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IRRETRIEVABLE BREAKDOWN THEORY AS GROUND OF DIVORCE IN INDIA: A COMPARATIVE ANALYSIS WITH U.K AND USA

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I. INTRODUCTION

Marriage is a legally and socially recognized institution that unites two individuals in a partnership characterized by reciprocal rights and responsibilities. Occasionally, the marriage may deteriorate to the point of being dysfunctional and irreversible, prompting the spouses to pursue divorce as a means of termination.¹ Divorce is the formal termination of a marriage that grants the spouses the freedom to enter into new marriages or pursue other personal endeavours.² The rules governing divorce varied among nations and societies, influenced by their historical, religious, and social circumstances. The irreparable collapse of a marriage is now acknowledged and accepted as a valid reason for divorce in numerous legal jurisdictions.

Irretrievable breakdown of marriage refers to a circumstance when either one or both partners no longer desire to cohabit, and the relationship has deteriorated to an extent that it is beyond repair.³ Continuing with the marriage will only result in additional harm and loss for both individuals involved. This cause for divorce is founded on the idea of upholding human autonomy and dignity, and acknowledging that compelling dissatisfied couples to stay married is not advantageous nor desirable for them or society. Irretrievable collapse of marriage, also referred to as no-fault divorce, eliminates the need for spouses to provide evidence of specific faults or wrongdoings committed by the other party, such as adultery, cruelty, desertion, etc.

¹ “*Irretrievable Breakdown of Marriage in a wide perspective*”, FREELAW, available at <https://www.freelaw.in/legalarticles/Irretrievable-Breakdown-of-Marriage-in-a-wide-perspective>.

² *Ibid.*

³ Divya K., “*A Bird's Eye View on Irretrievable Breakdown of Marriage in India with Special Reference to Landmark Judgments*”, 3 INDIAN J.L. & LEGAL RSCH. 1 (2021).

The notion of irreparable dissolution of marriage emerged in Western nations, including the “United States, the United Kingdom, Australia, Canada, and New Zealand”, during the 20th century.⁴ This development was prompted by shifting social and economic circumstances, as well as a growing desire for personal autonomy and egalitarianism. These nations have implemented legislation that permits couples to acquire a divorce through mutual agreement or by demonstrating that they have lived apart for a specified duration, without the need to make accusations or provide evidence of wrongdoing by the other party. The legislation also encompasses several facets of divorce, including spousal support, parental rights, financial assistance for children, and the distribution of assets, guided by the principles of equity, impartiality, and the welfare of the child.

Divorce laws in India are regulated by distinct personal laws, which vary according on the religious affiliation of the individuals involved. “The Hindu Marriage Act, 1955”⁵, is applicable to individuals who identify as Hindus, Buddhists, Sikhs, and Jains. “The Muslim Personal Law (Shariat) Application Act, 1939”⁶, is applicable to individuals who identify as Muslims. The “Parsi Marriage and Divorce Act, 1936”⁷, is applicable to individuals who identify as Parsis. The Special Marriage Act, 1954⁸, is applicable to individuals who are in inter-religious or civil marriages. These laws encompass a range of reasons for divorce, including adultery, cruelty, abandonment, conversion, mental instability, venereal disease, and others. However, none of these laws specifically acknowledge irreparable breakdown of marriage as a valid reason for divorce.

In certain exceptional cases, the Indian courts have utilized their inherent and constitutional authority to grant divorce based on the irreparable breakdown of a marriage. This occurs when the marriage has reached a point where it is beyond repair and there is no chance of the parties reconciling or living together.⁹ The Supreme Court of India has utilized its authority under “Article 142 of the Constitution of India”¹⁰ to dissolve marriages based on irreparable

⁴ Pieter Pauw, “*Comparative Aspects of Irretrievable Breakdown in Divorce*,” 1979 J. S. AFR. L. 226 (1979).

⁵ Hindu Marriage Act, 1955.

⁶ Muslim Personal Law (Shariat) Application Act, 1939.

⁷ Parsi Marriage and Divorce Act, 1936.

⁸ Special Marriage Act, 1954.

⁹ *Naveen Kohli v. Neelu Kohli*, AIR 2006 SC 1675.

¹⁰ INDIAN CONST. Art. 142.

breakdown, while adhering to specific conditions and safeguards, in order to ensure complete justice in any cause or matter.¹¹

The author's objective in this research is to investigate the notion and development of irretrievable breakdown of marriage as a basis for divorce. Additionally, the author seeks to analyze and compare the legal and social consequences of this ground in UK and USA, and compare the position with respect to the Indian jurisprudence.

