

AN ANALYSIS OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND OF DIVORCE UNDER HINDU LAW

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ABSTRACT

Marriage is a considered sacrament and a sacred holy union under Hindu law for the fulfilment of religious obligations. Marriage is considered a sacrament and a sacred union according to Hindu law, with the purpose of fulfilling religious duties. Once a relationship is established, the law intervenes and binds the parties to a number of duties and liabilities. In earlier Hindu law, divorce was an unknown concept because marriage was considered an indissoluble union. Initially, the grounds for divorce under the Hindu Marriage Act, 1955, were based on the guilt theory, and a divorce decree may be obtained by either of the parties in accordance with Section 13 of Hindu Marriage Act, 1955. The Hindu Marriage (Amendment) Act, 1964 introduced the theory of breakdown in Hindu law by inserting clause 13(1-A) under the Hindu Marriage Act, which is a small step in the direction of an irretrievable breakdown of marriage, despite the fact that Hindu law does not specifically recognize this concept as a ground of divorce. Irretrievable breakdown of marriage means when a marriage has broken down beyond any possibility of repair, then it should be dissolved. The determination of the question whether a marriage has broken down or not is left to the courts. The Honourable Supreme Court occasionally exercised the power provided in Art. 142 of the Indian Constitution to dissolve marriages in cases where it deemed that the marriage had irretrievably broken down and it would be unjust to the parties to continue it. Judiciary and Law Commission Reports suggested the Indian Legislature to incorporate "Irretrievable Breakdown of Marriage" as a ground for divorce under Hindu Marriage Act, 1955. This paper includes judicial approach towards the irretrievable breakdown of marriage, Law commission reports and Marriage (Amendment) Bill, 2010. In pursuing the present research, the study has opted the doctrinal method of research. The research found that "Irretrievable breakdown of marriage" is not explicitly recognized as a ground for divorce under Hindu law in India. At the same time the concept of irretrievable breakdown of marriage has been acknowledged and considered by Indian courts in certain cases. The recognition of the irretrievable breakdown of marriage as a ground for divorce in Hindu law is a significant development that has the potential to provide relief to spouses who are unhappy in their matrimonial bonds and whose relationship is beyond repair.

KEYWORDS: *Irretrievable Breakdown of Marriage, Divorce, Hindu Marriage Act, 1955, Law Commission Reports, Supreme Court.*

1. INTRODUCTION

Marriage is a sacrament and holy union under Hindu law for the fulfilment of religious obligations. Marriage is a union between two individuals, often seen as a lifelong commitment. In earlier Hindu law, divorce was an unknown concept because marriage was considered an indissoluble union. It is a bond that goes on for seven births¹. The three theories of divorce recognised by modern Hindu law are the fault theory, the mutual consent theory, and the irretrievable breakdown of marriage theory. Initially, the grounds of divorce

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¹ Neeru Ahuja, *Theory of irretrievable breakdown of marriage under Hindu law: A critical analysis*, Shodhganga (Nov. 25, 2023, 10:10 AM), <https://shodhganga.inflibnet.ac.in:8443/jspui/handle/10603/208551>.

under the Hindu Marriage Act, 1955 were based on the guilt theory² and introduced nine fault grounds (Section 13(1)) on which either married party can file a divorce petition. The Hindu Marriage Act of 1955 outlines several grounds upon which marriage could be dissolved. These include cruelty, desertion, adultery, conversion to another religion³, mental disorders, and various other factors⁴, yet one of them is not irretrievable breakdown of marriage. These grounds are available to both parties of marriage equally, but after the 1976 amendment, four additional grounds of divorce were given to the wife only. Although the majority of these grounds for divorce are based on a concept of fault, there are other⁵ situations in which a marriage may be ended without any fault at all like when a party is living separately for seven years or more. Hindu law does not expressly acknowledge the idea of an irretrievable breakdown of marriage as a basis for divorce. Irretrievable breakdown of marriage refers to a marriage that is irretrievably demolished emotionally dead, and completely unworkable.⁶ However, many opine that Section 13(1A) of the Hindu Marriage Act, 1955, is a small step towards the irretrievable breakdown of marriage, even though these grounds under Hindu law doesn't officially recognise. The Hindu Marriage (Amendment) Act, 1964⁷ introduced the theory of breakdown in Hindu law by inserting clause 13(1-A) under the Hindu Marriage Act. Section 13(1-A) provides that "either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground: (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two⁸ or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years⁹ or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties. However, over the years, the Indian judiciary has, in some cases, considered the concept of "irretrievable breakdown of marriage" as a ground for granting a divorce. This is based on the idea that if a marriage has broken down to the

