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IRRETRIEVABLE BREAKDOWN OF MARRIAGE IN INDIA: JUDICIAL INNOVATION, LEGISLATIVE SILENCE AND THE QUEST FOR MATRIMONIAL JUSTICE

AUTHORED BY – ANKITA LODE

ABSTRACT

The study critically examines the transformation of matrimonial dissolution under Hindu law, with a focus on the **emergence of the irretrievable breakdown of marriage (IRBM)** as a judicially recognized ground for divorce. Traditionally, the **Hindu Marriage Act, 1955**, adhered to the fault-based model, requiring proof of matrimonial misconduct to grant relief. However, societal changes, evolving marital expectations, and constitutional principles of liberty and dignity have necessitated a **shift toward the breakdown theory**, where the factual collapse of the marital relationship, rather than blame, forms the basis for dissolution.

The study analyzes **judicial innovation through Article 142**, evaluating how courts have filled the legislative vacuum in the absence of statutory recognition of IRBM. It identifies **key challenges**, including procedural uncertainty, limited access for ordinary litigants, and potential overreach of judicial discretion. By reviewing case law, Law Commission recommendations, and doctrinal scholarship, the research highlights the urgent **need for codification and procedural reform**, ensuring equitable, consistent, and constitutionally aligned divorce relief.

This research contributes to the understanding of **Hindu divorce jurisprudence**, illustrating the dynamic interaction between **judicial creativity, legislative inertia, and constitutional morality**. It proposes that statutory recognition of IRBM, accompanied by clear procedural guidelines, will harmonize personal law with contemporary social realities while safeguarding access to justice, human dignity, and marital autonomy.

Keywords: *Hindu Marriage Act, 1955, Divorce jurisprudence, Fault theory, Breakdown theory, Irretrievable Breakdown of Marriage (IRBM), Article 142, Judicial discretion, Codification, Procedural fairness, Constitutional morality.*

INTRODUCTION

Marriage, in the Hindu legal and cultural tradition, has historically been viewed not merely as a social contract but as a **sacramental and indissoluble union** — a bond meant to last through all stages of life and even beyond death. The classical texts of Hindu law considered marriage to be an essential *sanskara* (sacrament), wherein the union between husband and wife was based on religious duty and moral responsibility rather than personal choice or convenience. The very notion of divorce was alien to this philosophy, as the dissolution of a marriage was believed to be incompatible with the sacred ideals of Dharma and familial stability¹.

However, with the advent of modernization, constitutional governance, and codification of personal laws in post-independence India, the **Hindu Marriage Act, 1955** marked a watershed moment². For the first time, the law recognized the possibility of marital breakdown and introduced limited grounds for divorce such as cruelty, adultery, and desertion based on the **Fault Theory**³. Under this model, divorce could be granted only when one spouse was found “guilty” of a matrimonial offence, and the other was the “innocent” victim.

While this framework was initially celebrated for balancing tradition with reform, it soon revealed serious shortcomings. The requirement to assign fault often intensified hostility, encouraged false allegations, and prolonged litigation. Many couples trapped in emotionally dead marriages were denied legal relief merely because neither party could establish a “fault.”⁴ The rigid fault theory thus failed to accommodate **the changing realities of human relationships**, especially in a society experiencing rapid urbanization, evolving gender roles, and growing emphasis on individual autonomy⁵.

Recognizing these practical and moral limitations, Indian courts gradually began to adopt a more humane and realistic perspective giving rise to the **Breakdown Theory of Marriage**. This theory rests on a simple yet profound principle: when a marriage has completely and irretrievably broken down, and no possibility of reconciliation remains, the law should not compel the parties to remain bound in a relationship devoid of love, respect, or companionship⁶. Forcing continuance of such a union serves neither individual welfare nor public morality; instead, it perpetuates emotional cruelty and social hypocrisy⁷.

¹ *Manu Smriti*, Chapter IX, Verses 45–47

² *The Hindu Marriage Act, 1955*, Act No. 25 of 1955

³ Dr. Paras Diwan, *Law of Marriage and Divorce*, 7th ed. (Allahabad Law Agency, 2016), p. 210.

⁴ Poonam Pradhan Saxena, *Family Law in India*, 3rd ed. (LexisNexis, 2020), p. 432.

