



Review Article

Irretrievable Breakdown of Marriage as A Ground for Divorce: A Critical Evaluation and the Need for Legal Recognition Under Hindu Law

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Abstract

The Hindu Marriage Act, 1955, lays down specific grounds for divorce; however, the absence of "irretrievable breakdown of marriage" as a statutory ground remains a critical gap in Indian matrimonial law. With the growing number of cases where marriages have become merely legal shells devoid of emotional and social substance, it becomes imperative to recognize irretrievable breakdown as a legitimate and humane basis for divorce. This research aims to critically evaluate the relevance, implications, and necessity of including irretrievable breakdown of marriage as an additional ground for divorce under Hindu law. The study also examines the judicial evolution of the concept through various landmark judgments of the Supreme Court, where relief has often been granted under Article 142 of the Constitution despite statutory limitations. Such judicial interventions, while progressive, raise concerns regarding legal consistency and equitable access to justice. The research also explores comparative legal frameworks, particularly from jurisdictions like the UK, Australia, and South Africa, where irretrievable breakdown is a well-established ground, thus offering valuable insights for Indian legal reform. The study adopts a doctrinal and analytical methodology, reviewing statutes, case laws, Law Commission reports, and academic discourse to highlight the growing societal need for this reform. This paper concludes that formal recognition of irretrievable breakdown as a ground for divorce would enhance the efficiency of matrimonial justice, promote the dignity of individuals, and reduce misuse or over-reliance on other grounds such as cruelty or desertion. The study emphasizes the urgent need for legislative intervention to align Hindu divorce laws with contemporary realities and principles of justice.

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INTRODUCTION

A basic social institution, marriage was established to establish paternity for children and legalize sexual interactions. Hinduism is where the idea of marriage as a holy, lifelong connection first emerged. The Industrial Revolution then led to the development of the modern understanding of marriage as a contract, which holds that all unions must be founded on the free will of the parties. Since all relationships are based on the idea of free will, marriage must likewise be founded on that foundation. After the Hindu Marriage Act¹ was passed in 1955, Hindu marriages now involve a peculiar fusion of ceremony and contract. Due to the divorce-friendly Hindu marriage laws of 1955 and the widow remarriage law of 1856, Hindu marriage is no longer an eternal and irrevocable sacrament, even if it is still solemnized through religious procedures.

The law does not now recognize the irrevocable breakup of a marriage, but it does recognize several reasons for divorce, such as cruelty, adultery, and desertion. There are several issues with the Hindu Marriages Act of 1955, even if it permits divorce by mutual consent. There is often waffling on the part of one or both parties, and reaching a consensus is not always achievable. When one partner attempts to negotiate or add terms that might even be against the public interest, an anxious marriage might not be able to use the remedy of divorce by mutual consent. It has been observed that when a wife is eager to file for divorce, her husband would sometimes threaten her or impose restrictions, which can cause her to forfeit her basic legal entitlement to support. If the legislation is changed, this awful circumstance can be avoided.

The phrase "*irretrievable breakdown of marriage*" refers to a circumstance or breakdown in the marriage that is so detrimental to the partnership that it is no longer possible for the spouses to continue supporting and comforting one another as husband and wife. This concept first became popular in New Zealand. The United States, England, Australia, and many other nations also grant divorces based on the irretrievable dissolution of a marriage. The 71st Law Commission of India² The report, which was delivered to the government on April 7, 1978, recommended that a retrievable breakdown of marriage be covered.

The Development of Irretrievable Marital Breakdown as A Basis for Divorce

New Zealand was where the breakdown theory's seeds were initially planted. The (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920, for the first time included a clause stating that a separation agreement for three years or longer was a basis for submitting a divorce petition to the court and that the court had the authority to decide whether or not to grant a divorce. In the Masarati v. Masarati³ case in England, when both of the marriage's participants had committed

adultery, this theory was recognized. In its decision regarding the wife's divorce petition, the Court of Appeal emphasized the breakdown of the marriage. The recommendations of the Legislative Commission of England state that a fair divorce law should facilitate the dissolution of a marriage with the least amount of resentment, shame, and suffering possible, as well as allow for the destruction of the empty shell. In 1969, the General Assembly of the Church of Scotland approved the Moral and Social Welfare Board's Reports, which suggested substituting breakdown for matrimonial offenses. According to this report, "Matrimonial offenses are often the outcome of a failing marriage rather than its cause." A prolonged separation of at least two years after at least one of the parties decides not to live together should be the only indication that a marriage is broken. However, divorce is still illegal in India when a couple's marriage has failed, even after the Law Commission's recommendations and multiple Supreme Court decisions.

