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Exploring the Imperative and Implementation Challenges for Irretrievable Breakdown of Marriage as a Ground for Divorce in India - A Comparative Study with Other Jurisdictions

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ABSTRACT

“While there is no rose which has no thorns but if what you hold is all thorn and no rose, better throw it away. The ground for divorce is not conjugal guilt but breakdown of marriage”

This research paper provides a comprehensive overview of the concept of "irretrievable breakdown of marriage" as a ground for no-fault divorce. It delves into the historical context of divorce laws in India, examining the recommendations of the Law Commission reports, including the 71st and 217th reports, as well as the position of Marriage Laws (Amendment) Bill, 2010. The research paper evaluates the position of the Indian government and judiciary on irretrievable breakdown of marriage and analyze the recognition of Irretrievable breakdown of marriage in other countries like Australia, Canada, Germany, Malta, Russia, United Kingdom, and New Zealand. The implementation challenges and proposed changes in legislation are also discussed. Moreover, the research analyzes the societal and cultural perception of divorce in India and explores the benefits of acknowledging irretrievable breakdown of marriage. Finally, the paper concludes with recommendations for policymakers and lawmakers to address the issue of no-fault divorce in India, highlighting the need for legal reform and social awareness programs to facilitate a smooth transition towards a more liberal divorce regime.

Keywords: *Irretrievable Breakdown of Marriage, No fault divorce, The Marriage Laws (Amendment) Bill, 2010, 71st and 217th Law Commission reports, Challenges, Divorce law in India, Irretrievable Breakdown of Marriage in various countries.*

I. INTRODUCTION

In India, marriage is held in high regard as a sacred institution that is expected to last a lifetime.

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However, there are situations where marriages may break down beyond repair, leading to the need for legal separation or divorce. Traditionally, divorce was only granted on the basis of specific faults or misconduct by one of the spouses. However, the concept of 'no-fault' divorce or 'irretrievable breakdown' of marriage has gained acceptance in India due to changing times. This article will delve into the meaning of 'no-fault' divorce or 'irretrievable breakdown' of marriage and needs in India.

The study aims to analyze the concept of "irretrievable breakdown of marriage" and its need in India, with a special reference to various countries such as Australia, New Zealand, United Kingdom, Canada, and Russia. The primary objective of this study is to analyze the legal framework of the concept of irretrievable breakdown of marriage in India and other countries and to provide insights into the need for such a concept in India.

(A) Methodology:

The study is conducted using a doctrinal research methodology, which involves an analysis of existing legal frameworks and judicial precedents related to the concept of irretrievable breakdown of marriage in India and other countries. The study is based on primary and secondary sources of data, including statutes, case laws, legal articles, and other relevant literature related to the subject matter.

(B) Data Collection:

The study involves the collection of data from various sources, including online databases, legal journals, academic books, and other relevant sources. The data collected will be analyzed systematically to identify the key issues related to the concept of irretrievable breakdown of marriage in India and other countries.

Data Analysis:

The collected data will be analyzed using a qualitative content analysis approach, which involves the identification of themes, patterns, and trends in the data. The analysis will focus on identifying the legal frameworks related to the concept of irretrievable breakdown of marriage in India and other countries, the historical development of the concept, and the impact of the concept on the society.

(C) Discussion:

The findings of the study will be discussed in the light of the research objectives and the existing literature on the subject matter. The discussion will provide insights into the need for the concept of irretrievable breakdown of marriage in India and other countries and its impact on the society.

II. 'NO-FAULT DIVORCE' OR 'IRRETRIEVABLE BREAKDOWN OF MARRIAGE'

The earlier concept of divorce in India was based on 'fault-based' grounds. This meant that divorce could only be granted if one spouse could provide evidence that the other had committed certain specific acts of misconduct, such as adultery, cruelty, desertion, etc.² However, in recent times, the concept of 'no-fault' divorce or 'irretrievable breakdown' of marriage has emerged. This concept is based on the idea that marriage is a contract between two individuals, and if the marriage has broken down irretrievably, it should be terminated regardless of who is at fault.

The idea of 'no-fault' divorce or the 'irretrievable breakdown' of marriage originated in the Western world. A number of nations, such as the United States, the United Kingdom, Australia, and Canada, have incorporated this idea into their legal systems.

It is argued that a strong and lasting marriage necessitates the virtues of tolerance, adjustment, and mutual respect. It is essential to show tolerance towards one's partner's flaws to a certain extent, as this is crucial to maintaining a harmonious relationship. Trivial disagreements and disparities must not be exaggerated and utilized to erode the sacred bond that exists between couples. It is imperative that every argument be considered on a case-by-case basis, taking into account factors such as physical and mental health, character, and social status. An excessively technical and hypersensitive approach would not be helpful for the institution of marriage. It is crucial to note that courts do not deal with ideal hypothetical partners, but rather with the specific man and woman present before them.