II. THEORIES OF DIVORCE

A divorce is a legal decree that terminates a marriage, issued by a court. The court necessitates a "legitimate justification" for the divorce. Aside from the formal termination of the marriage, the court also considers other matters that must be resolved prior to the divorce being officially concluded.¹² Divorce was not recognized under traditional Hindu law, as marriage was considered a permanent connection between the husband and wife. There exist three main theories regarding divorce:

A. *Fault Theory*

The guilt or offence theory of divorce originated in the 19th century, when society strongly disapproved of divorce and considered it to be a wicked act. According to this theory, divorce was only acceptable if one of the spouses had committed a grave sin or a highly immoral act against the institution of marriage. Consequently, in order for one side to be found guilty, it was necessary for the other party to be completely innocent.¹³

According to this idea, if one party commits a marital offense, the injured person has the right to seek a divorce from the offending spouse. Only the act of committing a marital offense can be used as a reason for divorce. Regardless of the severity, no criminal offense can serve as a basis for divorce. Adultery, desertion, and cruelty have always been seen as marriage offenses. However, it is important to consider that this list should only be regarded as a demonstration. Matrimonial offenses encompass acts such as rape, sodomy, bestiality, non-compliance with a court order to provide spousal support, and engaging in a marriage with a minor. *"If the respondent is not found guilty of any of these offenses, divorce cannot be issued against them,*

¹¹ *Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr.* (2019) 5 SCC 688.

¹² Navneet Chahal, "Irretrievable Breakdown of Marriage", IJCRT VOLUME 10, ISSUE 3.

¹³ PARAS DIWAN, MODERN HINDU LAW (3rd ed.).

even if they have committed the offense of murder, dacoity, deceit, theft, treason, smuggling, black marketing, or bribery, among others. Therefore, what is crucial for divorce is the harm caused to the marital relationship of the other spouse, rather than any harm inflicted on other individuals in society."¹⁴ A fault divorce is typically selected by a spouse who seeks vindication by substantiating the fault of the other party. In certain jurisdictions, the spouse who provides evidence of the other spouse's wrongdoing may be entitled to a larger portion of the shared assets or a higher amount of financial support known as alimony.

B. Frustration Theory

The marriage may be dissolved for one person, even if the other party is not at fault for any marital wrongdoing. This can occur when an individual is experiencing mental instability, undergoing a religious conversion, withdrawing from society, or has been absent for an extended duration.¹⁵ If an individual desires to be liberated from a futile marriage, they should be assisted according to this philosophy. Divorce provides a sense of relief from this perspective. The Hindu Marriage Act acknowledges these circumstances as valid reasons for divorce.¹⁶

C. Consent Theory

Based on this theory, if the husband and wife mutually decide to permanently separate, they should be allowed to legally terminate their marriage. They are the ones who must endure the consequences of their marriage. If, under any circumstances, they are unable to do so, they must not be coerced. Engaging in compulsive cohabitation can lead to marital misconduct, which might serve as valid reasons for divorce. Why should the law deny an individual anything that can be granted to them before their decline, when they request it in advance of such decline? Granting divorce prior to the deterioration or moral decline of one or both spouses is a beneficial measure for all parties involved, including the married couple and society as a whole. In addition to preventing moral decline, this divorce method offers the advantage of allowing the parties to avoid airing their personal conflicts in public. There is no need for them to make accusations and counter-accusations in an attempt to outsmart each other in order to prove that the other person is guilty. There is concern that allowing divorce with

¹⁴ RAMESH CHANDRA NAGPAL, MODERN HINDU LAW (Eastern Book co.).

¹⁵ DR. BASANT KUMAR, HINDU LAW (3rd edn. 2011).

¹⁶ B. M. GANDHI, HINDU LAW (2nd edn. 2003).

mutual consent could potentially lead to one side obtaining consent from the other party using unethical means such as coercion or fraud. There is no justifiable rationale for this apprehension. Consent is fundamentally synonymous with voluntary agreement. If a party's permission is gained through misconduct, the affected party has the right to deny it in court, which will result in the immediate dissolution of the grounds for divorce.¹⁷

Divorce by mutual consent refers to a situation where both parties agree to end their marriage, as opposed to the typical scenario where one person files for divorce and the other party opposes it.¹⁸ It signifies that both parties collaborate to file a joint petition with the court to dissolve their marriage. Both parties may genuinely seek to eliminate each other. If one party in a marriage desires a divorce, it is not inherently required for the other party to oppose it. The opposite party may be equally or even more inclined towards it. They may possess enough rationality to mutually separate in a friendly manner.

The proponents of this notion argue that those who oppose marriage have the same freedom to terminate a marriage as they do to enter into one. If marriage is a contractual agreement formed via the voluntary consent of both parties, then both parties should have equal liberty to terminate it. Similar to making a mistake in any other transaction, an individual can also make a mistake while entering into a marriage.

¹⁷ *Syal v. Syal*, AIR 1968 P&H 439

¹⁸ *Dharmendra Kumar v. Usha Kumari*, AIR 1977 SC 2218

III. AN OVERVIEW OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

A. The Concept

Contemporary society has become increasingly intricate due to shifts in socio-economic circumstances, accompanied by the breakdown of traditional family units, as well as growing industrialization, urbanisation, education, and employment. Matrimonial laws worldwide have experienced significant intervention from both legislative and judicial authorities. Divorce, once considered morally wrong, now has established legal regulations that are undergoing significant modifications and liberalisations.

