
Between Dharma and Divorce: Redefining Hindu Marriage in the Era of Irretrievable Breakdown

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Abstract

The paper critically analyses how Hindu marriage has changed from being a holy and unbreakable bond to a vibrant social institution influenced by equality, compassion, and autonomy. It illustrates how socioeconomic advancement and shifting gender dynamics have changed marital partnerships in India by tracing this transformation via historical, legal, and constitutional changes. The idea of irretrievable breakdown of marriage, which acknowledges that forced ongoing cohabitation serves neither justice nor dignity when trust, companionship, and mutual respect disintegrate beyond repair, is at the centre of the debate. The Article further goes on examining Law Commission reports supporting legislative codification of this doctrine, along with judicial interpretations. In order to bring Indian law into compliance with international norms and the fundamental principles of liberty, equality, and dignity, it makes the case for the Hindu Marriage Act, 1955's official recognition of irretrievable breakdown. In the end, the article envisions a gender justice perspective and compassionate marital jurisprudence that balances dharma with contemporary notions of individual autonomy and compassion.

Keywords: *Dharma, Hindu Marriage, Irretrievable Breakdown, Gender Justice, Constitutional Values.*

Introduction

Hinduism views marriage as more than just the union of two people; it represents the union of two souls bound by dharma, respect for one another, and spiritual companionship with the ultimate goal of achieving moksha (liberation) and fulfilling life's threefold purposes—dharma (duty), artha (prosperity), and kama (desire)¹. From a religious perspective, procreation and the fulfilment of religious ceremonies guarantee societal order and the continuation of lineage, and marriage is seen as an act of holy obligation and a divine covenant seen by the gods. In terms of society, it has served as the foundation of the family system, guaranteeing social cohesion, stability, and moral discipline. The institution of marriage, which governed kinship, property rights, and gender roles within patriarchal norms, likewise mirrored hierarchical hierarchies in ancient India.

But as time went on, it changed as an institution to represent the shifting balance between tradition and change, responding to social, legal, and economic developments. Beyond its ceremonial aspects, marriage still stands for shared duties, emotional stability, and friendship. Even while ideas of individual autonomy and equality cast doubt on its sacramental nature in modern discourse, it is nevertheless regarded as a highly esteemed social institution that strengthens ties to the community, the spiritual realm, and the emotions. As a result, Hindu marriage is more than just legal, it is a moral and spiritual union that is ingrained in Indian culture and promotes both individual fulfilment and social harmony.

Many people view marriage as a lifetime commitment based on respect, love, and understanding for one another. But not every connection endures over time. Forcing spouses to stay together on antiquated legal grounds after a marriage has irretrievably broken down frequently results in emotional misery, bitterness, and protracted suffering. This is the point at which acknowledging *irretrievable breakdown of marriage* as a valid reason for divorce becomes crucial.

Many legal systems still use fault-based grounds for divorce today, meaning that one partner must demonstrate misconduct or blame, such as cruelty or adultery. In addition to intensifying tension, this process frequently forces couples into acrimonious legal disputes, making an

¹ HINDU CULTURE HUB, <https://hinduculturehub.com/ethics-social-structures/hindu-marriage/> (last visited Oct. 26,2025).

already unpleasant situation much more upsetting. On the other hand, a no-fault approach that emphasizes the reality of the partnership rather than assigning blame is made possible by admitting irretrievable collapse as a basis for divorce. This practical and compassionate solution puts people's mental and emotional health first, allowing them to move on with dignity. A gradual change in society attitudes and views of marriage is indicated by the recognition of *irretrievable breakdown of marriage* as a valid reason for divorce. It expresses the knowledge that mutual trust, consent, and respect are the cornerstones of a healthy marriage, and that prolonging the partnership is pointless when these qualities are irreparably damaged. In certain situations, allowing a couple to divorce fosters emotional health, dignity, and a more compassionate handling of marital conflicts. Experiences from jurisdictions that have implemented this principle show that it not only lessens protracted and combative litigation but also promotes a conciliatory focus on issues like child welfare, maintenance, and fair financial settlements, resulting in a more sympathetic and practical resolution of marital disputes.