² *Id.* at 123.

³ Raja, *Irretrievable breakdown of marriage: A ground for Divorce*, (Nov. 25, 2023, 11:30 AM), https://www.lawyersclubindia.com/learning/ip-rights-practice-drafting128.asp?utm_source=mainpopup&utm_medium=banner&utm_campaign=iprgautam.

⁴ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955, (India) § 13.

⁵ Ashish Jain, *Irretrievable Breakdown of Marriage*, 2 INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION 167, 165-172 (2020) (Nov.27, 2023, 10:15 AM), <https://www.ijlsi.com/wp-content/uploads/Irretrievable-Breakdown-of-Marriage.pdf>.

⁶ Neeta Beri *Analysing irretrievable marriage as a separate ground for divorce under Hindu law* INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES 240, 240-252 (2020) (Nov.27, 2023, 10:20 AM), <https://thelawbrigade.com/>.

⁷ Paras Diwan, *Modern Hindu Law*, 172 (22nd ed. 2015).

⁸ Since the 1976 Amendment, the duration has been shortened to one year.

⁹ *Ibid.*

point that it cannot be repaired, it may be in the best interests of both parties to grant a divorce, even if no specific grounds for divorce have been mentioned under the Act. The Honourable Supreme Court occasionally exercised the power provided in Art. 142 of the Indian Constitution to dissolve marriages in cases where it deemed that the marriage had irretrievably broken down and it would be unjust to the parties to continue it. These cases do differ from case to case, but they are not more common than usual.

1.1 OBJECTIVES OF STUDY:

1. To understand the nature and circumstances of irretrievable breakdown of marriage.
2. To analyse the legal status of irretrievable breakdown of marriage.
3. To examine the judicial approach toward irretrievable breakdown of marriage

2. RESEARCH METHODOLOGY

The researcher used the doctrinal method of research. In the doctrinal study, the material is collected from primary as well as secondary sources. Primary sources gathered from the Acts, Bills and case laws relating to the irretrievable breakdown of marriage to analyse and interpret established legal concepts governing dissolution of marriage. Secondary Sources included books, research papers, articles, and legislative provisions related to the irretrievable breakdown of marriage.

3. JUDICIAL APPROACH TOWARDS THE IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A GROUND OF DIVORCE

As stated in Article 142 of the Indian Constitution, the Supreme Court can issue any order required to provide "complete justice" in a case before it, only the Supreme Court of India has the authority to grant divorces based on the theory of irretrievable breakdown of marriage, even though it is not defined as a ground for divorce under Section 13 of the Hindu Marriage Act, 1955. A growing number of foreign laws now consider irretrievable breakdown as a valid justification to terminate a marriage and grant a divorce decree¹⁰.

The following notable case laws have been discussed:

The Delhi High Court, in *Ram Kali v. Gopal Das*¹¹ took note of the present tendency of not insisting on the preservation of a relationship that has utterly failed and observed: "It would not be a practical and realistic approach; indeed, it would be unreasonable and inhumane to compel the parties to keep up the

¹⁰ Ashish Jain, *supra* note 5.

¹¹ A.I.R 1971 O.R 1 De;10(FB) (India).

facade of marriage even though the rift between them is complete and there are no prospects of their ever living together as husband and wife."