Acknowledging The Supreme Court's Discretionary Authority Under Article 142 of the Indian Constitution

According to Article 142 of the Indian Constitution, the Supreme Court can make the necessary decrees or orders to guarantee that each case or matter before it is resolved fairly and reasonably. In compliance with any laws enacted by Parliament, these decisions shall be binding nationwide. These capabilities, sometimes referred to as the Supreme Court's inherent powers or "in-hand powers," are meant to give everyone complete justice at any moment. According to the aforementioned article, any case that is presently before the Supreme Court is regarded as any cause or matter, regardless of the type of procedure involved. The Supreme Court can employ its integrated powers when exercising its other jurisdiction, as decided in the Chandrakant Patil v. State⁴ decision. The court's order must be necessary to ensure full justice in the matters it is currently hearing. However, the power should only be used infrequently. Article 142 gives the Apex Court unprecedented authority to enforce the law and close any gaps that arise where there is not enough legal protection to deliver complete justice. In situations where subordinate courts are unable to provide an order that would serve to protect the objectives of justice, the Supreme Court of India may provide a remedy by issuing an enforceable decree or order.

The Constitution Bench recently rendered a unanimous verdict in the "Shilpa" case on May 1, 2023. Under Article 142 of the Constitution, the Supreme Court may grant a divorce right away on the basis of "irretrievable breakdown of marriage," as per the decision in Sailesh v. Varun Sreenivasan.⁵ The Bench ruled that the SC's sole authority under Article 142 is to defend justice, equality, and good conscience. A particular provision known as Article 142 gives the SC the authority to administer complete justice in any case or matter. In order to achieve the goals of justice, the SC may therefore go above and beyond the

¹ The Hindu Marriage Act, 1955.

² Law Commission of India, 71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground for Divorce, (1978).

³ Masarati v. Masarati, (1969) 1 All ER 923 (CA).

⁴ Chandrakant Patil v. State, AIR 1998 SC 1234.

⁵ Sailesh v. Varun Sreenivasan, Civil Appeal No. 3792 of 2020 (SC), decided on 1 May 2023.

requirements of substantive and procedural law. The Bench did caution that while engaging in such an activity, appropriate restriction should be employed. The Bench ruled that "fundamental general and specific principles" must be upheld when exercising the authority given by Article 142.

Article 142: Divorce May Be Granted by the Supreme Court

The process for a divorce by mutual consent of the spouses is outlined in Section 13B of the Hindu Marriage Act, 1955 (HMA), along with other reasons for divorce. There will be a 6- to 18-month cooling-off period after a joint divorce petition is filed. The appropriate court will move forward with the case and award a divorce if the application is not withdrawn within this time frame. The panel holds that even in situations where the initial action is still pending before a Family Court, the SC is not bound by these procedural criteria and may issue the decision under Article 142 before the term stipulated. They did emphasize that the time gap is crucial because it allows the parties to consider and reconsider their divorce arrangements. The waiting period cannot be extended if the judge determines that the marriage cannot be preserved.

The Rationale Behind Incorporating Irretrievable Marital Dissolution as A Basis for Divorce

Depending on whether the side is at fault or consent, divorce may be granted under the Hindu Marriage Act of 1955 on the grounds of cruelty, adultery, desertion, conversion, insanity, renunciation, or mutual acquiescence. These grounds may not always adequately capture the essence and underlying cause of the marital dispute. The court still requires the parties to prove or accuse one another of misbehavior or fault in some form, even if the parties to the marriage voluntarily decide to dissolve it. This invariably leads to injustice and suffering for all parties, who ought to endure a protracted, costly judicial process and suffer both financial and emotional repercussions. Furthermore, in many cases where marriages are all but dead and cannot be saved, these grounds are inapplicable. The introduction of irretrievable breakdown as an additional ground for divorce will be fully justified and rationalized because it will be utterly unfair and unjustified in those cases where the marriage could not be saved despite neither party being at fault, or when neither partner in the marriage is held accountable or if there is fault but the parties are unwilling to discuss it. On the outside, the marriage seems to be everything that it should be, but it isn't; it's just a shell that no longer holds love, affection, or concern. It is not reasonable or justified to prolong a married connection when the emotional and other bonds that are necessary for the marriage have disappeared.