Irretrievable breakdown of marriage refers to the complete failure of the marital relationship or conditions that are detrimental to the relationship, leaving no realistic chance for the spouses to continue living together as a married couple for mutual comfort and support. Marital estrangement refers to the circumstance in which one partner in a marriage declines to cohabit with the other and shows no effort to achieve reconciliation.

The concept of irretrievable dissolution of marriage is often regarded as the most contentious idea in the field of legal jurisprudence. Marriage is the amalgamation of two individuals based on love, devotion, and mutual respect. If any of these factors are impeded due to any reasons, or if there is a breakdown in the marital relationship to the extent that both spouses are no longer willing to peacefully coexist, it is advisable to terminate such a lifeless relationship that exists only in name but not in essence.

Consequently, if the couple is unable to reside together in the capacity of spouses, they must convincingly demonstrate to the court that their marriage has irreparably deteriorated and there is no feasible prospect of living together harmoniously.

B. Tracing the history

The notion of “Irretrievable breakdown of marriage” was initially introduced in New Zealand, acknowledging that it is not essential for there to be any fault or wrongdoing for a spouse to desire to terminate a marriage. Therefore, the law should acknowledge and address this necessity.¹⁹ The court in New Zealand awarded the “first divorce based on an irretrievable breakdown of marriage in 1921”. The Court determined that after the marriage has ended, it is

¹⁹ FAMILY LAW, PARAS DIWAN (6th edition 2001).

not in the best interest of the individuals involved or the public to legally maintain their status as husband and wife.²⁰

In England, the case of “*Masarati v. Masarati*”²¹ was the one that first introduced the concept of breakdown in marriages. Additionally, the 1943 House of Lords decision in the case of *Blunt v. Blunt*²² further established the idea that there was no public benefit in maintaining a legally valid marriage that had significantly deteriorated.

In the case of *Lodder v. Ladder*²³, Salmond J. explained this idea by noting that when a marriage has effectively ended for a certain amount of time, it should also legally cease to exist. This is because the fundamental functions of the marital union are no longer fulfilled. The Law Commission of England, in its report, concluded that there are two main aims of a good divorce legislation.²⁴ The first objective is to bolster, rather than undermine, the stability of marriage. The second objective is to facilitate the dissolution of a deeply fractured marriage with utmost justice, while minimising the severity of emotional pain, shame, and suffering.

The Divorce Law Reforms Act of 1973²⁵ established the exclusive basis for divorce as the Irretrievable Breakdown of Marriage, after a recommendation from the Law Commission. The Law Commission states that “when a marriage has ceased to exist both in substance and in actuality, divorce must be considered as a method to escape from a challenging situation.” The primary focus of the divorce arrangements should be on facilitating the acceptance of the new situation by all parties involved, including the children, and establishing a mutually agreeable framework for managing relationships in light of the altered circumstances. It is more important to foster this process than to dwell on identifying faults during the divorce proceedings.

C. Advantages

An exclusively fault-based divorce legislation is insufficient to address the complexities of a failed marriage. According to the flawed view, guilt must be established in order for divorce courts to consider specific examples of human action that tarnish the reputation of marriage.

²⁰ Finlay, H. A., and L. G. Phillips. “A Sane Divorce Law for a Sane Society: Marriage Breakdown and Marriage Guidance.” THE AUSTRALIAN QUARTERLY, VOL. 42, NO. 3, 1970, pp. 75–90. JSTOR, <https://doi.org/10.2307/20634384>.

²¹ *Masarati v. Masarati*, 1969(1) WLR 392.

²² *Blunt v. Blunt*, (1943) 2 All ER 76 (78) (HL).

²³ *Lodder v. Ladder*, 1921 NZLR 786.

²⁴ Law Commission of England, Report on Family Law The Ground for Divorce.

²⁵ Divorce Law Reforms Act of 1973.

Due to the occurrence of divorce as a result of marital wrongdoing, judges and attorneys are occasionally relegated to the role of scavengers. The lawyers must search for and reveal the most extreme indecencies inside a marital relationship, while the judges are faced with them. It is unsurprising, given the current adversary system, that all kinds of claims are freely exchanged in the courts. There is no need to adhere to an outdated divorce legislation that requires the determination of innocence or guilt for men and women.

D. Criticism of the theory

Throughout history, marriage has been universally recognized by all religions as a sacred relationship. Legend has it that couples only meet on Earth after their relationships are established in paradise. It encompasses a group of more than two individuals, comprising two separate families. Marriage involves the union of two distinct individuals from different families, with the intention of forming a new family unit. Marriage remains a legally binding agreement that can be terminated, akin to any other contractual arrangement.

An exclusively fault-based divorce legislation is insufficient to address the complexities of a failed marriage. According to the blame theory, guilt must be established in court. Concrete examples of human behavior that tarnish the institution of marriage are given as evidence. The irreparable dissolution of marriage is not an independent basis for divorce on its own. However, when examining the available information to establish if the reasons for seeking a divorce are valid, the surrounding circumstances can also be considered. A divorce cannot be granted based on the irreparable collapse of a marriage if the person seeking the divorce is responsible for the breakdown. A divorce order might be granted when both parties have made claims against each other that demonstrate the marriage is irreparably damaged and they are unable to coexist.