The court in *Durga P. Tripathy v. Arundhati Tripathy*¹², observed that "marriages are made in heaven; both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot, at this stage, reconcile themselves and live together, forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal, set aside the judgement of the High Court, and affirm the order of the Family Court granting a decree for divorce".

In *Anil Kumar Jain v. Maya Jain*¹³, the appellant husband was married to the respondent wife on June 22, 1985, according to Hindu rites. On account of differences between them, they took a decision to get a decree of mutual divorce, which resulted in the filing of a joint petition for divorce under Section 13-B of the Hindu Marriage Act, 1955¹⁴ (hereinafter referred to as 'the Act') on September 4, 2004, in the District Court at Chhindwara. The wife (petitioner) withdraws consent to such a decree prior to its passing and submits that, despite serious differences that had arisen between them; she did not want the marriage ties to be dissolved. The learned judge dismissed the joint petition under Section- 13-B of the above-mentioned Act, due to the respondent's wife withdrawal of consent. The appellant filed an appeal under Section 28 of the Act in the High Court of Madhya Pradesh at Jabalpur on April 4, 2005 and dismissed by the court. While dismissing the appeal, the learned single Judge took note of the decision of this Court in similar circumstances in the case of *Ashok Hurra v. Rupa Bipin Zaveri*¹⁵, Consequently, in accordance with Article 142 of the Indian Constitution, the Court used its extraordinary power and passed mutual divorce decree to the parties. It was directed that H.C. has not such extraordinary power, and Section 13-B stipulated that the spouses' consent, which formed the foundation for the petition under Section 13-B, must be maintained until a divorce decree was reached by consent of the two individuals. The appeal was rejected by the high court's learned single judge on those grounds. Subsequently, the husband of the appellant filed an appeal with the Supreme Court. The learned senior advocate, Mr. Rohit Arya, who was appearing on behalf of the appellant husband, argued that the parties had already reached a settlement that the appellant had fully implemented and that

¹² A.I.R. 2005 7 S.C.C. 353 (India).

¹³ A.I.R. 2009 10 S.C.C. 415 (India). (Nov.24, 2023, 10:18 AM) <https://indiankanoon.org/doc/447829/>;

¹⁴ Priti Rana, *Irretrievable Breakdown Of Marriage as an Additional Ground Of Divorce: A Long Awaited Move*, 5(2) JOURNAL OF GLOBAL RESEARCH & ANALYSIS 94, 90-100 (2016).

¹⁵ A.I.R. 1997 (4) S.C.C. 226 (India). (Nov.27, 2023, 10:17 AM) <https://indiankanoon.org/doc/447829/>;

the respondent wife had been given valuable property rights under the agreement, which she was and is still enjoying. Mr. Arya argued that in addition to the points mentioned above, the respondent wife's open declaration that she had no intention to stay with the appellant clearly indicated that the marriage had irretrievably broken down. In similar situations, this Court has previously used its exceptional powers under Article 142 of the Constitution to grant a divorce decree under Section 13-B of the Hindu Marriage Act, even if one of the parties had withdrawn consent before the final decree was issued. The decision in Ashok Hurra's case (above), which similarly featured a petition under Section 13-B of the Act, was mentioned. However, later on in the case of Ashok Hurrah (mentioned above)¹⁶, this Court raised some remarks in regard the view made in the case of Sureshta Devi¹⁷, and it was believed that these remarks could need to be reconsidered in a suitable situation. Based on the concept of irretrievable breakdown of marriage, the Honourable Judges contend that pulling down the curtain at some point was necessary and extending the individuals suffering from irretrievable breakdown of marriage would not be in the interest of both parties. The court further said that the court had to consider the whole and comprehensive perspective of the practical circumstances while addressing the modification of human relationship. The judgement in the case of Ashok Hurra (mentioned above) to utilise the authority granted by Article 142 of the Constitution was subsequently applied in many cases, relying on the principle of irretrievable breakdown of marriage. Consequently, the appeal is granted. Decision of the High Court was set aside, and the request for the approval of a mutual divorce under Section 13-B of the Hindu Marriage Act, 1955¹⁸, was granted. As a result, the marriage between the parties, which took place on 22nd June, 1985, according to Hindu rites and customs, was dissolved as of the date of this judgement.