⁵ Law Commission of India, *71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground of Divorce*, 1978

⁶ Kusum, *Family Law Lectures – Family Law I*, 3rd ed. (LexisNexis, 2018), p. 385.

⁷ J.K. Acharya, “Revisiting the Breakdown Theory of Divorce in India,” (2015) *Indian Bar Review*, Vol. 42(2), p. 187.

Judicial pronouncements such as *Naveen Kohli v. Neelu Kohli* (2006), *Samar Ghosh v. Jaya Ghosh* (2007), and *Shilpa Sailesh v. Varun Sreenivasan* (2023) reflect this evolving jurisprudence⁸. The Supreme Court, invoking its extraordinary powers under **Article 142 of the Constitution**, has granted divorce on the ground of **Irretrievable Breakdown of Marriage (IRBM)** — even though such a ground finds no express mention in the Hindu Marriage Act. These decisions signify the judiciary's proactive role in aligning matrimonial law with contemporary social realities. Yet, they also highlight a troubling paradox: **a recognized ground for divorce exists in practice but not in statute**, accessible only to those who can approach the Supreme Court⁹.

The absence of legislative codification of IRBM has created uncertainty and inconsistency in the legal process. While the judiciary has attempted to bridge the gap, such reliance on judicial discretion raises concerns regarding **separation of powers, procedural uniformity, and access to justice**¹⁰. Several **Law Commission Reports** notably the 71st (1978), 217th (2009), and 242nd (2012) have strongly recommended that irretrievable breakdown of marriage be formally incorporated as a statutory ground for divorce¹¹. Despite these recommendations, legislative inertia persists, leaving the law fragmented and incomplete.

In this context, the present study undertakes a **doctrinal and analytical exploration** of the evolution of divorce jurisprudence in Hindu law from fault-based dissolution to the recognition of breakdown theory. The research aims to critically evaluate judicial developments, legislative gaps, and comparative perspectives from other jurisdictions such as the United Kingdom, Australia, and New Zealand, where the breakdown theory has been successfully codified¹².

Ultimately, the study argues that codifying the irretrievable breakdown of marriage as a legal ground for divorce is not merely a matter of procedural convenience but a **constitutional and social necessity** — essential for ensuring fairness, dignity, and equality within the institution of marriage. It aspires to contribute to ongoing debates on **judicial innovation versus legislative responsibility**, and to propose reforms that reflect the balance between traditional values and modern realities.

⁸ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558; *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511; *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 6 SCC 581.

⁹ Ruma Pal, "Judicial Legislation and Article 142 of the Constitution," (2011) *Supreme Court Cases (Journal)*, Vol. 6 SCC (J) 1.

¹⁰ M.P. Jain, *Indian Constitutional Law*, 9th ed. (LexisNexis, 2022), Vol. 2, p. 1642.

¹¹ Law Commission of India, *217th Report on Irretrievable Breakdown of Marriage – Another Ground for Divorce*, 2009; *242nd Report on Prevention of Interference with Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*, 2012.

¹² Rebecca Probert, *The Changing Legal Regulation of Cohabitation: From Fornicators to Family, 1600–2010*, (Cambridge University Press, 2012), p. 276.

HISTORICAL BACKGROUND

The concept of divorce in India has undergone a long and complex evolution, mirroring the transformation of Indian society from a traditional, patriarchal, and religiously guided structure to a modern constitutional democracy that values individual autonomy and equality. In ancient Hindu society, marriage was regarded as a *samskara* (sacrament) — a sacred and indissoluble union between husband and wife, meant to last through multiple lifetimes.¹³ Divorce was virtually non-existent, as the religious philosophy considered marriage not a contract but a holy obligation. The *Dharmashastra* texts such as *Manusmriti* and *Yajnavalkya Smriti* emphasized the permanence of marriage, focusing on the duties (*dharma*) of spouses rather than their individual rights¹⁴.

During the Vedic and Smriti periods, the dissolution of marriage was socially stigmatized. Women, in particular, were denied the right to separate from their husbands, regardless of cruelty, neglect, or desertion¹⁵. Although certain exceptional customs existed among lower castes and tribal communities allowing separation or remarriage, these practices were seen as deviations rather than accepted norms. The rigid religious foundation of Hindu marriage ensured that divorce remained alien to classical Hindu law¹⁶.

