

Social Dynamics of Irretrievable Marriage Breakdown

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ABSTRACT

There was a time when it was believed that the marriages were arranged in heaven, and it used to be a relation of flesh with flesh and bone with bone. So, the question of separation from each other was a far cry. But slowly and steadily this concept did not find favor with social reformers, who wanted that a woman must not be chained with a man who is completely devoid of all the virtues. Divorce, once stigmatized, has experienced a notable shift in societal attitudes, where it has become increasingly normalized and accepted in modern times. The general societal view on divorce has shifted to accept and understand the feelings of the people involved. One of the main reasons for the acceptance of divorce is the shift in gender roles over time. There is no direct ground for dissolution of marriage on irretrievable breakdown theory of Divorce. This paper will focus on the idea and legality of irretrievable breakdown of marriage and its implications in the long run specifically in India.

Keywords: Divorce, Marriage, Fault Ground, Law, Irretrievable.

INTRODUCTION

There was a time when it was believed that the marriages were arranged in heaven, and it used to be a relation of flesh with flesh and bone with bone. So the question of separation from each other was a far cry. But slowly and steadily this concept did not find favour with social reformers, who wanted that a woman must not be chained with a man who is completely devoid of all the virtues that a reasonable husband should have³. The British Government frowned upon any effort to make radical changes in the provisions of Hindu Law, although Hindu reformers were agitating for such changes from time to time. Post Independence the Hindu Marriage Act, 1955 came into existence which inserted the concept of Divorce. There is no precise definition of Divorce but in simple words it means putting an end to marital relationship. In legal term it is defined as a permanent dissolution of marriage by a competent court⁴.

Theories of Divorce

The ground of divorce is based on the following theories of divorce

The fault or offence theory

The fault theory of divorce is also known as the offense theory or guilt theory. It highlights that a marriage can be dissolved when any of the parties within the bond of matrimonial ties commits an offense against the other innocent party of the marriage. Thus it is necessary to have a guilty partner and an innocent partner within the bond the matrimonial ties. The innocent party only holds the right to seek remedy for the divorce. However, if both parties are at fault there is no remedy available for them⁵.

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³ A.K, Kulshrestha, "Marriage and Divorce", Chandigarh law house, Chandigarh, 1983, p.23

⁴ Retrieved from, <https://www.legalserviceindia.com/leg>, visited on 22nd June, 2025

⁵ ParisDiwan, "Law of Marriage and Divorce", Universal Publication, New Delhi, 2002, p.171

Mutual consent theory

The ideology of this theory is that since two people marry each other through their free will, at the same time, they ought to likewise be permitted to move out freely or willingly⁶. Divorce on this theory is highly criticized that this methodology will advance immorality as it will prompt rushed separations and parties would break down their marriage regardless of whether there was a slight contradiction of personality.

Irretrievable breakdown of marriage theory or No-Fault Theory

The irretrievable breakdown of marriage theory is defined as a failure in the matrimonial relationship owing to such adverse circumstances that no reasonable probability remains for the spouses to stay together. The adverse impossible conditions and situations may be due to fault of both the parties or no fault of either party. In such cases there is a stronger reason to live apart as compared to the emotions of love, affection, and loyalty that should commonly prevail between them⁷. Therefore the rationale behind this theory is that if a marriage is beyond all possibilities of a repair then it should be brought to an end without fixing responsibility. When a marriage cannot endure, there is no justification for maintaining the shared rights and responsibilities between the two individuals.

Concept of Irretrievable Breakdown of Marriage

Divorce, once stigmatized, has experienced a notable shift in societal attitudes, where it has become increasingly normalized and accepted in modern times. The general societal view on divorce has shifted to accept and understand the feelings of the people involved. One of the main reasons for the acceptance of divorce is the shift in gender roles over time. Now, women have become more financially independent and have greater access to education and career opportunities⁸. As a result, they are less likely to stay in unhappy marriages simply because they feel economically dependent on their spouse. This newfound independence has also given women the confidence to leave marriages that are not fulfilling or worse, are abusive. Another factor contributing to the acceptance of divorce is the emphasis on personal happiness, mental health and autonomy. Society now values individual happiness and self-fulfillment more than ever before. Couples are less willing to stay in marriages that do not bring them happiness, even if it means going through the process of a divorce. Although, no matter how easy the process gets, it is still difficult for the couples and their respective families of the divorce to go through the challenging process of evidence. Acknowledging this challenging process, legal systems across the world have made divorce laws more streamlined, making the process less costly and time-consuming⁹. Laws also have begun to promote equitable distribution of assets, which has helped to reduce the financial burden of a divorce. In view of the above, the concept of irretrievable breakdown of marriage has time and again become a talking point amongst Legislatures, Judiciary and Society¹⁰.