Hindu Law and Divorce Emergence: A Paradigm Shift

Traditional ideas of marriage as an unbreakable and sacred relationship have been significantly altered by the development of divorce under Hindu law. According to ancient Hindu thought, marriage represented a union of souls rather than a contractual agreement, and it was seen as a lasting and spiritual relationship that lasted beyond one lifetime. Since the institution was controlled by dharma rather than free will, the concept of dissolution was foreign to Hindu philosophy. A wife was considered a *sahadharmini*², a lifetime partner in the pursuit of moral and religious obligations. As a result, the idea of separation or dissolution was frowned upon by society and prohibited by religion. However, the idea of marriage underwent a slow but significant transition with the emergence of social reform movements and the impact of contemporary legal and constitutional norms.

² PRACTICAL PHILOSOPHY, <https://practicalphilosophy.in/2019/11/24/living-together-responsibilities-and-challenges/> (last visited Nov. 4, 2025).

An important turning point in the development of Indian matrimonial law was the passage of the Hindu Marriage Act, 1955. Hindus officially accepted divorce for the first time, changing marriage from an indestructible sacrament to a dissoluble social and legal bond. The evolving socioeconomic conditions of post-independence India and the increasing focus on gender justice and individual rights were reflected in this legislation.

A number of grounds for divorce, including adultery, cruelty, desertion, conversion, mental illness, and venereal disease, were introduced under the said Act³. Subsequent modifications added provisions like mutual consent divorce under Section 13-B (adopted in 1976), which acknowledged the right of spouses to dissolve their marriage by agreement when cohabitation became impossible, significantly broadening these reasons⁴.

The judiciary first took a cautious approach to granting divorce, upholding the traditional belief in the sanctity of marriage, notwithstanding this innovative statute. The social and moral significance of marriage in Indian society was emphasized by courts, which frequently gave priority to reconciliation and the maintenance of the marital connection.

Global Development of the Doctrine of Irretrievable Breakdown of Marriage

A fundamental change in matrimonial jurisprudence is represented by the doctrine of *irretrievable breakdown of marriage*, which acknowledges that it is more equitable and humane to legally accept the termination of a relationship when it has irretrievably broken down. The philosophy is based on the notion that when mutual trust, friendship, and affection have irreversibly crumbled, a marriage no longer serves its social or personal function. Therefore, maintaining such a partnership turns into a legal fiction with no moral or emotional depth. The idea highlights that when a couple's relationship has completely collapsed, the law shouldn't force them to remain together.

The breakdown theory was first introduced in New Zealand. For the first time, the (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920, contained a provision stating that a separation agreement lasting three years or more served as the foundation for

³ The Hindu Marriage Act, 1955, § 13, No. 25, Acts of Parliament, 1955 (India).

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

submitting a divorce petition to the court, with the court having the power to determine whether or not to grant a divorce.⁵

This argument was acknowledged in the English case of *Masarati v. Masarati*⁶, when both parties to the marriage had committed adultery. The Court of Appeal highlighted the dissolution of the marriage in its ruling on the wife's divorce petition. According to the Legislative Commission of England's guidelines, a fair divorce legislation should allow for the elimination of the hollow shell and promote the dissolution of a marriage with the least amount of hatred, shame, and pain possible. The Moral and Social Welfare Board's reports, which recommended replacing marital offenses with breakdown, were accepted by the Church of Scotland's General Assembly in 1969. This report states that 'matrimonial offenses are often the outcome of a failing marriage rather than its cause.'⁷

The Divorce Reform Act of 1969 in the UK replaced previous systems that needed proof of crime, such as infidelity or cruelty, with the idea of "irretrievable breakdown" as the only basis for divorce. This idea was later upheld by the Matrimonial Causes Act, 1973, which emphasized that the court must be convinced that the marriage has irretrievably failed, as demonstrated by things like separation, desertion, or unreasonable behaviour⁸.

Development of the Doctrine of Irretrievable Breakdown of Marriage in India

In an effort to reconcile traditional ideas of marital purity with the realities of human relationships in a changing society, the theory of irretrievable breakdown of marriage emerged in India, marking a significant turning point in the development of matrimonial jurisprudence. The criteria listed in the Hindu Marriage Act of 1955 were strict and frequently insufficient to

⁵ MULTIPLE ARTICLES JOURNAL, <https://multiarticlesjournal.com/uploads/articles/IJCRM20254384.pdf> (last visited Nov. 1, 2025).

⁶ *Masarati v. Masarati*, (1969) 1 All ER 923 (CA).

⁷ ADVOCATE KHOJ, <https://www.advocatekhoj.com/library/lawreports/hindumarriageact/17.php?Title=The%20Hindu%20Marriage%20Act,%201955%20-%20Irretrievable%20breakdown%20of%20Marriage%20as%20a%20Ground%20of%20Divorce&STitle=Defects%20of%20the%20matrimonial%20fault%20theory> (last visited Nov. 1, 2025).