The British colonial period marked the first significant shift in matrimonial jurisprudence in India. British administrators, influenced by the principles of English common law, introduced the idea of marriage as a civil contract, though they were cautious about interfering with Hindu personal laws. The early colonial courts largely upheld the religious view of marriage's indissolubility among Hindus¹⁷. However, social reform movements during the 19th and early 20th centuries led by reformers like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and Keshab Chandra Sen began to challenge orthodox traditions, advocating for widow remarriage, women's education, and relief from oppressive marital situations.¹⁸

The enactment of the **Hindu Widows' Remarriage Act, 1856** was the first legislative step toward recognizing the individual rights of women within marriage¹⁹. Later, under growing pressure from social reformers and the emerging nationalist consciousness, the colonial state began codifying aspects of Hindu law. Yet, divorce remained unrecognized for Hindus until

¹³ Kusum, *Family Law Lectures – Family Law I*, 3rd ed. (LexisNexis, 2018), p. 52.

¹⁴ R.K. Agarwal, *Hindu Law*, 3rd ed. (Central Law Publications, 2019), p. 110.

¹⁵ Mulla, *Principles of Hindu Law*, 23rd ed. (LexisNexis, 2020), p. 432.

¹⁶ Paras Diwan, *Family Law in India*, 7th ed. (Allahabad Law Agency, 2016), p. 58.

¹⁷ Kusum, *supra* note 1, p. 55.

¹⁸ J.K. Acharya, "Historical Development of Divorce Law in India," (2017) *Indian Bar Review*, Vol. 44(1), p. 102.

¹⁹ The Hindu Widows' Remarriage Act, 1856.

after independence. The **Hindu Marriage Act, 1955**, passed as part of the larger Hindu Code reforms initiated by Prime Minister Jawaharlal Nehru and Dr. B.R. Ambedkar, finally granted Hindus the right to divorce on specific statutory grounds, marking a revolutionary departure from religious orthodoxy.²⁰

Initially, the Act embodied the **fault theory** allowing divorce only when one spouse could prove matrimonial misconduct such as adultery, cruelty, desertion, conversion, or mental disorder²¹. However, over time, it became evident that the fault-based system led to bitterness, false allegations, and endless litigation, often defeating the purpose of granting relief. As Indian society modernized and the judiciary grew more progressive, the **breakdown theory** began gaining recognition asserting that when a marriage has irretrievably broken down beyond repair, forcing parties to continue living together serves no societal purpose.²²

The Law Commission of India, in its 71st, 217th, and 242nd Reports, consistently recommended the inclusion of “irretrievable breakdown of marriage” as an independent ground for divorce²³. Despite repeated judicial acknowledgment most notably in cases like *Naveen Kohli v. Neelu Kohli* (2006) and *Samar Ghosh v. Jaya Ghosh* (2007) the legislature has not yet codified this ground.²⁴ The Supreme Court, invoking **Article 142 of the Constitution**, has dissolved marriages on this basis in exceptional cases to render “complete justice.”²⁵

Thus, the historical evolution of divorce law in India reflects the gradual transformation from a sacramental and indissoluble institution to one that acknowledges the individual’s right to dignity, liberty, and personal fulfillment. The journey from fault theory to breakdown theory symbolizes not merely a legal transition but a broader social and moral shift from the dominance of religious duty to the assertion of personal choice and human rights within the marital framework²⁶.

PROBLEM OF THE STUDY

The problem at the heart of this research lies in the tension between the traditional doctrinal framework of divorce under Hindu law and the contemporary judicial realization of social realities. The Hindu Marriage Act, 1955, though revolutionary in introducing divorce into Hindu personal law, continues to function largely within the confines of the fault-based model.

²⁰ Hindu Marriage Act, 1955; Paras Diwan, *supra* note 4, p. 114.

²¹ Kusum, *supra* note 1, p. 58.

²² *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558; *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

²³ Law Commission of India, *71st Report* (1978); *217th Report* (2009); *242nd Report* (2012).

²⁴ Kusum, *supra* note 1, p. 60; Mulla, *supra* note 3, p. 435.

²⁵ Constitution of India, Art. 142; *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 6 SCC 581.

²⁶ Paras Diwan, *supra* note 4, p. 121.

Under this theory, the dissolution of marriage depends on the proof of specific matrimonial offences such as adultery, cruelty, desertion, or conversion. In essence, it is grounded in the idea of “*guilt and innocence*,” assuming that marriage breaks down only due to the wrongful conduct of one party, and that the “aggrieved” or “innocent” spouse alone deserves relief.