An opposing perspective on the inclusion of Irretrievable Breakdown as a distinct basis for divorce can be found in the ruling of William Scott in the case of *Evans v. Evans*. In this judgment, it was asserted that the enduring nature of marriage ensures overall marital contentment. The argument posits that when individuals recognize that they are bound to live together, they develop the ability to compromise and adapt through mutual accommodation.²⁶ This is because necessity serves as a compelling teacher in imparting the responsibilities it imposes.

²⁶ *Evans v. Evans*, 14 S.W.3d 343.

IV. THE INDIAN LEGAL POSITION

A. *The Legal Position*

The legal frameworks governing marriage in India, including the “*Hindu Marriage Act 1955*²⁷, the *Special Marriage Act 1954*²⁸, the *Divorce Act 1869*²⁹, the *Parsi Marriage and Divorce Act 1936*³⁰, and the *Dissolution of Muslim Marriage Act 1939*³¹”, do not currently recognize the concept of irretrievable breakdown of marriage as a valid reason for divorce. The foundation of a robust marriage alliance rests on the values of tolerance, adaptability, and mutual respect. Every marriage should have an inherent capacity to tolerate each other's flaws, within a certain acceptable threshold. Trivial disagreements and tiny disparities should not be magnified and overstated in order to undermine something that is considered to be of divine origin. When evaluating the irreparable dissolution of a marriage, it is crucial to carefully evaluate all considerations from this standpoint.³² It is imperative to consider the physical and mental conditions of the individuals involved, as well as their personality and social standing. An extremely specialized and highly reactive approach would have a negative impact on the establishment of marriage. Courts have no obligation to consider the notion of ideal partners. They are required to direct their attention to a particular male and female individual who are present in their vicinity.

The existing Indian Personal laws on divorces are based on the evaluation of guilt or misconduct. They are based on the notion of divorce that assigns responsibility. The Hindu Marriage Act, 1955 recognizes nine grounds for divorce on the basis of fault, which are applicable to both partners.³³ The legal reasons for divorce encompass several factors such as adultery, cruelty, conversion to a different faith, mental illness, leprosy, venereal disease, joining a religious order, being absent and unheard of for a period of seven years or presumed dead, not resuming cohabitation for one year, and failing to restore conjugal rights for one year. There are four private grounds that are only accessible to the wife. In the same vein, if the spouse engages in acts of sodomy, rape, or bestiality following the marriage ceremony, divorce

²⁷ Hindu Marriage Act, 1955

²⁸ Special Marriage Act, 1954

²⁹ Divorce Act, 1869

³⁰ Parsi Marriage and Divorce Act 1936

³¹ Dissolution of Muslim Marriage Act 1939

³² Ayushee Sinha, “*Irretrievable Breakdown Of Marriage: An Analysis*,” INDIAN JOURNAL OF LAW AND LEGAL RESEARCH, VOL. V. ISSUE II.

³³ *Supra* note 29, Sec. 13(1).

can be achieved by legal means. In 1964, a law introduced by a private member changed the grounds for divorce to the notion of irreparable breakdown of marriage as the foundation for divorce. The legislation replaced the notion of guilt or fault as reasons for divorce with the principle of irretrievable breakdown of marriage.

Noncompliance with a court order to reunite as a married couple and abstaining from cohabitation for one year following a court judgment for legal separation is indisputable evidence that the marriage has irreparably deteriorated.³⁴ As per the statement of Objects and Reasons, it is proposed that both the husband and wife should have the right to seek divorce based on any grounds, given that the marriage has unequivocally failed in such instances. The court observed that a marriage that is genuinely degraded and merely exists in name lacks any worth in terms of preservation, as it does not provide any advantageous function for the persons concerned or for society at large. Considering the total breakdown of the marriage, it is superfluous to ascertain blame for the irreversible termination of the relationship, whether it rests with the husband, the wife, or both. It can be stated that the marriage has worsened due to the absence of compatibility between the individuals involved.

B. 71st Law Commission Report – The Recommendations

“Chapter 6 of the 71st report of the Law Commission of India” outlines the circumstances under which a court may assume that a marriage has irretrievably broken down.³⁵ These circumstances are listed below.:

1. “Agreement of separation between the married couple
2. Non cohabiting shall be considered as a sufficient fact to proof irretrievable breakdown of marriage.
3. Separation for more than 5 years should be a sufficient proof.
4. When the couple is living separate during young age and do not want to reconcile, this situation shall be considered as sufficient proof.
5. No petition for restitution of conjugal rights has been filed from either side after a continuous separation (during the period of one year) arising out of rift, shall be a conducive ground of irretrievable breakdown of marriage.