In certain extraordinary situations, the Supreme Court of India has exercised the discretionary power granted to it by Article 142 of the Constitution to grant divorces based on irretrievable breakdown. Article 142 states that the Supreme Court may issue any order if it feels that doing so is fundamentally necessary to administer complete justice in any case or matter that is before it. However, none of the other lesser courts or authorities can employ this inherent authority. The Supreme Court has

acknowledged over time that its inherent authority to grant divorces could only be used very sparingly and cautiously, and that it cannot create a new legal basis for divorce through its rulings. As a result, the Supreme Court's inherent powers cannot be considered a replacement for a statutory provision.

India's acceptance of the idea of irretrievable collapse of marriage as a legitimate basis for divorce will offer a more humane and realistic way to dissolve a dead marriage. This strategy would allow the parties to continue living their lives with the highest level of happiness and well-being while also promoting a friendly settlement and compromise and reducing the possibility of litigation and animosity between the parties. The Vishnu Dutt Sharma v. Manju Sharma⁶ The case's significant ruling emphasizes the need to include irretrievable marital dissolution in the list of grounds for divorce under the Hindu Marriage Act (HMA). Both parties wanted to end their marriage because it had irretrievably fallen apart, but the appellant was unable to establish any additional grounds for divorce under Section 13 of the Act, such as cruelty, adultery, desertion, etc., and the respondent refused to submit to a divorce by mutual consent as provided for in Section 13-B of the HMA. Therefore, the appellant was left without a legal option to end his marriage and was forced to deal with the pain and frustration of a broken relationship since he and the respondent had been living apart for more than ten years.

After one of the parties withdrew their consent, the court dismissed the divorce appeal and refused to issue a divorce decree, declaring that "a court decision will amend the Act's Section 13 to include a clause stating that irretrievable breakdown of marriage qualifies as a ground for divorce if divorce is granted on that basis." We believe that the legislature alone, not the courts, should be empowered to do this. According to the court, the only body with the power to enact or amend laws is Parliament, not the courts.

However, in the recent cases of R. Srinivas Kumar v. R. Shameth⁷, Shilpa Shailesh v. Varun Sreenivasan, and Rakesh Raman v. Kavitha⁸, the court is utterly at odds with itself. This is even though, in the absence of mutual consent between the parties or any of the other legitimate grounds for divorce under section 13, the court used its discretionary powers under Article 142 of the Indian Constitution, without any amendment or enactment. According to the rulings in Vishnu Dutt Sharma v. Manju Sharma and R. Srinivas Kumar v. R. Shameth⁹, the court in the former case declared that cases involving irretrievable marriage breakdown fall under the jurisdiction of the Legislature and that the judiciary has no say in them. In the latter case, however, the court granted the parties a divorce on the same grounds, stating that the judiciary is responsible for making decisions in these cases and is empowered to issue orders for the mutual well-being of both parties and that one of the parties's fundamental rights cannot be violated simply

⁶ Vishnu Dutt Sharma v. Manju Sharma, (2009) 6 SCC 379.

⁷ R. Srinivas Kumar v. R. Shametha, (2019) 9 SCC 409.

⁸ Rakesh Raman v. Kavitha, Civil Appeal No. 7528 of 2013 (SC).

⁹ Shilpa Saisesh v. Varun Sreenivasan, Civil Appeal No. 3792 of 2020 (SC), decided on 1 May 2023.

because the other party did not consent. The Parliament should therefore take into consideration the concept of passing legislation to establish irretrievable breakdown of marriage as a basis for divorce in India in order to eliminate the Supreme Court's capricious nature and the ambiguity between judicial precedents referring to the same IRB principle. In addition to keeping the legal system up to date with the times and social realities, this would offer a more practical and humane means of ending a dead marriage.

