

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A white rectangular overlay is centered on the page, containing the journal's title and ISSN information.

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IRRETRIEVABLE BREAKDOWN OF MARRIAGE: NEED FOR STATUTORY RECOGNITION

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Abstract

Marriage is regarded as one of the most important social institutions in India and has traditionally been viewed as a sacred union based on trust, companionship, and mutual understanding. However, changing social conditions, increasing individualism, and evolving constitutional values have transformed the nature of matrimonial relationships. In many cases, marriages collapse emotionally and practically, though they continue legally due to the absence of an appropriate statutory remedy. The doctrine of irretrievable breakdown of marriage recognizes that when a marital relationship has failed beyond repair and there remains no possibility of reconciliation, the law should permit dissolution of such marriage.

Although several countries have recognized irretrievable breakdown as a valid ground for divorce, Indian matrimonial laws still do not provide express statutory recognition to the doctrine. The Supreme Court of India has repeatedly emphasized the need for legislative reform and has, in exceptional circumstances, exercised powers under Article 142 of the Constitution to dissolve marriages that are completely dead. This article examines the meaning and development of the doctrine, judicial trends, recommendations of the Law Commission of India, comparative international perspectives, and the urgent need for statutory recognition in India. The article further analyzes the advantages, concerns, and safeguards associated with the doctrine and argues that legal recognition of irretrievable breakdown would promote justice, reduce unnecessary litigation, and uphold human dignity.

Key Words

Irretrievable Breakdown of Marriage, Divorce, Matrimonial Law, Family Law, Article 142, No-Fault Divorce, Marriage Dissolution.

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1. Introduction

Marriage is one of the oldest and most respected institutions in human society. In India, marriage has historically been considered a sacred and lifelong union rather than a mere contractual relationship. Traditional Indian society emphasizes preservation of marriage and family stability, considering marriage as the foundation of social order and morality. However, with the passage of time, social structures and personal relationships have undergone significant changes. Urbanization, education, economic independence, and growing awareness of individual rights have altered the perception of marriage and family life.

In modern society, many marriages fail due to incompatibility, emotional alienation, prolonged separation, cruelty, and continuous disputes. Despite the complete collapse of the relationship, parties often remain legally married because Indian matrimonial laws do not recognize irretrievable breakdown as an independent ground for divorce. As a result, spouses are compelled to continue a legal relationship that has ceased to exist in substance. Such situations cause prolonged mental agony, emotional suffering, and unnecessary litigation.

The doctrine of irretrievable breakdown of marriage emerged as a progressive response to this problem. It is based on the principle that if a marriage has broken down beyond repair and there remains no possibility of reconciliation, continuation of the legal tie serves no useful purpose. The doctrine seeks to recognize the practical reality of failed marriages instead of forcing parties to maintain a merely formal legal bond.

The Supreme Court of India and the Law Commission of India have repeatedly highlighted the necessity of incorporating this doctrine into Indian matrimonial law.

However, despite judicial recommendations and social necessity, Parliament has not yet enacted a statutory provision recognizing irretrievable breakdown as a ground for divorce.

This article critically examines the concept, judicial recognition, and the pressing need for statutory recognition of irretrievable breakdown of marriage in India.

1.1 Meaning and Concept of Irretrievable Breakdown of Marriage

Irretrievable breakdown of marriage refers to a situation where the matrimonial relationship

between spouses has deteriorated to such an extent that there remains no possibility of reconciliation or restoration of normal marital life. The marriage becomes emotionally, socially, and practically dead though legally subsisting.

The doctrine is based on the understanding that:

- The spouses have lost emotional attachment and mutual trust;
- They have been living separately for a considerable period;
- Continuous disputes and litigations have destroyed the relationship;
- Attempts at reconciliation have failed; and
- Continuation of marriage would only prolong mental suffering.

Unlike fault-based grounds such as cruelty, adultery, or desertion, irretrievable breakdown focuses on the collapse of the marriage itself rather than the wrongdoing of either spouse. It therefore represents a “no-fault” approach to divorce.

The central idea behind the doctrine is that law should recognize reality. When a marriage has ceased to exist in substance, compelling parties to continue the legal relationship defeats the true purpose of marriage and results in injustice.

1.2 Historical Development of the Doctrine in India

The concept of irretrievable breakdown of marriage was first seriously considered by the Law Commission of India in its **71st Report (1978)**. The Commission recommended that irretrievable breakdown should be introduced as an independent ground for divorce under the Hindu Marriage Act, 1955.

The Commission observed that where a marriage has completely failed and there is no chance of reconciliation, it would be unjust to compel parties to continue the legal tie. It emphasized that the law must adapt to changing social realities and provide relief in genuinely broken marriages.

The issue was reconsidered in the **217th Report of the Law Commission (2009)**, which again supported the inclusion of irretrievable breakdown as a statutory ground for divorce. The Commission noted that prolonged matrimonial disputes create unnecessary suffering and burden the judicial system.

Despite these recommendations, Parliament has not enacted legislation incorporating the doctrine into Indian matrimonial laws.

2. Judicial Recognition of the Doctrine

Although irretrievable breakdown is not a statutory ground for divorce, Indian courts have increasingly recognized the concept through judicial decisions.

Naveen Kohli v. Neelu Kohli³

In this landmark case, the Supreme Court of India observed that the marriage between the parties had completely collapsed due to continuous bitterness, allegations, and prolonged litigation. The Court held that compelling parties to continue such a marriage would only increase their misery.