This rigid framework, while doctrinally consistent with traditional notions of morality, has proven inadequate in addressing the complexities of modern marriages. In an era marked by evolving gender roles, economic independence, and psychological expectations, marital breakdowns often occur not because of identifiable faults but due to the gradual erosion of mutual respect, emotional intimacy, and compatibility. Yet, the fault theory offers no remedy for such couples. The law, in its current form, often traps individuals in lifeless marriages — relationships that are legally valid but socially and emotionally dead.

As a result, Indian courts, particularly the Supreme Court, have increasingly relied on the concept of Irretrievable Breakdown of Marriage (IRBM) to deliver justice in deserving cases. This judicial innovation represents a shift from a punitive to a remedial understanding of divorce — from determining blame to recognizing human reality. However, this *progressive judicial development* has simultaneously exposed deep structural and procedural challenges in the legal system, which form the core of the research problem.

(i) Absence of Statutory Recognition

The Hindu Marriage Act, 1955 does not expressly recognize *irretrievable breakdown of marriage* as an independent ground for divorce. This legislative silence creates a serious doctrinal gap. Despite consistent judicial recognition that a dead marriage should not be mechanically preserved, the absence of a statutory provision leaves judges with limited interpretative scope. Consequently, courts must stretch existing grounds such as cruelty or desertion to grant relief, often resulting in judicial inconsistency and *strained interpretations* that dilute the integrity of matrimonial law.

(ii) Judicial Overreach and Article 142

In the absence of legislative clarity, the Supreme Court of India has invoked its extraordinary powers under Article 142 of the Constitution to dissolve marriages that are found to be irretrievably broken. This judicial resort, though humane and necessary, blurs the line between *judicial activism* and *legislative function*. Article 142 empowers the Supreme Court to pass any order necessary “for doing complete justice,” but it was never intended to serve as a substitute for lawmaking. The Court itself, in multiple pronouncements, has expressed discomfort in

exercising such powers in the absence of statutory guidance. Moreover, the benefit of this extraordinary relief remains confined to the Supreme Court, leaving subordinate courts powerless to grant similar justice. This results in unequal access to remedies, undermining the constitutional principle of equality before law.

(iii) Procedural Ambiguity and Inconsistency

Without a legislative framework governing IRBM, there exists no standardized procedure or criteria to determine when a marriage can be said to have “irretrievably broken down.” Different benches have applied varied tests — some emphasizing the passage of time and separation, others focusing on conduct and emotional detachment. This has led to a lack of uniformity in judicial decisions, where similarly placed couples may receive different outcomes depending on the bench or interpretation applied. Moreover, the lack of procedural clarity creates evidentiary confusion, as courts struggle to establish the threshold of proof for “breakdown.” Such inconsistency erodes public confidence in the uniform application of matrimonial justice.

(iv) Inequality in Access to Justice

Perhaps the most troubling dimension of the problem is the elitist accessibility of IRBM relief. Since only the Supreme Court can exercise powers under Article 142, ordinary litigants are excluded. The prohibitive costs, complex procedures, and geographical constraints make it impossible for most individuals to approach the apex court. Consequently, divorce on the ground of breakdown becomes a privilege for a few — not a right for all. This class bias contradicts the constitutional promise of *equal access to justice* and creates a dual system: one for those who can reach the Supreme Court, and another for those trapped in procedural rigidity.

(v) Need for Codification and Reform

The continued reliance on judicial discretion in the absence of codification reflects a systemic imbalance between the legislature and the judiciary. While the judiciary has admirably filled the legislative void, this ad hoc mechanism cannot substitute a clear and democratically enacted law. Codifying IRBM as a distinct ground for divorce would bring transparency, consistency, and predictability to matrimonial jurisprudence. It would also restore the balance between judicial interpretation and legislative intent, ensuring that personal liberty and social justice coexist within a coherent statutory framework. The Law Commission of India, through its 71st

(1978), 217th (2009), and 242nd (2012) Reports, has repeatedly emphasized this need, noting that forcing unwilling couples to remain married serves no useful purpose and often perpetuates cruelty. Despite such clear recommendations, Parliamentary inaction persists, leading to a widening gap between social reality and legal recognition.