³⁴ Reetika Bansal, *Irretrievable Breakdown Of Marriage: A Remedy For Easy Separation*, RESEARCH GATE.

³⁵ 71st Law Commission of India Report.

6. Continuous separation for the period of one year along with suspicion of misconduct, mental or physical cruelty, from either party. Discovering adultery covering pre marital illicit relationship which has rendered their living together impossible.
7. If no attempt to settle the dispute relating to which the case is pending for judicial separation or restitution of conjugal rights or Divorce for three years or more has been made by either party.
8. In some of the cases, mere submission of either party that he or she cannot live together is enough to consider the case of marriage being irretrievably broken.”

C. Judicial Perspective

“Article 142 of the Constitution of India” outlines the wide and inherent powers that are granted to the Supreme Court of India.³⁶ In the event that "Irretrievable Breakdown of Marriage" is used as a reason for divorce, the Supreme Court is the only court that has the authority to decide on the legal and other aspects of the situation. During the case of “*Naveen Kohli v. Neelu Kohli*”³⁷, the Apex court of India noted the importance of irretrievable collapse of marriage as a viable reason for divorce. The court has also recommended that the Govt. should give serious consideration to the possibility of implementing an Amendment Act in 1955 that would include “irretrievable dissolution of marriage as a valid reason for awarding divorce”. It was explicitly declared by a bench of the Supreme Court that the Supreme Court is the only court in the country that has the authority to grant divorces based on the irreparable breakdown of a marriage in a married partnership, and that no other court in the country has this power.

An advantageous precedent has been established for the purpose of providing enhanced pathways and opportunities to both partners in the event that they experience difficulties in preserving their marriage while they are married. According to the irreparable breakdown of their marriage, they have the choice to pursue divorce as a legal course of action.

Through the implementation of “Article 142 of the Indian Constitution”, the Supreme Court of India has been able to efficiently provide justice to a large number of married couples. It is possible that this may be accomplished even if the “Hindu Marriage Act of 1955” did not

³⁶ INDIAN CONST., Art. 142.

³⁷ *Naveen Kohli v. Neelu Kohli*, AIR 2006 SC 1675.

contain any significant law in this regard. According to the 71st Report of the Law Commission of India, the title of the report is "The Hindu Marriage Act, 1955 - Irretrievable breakdown of marriage as a new basis for granting divorce among Hindus."

In the case of "*Kanchan Devi v. Pramod Kumar Mitta*"³⁸, the Supreme Court came to the conclusion that the marriage between the respondent and the appellant had fully and permanently broken, and there was no possibility of reconciliation. As a result, the court, "*in accordance with the authority granted to them by Article 142 of the Constitution of India, issued an order that the marriage between the respondent and the appellant be officially terminated through the issuance of a divorce decree.*" A couple whose marriage had reached a point of no return was granted a divorce by the court in the case of "*Krishna v. Som Nath*"³⁹. With the wife just spending a few months in the matrimonial house after the marriage, the parties were living apart from one another while they were separated. While the wife leveled accusations of abuse and desertion against her husband, the husband simultaneously leveled accusations of his own against her. After taking all of these factors into consideration, the court came to the conclusion that "the marriage had irretrievably broken down and granted the divorce."

In the case of "*Samar Ghosh v. Jaya Ghosh*"⁴⁰, the Supreme Court of India clarified that it is not sufficient to just demonstrate that the parties have been separated for an extended period of time in order to establish that the marriage has resulted in an irretrievable breakdown. For a marriage to be considered divorced, there must be sufficient evidence proving that the marriage has irreparably deteriorated and that there is no hope of the parties reuniting.

Furthermore, in the case of "*Anil Kumar Jain v. Maya Jain*,"⁴¹ it was determined that the parties had been living apart for a period of seven years prior to the court's decision. A trial court in Madhya Pradesh received a petition for divorce that was presented by both parties collectively. The petition was based on the parties' mutual consent. The petition was subsequently dismissed by the court after the wife retracted her permission to conduct the investigation. The appeal was granted, and the Supreme Court came to the conclusion that it has the authority to grant a divorce by mutual agreement in accordance with Section 13-B of

³⁸ *Kanchan Devi v. Pramod Kumar Mitta*, AIR 1996 SC 1515.

³⁹ *Krishna v. Som Nath*, 1980 AIR 1226.

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

⁴¹ *Anil Kumar Jain v. Maya Jain*, II (2009) DMC 449 (SC)

the Hindu Marriage Act 1955. This is the case even if “*either the wife or the husband withdraws their consent during the proceedings in the Lower Court before the order is issued*”. The agreement that both spouses make when submitting a joint petition for divorce by mutual consent must be valid until the second stage, which is when the petition is evaluated and a final divorce judgment is issued. Under the rules that are now in place, this agreement must be valid until the second stage. Only the Supreme Court, by virtue of the extraordinary jurisdiction granted to it by Article 142 of the Constitution, is able to issue orders that are capable of achieving complete and total justice for all of the parties involved. The Court held that “the High Courts, which do not possess powers that are equal to those that are exercised by the Supreme Court in accordance with Article 142, are not permitted to make use of the notion of irretrievable collapse of marriage”.