The irretrievable breakdown of marriage is defined as “such failure in the matrimonial relationships or such circumstances adverse to that relationship that no reasonable probability remains for the spouses to live together as husband & wife.” Breakdown of Marriage is when, despite the parties’ best efforts, their marriage cannot be restored to as it was before. It is often used as a no-fault ground for divorce, meaning that neither party needs to prove that the other is at fault for the breakdown of the marriage¹¹.

⁶ Poonam Pradhan Saxena, “Family Law Lectures - Family Law I”, Lexis Nexis, Haryana, 2021, 1st Edition, p.259-261

⁷ Retrieved from, <https://blog.ipleaders.in/grounds-divorce-the-hindu-marriage-act/>, visited on 25 July 2025

⁸ Prof. Kusum, “Family Law I”, Eastern Book Company, Lucknow, 2023, p.220

⁹ Retrieved from, <https://www.drishtiiias.com/>, visited on 20th May 2025

¹⁰ Retrieved from, <https://timesofindia.indiatimes.com>, visited on 25 June 2025

¹¹ Retrieved from, <https://indianexpress.com/article>, visited on 2nd July 2025

Historical Background of Irretrievable Breakdown Of Marriage 71st Report of the Law Commission of India (1978)

The Law Commission of India in its 71st report, submitted in 1978, dealt with the concept of irretrievable breakdown of marriage. The Report mentions that as far back as 1920, New Zealand was the first of the Commonwealth countries to introduce the provision that a three-year or more separation agreement was grounds for filing a petition in the courts for divorce¹². In 1921, in the first case of the granting of divorce on these grounds in New Zealand, the court laid down that when matrimonial relations have, in fact, ceased to exist it is not in the interests of the parties or in the interest of the public to keep a man and woman bound as husband and wife in law¹³. In the event of such a separation, the essential purpose of marriage is frustrated and its further continuance is not merely useless but mischievous. This formulation has become a classic enunciation of the breakdown principle in matrimonial law. The Law Commission observed that restricting divorce to matrimonial disability results in an injustice in cases where neither party is at fault, or if the fault is of such a nature that the parties do not wish to divulge it and yet the marriage cannot be worked out. It refers to a situation where the emotional and other bonds, which are the essence of marriage, have disappeared and only a façade remains. On the basis of the Report, the Marriage Laws (Amendment) Bill, 1981 was accordingly introduced in Parliament but it later lapsed due to the continuous and persistent opposition it received from few women organisations¹⁴. This was followed by the series of large number of debates regarding both advantages and downsides to determine whether to include “irretrievable breakdown marriage” as a separate ground of marriage, but ultimately it had to be withdrawn due to continuous high level of resistance. Though “mutual consent” as a ground for divorce, on the other hand, has already been included in various personal laws to give speedy relief to the aggrieved parties to some extent.

217th Law Commission of India Report (2009)

Irretrievable breakdown did not go on to formally become law, but acquired informal validity as a principle evoked in a number of judicial decisions granting divorces. The resultant legal confusion was one of the main reasons the Law Commission took up the question again as a suo motu issue, with the 217th Law Commission of India Report in March 2009 recommending again that irretrievable breakdown be added as a ground of divorce to existing provisions. The fact to be considered here is that when a marriage is broken without being able to be revived, it is quite unrealistic for the law to fail to notice the irretrievable breakdown of same, which is not only harmful to society but also to the interests of the parties¹⁵.

Legislative Provisions

There is no direct ground for dissolution of marriage on irretrievable breakdown theory of Divorce. However Section 13(1A) of Hindu Marriage Act, 1955 and section 27(2) Special Marriage Act, 1954 laid down provisions where marriage can be dissolved even there is no fault of parties or no mutual consent¹⁶.