(vi) Summation of the Central Research Problem

The central issue can thus be summarized as follows:

The absence of statutory recognition of Irretrievable Breakdown of Marriage under the Hindu Marriage Act, 1955, has resulted in doctrinal inconsistency, procedural ambiguity, judicial overreach, and unequal access to justice. This legislative vacuum undermines the principles of fairness, equity, and constitutional morality, necessitating urgent codification and reform to align divorce jurisprudence with the realities of modern Indian society.

FAULT THEORY UNDER THE HINDU MARRIAGE ACT, 1955

The Hindu Marriage Act, 1955 introduced divorce into Hindu personal law through the fault theory, under which dissolution of marriage depended upon proving matrimonial misconduct by one spouse.²⁷ The theory is based on the doctrine of matrimonial guilt, where one party is treated as the “guilty” spouse and the other as the “innocent” party entitled to relief.²⁸ Consequently, divorce functioned more as a punitive remedy against wrongdoing than as recognition of marital failure itself.²⁹

Section 13 of the Act provides grounds such as cruelty, adultery, desertion, and mental disorder.³⁰ Judicial interpretation gradually expanded these grounds, particularly cruelty. In *Dastane v. Dastane*, the Supreme Court recognized mental cruelty as conduct causing reasonable apprehension that continued cohabitation would be harmful.³¹ Similarly, in *V. Bhagat v. D. Bhagat*, the Court observed that allegations exchanged during matrimonial proceedings may themselves amount to mental cruelty.³²

Despite these developments, the fault theory has significant limitations. It often encourages false allegations, emotional hostility, and prolonged litigation, as parties must prove wrongdoing to secure divorce.³³ Modern marriages frequently fail due to incompatibility,

²⁷ Hindu Marriage Act, No. 25 of 1955, § 13, India Code.

²⁸ Mulla, *Principles of Hindu Law* (22nd ed. 2022).

²⁹ Paras Diwan, *Family Law in India* (11th ed. 2021).

³⁰ Hindu Marriage Act, No. 25 of 1955, § 13, India Code.

³¹ *Dastane v. Dastane*, (1975) 2 SCC 326.

³² *V. Bhagat v. D. Bhagat*, (1994) 1 SCC 337.

³³ Law Commission of India, *71st Report on Irretrievable Breakdown of Marriage* (1978).

emotional exhaustion, or loss of companionship rather than identifiable legal fault. Yet, the law provides no direct remedy for such “dead marriages.”³⁴

The fault-based framework therefore reinforces adversarial litigation and fails to reflect contemporary constitutional values of dignity, autonomy, and mental well-being.³⁵ Its inadequacy has gradually compelled Indian courts to move toward the breakdown theory of divorce, recognizing that the continuation of irreparably failed marriages often serves no meaningful social or legal purpose.³⁶

JUDICIAL RECOGNITION OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

The recognition of irretrievable breakdown of marriage (IRBM) in India has primarily emerged through judicial interpretation rather than legislative reform. Although the Hindu Marriage Act, 1955 does not expressly recognize breakdown as an independent ground for divorce, the Supreme Court has gradually developed this doctrine through constitutional interpretation and the exercise of powers under Article 142.³⁷ Courts increasingly acknowledged that compelling parties to remain in emotionally dead marriages defeats the purpose of matrimonial justice.

A major turning point came in *Naveen Kohli v. Neelu Kohli*.³⁸ The case involved prolonged separation, repeated litigation, and complete emotional collapse of the marital relationship. The Supreme Court observed that preserving such a marriage would only prolong human suffering and recommended that Parliament incorporate irretrievable breakdown as an independent ground for divorce under the Hindu Marriage Act.³⁹ The judgment was transformative because it openly recognized the inadequacy of fault theory in addressing modern matrimonial realities and shifted the focus from punishment to resolution and human welfare.

The jurisprudential shift was further strengthened in *Samar Ghosh v. Jaya Ghosh*.⁴⁰ The Court expanded the concept of mental cruelty to include emotional neglect, denial of companionship, sustained humiliation, and psychological suffering. Although the Court did not formally recognize IRBM as a statutory ground, it indirectly acknowledged breakdown theory by emphasizing emotional incompatibility and practical marital collapse rather than isolated acts

³⁴ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

³⁵ Lokinder Sharma, “The Case for Statutory Recognition of Irretrievable Breakdown of Marriage” (2024).