Both the Civil Court and the High Courts are unable to issue orders prior to the specified timeframes outlined in the applicable provisions of the Hindu Marriage Act 1955, nor may they do so based on reasons that are not covered under “Section 13 and Section 13-B of the Hindu Marriage Act 1955”. The Court additionally determined that there would be no benefit in unnecessarily prolonging the suffering of the individuals involved in a marriage that had irreversibly deteriorated, and that a conclusion had to be reached at some point. When addressing the adjustment of human relationships, the Court must consider the complete and comprehensive perspective of the actual circumstances.

V. A GLANCE THROUGH DIFFERENT JURISDICTION: A COMPARATIVE ANALYSIS

A. *United Kingdom*

The principle of breakdown in divorce emerged during the early half of the twentieth century when the Matrimonial Causes Act 1937⁴² introduced insanity as the first non-fault cause. “Prior to that time, the legal issues concerning the use of judicial discretion in regards to a petitioner's adultery alluded to the principle of breakdown.” In 1943, the House of Lords ruled on the case of “*Blunt v Blunt*”⁴³ and determined that in some circumstances, it may be in the greatest interest of the public to end a marriage that has completely deteriorated. Additionally, certain judges had taken into account the perspective. In 1920, McCardie J conducted a meticulous examination of the evolving perspective on recrimination following the 1857 case of “*Pullen v Pullen*”.⁴⁴ His analysis of the legal authorities revealed that prior to 1857, the act of blaming one another was somewhat retaliatory. However, the courts were granted the power after 1857 to grant divorce even if the petitioner had committed adultery, with the intention of upholding public morals. This offered the prospect of modifying the application of the law based on shifts in moral beliefs, ultimately resulting in the premise stated in “*Blunt v Blunt*” “and the emergence of the concept of irretrievable breakdown.

The subsequent noteworthy advancement was the publication of "Putting Asunder," which was a report released in 1966 by a Commission that was specifically formed by the Archbishop of Canterbury.⁴⁵ The investigation revealed that the current legislation focused solely on identifying previous offenses, disregarding the present feasibility of the marriage. The commission endorsed irretrievable breakdown as the preferred foundation for divorce and rejected the notion that combining fault grounds and breakdown were incompatible with one other. The Report said that the attitudes and processes suitable for the trial of cases involving marriage offenses would probably be expanded to instances involving the "new ground". There was a belief that the principle of breakdown should "permeate the entirety of the divorce law". Later in the same year, Putting Asunder was referred to the Law Commission, which

⁴² Matrimonial Causes Act 1937.

⁴³ *Blunt v Blunt*, [1943] A.C 517, 525.

⁴⁴ *Pullen v Pullen*, 36 TLR 506.

⁴⁵ PUTTING ASUNDER, A DIVORCE LAW FOR CONTEMPORARY SOCIETY (S.P.C.K, 1966)

subsequently endorsed that perspective.⁴⁶ Nevertheless, the primary distinction between the Archbishop's Committee and the Law Commission lay in their disagreement regarding the approach to be used in determining irretrievable collapse. Putting Asunder had proposed the determination of dissolution via investigation in every instance. Conversely, the Law Commission highlighted several complaints and challenges, including logistical issues.⁴⁷

In a similar vein, the House of Lords, in the cases of *Gollins v Gollins*⁴⁸ and *Williams v Williams*⁴⁹, eliminated the requirement of culpability as a crucial element in cases of marital cruelty. Regrettably, despite these emerging understandings, the Divorce Reform Act of 1969⁵⁰, which subsequently established the breakdown of marriage as the sole basis for divorce, nonetheless considered the old matrimonial offenses as proof of that breakdown. The Matrimonial Causes Act 1973⁵¹ solidified these revisions and currently serves as the governing legislation for divorce in England.

B. United States of America

Initially, the issue of which legislation should regulate divorce presented a perplexing challenge to state governments. In contrast to England, where family relations were handled by ecclesiastical courts, there were no equivalent church courts available as a convenient means to get a divorce. Before the mid-19th century, divorces were often issued in an improvised manner by specific legislative acts of annulment in state legislatures.⁵² “In the mid-1800s, state legislatures started granting state courts the authority to handle divorce cases, inspired by England's example where civil courts took on jurisdiction over domestic issues in 1857.”⁵³ By the early 20th century, all American states, save for South Carolina, had enacted legislation granting courts the authority to terminate marriages based on specific grounds.

Initially, the grounds for divorce in most jurisdictions consisted of strictly specified offenses such as adultery, cruelty, and desertion. During the early 1900s, numerous states broadened and

⁴⁶ REFORM OF THE GROUNDS OF DIVORCE. THE FIELD OF CHOICE (1966).

⁴⁷ Reform of the Grounds of Divorce. The Field of Choice, paras 58(k), (1), (p), 70-71.

⁴⁸ *Gollins v Gollins*, [1964] AC 644.