The Court recommended to the Government that irretrievable breakdown should be introduced as a ground for divorce under matrimonial laws.

The Court stated: “Where the marriage has been wrecked beyond the hope of salvage, public interest lies in recognizing the real fact.”

This judgment became one of the strongest judicial endorsements of the doctrine.

Samar Ghosh v. Jaya Ghosh⁴

The Court recognized that prolonged separation and absence of cohabitation may indicate complete breakdown of marriage. It observed that continuation of a dead marriage may itself amount to mental cruelty.

The judgment reflected the judiciary’s growing acceptance of the need to acknowledge failed marriages realistically.

R. Srinivas Kumar v. R. Shametha⁵

The Supreme Court of India dissolved the marriage under Article 142 of the Constitution because the parties had been living separately for more than twenty years. The Court emphasized that continuation of a dead marriage would serve no useful purpose.

Shilpa Sailesh v. Varun Sreenivasan⁶

A Constitution Bench of the Supreme Court of India clarified that the Court can dissolve marriages on the ground of irretrievable breakdown by exercising powers under Article 142.

³ (2006) 4 SCC 558

⁴ (2007) 4 SCC 511

⁵ AIR 2019 SUPREME COURT 4914

⁶ [2023] 5 S.C.R. 165

The Court identified several indicators of irretrievable breakdown, including:

- Long separation;
- Continuous litigation;
- Failure of reconciliation efforts;
- Emotional deadness of marriage; and
- Complete absence of cohabitation.

However, the Court also noted that such extraordinary power is available only to the Supreme Court and not to ordinary family courts.

3. Need for Statutory Recognition

1. Recognition of Social Reality

Many marriages survive only in legal form while the actual relationship between spouses has completely ended. Statutory recognition would ensure that matrimonial law reflects social realities and practical human experiences.

2. Reduction of Matrimonial Litigation

In the absence of irretrievable breakdown as a ground for divorce, parties often make false or exaggerated allegations of cruelty or adultery merely to secure divorce. This increases hostility and prolongs litigation.

Recognition of breakdown as an independent ground would reduce unnecessary conflict and encourage dignified separation.

3. Protection of Human Dignity

Article 21 of the Constitution guarantees the right to life and personal liberty, which includes the right to live with dignity. Forcing individuals to remain trapped in emotionally dead marriages violates human dignity and personal freedom.

4. Judicial Efficiency

Indian family courts are burdened with prolonged matrimonial disputes. Recognition of irretrievable breakdown would simplify adjudication and reduce pendency of cases.

5. Prevention of Misuse of Existing Grounds

The absence of a direct statutory provision encourages misuse of fault-based grounds. Parties

often fabricate allegations to satisfy legal requirements. A no-fault ground based on breakdown would reduce such misuse.

6. Gender Justice

Women trapped in abusive or emotionally dead marriages often face severe social and economic hardships. Proper statutory safeguards regarding maintenance and financial security can provide fair relief to vulnerable spouses.

3. Arguments Against Statutory Recognition

Despite its advantages, certain objections are raised against statutory recognition of irretrievable breakdown.

Threat to Sanctity of Marriage

Critics argue that easy divorce based on breakdown may weaken the institution of marriage and encourage instability in family life.

Possibility of Misuse

There is concern that financially stronger spouses may misuse the doctrine to abandon economically dependent partners.

Impact on Children

Divorce may adversely affect the emotional and psychological well-being of children. Critics fear that liberal divorce laws may weaken family structures.

Subjective Determination

Determining whether a marriage has irretrievably broken down may involve subjective judicial assessment and varying interpretations.

4. Comparative Legal Perspective

Several countries have recognized irretrievable breakdown or no-fault divorce systems.

United Kingdom

The United Kingdom recognizes irretrievable breakdown as the sole ground for divorce.

Australia

The Australia follows a no-fault divorce system based on separation for a specified period.

United States

Many states in the United States recognize incompatibility or irretrievable breakdown as valid grounds for divorce.

Canada

The Canada permits divorce on the basis of marriage breakdown and prolonged separation. These jurisdictions emphasize practical realities and individual autonomy rather than preservation of formally dead marriages.

5. Suggested Safeguards for India

If irretrievable breakdown is recognized statutorily, certain safeguards should be incorporated:

- Mandatory mediation and counseling;
- Minimum period of separation;
- Financial protection and maintenance rights;
- Protection of children's welfare;
- Judicial satisfaction regarding genuine breakdown; and
- Safeguards against arbitrary misuse.

Such measures would balance personal liberty with social protection.

6. Conclusion

The doctrine of irretrievable breakdown of marriage reflects the evolving understanding of marriage in modern society. Marriage is based on companionship, emotional support, mutual trust, and respect. When these essential elements disappear permanently and reconciliation becomes impossible, continuation of the legal bond serves no meaningful purpose.

Indian courts have repeatedly recognized the need for statutory incorporation of this doctrine. However, the absence of legislative recognition creates inconsistency because only the Supreme Court can grant relief under Article 142, while ordinary courts remain restricted by traditional statutory grounds.

Statutory recognition of irretrievable breakdown of marriage, accompanied by appropriate safeguards, would promote justice, reduce unnecessary litigation, protect individual dignity, and align Indian matrimonial law with constitutional values and social realities. Such reform would not weaken marriage as an institution; rather, it would ensure that the law responds humanely and realistically to failed matrimonial relationships.

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