³⁶ Paras Diwan, *Modern Hindu Law* (2020).

³⁷ Paras Diwan, *Family Law in India* (11th ed. 2021).

³⁸ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

³⁹ Law Commission of India, *217th Report on Irretrievable Breakdown of Marriage* (2009).

⁴⁰ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

of fault.⁴¹ The judgment reflected judicial recognition that modern marriages may fail due to emotional alienation and loss of companionship.

A constitutional milestone was reached in *Shilpa Sailesh v. Varun Sreenivasan*.⁴² The Constitution Bench affirmed that the Supreme Court may dissolve a marriage under Article 142 where the relationship is beyond repair and continuation would amount to injustice. The Court emphasized that “complete justice” may require dissolution of marriages marked by prolonged separation, failed mediation, and total emotional breakdown.⁴³ At the same time, the Court acknowledged that such extraordinary powers must be exercised cautiously.

Collectively, these judgments demonstrate the judiciary’s gradual movement from rigid fault theory toward a more humane and constitutional understanding of marriage, emphasizing dignity, autonomy, emotional well-being, and substantive justice.⁴⁴

ARTICLE 142 AND JUDICIAL ACTIVISM

The evolution of divorce jurisprudence in India, particularly the recognition of irretrievable breakdown of marriage (IRBM), is closely linked with the constitutional role of Article 142 of the Constitution. Since the Hindu Marriage Act, 1955 does not expressly recognize irretrievable breakdown as a ground for divorce, the Supreme Court has increasingly relied on Article 142 to dissolve marriages that are emotionally dead and beyond reconciliation.⁴⁵ Article 142 empowers the Court to pass any decree necessary for doing “complete justice” in matters before it.⁴⁶ Through this extraordinary power, the judiciary has attempted to bridge the gap between rigid statutory law and social reality.

Traditionally, divorce under the Hindu Marriage Act depended upon proving matrimonial fault under Section 13. However, courts frequently encountered situations where marriages had completely collapsed despite the absence of provable misconduct.⁴⁷ To avoid injustice, the Supreme Court gradually adopted a more humane approach by invoking Article 142 in exceptional cases involving prolonged separation, emotional alienation, and repeated litigation. This judicial shift became especially significant in *Shilpa Sailesh v. Varun Sreenivasan*, where the Constitution Bench affirmed that the Supreme Court may directly grant divorce on the

⁴¹ Paras Diwan, *Modern Hindu Law* (2020).

⁴² *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 2 SCC 1.

⁴³ Constitution of India, art. 142 & art. 21.

⁴⁴ Law Commission of India, *242nd Report on Prevention of Irretrievable Breakdown of Marriage* (2012).

⁴⁵ Paras Diwan, *Family Law in India* (11th ed. 2021).

⁴⁶ Constitution of India, art. 142.

⁴⁷ Law Commission of India, *71st Report on Irretrievable Breakdown of Marriage* (1978).

ground of irretrievable breakdown to achieve “complete justice.”⁴⁸ The Court emphasized that forcing parties to remain in emotionally extinct marriages may violate dignity, autonomy, and personal liberty protected under Article 21.⁴⁹

The use of Article 142 reflects judicial creativity and constitutional compassion. Supporters argue that courts cannot remain passive where legislative silence perpetuates human suffering.⁵⁰ Judicial intervention has provided relief in deserving cases where strict application of fault theory would have prolonged emotional trauma and hostile litigation. The judiciary’s approach recognizes that marriage should not be preserved merely as a legal formality where its substantive foundation has disappeared.⁵¹

However, this development has also generated concerns regarding separation of powers and judicial overreach. Critics argue that by effectively recognizing IRBM without statutory amendment, the judiciary risks entering the legislative domain reserved for Parliament.⁵² Since irretrievable breakdown lacks codified standards, judicial decisions may become inconsistent and unpredictable.

Another major concern is accessibility. Relief under Article 142 is available only before the Supreme Court, making it inaccessible for many ordinary litigants due to financial and procedural barriers.⁵³ Consequently, matrimonial justice based on IRBM often remains limited to economically privileged parties capable of approaching the apex court.

Thus, Article 142 jurisprudence reflects both the strength and limitation of judicial activism. While it promotes dignity, substantive justice, and humane relief, it also highlights the urgent need for legislative codification of irretrievable breakdown of marriage to ensure uniformity, accessibility, and constitutional balance in matrimonial law.