¹² Retrieved from, <https://blog.iplayers.in/grounds-divorce-the-hindu-marriage-act/>, visited on 5th July 2025

¹³ Retrieved from, <https://blog.iplayers.in/grounds-divorce-the-hindu-marriage-act/>, visited on 12th May 2025

¹⁴ Retrieved from, <https://lawcommissionofindia.gov.in/> of India, visited on 12th May 2025

¹⁵ Dr. Basant Kumar Sharma, “Hindu Law”, Central Law Publication, Allahabad, 2017, pg. 128-129

¹⁶ Paras Diwan, “Modern Hindu Law”, Allahabad Law Agency, Faridabad, 2024, pg. 173-175

No resumption of cohabitation for one year or more after Decree of Judicial Separation:

According to it, if there has been no resumption of cohabitation between the parties for a period of one year or more after passing the decree for judicial separation in a proceeding where both were parties, then the court may, on such ground grant the decree for divorce to both the parties.

No resumption of cohabitation for one year or more after Decree of Restitution of Conjugal Rights:

According to it, if there has been no restitution of conjugal rights between the parties to the marriage for a period of one year or more after the passing of the decree for judicial separation in a proceeding to which both were parties, then the court may grant the decree for divorce to both the parties.

The Marriage Laws Amendment Bill was first introduced in the Indian Parliament in 2010 and 2013. It proposes amend The Hindu Marriage Act, 1955 by Insertion of following sections¹⁷ :

"13C. Divorce on the ground of irretrievable breakdown of marriage.-

- (1) A petition for the dissolution of a marriage by a decree of divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.
- (2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.
- (3) If the court is satisfied; on the evidence, as to the fact mentioned in sub-section (2), then unless, it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.
- (4) In considering for the purpose of sub-section (2) whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.
- (5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and references in this section to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household."

"13D. Wife's right to oppose the petition on the ground of hardship.- (1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

2) Where the grant of a decree is opposed by virtue of this section, then-

- (a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C, and
- (b) if apart from this section the court would grant a decree on the petition.

this court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage will result in grave financial hardship to the respondent and that it would in all the

¹⁷ Retrieved from, <https://www.drishtiias.com/> ,visited on 25 July 2025

circumstance be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship."

Supreme Court and Irretrievable Breakdown of Marriage

Although till now the legislature has not incorporated irretrievable breakdown as a valid ground to grant divorce, the courts have felt the need to recognize it. But with the change in the social mores and in view of the changing nature of marriage in the society, the Supreme Court has shown special concern over the matter of making irretrievable breakdown of marriage as a ground for divorce. The Supreme Court has with a view to do complete justice and shorten agony of the parties engaged in long drawn battle, directed dissolution of marriage while exercising its Power under Article 142¹⁸. Article 142 of the Constitution of India is one such provisions which empowers the Supreme Court to pass such "Decree or Order" as may be necessary for doing complete justice between the parties. The Supreme Court's power under Article 142(1) to grant of divorce on the ground of irretrievable breakdown of marriage is not a matter of right, but a discretion which is to be exercised with great care and caution to ensure complete justice in a case¹⁹. Supreme Court has laid down guideline for exercising discretion as following²⁰ :

- The time for which parties stayed together.
- The time, the parties last cohabited.
- Allegations made by parties against each other.
- Order, if any, passed in a legal proceeding between the parties.
- Attempts made to settle the dispute by the family.
- The separation period should be more than 6 years²¹.

Landmark Cases

Ashok Hurra v. Rupa Bipin Zaveri²²

Supreme Court marks a significant evolution in the application of mutual consent divorce in India. By asserting the importance of judicial discretion and the imperatives of justice over procedural technicalities, the Court ensured that the legal framework adapts to the nuanced realities of marital dissolution. This judgment underscores the judiciary's role in balancing strict adherence to legal provisions with the compassionate need to resolve irreparable marital breakdowns efficiently. It serves as a guiding beacon for future cases, advocating for timely and just resolutions while safeguarding the rights and dignities of the involved parties.