⁴⁹ *Williams v Williams*, [1964] AC 698.

⁵⁰ Divorce Reform Act of 1969.

⁵¹ Matrimonial Causes Act 1973.

⁵² A M. Morse, Jr., *Fault: A Viable Means of Re-injecting Responsibility in Marital Relations*, U. RICH LAW REVIEW 30, (1996).

⁵³ H H Kay, *Beyond No-Fault: New Directions in Divorce Reform* in DIVORCE REFORM AT THE CROSSROADS ED. S D SUGARMAN, AND H H KAY, (New Haven: Yale University Press, 1990)

modernized their concepts of culpability. The newly identified defects encompassed a range of offenses, such as criminal convictions, homosexuality, mental illness, drug use, and various other categories that varied significantly throughout the country. “Defenses have also emerged to counter claims of fault, such as recrimination, connivance, and condonation. The fault-based regime embodied the perspective of marriage as a status relationship that consolidated the interests of the husband, wife, and kid.” Alimony and child support were awarded as a result of the husband's wrongdoing and the economic reliance of women and children. The state regarded marriage as a realm of personal privacy, impervious to official intervention. State intrusion is only justified in cases where there is a potential for disintegration or a harm to the integrity of the unit.⁵⁴

California made history in 1969 by becoming the first jurisdiction in America, and in the western world, to enact a contemporary and exclusive 'no-fault' divorce legislation through the passage of the Family legislation Act of 1969.⁵⁵ The legislation abolished all legal reasons for divorce and stipulated that, with the exception of extremely rare cases of 'incurable insanity,' marriage could only be dissolved on the basis of "*irreconcilable differences that have led to the irreparable breakdown of the marriage.*" In terms of legislation, California initiated reform efforts through hearings starting in 1964. In 1966, a “Governor's Commission on the Family” was established and presented a report suggesting the removal of all grounds for divorce based on blame, along with the implementation of a comprehensive family court system.⁵⁶ However, it was the advancements in England during this time that greatly contributed to the acceptance of divorce reform in the United States. “*Although California's no-fault divorce legislation represented a more significant departure from traditional divorce procedures compared to the English law (DRA 1969), the English divorce reform movement played a crucial role in paving the way for California's divorce reform. From 1969 to 1985, all fifty states in the United States implemented no-fault clauses in their divorce legislation. The main goal of the no-fault movement was to alter the reasons for divorce. In addition, reformers suggested removing fault as a basis for dividing property and granting alimony.*” Indeed, numerous states followed the guidance provided by the Uniform Marriage and Divorce Act of 1970⁵⁷ and removed the consideration of blame when determining the distribution of assets and the establishment of financial support for spouses. While some jurisdictions still include blame as one of the

⁵⁴ E S. Scott, 'Rational Decision-making about Marriage and Divorce' Virginia. LAW REVIEW 76, (1990).

⁵⁵ Cal. Civ. Code SS 4000-5138 (West 1983)

⁵⁶ Cal. Civ. Code ss 4506, 4507 (West 1983).

⁵⁷ Uniform Marriage and Divorce Act of 1970.

elements that a court may examine when determining awards, it does not certain that a guilty husband would be obligated to provide permanent support. The court's purpose is to offer one-time financial settlements in order to prevent long-lasting financial links between the parties involved. In this approach, the court determines property distributions that are 'equal' or 'equitable' and, if necessary, provides basic alimony payments that are gradually reduced while the supported spouse undergoes retraining for a new profession. The most criticisms of no-fault divorce have been concentrated on this aspect.

C. An Analysis

It would appear from a cursory examination of the laws that control the issue of irretrievable breakdown of marriage that the situation is relatively comparable in the United Kingdom and the United States of America. However, there is a lack of appropriate legislation in place in India to facilitate divorces that are not based on fault.

At the present time, the United Kingdom continues to adhere to the *Matrimonial Causes Act 1973*, which stipulates that the sole basis for divorce is the irretrievable dissolution of the marriage. On the other hand, the petitioner is required to demonstrate that the relationship has broken down by establishing one of the five scenarios that are outlined in the Act. These scenarios include “adultery, unreasonable behavior, desertion, two years of separation with consent, or five years of separation without consent”.⁵⁸

On the other hand, there is a no-fault divorce of some kind in each of the fifty states that exist today. "Irretrievable breakdown" or "irreconcilable differences" are the primary or single grounds for divorce in several states. This has been the case for quite some time. In some states, fault-based reasons for divorce, such as “adultery, cruelty, or desertion, are also permitted as alternatives or additional grounds for divorce.”