LEGISLATIVE SILENCE AND LAW COMMISSION RECOMMENDATIONS

A major issue in Indian divorce jurisprudence is the gap between judicial recognition of irretrievable breakdown of marriage (IRBM) and the absence of its statutory codification under the Hindu Marriage Act, 1955. While courts have repeatedly acknowledged that forcing parties to continue a dead marriage serves no useful purpose, Parliament has not formally recognized IRBM as an independent ground for divorce.

⁴⁸ Shilpa Sailesh v. Varun Sreenivasan, (2023) 2 SCC 1.

⁴⁹ Constitution of India, art. 21.

⁵⁰ Lokinder Sharma, “The Case for Statutory Recognition of Irretrievable Breakdown of Marriage” (2024).

⁵¹ Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558.

⁵² H.M. Seervai, *Constitutional Law of India* (4th ed. 2019).

⁵³ Law Commission of India, *242nd Report on Prevention of Irretrievable Breakdown of Marriage* (2012).

The Law Commission of India has consistently recommended reform in this regard. The **71st Report (1978)** was the first major document to criticize the fault-based framework, observing that it encouraged hostility and prolonged litigation. The Commission stated that many marriages fail not because of deliberate misconduct, but because the relationship itself collapses beyond repair. It therefore recommended introducing irretrievable breakdown as a separate ground for divorce.⁵⁴

The **217th Report (2009)** revisited the issue after important judicial developments such as *Naveen Kohli v. Neelu Kohli*.⁵⁵ The Commission emphasized that courts were increasingly compelled to stretch existing grounds like cruelty to address factual marital breakdown. It noted that modern marriages often fail due to emotional incompatibility, prolonged separation, and psychological alienation rather than identifiable matrimonial offences.⁵⁶

The **242nd Report (2012)** further strengthened the case for codification while focusing on safeguards for women and economically weaker spouses. The Commission recommended financial protection, maintenance rights, mediation mechanisms, and judicial scrutiny to prevent misuse.⁵⁷ It also recognized that forcing continuation of dead marriages may violate dignity and personal liberty under Article 21.⁵⁸

Despite repeated recommendations, Parliament has not enacted reform. One reason is social conservatism and the belief that easy divorce may weaken the institution of marriage.⁵⁹ Concerns regarding misuse and abandonment of economically dependent spouses have also contributed to hesitation. Additionally, political sensitivity surrounding family law reforms has discouraged legislative action.⁶⁰

Thus, legislative silence on IRBM reflects the tension between evolving constitutional values and traditional social attitudes. While the judiciary has attempted to fill the gap through Article 142, absence of codification continues to create uncertainty, inconsistency, and unequal access to matrimonial justice.

COMPARATIVE PERSPECTIVE

The evolution of divorce jurisprudence in several common law countries reflects a global shift from fault-based divorce toward no-fault and breakdown-based systems. Jurisdictions such as

⁵⁴ Law Commission of India, *71st Report on Irretrievable Breakdown of Marriage* (1978).

⁵⁵ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

⁵⁶ Law Commission of India, *217th Report on Irretrievable Breakdown of Marriage* (2009).

⁵⁷ Law Commission of India, *242nd Report on Prevention of Irretrievable Breakdown of Marriage* (2012).

⁵⁸ Constitution of India, art. 21.

⁵⁹ Mulla, *Principles of Hindu Law* (22nd ed. 2022).

⁶⁰ Paras Diwan, *Family Law in India* (11th ed. 2021).

the United Kingdom, Australia, and New Zealand have recognized that requiring spouses to prove fault often intensifies hostility and fails to reflect modern marital realities.

In the United Kingdom, the Matrimonial Causes Act, 1973 recognized irretrievable breakdown of marriage as the sole ground for divorce. Initially, parties still had to establish factors such as adultery, unreasonable behaviour, or separation. However, the Divorce, Dissolution and Separation Act, 2020 introduced a pure no-fault divorce system, eliminating the need to prove misconduct.⁶¹ The present system allows dissolution through a simple assertion that the marriage has irretrievably broken down, thereby reducing adversarial litigation.

Similarly, Australia adopted a no-fault divorce regime through the Family Law Act, 1975.⁶² The sole ground for divorce is irretrievable breakdown demonstrated by twelve months of separation. Australian courts focus on mediation, child welfare, and financial settlement rather than assigning blame. This approach emphasizes practical resolution over punitive adjudication.