In another case, *Ms. Jorden Diengdeh v. S. S. Chopra*¹⁹, the Supreme Court observed:

"It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds for divorce in all cases... We suggest that the time has come for the intervention of the legislature in those matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situation in which couples like the present have found themselves."²⁰

¹⁶ Advocatanmoy Law Library (Dec. 02, 2023, 10:05 AM), <https://advocate-tanmoy.com/2020/02/25/smriti-pahariya-vs-sanjay-pahariya>.

¹⁷ A.I.R. (1991) 2 S.C.C. 25 (India).

¹⁸ Priti Rana, *supra* note 14.

¹⁹ A.I.R. 1985 S.C. 935 (India).

²⁰ Law Commission of India, Report No. 217, 11 *Irretrievable Breakdown of Marriage – Another Ground for Divorce*, (Nov. 17, 2023, 10:15 AM) <http://www.commonlii.org/in/other/lawreform/INLC/2009/1.pdf>, March 2009 .

On the other hand, the Supreme Court in several cases dissolves marriage on the ground of irretrievable breakdown of marriage. For instance, in the case of *Samar Ghose v. Jaya Ghose*²¹, the Supreme Court viewed that the petitioner suffered from mental cruelty caused by the respondent (the wife), and as a consequence, the marriage was irreversibly damaged and the parties had been living apart for more²² than sixteen years.

Furthermore, the court has noted that, despite the appellant's serious illness, none of her family members, not even her father, cared to check on her health, even over the phone. Based on the case's facts as stated above, it is clear that the parties lack sentiments, feelings, or emotions for one another and are capable of ending the marriage irreversibly. The court's considered that the marriage is unable to be repaired or sustained.

When issuing decrees, courts must have concern about the fact that the marriage has irretrievably broken down. In *V. Bhagat v. D. Bhagat*²³, the Supreme Court observed:

"The irretrievable breakdown of the marriage is not a ground by itself. But while ascertaining the evidence on record to determine the relief to determine whether the ground(s) alleged is made out and granted, the said circumstances can certainly be kept in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess when the court finds it in the interest of both parties".

In *Amma Khatoon v. Kashim Ansari*²⁴, the Jharkhand High Court granted a decree of divorce on the ground of irretrievable breakdown under Section 2(ix)²⁵ of the Dissolution of Muslim Marriages Act, 1939. On the basis of the above-mentioned facts, the court held:

It is reasonable to conclude that the marriage has actually failed when a breaking point has been reached and the partners have been living in frustration for a significant period of years. The law must recognise that the marriage has been broken down in reality and have the effect dissolving the marital status. Under the Muslim law, only the wife can dissolve as per section 2 of the Dissolution of Muslim Marriage Act and the Act's s. 2(ix) enacted "any other

²¹ A.I.R. (2007) 4 S.C.C. 511 (India). (Jan. 5, 2024, 10:15 AM) https://www.livelaw.in/pdf_upload/353-rakesh-raman-v-kavita-26-apr-2023-470336.pdf.

²² *Id.*

²³ A.I.R. 1994 S.C 710 (India).

²⁴ A.I.R. 2001 Jhar 28 (India).

²⁵ The Dissolution of Muslim Marriages Act, 1939, No. 8, Acts of Parliament, 1939, (India) §.2 (ix).

ground which is justified as valid for dissolution of marriage under the Muslim Law" recognises and preserves this ground as a saving provision.²⁶