⁸ LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/ukpga/1973/18/section/1> (last visited Nov. 2, 2025).

deal with marriages that had practically and emotionally failed but did not neatly fall into the statutory categories.

This insufficiency gave rise to the idea of irretrievable marriage breakdown, which acknowledges that a marriage can no longer serve its intended purpose if it is devoid of love, trust, and companionship. The 71st Report of the Law Commission of India (1978), which suggested that a marriage that had totally failed should be officially dissolved in order to lessen suffering and litigation, was the first significant discussion of this concept⁹. The Commission suggested adding irretrievable breakdown as a separate ground for divorce under the HMA after observing that maintaining such unions served no social or moral purpose. However, no legislative change was made at the time because of worries about abuse and the possible erosion of the institution of marriage.

Through significant rulings, judicial acknowledgment of the doctrine started to progressively emerge. The Supreme Court recognized in *Naveen Kohli v. Neelu Kohli*¹⁰ that forcing a couple to stay together when their marriage is emotionally dead and beyond salvage only serves to increase resentment. The Court emphasized the necessity for a practical and compassionate response to marital disagreements and suggested that Parliament take into consideration making irretrievable breakdown a statutory basis for divorce.

In *Samar Ghosh v. Jaya Ghosh*¹¹, the Court acknowledged extended separation, incompatibility, and loss of companionship as signs of a total breakdown of a married partnership, further elaborating the concept.

In *Shilpa Sailesh v. Varun Sreenivasan*¹², a five-judge Constitution Bench used Article 142 of the Constitution¹³ to dissolve marriages that had irretrievably broken down, even in the absence of legislative provision, fully articulating the doctrine's constitutional and human rights

⁹SCC ONLINE, <https://www.scconline.com/blog/post/2022/04/15/irretrievable-breakdown-of-marriage-as-a-ground-for-divorce/> (last visited Nov. 2, 2025).

¹⁰ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

¹¹ *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511.

¹² *Shilpa Sailesh V. Varun Sreenivasan* (2023 INSC 468).

¹³ INDIA CONST. art. 142.

dimensions. According to the Court, forcing people to stay in a loveless marriage is against the principle of rights to privacy, liberty, and dignity¹⁴. Although the theory is still uncoded, this ruling essentially established it within Indian legal.

The 217th Law Commission Report (2009) reiterated the necessity of this doctrine's legal recognition, contending that maintaining deceased marriages encourages social injustice and mental cruelty¹⁵. The judicial trend reflects an emerging concept of marriage, not as an indissoluble sacrament but as a living partnership based on mutual respect and emotional fulfilment, even though legislative action has not yet been taken. The philosophy of irretrievable breakdown, which emphasizes compassion, pragmatism, and justice within the contemporary matrimonial framework, thus represents a progressive change from the sanctity of endurance to the sanctity of human dignity in India.

Nonetheless, there has been criticism of this judicial activity too. Because such dissolutions essentially establish a new basis for divorce without legislative approval, raising concerns about judicial overreach, the line between the legislative and judicial branches of government is blurred. Opponents contend that the Supreme Court's use of Article 142 in this way infringes upon Parliament's exclusive jurisdiction to change marriage legislation.

However, proponents argue that the judiciary's action is warranted given the legislative void and inaction. Parliament has not yet codified the concept despite numerous recommendations from the Law Commission of India such as 71st and 217th Reports and public clamour for reform.

This doctrine's constitutional aspects also show a more profound movement toward human dignity, gender equality, and individual autonomy. The freedom from forced cohabitation in an emotionally or physically abusive relationship is part of the right to live with dignity under Article 21. This realization has important ramifications, especially for women. Statutory divorce is unavailable to many women who are stuck in unhappy marriages due to social shame,

¹⁴ INDIA CONST. art. 21.

¹⁵ PIB.GOV.IN, <https://www.pib.gov.in/newsite/erecontent.aspx?relid=48422> (last visited Nov. 3, 2025).

financial dependence, and procedural delays. The Court upholds women's agency and right to leave abusive relationships by recognizing irretrievable breakdown as a basis for dissolution, strengthening gender justice.

A difficult constitutional balance between judicial innovation and legislative restriction, between the sanctity of marriage and the sanctity of human dignity, is thus symbolized by the court approval of this doctrine under Article 142. It represents a changing constitutional morality that puts individual freedom, equality, and compassion ahead of strict formalism, advancing India's marriage law in the direction of a more just and compassionate future.