In New Zealand, the Family Proceedings Act permits divorce where spouses have lived apart for a specified period and reconciliation is no longer possible.⁶³ The system prioritizes emotional well-being, autonomy, and procedural simplicity rather than moral fault.

In contrast, Indian matrimonial law under the Hindu Marriage Act, 1955 continues to remain largely fault-based. Although the Supreme Court has recognized irretrievable breakdown through Article 142, ordinary litigants before family courts still require proof of matrimonial misconduct.⁶⁴ Comparative experience shows that no-fault divorce systems do not necessarily weaken marriage; rather, they reduce hostility and promote dignified separation. This strengthens the case for codification of irretrievable breakdown of marriage in India.

NEED FOR CODIFICATION OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

The growing judicial recognition of irretrievable breakdown of marriage (IRBM) has exposed a significant gap in Indian matrimonial law. Although courts increasingly acknowledge that dead marriages should not be mechanically preserved, the Hindu Marriage Act, 1955 still does not recognize IRBM as an independent ground for divorce. This has resulted in procedural inconsistency, unequal access to justice, and excessive dependence on judicial discretion.

⁶¹ Matrimonial Causes Act, 1973 (UK); Divorce, Dissolution and Separation Act, 2020 (UK).

⁶² Family Law Act, 1975 (Australia).

⁶³ Family Proceedings Act, 1980 (New Zealand).

⁶⁴ Shilpa Sailesh v. Varun Sreenivasan, (2023) 2 SCC 1.

One of the strongest arguments for codification is the need for procedural clarity and uniformity. At present, courts apply varying standards while dealing with marital breakdown, leading to unpredictability in matrimonial adjudication.⁶⁵ Codification would provide objective criteria for determining when a marriage has irretrievably failed, thereby reducing arbitrariness and ensuring consistency across courts.

Codification is also necessary to improve access to justice. Currently, relief based on IRBM is largely available only through the Supreme Court's powers under Article 142, making it inaccessible for many ordinary litigants.⁶⁶ Recognizing IRBM statutorily would empower family courts and subordinate courts to grant relief in deserving cases, thereby democratizing matrimonial justice.

Importantly, codification would reduce adversarial litigation. Under the fault-based framework, parties often resort to allegations of cruelty or adultery merely to obtain divorce.⁶⁷ A breakdown-based approach would shift the focus from blame to practical resolution of failed relationships.

However, codification should not weaken the institution of marriage. Rather, it should balance personal autonomy with social justice through safeguards such as maintenance rights, financial protection, child welfare considerations, and mediation mechanisms.⁶⁸ Thus, codification of IRBM would align Indian matrimonial law with constitutional values of dignity, fairness, and substantive justice.

CONCLUSION

The evolution of divorce jurisprudence in Hindu law reflects a significant transition from the rigid fault-based model toward a more humane and reality-oriented breakdown theory of marriage. Judicial decisions have increasingly recognized that marriages may collapse beyond repair even in the absence of identifiable matrimonial fault, and that forcing parties to remain in emotionally dead relationships often perpetuates suffering rather than preserving social harmony.

Through the progressive use of Article 142, the Supreme Court has attempted to bridge the gap between outdated statutory provisions and contemporary constitutional values of dignity, autonomy, equality, and mental well-being. However, reliance on judicial discretion alone

⁶⁵ Law Commission of India, *217th Report on Irretrievable Breakdown of Marriage* (2009).

⁶⁶ *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 2 SCC 1.

⁶⁷ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

⁶⁸ Law Commission of India, *242nd Report on Prevention of Irretrievable Breakdown of Marriage* (2012).

cannot provide a consistent or accessible framework for matrimonial justice. The absence of statutory recognition of irretrievable breakdown of marriage continues to create uncertainty, procedural inconsistency, and unequal access to relief.

The continued preservation of legally valid but emotionally extinct marriages reflects the inadequacy of fault-based matrimonial jurisprudence in contemporary India. The codification of irretrievable breakdown of marriage is therefore not merely a legal reform, but a constitutional necessity rooted in dignity, autonomy, and substantive justice. Such reform would not weaken the institution of marriage; rather, it would align matrimonial law with social reality while ensuring fairness, compassion, and meaningful access to justice.

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