The landmark judgement of irretrievably broken-down marriage was delivered in the case of *Naveen Kohli v. Neelu Kohli*²⁷. In this case, the parties have lived separately for more than ten years, and they are no longer able to fulfil their matrimonial obligations because of multiple criminal and civil lawsuits filed by them against each other. After an examination of the case's facts, the family court declared that marriage should be dissolved in accordance with Section 13 of the Hindu Marriage Act of 1955. But the appellant was dissatisfied with the decision of family court and filed a first appeal before Allahabad High Court and same was allowed after reviewing the case's facts and overriding the family court's decision. Following that, the appellant requested special leave under Article 136 of the Indian Constitution, which was accepted by the honourable Supreme Court. In this instance, the honourable Supreme Court strongly recommends that the Hindu Marriage Act, 1955 be amended by the Union of India to include the irretrievable breakdown of marriage as a ground for awarding a divorce decree. A copy of such decision was additionally forwarded to the Secretary, Ministry of Law & Justice, Department of Legal Affairs, Government of India²⁸, in order to initiate the necessary actions.

In *Shilpa Sailesh v. Varun Sreenivarab*²⁹, following legal points arose before the court:

- (i) What is the authority and power of the supreme court to make decisions under Article 142 of the Constitution, and whether the court can waive or shorten the six-month time specified in Section 13-B (2) of the Hindu Marriage Act?
- (ii) Can the dissolution of a marriage be based on the concept of 'Irretrievable breakdown of marriage' even if it is not explicitly recognised by the Hindu Marriage Act? Furthermore, does the Supreme Court have the authority, under Article 142 of the Constitution of India, to address this issue?
- (iii) Can the Supreme Court, in accordance with the authority granted by Article 142(1) of the Constitution of India, grant a divorce where there is an absolute and irretrievable breakdown of the marriage, even if the other spouse opposes the request?

²⁶ Kusum, Family Law Lectures, 181 (3rd ed. 2012).

²⁷ A.I.R. 2006 S.C. 1675 (India).

²⁸ Neeru Ahuja, *supra* note 1.

²⁹ A.I.R. 2023 S.C. 544 (India). (Dec. 07, 2023, 11:15 PM) <https://indiankanoon.org/doc/37623680/>.

The honourable court held that the Supreme court has the authority to make decisions under Article 142 of the constitution in order to achieve complete justice. Additionally, the court can exempt or decrease the six-month as specified in section 13(B) of The Hindu Marriage Act, if the court convinced that the marriage is emotionally dead, impracticable, and beyond repair. Furthermore, in addressing the other matters, the court established that the authority to terminate a marriage based on irretrievable breakdown is a discretionary power granted by Article 142(1) of the Indian Constitution. This power can be exercised when there is no chance of reconciliation and living together. Therefore, this authority must be wielded with utmost caution and prudence.³⁰

In *Amardeep Singh v. Harveen Kaur*³¹, the Court established that the statutory waiting period of a minimum of six months, as stated in Section 13B (2) of the Hindu Marriage Act, is not obligatory but directory. The Court has the authority to use its discretion to waive the requirement of Section 13B(2) based on the specific facts and circumstances of the case, particularly if there is no chance of reconciliation between the spouses. In such instances, the waiting period would only serve to unnecessarily prolong their suffering.

3.1 LAW COMMISSION REPORTS AND THE IRRETRIEVABLE BREAKDOWN OF MARRIAGE

The 71st Law Commission report discusses the idea that an irretrievable breakdown of a marriage serves as a ground for divorce under the Hindu Marriage Act of 1955³² and was presented to the government on April 7, 1978, by the chairman, H.R. Khanna. The question "Should the irretrievable breakdown of marriage be made a ground for divorce under the act, and if so, to what extent and subject to what conditions?" is one of the main issues covered in this study about the Hindu Marriage Act of 1955.

The Report states that limiting the grounds for divorce to specific offences or marital disabilities leads to unfairness in cases where neither party to marriage at guilty or the fault is of such a nature that the parties to the marriage do not want to disclose it. However, despite the absence of fault, the circumstances have arisen in which the marriage is no longer viable. Under

³⁰ Komal Singh, *Case Commentary: Shilpa Sailesh v. Varun Sreenivasan*, V INDIAN JOURNAL OF LAW AND LEGAL RESEARCH, 7, 1-9 (2023). (Dec. 08, 2023, 10:50 PM), https://3fdef50c-add3-4615-a675a91741bcb5c0.usrfiles.com/ugd/3fdef5_2af436e4033d4b39a24a98df724c5548.pdf.