"Irretrievable breakdown of marriage" and "no fault theory" are often used interchangeably, but they both refer to the same legal concept. This concept allows couples to obtain a divorce without the need to prove that one spouse is at fault for the breakdown of the marriage.

The concept of no-fault divorce or irretrievable breakdown of marriage permits couples to file for divorce solely on the grounds that their marriage is irretrievably broken, without the obligation to prove any wrongdoing by either spouse. This implies that if one or both spouses believe that their marriage is beyond repair and cannot be saved, they can file for divorce without the need to prove any misconduct like infidelity or abuse.

The no-fault theory has been widely accepted in many countries and jurisdictions, based on the belief that divorce is a private matter between the spouses, and that the state should not interfere by determining fault or assigning blame. The adoption of the no-fault theory simplifies the divorce process and minimizes conflicts between spouses, allowing them to move on with their

² Section 13, The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

lives more quickly and easily.

III. IRRETRIEVABLE BREAKDOWN EVOLUTION

The root of the theory of breakdown, concerning Commonwealth nations, can be traced back to legislative and judicial advancements from an earlier era. In 1920, the Divorce and Matrimonial Causes Amendment Act was passed in New Zealand, which introduced a new provision stating that a separation agreement of three years or more could serve as a basis for petitioning the court for a divorce.³ This provision gave the court the authority to use discretion, without any specific guidelines, in deciding whether to grant the divorce or not.

In 1921, a case in New Zealand exemplified the use of the discretion granted by this statute. Salmond J. articulated the breakdown principle, which has since become a renowned concept, using the following language⁴:

“The Legislature must, I think, be taken to have intended that separation for three years is 'o be accepted by this court, as prima facie a good ground for divorce. When the matrimonial relation has for that period ceased to exist de facto, it should, unless there are special reasons to the contrary, cease to exist de jure also. 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.”

IV. DIVORCE LAW IN INDIA

The legal framework for divorce in India is largely based on an individual's religion, as personal laws govern the process. The Hindu Marriage Act of 1955⁵ applies to Hindus, Sikhs, Buddhists, and Jains, while the Dissolution of Muslim Marriage Act of 1939 applies to Muslims, and the Indian Divorce Act of 1869⁶ applies to Christians. For individuals regardless of religion, the Special Marriage Act of 1954 is applicable. The existing laws provide for several grounds for divorce, such as cruelty, adultery, desertion, conversion to another religion, unsoundness of mind, and incurable mental illness.⁷ However, irretrievable breakdown of marriage is not recognized as a ground for divorce under any of the Acts. As a result, individuals seeking divorce in India have to prove one of the existing grounds, which can be emotionally and

³ Patricia M , Webb, “Recent Chances in U. K. and New Zealand Divorce Law” (1965) 14 t.C.L.Q. 194, 195

⁴ Lodder v. Lodder, (1921) N.Z.L.R. 876

⁵ Section 13, The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

⁶ Section 10, The Indian Divorce Act, 1869, No. 04, Acts of Parliament, 1869 (India).

⁷ Section 13, The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

financially taxing. Moreover, obtaining a divorce can be a lengthy and expensive process, putting additional burden on the individuals seeking it.

V. LAW COMMISSION REPORT IN INDIA

a) 71st Law Commission Report

It has been reported that the Law Commission of India has submitted a detailed report (71st Report) on the utilization of irretrievable breakdown of marriage as a ground for divorce. The Government of India has entrusted this task to the Commission and the report was presented on April 7, 1978, under the leadership of Shri Justice H. R. Khanna. The report scrutinized the proposal comprehensively, and subsequently, a brief questionnaire was issued by the Commission to gather opinions on the matter. The Commission has acknowledged the use of irretrievable breakdown of marriage as a ground for divorce and examined how it can be included in the Act. Moreover, the Commission has also taken into consideration whether any safeguards should accompany such a ground.⁸

The Report under discussion analyzed the existing law under the Hindu Marriage Act in Chapter II.⁹ The advantages and disadvantages of the concept of irretrievable breakdown of marriage were evaluated in Chapter IV, and the retention of other divorce grounds was assessed in Chapter V.¹⁰ Protective measures, including the welfare of children and addressing hardship, were proposed in Chapter VI,¹¹ where the necessity of living apart was examined. The Commission also recommended modifications to Sections 21A and 23(1)(a) of the Act, along with the addition of new sections 13C, 13D, and 13E.¹²

b) 217th Law Commission Report

According to the Law Commission of India's 217th Report, which was chaired by Dr. Justice AR. Lakshmanan, a recommendation was made to include "irretrievable breakdown of marriage" as a new ground for divorce in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.¹³ The report emphasized the need for prompt action to implement this amendment, while also highlighting the importance of assessing whether adequate financial provisions have been made for both parties and their children prior to granting a divorce decree