When both parties in a marriage in the United States of America are in agreement that the marriage has irretrievably broken down, they are typically able to secure a divorce without assigning blame to any of the partners. Every state has its own unique set of criteria, including the waiting period and other related procedures. Before a divorce petition may be submitted in certain states, the parties must prove that they have lived apart for a predetermined amount of

⁵⁸ Michael Attah & Linda Osagie, “Reforming the Irretrievable Breakdown Rule - Historical Perspectives from Common Law Jurisdictions and Lessons for Nigeria”, 11 NNAMDI AZIKIWE U. J. INT'L L. & Juris. 29 (2020).

time. Additionally, before to the granting of a divorce, the parties in some states are required to participate in counselling or mediation.⁵⁹

According to the traditional Hindu law, however, divorce could only be granted on the basis of certain grounds, such as adultery, cruelty, or desertion. A very new development in Indian law is the recognition of the irretrievable breakdown of marriage as a reason for divorce. Certain grounds for divorce are provided under the Hindu Marriage Act, the Special Marriage Act, and other personal laws of the country. These grounds include cruelty, adultery, desertion, and mutual consent. There have been many decisions made by the Supreme Court of India that have acknowledged the irretrievable collapse of marriage as a legal grounds to dissolve the relationship. This is particularly true in situations where it is impossible for the couple to reconcile their differences. On the other hand, according to the most recent information available, the *Hindu Marriage Act of 1955* does not specifically include this as a reason for divorce.

By utilizing the vast powers granted to it by “Article 142 of the Constitution of India”, the Apex Court of India has been known to dissolve marriages in cases where it has determined that there has been an irretrievable breakdown.⁶⁰ This highlights the significance of ensuring that justice is established in instances pertaining to married relationships. A recommendation has also been made by the Court to the Parliament to alter the law in order to include the irretrievable collapse of marriage as a reason for divorce.

There is a resistance to adopting the concept of "irretrievable breakdown" in Indian statutory law. This resistance can be traced to cultural and societal beliefs that place an emphasis on maintaining the spirituality of marriage. Due to their more independent cultures, the United Kingdom and the United States of America changed early in order to accept shifting societal realities. Alternatively, in the United Kingdom and the United States of America, divorce is typically considered as a personal choice and a civil matter, with limited intrusion from society and low shame associated with it. The institution of divorce is frequently regarded as a taboo and a moral issue in India, and it is subject to a large amount of stigma and pressure from society, particularly for women. Additionally, the religious status of the parties involved may

⁵⁹ *Ibid.*

⁶⁰ Divya K., “A Bird’s Eye View on Irretrievable Breakdown of Marriage in India with Special Reference to Landmark Judgments”, 3 INDIAN J.L. & LEGAL Rsch. 1 (2021).

be impacted by the divorce process. This is because many religions, such as Hinduism and Islam, have their own set of regulations and procedures that pertain to divorce.

Within the context of the Indian scenario, legal decisions play a significant role, with the Supreme Court frequently intervening to grant relief to parties who are in marriages that have reached an impasse. A greater degree of legislative activity governs the situation in the United Kingdom and the United States of America. Both the Parliament and the Congress have passed laws that regulate divorce.

VI. CONCLUSION

Marriage is an individual bond, but it is also a societal institution with intricate social components. The ultimate joy that the institution of marriage may grant to an individual is alone discovered via the ongoing endeavour of achieving unity by a pair. The imprudent and unregulated divorce legislation has the potential to undermine the positive aspects of the institution of marriage. Even if we see marriage just as a contractual agreement, it cannot be asserted that the concerns of the people involved should be the primary focus in divorce procedures. The collective welfare should take precedence above the individual interests of parties. The majority of sophisticated nations worldwide have acknowledged irreparable dissolution of marriage as a distinct basis for divorce.

The Supreme Court of India has granted divorce in numerous instances, not solely based on “adultery, cruelty, or desertion”, but primarily due to their belief that the marriage between the two parties had irreparably deteriorated. This deterioration was characterized by a loss of faith, love, care, emotional breakdown, and an inability to manage their emotions. The Court determined that in cases of serious circumstances when there are not only mutual allegations, but also a complete and irreversible breakdown of the marriage, it is necessary for the Court to grant a divorce decree based on the grounds of irretrievable breakdown of the marriage.

In such cases, the parties may prefer to keep the details of their incompatibility confidential. In such circumstances, it is imperative to provide a means or solution for individuals trapped in an unproductive and stagnant marriage. Indeed, when a marriage has irreparably deteriorated, it would be impractical for the legal system to ignore this reality. Furthermore, such negligence would have detrimental effects on society and be detrimental to the individuals involved. Thus, it is clear that the judiciary has recognized the irreparable breakdown of marriage as a valid reason for divorce and has provided assistance to those in need. However, this assistance is only available to a select few, as not all spouses involved in litigation can afford to bring their cases to the Supreme Court. However, the lawmakers are neglecting the matter and biding their time for an undiscovered moment, unbeknownst to the people they serve. Regrettably, the trial court, which has the authority to handle cases related to marriage, is unable to fulfill its duty unless the “Hindu Marriage Act of 1955 and the Special Marriage Act of 1954” are modified to include 'irretrievable breakdown of marriage' as a separate legal basis for divorce. However, the author emphasizes that this measure should only be introduced if there are established

methods to ensure its correct execution. This is crucial in order to prevent granting unfair advantages to the wrong individuals or allowing someone to handle this provision irresponsibly.