³¹ 2017(4) RCR (Civil) 608; Amit Kumar v. Suman Beniwalri A.I.R. (2021) S.C.C. S.C. 1270 (India).

³² Jaya V.S., *Irretrievable Breakdown of Marriage As An Additional Ground For Divorce*, 48.3 JOURNAL OF THE INDIAN LAW INSTITUTE, (July-September 2006), 439-444, (Dec. 10, 2023, 09:50 PM) <https://www.jstor.org/stable/43952052>.

such conditions, it is argued that there is no value in upholding the marriage as a mere façade, when the emotional and other fundamental connections that define marriage have vanished.

The Report also states that if a marriage no longer exists in substance and actuality, there is no justification for rejecting divorce. In such situation, the parties alone can choose whether their marital bond will fulfil their desired needs. Divorce should be regarded as a viable resolution and a means of extricating oneself from a challenging circumstance. This kind of divorce is not about past wrongs; rather, it is about helping the parties and the kids come to grips with the new circumstances and developments by figuring out what kind of foundation would work best for managing their relationship under the current conditions.³³

The law commission report also refers *Blunt v. Blunt* case³⁴, in which Viscount Simon, L.C., while specifying the considerations that should prevail in matrimonial matters, observed:

*"To these four considerations, I would add a fifth of a more general character, which must indeed be regarded as of primary importance, viz., the interest of the community at large, to be judged by maintaining a true balance between respect for the binding sanctity of marriage and the social considerations that make it contrary to public policy to insist on the maintenance of a union that has utterly broken down. It is noteworthy that in recent years this last consideration has operated to induce the courts to exercise favourable discretion in many instances where, at an earlier time, a decree would certainly have been refused."*³⁵

The Matrimonial Causes Act, 1973, enacted by the British Parliament, supersedes the Divorce Reform Act, 1969. As to section 1 of the mentioned Act, a divorce petition can be filed on the ground of irretrievable breakdown of marriage.

When the parties to a marriage have separated for a long duration of time and a divorce petition has been filed by one of them, it is reasonable to presume that the marriage has come to an end. The court should, without a

³³ Law Commission of India Report No. 71, *The Hindu Marriage Act, 1955-Irretrievable Breakdown of Marriage as a Ground of Divorce*, April 7, 1978, (Dec. 09, 2023, 09:50 PM) <http://www.bareactlive.com/LCR/LC071.HTM>.

³⁴ (1943) 2 All ER 76 (78) (HL), (Dec. 07, 2023, 09:50 PM) <https://www.scribd.com/doc/316315713/Law-Commission-Report-No-71-The-Hindu-Marriage-Act-1955>.

³⁵ Law Commission of India, *supra* note 33.

doubt, make every effort to reunite the parties, but if the court finds that the breakdown is irreversible, divorce should not be denied.

The law commission report also stated that divorce under Hindu law should be liberalised and updated to reflect current practices in Europe and other parts of the world, as well as to be consistent with the laws that apply to the nation's other communities. The Law Commission report suggests that:

*"The essence of the proposal is that a Hindu marriage should be allowed to be dissolved if the husband and wife have lived apart for a period of say 5-10 years and the marriage is irretrievably broken due to incompatibility, clash of personalities, or similar other reasons, as is permissible under many systems of law in advanced countries"*³⁶.

Law commission in its 217th Report³⁷, titled "Irretrievable Breakdown of Marriage: Another Ground for Divorce," viewed as it should be inserted under the Hindu Marriage Act, 1955.

The study argued that it is imperative for society that marriages that are irretrievably broken down and beyond all possibility dissolved on the grounds of irretrievable breakdown of marriage.³⁸

As reported in this study, critics argued that "divorce by mutual consent" covers situations where parties file for divorce when they no longer wish to continue their relationship, so adding another basis for divorce under Hindu law is unnecessary. But it's crucial to remember that to submit the petition, both parties should agree under the heading "Divorce by Mutual Consent," and if one of them refuses, the petition cannot be filed under that particular basis.