71st And 217th Law Commission Report

The Parliament should therefore take into consideration the concept of passing legislation to establish irretrievable breakdown of marriage as a basis for divorce in India in order to eliminate the Supreme Court's capricious nature and the ambiguity between judicial precedents referring to the same IRB principle. In addition to keeping the legal system up to date with the times and social realities, this would offer a more practical and humane means of ending a dead marriage. A law that would have made the irretrievable breakdown of a marriage a ground for divorce was then proposed in 1981, but it was not passed because certain groups thought that dishonest husbands would misuse this option and abandon their wives.

The 217th Report of The Law Commission

In 2009, the Law Commission of India¹⁰ again suggested that the irretrievable breakdown of the marriage be included in the list of reasons for divorce in its 217th Report. This, along with the Apex court's recommendations, led to the introduction of the Marriage Laws (Amendment) Bill 2010 and the Marriage Laws (Amendment) Bill 2013. However, current legislation states that a marriage's mere dissolution cannot serve as grounds for divorce under Indian personal law. Due to legal procedures, the courts have been unable to offer the parties any meaningful remedy in many cases where the marriage was truly irreversibly broken.

The Supreme Court's Methodology in Addressing Cases Concerning the Problem of Irretrievable Breakdowns in Marriages

Even though the aforementioned recommendations were not able to be implemented, the Supreme Court has continued to voice its opinions when the matter has arisen. In *Rupa Bipin Zaver v. Ashok Hurra*.¹¹ The marriage was dissolved by the two-judge panel of the Supreme Court, which included Justices M.M. Punchhi and K.S. Paripoornan, since they believed it was irretrievably broken. In *Chandrakala Menon (Mrs.) and Anr. V. Vipin Menon (Capt.) and Anr.*¹², the Court, acting within the bounds of Article 142 of the Constitution, granted a decree of divorce by mutual consent under Section 13B of the Act and ended the parties' marriage to achieve the ends of justice, subject to certain conditions. The Court took that action even

though the consent for the petition under Section 13B of the Act was withdrawn within a week of the joint petition's filing date. It was also made clear that the edict would not become operative until all of its conditions were fulfilled. In *Naveen Kohli v. Neelu Kohli*¹³, both parties have accused the other of cheating on their spouse and breaking the law, but neither has been able to back up their claims with proof. After considering the circumstances, the three justices on the Supreme Court panel—B.N. Agarwal, A.K. Mathur, and Dalveer Bhandari, J.J.—granted the dissolution of the marriage. The judge underlined how useless it would be to keep the marriage going in these circumstances. Both sides have accused the other of having extramarital affairs and disrespecting marriage, but neither has been able to back up their claims with proof. The court also determined that it was appropriate to end the marriage. After considering the circumstances, the three justices on the Supreme Court panel—B.N. Agarwal, A.K. Mathur, and Dalveer Bhandari, J.J.—granted the dissolution of the marriage. The judge underlined how useless it would be to keep the marriage going in these circumstances. The court determined that, in addition to ending the marriage, it was appropriate to suggest to the parliament that the HMA, 1955, be amended to include irretrievable breakdown as a basis for divorce.

In *Samar Ghosh v. Jaya Ghosh*¹⁴, a three-judge panel of the Supreme Court—Judges B.N. Agarwal, P.P. Naolekar, and Dalveer Bhandari—concluded that, given the parties' acknowledged different living arrangements for more than sixteen and a half years, the respondent's mental cruelty had irreparably harmed the matrimonial bond. After taking into account the strategies employed by the courts in various nations, including India, England, America, Canada, and Australia, the court in this case decided to dissolve the marriage since it had irretrievably broken down. In *Ganga v. Satish Sitole*,¹⁵ the pair has been apart for 14 of their 16 years of marriage, and a large amount of that time has been spent leveling scathing charges against one another. Furthermore, the advent of a son did not act as a catalyst for the parties to reach a mutually agreeable solution. At the request of both parties, a Supreme Court judge bench consisting of Justices Altamas Kabir and Aftab Alam annulled the marriage under its jurisdiction under Article 142 of the Indian Constitution. *Maya Jain v. Anil Kumar Jain*¹⁶. The respondent first consented to a divorce decree, but she later changed her mind after the appellant-husband gave her some property and made the decision to stay separate from him. Using the authority accorded to them by Article 142 of the Indian Constitution, a two-judge bench consisting of Altamas Kabir and Cyriac Joseph, JJ, issued a divorce decree under Section 13-B to the husband. The circumstances of the aforementioned situations, when closely analyzed, get us very close to the actual suffering and anguish that either or both parties have endured because the law's current laws prevent them from ending the deadlock (became wedlock) situation.