The Changing Contours of Hindu Marriage in Contemporary India

Marriage is now seen as a dynamic social contract that emphasizes equality, autonomy, and respect for one another rather than just a religious ceremony due to modernization, constitutional principles, and changing socioeconomic realities. Urbanization, women's economic independence, and higher levels of education all have a significant impact on this change. People, particularly women, are now empowered by education to challenge the patriarchal standards that formerly governed marriage roles. Women now have more financial liberty thanks to economic involvement, enabling them to make autonomous decisions regarding marriage, divorce, and procreation, probably the areas that were formerly controlled by social norms. As a result, a more equal relationship is progressively replacing the hierarchical concept of the husband as the 'provider' and the wife as the 'submissive homemaker.'

Furthermore, India's marriage jurisprudence has been transformed by the expanding conversation about constitutional rights and gender equality. Judicial interpretations of marital disputes are now influenced by the ideals of equality before the law and the right to live with dignity included in Articles 14 and 21 of the Constitution. Emotional compatibility, personal fulfillment, and consent are increasingly acknowledged by courts as necessary elements of a lawful and long-lasting marriage. This change has also made divorce less of a societal taboo and more acceptable as a way to leave abusive or unhealthy relationships.

Marriage is increasingly seen in contemporary Hindu society as a partnership based on shared responsibilities, companionship, and emotional fulfilment. The focus has shifted from perseverance and sacrifice to equality, consent, and communication. The younger generation views marriage more as a place for mutual support and personal development than as a strict obligation. Even if these modifications go against conventional ideas of sanskar and family honor, they are a step in the right direction toward achieving gender fairness and human dignity within the institution of marriage. From communal morality to individual rights, from patriarchal control to personal freedom, and from ritualistic permanence to relationship harmony based on equality and respect, the evolving nature of Hindu marriage essentially reflects a larger cultural movement.

Conclusion and Suggestion: Toward a Humane and Equitable Marital Jurisprudence

India's larger transition from public morality to individual rights is reflected in the growth of Hindu marriage legislation from sacrament to social contract. The organization, which was formerly controlled by strict ideas of obligation and perseverance, is currently at a turning point when respect for one another and individual dignity have started to redraw its boundaries. The law must recognize that marriage is a partnership based on emotional compatibility, trust, and free will rather than just a union approved by religion in order to advance toward a truly humane and equitable marital jurisprudence.

In a time that prioritizes human dignity over ceremonial permanence, Hindu marriage must be redefined through the lenses of autonomy, equality, and compassion. A marriage's moral legitimacy must result from both parties' voluntary commitment, not just from perseverance or obedience. Therefore, a humane legal framework must be able to acknowledge that maintaining a marriage under the pretense of sacred commitment serves neither justice nor social peace when it has emotionally and functionally disintegrated. Even while Article 142 of the Constitution acknowledges the idea of irretrievable breakup of marriage, it is still not sufficiently institutionalized. The Supreme Court's selective use of it reveals the legislative inertia that keeps people bound to unfulfilling relationships.

In addition to bringing Indian law into line with international trends, legislative acknowledgment of irretrievable breakdown as a statutory basis for divorce under the Hindu Marriage Act, 1955 will uphold the equality and liberty guaranteed by the constitution. People, particularly women, would be shielded by such legislation from protracted legal proceedings, psychological suffering, and social pressure to maintain unhealthy relationships. At the same time, appropriate precautions must guarantee that the property is not abused to neglect dependents or avoid obligations. Therefore, cooling-off periods, mediation efforts, and equitable financial settlements prior to dissolution should be required by a balanced regulatory framework.

Harmonizing tradition with change is a reaffirmation of justice inside hallowed institutions rather than an act of cultural resistance. Hindu philosophy, which is based on dharma, places a strong emphasis on truth, balance, and compassion—values that are consistent with the contemporary goals of gender equity and individual autonomy. India can preserve the spiritual core of the Hindu marriage institution while making sure it adapts to contemporary realities by incorporating these ideals into marital legislation.

In the end, a humane marital jurisprudence views marriage as an equal partnership rather than a place of dominance or endurance. It aims to change the legal system from one that upholds broken promises to one that promotes compassionate resolution. A legal culture where justice, empathy, and equality coexist—honoring both the sanctity of marriage and the sanctity of human dignity—can be created by acknowledging irretrievable breakdown as a statutory ground, encouraging gender-sensitive mediation, and raising awareness of marital rights.