Conversely, the court may also dissolve a marriage based on the "irretrievable breakdown of marriage" defence, provided that the court determines from the case's circumstances that the marriage in question is irreparable. Given the circumstances of this case, the court would grant the divorce on the grounds that the marriage in question has irretrievably failed.

The committee said that if a couple is unable to live contentedly and peacefully together, it is impossible to keep them together. Although love, caring, tolerance, and mutual respect are the cornerstones of marriage, an unhappy marriage is unimaginable when these virtues are compromised.

³⁶ Law Commission of India, *supra* note 33.

³⁷ Law Commission of India, *supra* note 20.

³⁸ Vijender Kumar, *Irretrievable Breakdown of Marriage: Right Of A Married Couple*, 5.1 NALSAR Law Review, 18, 15-38 (2010).

In these situations, it would be preferable for both the spouse and society to end an unsuccessful marriage so that the individual may go on and not have to live in misery. According to the law commission's 217th report, the government should move quickly to alter the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954 to include "irretrievable breakdown of marriage" as an additional basis for divorce. The commission also recommended that before awarding a divorce order based on an irretrievably broken marriage, the court consider "whether adequate financial arrangements have been made for the parties and children."

The Report states that the origin of the breakdown idea, specifically in relation to Commonwealth nations, may be traced back to legislative and judicial advancements that occurred in a far earlier era. The Divorce and Matrimonial Causes Amendment Act of 1920, enacted in New Zealand, introduced a significant provision. It stated that a separation agreement lasting three years or more could serve as a basis for filing a divorce petition in court. The court was granted the authority to exercise discretion in deciding whether to grant the divorce or not, without any specific guidelines to follow.³⁹ The discretion granted by this Act was utilised in the case of *Lodder v. Lodder*⁴⁰. In this case Salmond J., observed that:

“The Legislature must, I think, be taken to have intended that separation for three years is to be accepted by this Court as prima facie a good ground for divorce. When the matrimonial relationship has, for that period, ceased to exist de facto, it should, unless there are special reasons to the contrary, also cease to exist de jure. In general, it is not in the interests of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law when, for a lengthy period, they have ceased to be such in fact. In the case of such a separation, the essential purposes of marriage have been frustrated, and its further continuance is in general not merely useless but mischievous.”

3.2 MARRIAGE (AMENDMENT) BILL, 2010

The Law Commission examined the issue in depth in its 71st Report, titled "The Hindu Marriage Act, 1955: Irretrievable Breakdown of Marriage as a Ground of Divorce," which was submitted in April 1978, and suggested amending the Hindu Marriage Act, 1955, in order to make irretrievable breakdown of marriage a ground for divorce among Hindu couples. The commission also

³⁹ Law Commission of India, *supra* note 20.

⁴⁰ 1921 New Zealand Law Reports 786, (Dec. 10, 2023, 10:00 AM), <https://www.advocatekhaj.com/library/lawreports/breakdownofmarriage/3.php>.

suggested a period of three years of separation as a criterion for the breakdown of marriages.

On the basis of the 71st report, the Marriage Laws (Amendment) Bill, 1981, was introduced in parliament to amend the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, but was allowed to lapse on account of opposition by some women's organisations⁴¹.

Afterward, the Hon'ble Supreme Court in *Ms. Jorden Diengdeh v. S.S. Chopra*⁴² observed that there is a need to add an irretrievable breakdown of marriage as a ground for divorce in all cases. Similarly, in another case⁴³, the Hon'ble Supreme Court gave a recommendation to the Union of India to consider the proposed amendment in the Hindu Marriage Act, 1955, to include irretrievable breakdown of marriage as a ground for divorce. Further, the law commission, in its 217th Report titled "Irretrievable Breakdown of Marriage: Another Ground for Divorce," which was submitted to the government in March 2009, suggested that 'Irretrievable Breakdown of Marriage' ought to be added as another ground for the grant of a decree of divorce under the above-mentioned Acts.