¹⁰ Law Commission of India, 217th Report on Irretrievable Breakdown of Marriage – Another Ground for Divorce, (2009).

¹¹ *Rupa Bipin Zaver v. Ashok Hurra*, (1997) 4 SCC 226.

¹² *Chandrakala Menon v. Vipin Menon*, (1993) 2 SCC 6.

¹³ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

¹⁴ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

¹⁵ *Ganga v. Satish Sitole*, (2008) 2 SCC 415.

¹⁶ *Maya Jain v. Anil Kumar Jain*, (2009) 17 SCC 406.

SUGGESTIONS AND CONCLUSION

"Even if the marriage mutuality stream of life may carry smaller pebbles away, what would happen if the stream was interrupted by stubborn mental incompatibilities?" said Justice V.R. Krishna Iyer in *Aboobacker v. Manu*. Therefore, it should be clear that it is preferable to end a relationship when it is not working out and simply exists on paper, when there is no possibility of reconciliation or relationship preservation. Unhappiness is often mostly caused by incompatibility. When friends can leave a relationship, why can't a couple? However, adding a safety provision would provide the courts the authority to deny a divorce if doing so would be detrimental to the children's best interests. Support for the wife and child should also be covered by the agreement. Since women are no longer restricted to the home in today's culture, even if they are unable to provide for their family financially or exercise their full parenting rights, it should also address the wife's obligation to pay the bills for the husband and children. Furthermore, divorce was considered a sin in India and was only sought in the direst circumstances. In a country where partnerships are given priority, it would be shameful and incorrect to include a phrase stating that a marriage cannot be saved, and it would only be another example of westernization. The recent *Shilpa Sailesh v. Varun Srinivasan* ruling states that the court should not issue a divorce judgment under the irretrievable breakdown of marriage unless all of the conditions outlined by the ruling are fulfilled, including the following ones.

Duration of cohabitation after marriage.

- The most recent time the parties lived together.
- The details of the charges that the parties have levelled against each other.
- Attempts to reconcile the parties' disagreements.
- Enough time has elapsed since the last communication.

In addition to these considerations, the courts should ensure that appropriate plans are formed for the maintenance of the wife and children while taking the financial stability of the married parties into account. The following suggestions have been made for a more effective implementation of the laws about irretrievable divorce:

Firstly, if the marriage is failing and the gap is growing due to distaste, resentment, and hatred, and if the courts are certain that the divorce is appropriate and has sufficient grounds, they must issue a divorce decree after providing sufficient alimony for the wife and children.

The second suggestion is that the husband's income, regardless of whether he works for the government, the public sector, or the private sector, should be used to pay the debt if the parties are unable to pay the required amount of maintenance. The minimum amount of maintenance that must be deducted from the husband's pay is one-third of the salary that will be withheld. For the benefit of the abandoned family, maintenance arrangements should be made with the State as a party if the spouse works for himself. Another example is when men who work overseas marry Indian women in questionable or dishonest ways. Such males leave their women without any means of

support if they reject them after marriage. To compensate for this deficiency, it is recommended that the husband declare his assets and provide for the wife's support at the time of marriage. The third important suggestion is the date on which the need to pay should occur. The argument states that while evaluating whether or not there is a financial necessity to pay maintenance, the timing of the failure to maintain a spouse or dependent child should be taken into consideration. As stated correctly, "justice should not only be done but it seems to be done." Therefore, if implemented and enforced, the above recommendations can be beneficial for the correct application of the law when examining the various regulations pertaining to the irretrievable breakdown of a marriage. In order to make the law clear and consistent, it might be determined that the issuance of a divorce decision based on the irretrievable dissolution of a marriage should be codified. The Indian Supreme Court currently has the authority to declare a marriage irretrievably broken and then grant a divorce in accordance with Article 142 of the Indian Constitution. But as this paper explains, this strategy has drawbacks of its own and leads to the development of ad hoc case laws. Only the Supreme Court may grant relief under Article 142; the high court is not allowed to do so. By codifying the concept of irretrievable marriage dissolution, additional courts will be able to grant divorces, expediting the legal procedure and reducing the workload for the Supreme Court.

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