Naveen Kohli Vs Neelu Kohli²³

¹⁸ A.K,Kulshrestha, "Marriage and Divorce", Chandigarh law house, Chandigarh,1983,p.24

¹⁹ Mahendra P Singh, " V N Shukla's Constitution of India", Eastern Book Company, Lucknow, 2023,p.620

²⁰ Shilpa Sailesh Vs Varun Sreenivasan, 2023SCC Online SC544

²¹ Retrieved from, <https://www.livelaw.in/>, visited on 25 July 2021

²² AIR 1997 SC 1266

²³ 2006) 4 SCC 558

One of the first landmark case wherein the Supreme Court upheld the Family Court's conclusions that the Appellant had been subjected to the Respondent's psychological, physical, and financial abuse to the point where their marriage was irreparably broken and held Irretrievable Breakdown of Marriage as a valid ground for granting a divorce and recommend the Legislature to amend the Hindu Marriage Act, 1955 to incorporate relevant provisions according to the judgment. Prior to this decision, the only grounds for divorce in India were specified under the Hindu Marriage Act, which included cruelty, adultery, desertion, conversion to another religion, and mental disorders.

In landmark cases *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511; *Satish Sitole v. Ganga* (2008) 7 SCC 734 Supreme Court has pleaded with Parliament to statutorily add irretrievable breakdown as a ground but nevertheless used Article 142 powers piecemeal.

*Kanchan Devi Vs Promod Kumar Mittal*²⁴

In the present case, the Delhi High Court reiterated the principle that if a marriage has broken down irretrievably and there is no chance of the spouses coming together, it is a valid ground for divorce.

*K. Srinivas Rao Vs D.A. Deepa*²⁵

The Supreme Court held that the concept of Irretrievable Breakdown of Marriage can be applied to cases where the parties have been living separately for a considerable period, and the marriage has broken down irretrievably.

*Munish kakkar Vs Nidhi Kakkar*²⁶

The court finds and believes that after the decree of divorce, both the parties will be able to live their life successfully in harmony. The court also has the reason to believe when there are no hopes to continue this marriage; there is also a traumatic experience suffered by this couple due to lengthy litigation process. Thus by exercising power issued under Article 142 of the Constitution of India, the court passed a decree of divorce and breaking down the wedlock by judicial process per se.

*Rajib Kumar Roy Vs Sushmita Saha*²⁷

In this recent pronouncement SC held that keeping the parties together despite irretrievable breakdown of marriage amounts to cruelty on both sides.

*Shilpa Sailesh Vs Varun Sreenivasan*²⁸

The SC has ruled that it has the power to dissolve a marriage if it is irretrievably broken down. The court can waive the mandatory six-month waiting period for divorce under the Hindu Marriage Act (HMA), 1955, and allow the dissolution of the marriage on grounds of an irretrievable breakdown even if one of the parties was not willing.

*Prakashchandra Joshi Vs Kuntal Prakashchandra Joshi*²⁹

The honorable Supreme Court dissolved the marriage between the parties on the ground of irretrievable breakdown in exercise of powers under Article 142(1) of the Constitution of India.

²⁴ AIR 1996 SC 3192

²⁵ AIR 2013 SC 2176

²⁶ AIR 2020 SC 111

²⁷ 2023SCC Online SC1221

²⁸ 2023SCC Online SC544

²⁹ 2024 1 S.C.R. 697

Pradeep Bhardwaj v. Priya³⁰

The Supreme Court's decision in marks another significant step in the evolutionary journey of Indian matrimonial law. The Court, exercising its extraordinary power under Article 142 of the Constitution, dissolved a marriage that had effectively ended sixteen years earlier, notwithstanding concurrent findings of the Family Court and the High Court denying divorce on the statutory ground of cruelty. Crucially, the Court treated "irretrievable breakdown of marriage" as an independent and sufficient basis for divorce,

CONCLUSION

Restricting the ground of divorce to a particular offence or matrimonial disability causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not wish to divulge it, yet there has arisen a situation in which the marriage cannot be worked; that is, where the marriage has all external appearances of marriage but none of the reality. In such circumstances, there is hardly any utility in maintaining the marriage as a façade, when the emotional and other bounds which are the essence of marriage have disappeared. However Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce.

³⁰ 2025 INSC 852