In light of the Law Commission of India's recommendations and the Hon'ble Supreme Court's aforementioned observations, it is proposed to amend the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, to allow for irretrievable breakdown of marriage as a ground for divorce under certain safeguards, so that protection may be given to the wife and sufferer children.

The Marriage Law (Amendment) Bill, 2010 proposed a Law Commission to make the following provisions in regard to irretrievable breakdown of marriage:⁴⁴.

Section 13C of the bill provides that:

- 1) Any party to a marriage may file a petition for the dissolution of marriage with the district court on the grounds that the union has irretrievably broken down.
- 2) The court must be satisfied that the parties to the marriage must have been living apart for at least three years continuously prior to the filing of the petition before dissolving the marriage on the grounds of irretrievable breakdown.

⁴¹ Paras Diwan, supra note 7 at 77.

⁴² A.I.R.1985 S.C. 935 (India).

⁴³ A.I.R.2006 S.C. 1675 (India).

⁴⁴ The Marriage Laws(Amendment) Bill,2010 (Dec. 04, 2023, 07:50 AM)
https://prsindia.org/files/bills_acts/bills_parliament/2010/Marriage_Laws_Bill_2010.pdf

- 3) The court will issue a divorce order if it determines that the marriage has irretrievably broken down. The Hindu (Amendment) Bill, 2010 was passed by the Rajya Sabha in August 2010, but it lapsed with the dissolution of the 15th Lok Sabha in 2014.

The Hindu (Amendment) Bill, 2013 was passed by Rajya Sabha on August 26th, 2013 with the main objective of introducing irretrievable breakdown of marriage as a ground (by insertion of S. 13C in HMA and S. 28A in SMA) for matrimonial relief due to the changing dynamics of family relations⁴⁵. The 2013 Bill was passed by the Rajya Sabha in August 2013, but it was not introduced in the Lok Sabha⁴⁶ (lower house of the Indian Parliament).

4. CONCLUSION AND SUGGESTIONS

The institution of marriage, a cornerstone of human society, has experienced a profound transformation in response to the intricate and rapidly changing socio-economic conditions of modern life. While marriage was historically regarded as an indissoluble union, the rise of intricate causes, such as the breakdown of communal family systems, rapid industrialization, and urbanisation, the empowerment of women through education and employment, and the enactment of gender equality laws have necessitated a comprehensive re-evaluation of marital relationships and the legal framework that governs them. The proposal to include "irretrievable breakdown of marriage" as a ground for divorce under the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954 is a historic moment in this evolutionary process. The Law Commission 71st and 217th reports recommended the inclusion of irretrievable breakdown of marriage as a separate ground for divorce under Hindu law. In response to these recommendations, the Indian government introduced the Marriage Amendment Bill of 2010 in parliament, but it was lapsed due to the dissolution of the Lok Sabha in 2014. The recognition of the irretrievable breakdown of marriage as a ground for divorce in Hindu law is a significant development that has the potential to provide relief to spouses who are unhappy in their matrimonial bonds and whose relationship is beyond repair. However, it is important to carefully consider the potential implications of this change, including the potential for increased divorce rates and the need for clear guidelines to ensure consistent application of the law

⁴⁵ Abhilasha Kataria, *Marriage Laws (Amendment) Bill, 2013: A Step to Transform Matrimonial 29 Jurisprudence*, 2.1 INTERNATIONAL JOURNAL OF SOCIAL SCIENCES, ARTS AND HUMANITIES, 4, 1-6 (2014).

⁴⁶ Aditi Sampat, *Irretrievable Breakdown of Marriage – History, Applicability and Current Status in India*, (Dec. 06, 2023, 11:55 AM) <https://blog.ipleaders.in/irretrievable-breakdown-marriage-history-applicability-current-status-india/>.

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