ Rukaiya Farhan v. Mohd. Islam, Transfer Petition (Criminal) No. 852 of 2024, decided on Jan. 30, 2025 (SC).

¹⁶ Special Marriage Act, 1954, §§ 27, 27(1A), No. 43, Acts of Parliament, 1954.

¹⁷ Indian Divorce Act, 1869, §§ 10, 10A, No. 4, Acts of Parliament, 1869.

¹⁸ LAW COMMISSION OF INDIA, REPORT NO. 71: THE HINDU MARRIAGE ACT, 1955-IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND OF DIVORCE (1978).

¹⁹ PARAS DIWAN, MODERN HINDU LAW 73 (24th ed. 2019).

In its 217th Report on “Irretrievable Breakdown of Marriage - Another Ground for Divorce”²⁰, the Law Commission, headed by Dr. Justice A. R. Lakshmanan, again recommended the addition of irretrievable breakdown of marriage as a ground for divorce under the Hindu Marriage Act, 1955, as well as the Special Marriage Act, 1954. The Commission held that the provision relating to mutual consent does not adequately incorporate the ground of irretrievable breakdown of marriage. This is due to the fact that a divorce petition on this ground requires the cooperation of both spouses, and where one spouse refuses to seek divorce, the other may be forced to stay in a marriage where reconciliation is not possible. Restricting a party from seeking divorce unless they prove the commission of a particular offence or matrimonial disability by their spouse, in a situation where the breakdown of marriage is not the result of the fault of one party, causes injustice and prolonged suffering. The Report further recommended that the courts, while granting divorce on this ground, should also examine and arrange for financial support for either spouse and the children born out of the said wedlock.

Subsequently, the Marriage Laws (Amendment) Bill, 2010²¹, was introduced in Parliament. The Bill aimed to include irretrievable breakdown of marriage as a ground for divorce under the Hindu Marriage Act and the Special Marriage Act. Further, under the Bill, women could oppose a divorce petition on the ground that the divorce would result in grave financial hardship to them. Certain modifications relating to the maintenance provisions were made, and the Bill was passed by the Rajya Sabha. However, it lapsed due to the dissolution of the Lok Sabha.

JUDICIAL PRECEDENTS

In *Ram Kali v. Gopal Dass*²², the Delhi High Court held that, in modern times, it would be inhumane and impractical to compel spouses who have no intention of starting or resuming a marital relationship to live together merely to adhere to the rules of society. The Supreme Court, in *Naveen Kohli v. Neelu Kohli*²³, urged the Parliament to include irretrievable breakdown of marriage as an express ground for divorce. In certain cases, there may not be sufficient proof of mental or physical cruelty. However, prolonged separation and the conduct of either spouse may show that the differences between them are such that no resolution is possible. In *Rakesh Raman v. Kavita*²⁴, the parties had been living separately for 25 years, and multiple court cases

²⁰ LAW COMMISSION OF INDIA, REPORT NO. 217: IRRETRIEVABLE BREAKDOWN OF MARRIAGE-ANOTHER GROUND FOR DIVORCE (2009).

²¹ The Marriage Laws (Amendment) Bill, 2010, No. XLI of 2010.

²² *Ram Kali v. Gopal Dass*, 1971 SCC OnLine Del 6.

²³ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

²⁴ *Rakesh Raman v. Kavita*, (2023) 17 SCC 433.

had been filed by them against each other. The Court adopted a liberal interpretation and held that the bitterness between the parties and the severance of the marital relationship itself constitute cruelty under Section 13 of the Hindu Marriage Act.

CONCLUSION

It is high time that the concept of irretrievable breakdown of marriage is given statutory recognition under the Hindu Marriage Act, the Special Marriage Act, as well as the Indian Divorce Act. The Law Commission and the courts have time and again stressed the need for a statutory framework for granting divorce on this ground. In such context, the Supreme Court has been compelled to exercise its powers under Article 142 of the Constitution. Further, in a majority of cases where divorce has been granted on this ground, the spouses have been forced to first resort to the fault-based system of divorce, which is often characterised by rigid grounds and a cumbersome process. It is highly inconvenient to routinely invoke the inherent powers of the Supreme Court to resolve an issue, the statutory recognition of which has been repeatedly urged by jurists. Therefore, the ground of irretrievable breakdown of marriage should be added to the aforementioned statutes, which would enable the courts to comprehensively examine the evidence of the breakdown of marriage rather than look for faults on the part of either spouse. Such an addition would help grant adequate relief to litigants in cases where the demand for divorce arises not because of the fault of one person but due to substantial differences between the parties that cannot be resolved. Further, as per the recommendations of the Law Commission, separation must be treated as prima facie evidence of the irretrievable breakdown of the marital relationship.