⁸ Law Commission of India, "71st Report on The Hindu Marriage Act, 1955- Irretrievable Breakdown of Marriage as a Ground of Divorce" (April, 1978)

⁹ *Id.* at 5

¹⁰ *Id.* at 4 to 23

¹¹ *Id.* at 24

¹² *Id.* at 40

¹³ Law Commission of India, "Irretrievable Breakdown of Marriage – Another Ground for Divorce" (March 2009)

on the grounds of irretrievable breakdown of marriage.¹⁴

VI. THE MARRIAGE LAWS (AMENDMENT) BILL, 2010

The Marriage Laws (Amendment) Bill, 2010 was introduced by the Minister of Law and Justice, Shri M. Veerappa Moily on August 4, 2010, in the Rajya Sabha. Afterward, on August 23, 2010, the Hon'ble Chairman of the Rajya Sabha referred the bill to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice for further analysis and findings.¹⁵ The proposed changes to the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954 aim to introduce irretrievable breakdown of marriage as a new legal ground for extending a divorce decree. Additionally, the bill seeks to implement certain security measures to protect the rights of the spouse and children, and eliminate the current six-month waiting period required for filing a cooperative request for mutual consent divorce.¹⁶

The Marriage Laws (Amendment) Bill, 2010 aims to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.¹⁷ The objective is to address the issue of irretrievable breakdown of marriage, which the existing laws are unable to effectively deal with. The Hindu Marriage Act, 1955, was enacted to amend and codify the law concerning marriage among Hindus, while the Special Marriage Act, 1954, was introduced to facilitate a special form of marriage in specific cases, including registration and divorce.¹⁸ The proposed amendments are based on the recommendations of the Law Commission of India, the observations of the Hon'ble Supreme Court, and the demand from various quarters. The amendment seeks to introduce irretrievable breakdown of marriage as a ground for divorce, subject to certain safeguards for the wife and affected children¹⁹

The Marriage Laws (Amendment) Bill of 2010 proposes the following changes with the aim of achieving its objective. Firstly, it suggests adding Section 13C to the Hindu Marriage Act of 1955 and Section 28A of the Special Marriage Act of 1954 to allow for divorce on the basis of irretrievable breakdown of marriage. Secondly, it proposes introducing Section 13D to the Hindu Marriage Act of 1955 and Section 28B to the Special Marriage Act of 1954 to enable individuals to contest an irretrievable breakdown of marriage divorce petition in cases of extreme financial hardship. Thirdly, the Bill advocates for the inclusion of Section 13E in the

¹⁴ Id. at 23

¹⁵ [https://prsindia.org/billtrack/the-marriage-laws-amendment-bill-2010#:~:text=The%20Bill%20adds%20a%20provision,filling%20for%20such%20a%20petition.\(last visited on Mar 30, 2023\)](https://prsindia.org/billtrack/the-marriage-laws-amendment-bill-2010#:~:text=The%20Bill%20adds%20a%20provision,filling%20for%20such%20a%20petition.(last%20visited%20on%20Mar%2030%2C%202023))

¹⁶ Id.

¹⁷ The Marriage Laws (Amendment) Bill, 2010 (Bill No XLI of 2010)

¹⁸ Id.

¹⁹ Id.

Hindu Marriage Act of 1955 and Section 28C in the Special Marriage Act of 1954 to ensure that children born out of marital relationships receive adequate maintenance that corresponds to the financial means of the parties to the union before granting a divorce decree based on irretrievable breakdown of marriage. Finally, the Bill seeks to amend Section 13B(2) of the Hindu Marriage Act, 1955 and Section 28(2) of the Special Marriage Act, 1954 to eliminate the waiting period required following an application for divorce on the grounds of mutual consent.²⁰

On March 1st, 2011, the Standing Committee submitted their report.²¹ Following some amendments, the bill was passed on August 26th, 2013. Nonetheless, the bill ultimately lapsed.

Ministry of Women and Child Development

According to information presented to the Committee by the Secretary of the Ministry of Women and Child Development, the proposed Bill includes irretrievable breakdown of marriage as a new ground for divorce. This provision can be helpful in situations where the marriage has completely broken down, and it can prevent multiple litigations. However, the Secretary expressed some concerns that must be addressed to ensure the protection of women and children's rights after the Bill is enacted.²² These concerns include the proposed Bill places a greater responsibility on the courts when interpreting the situation of "irretrievable breakdown." As such, the courts must exercise care and caution when they believe that the husband has deserted or abandoned the wife and filed a petition under this section after living separately for three years.²³

In cases where the woman is vulnerable, the courts should avoid granting an ex-parte decree. The provision of section 13(E) of the proposed Bill should be interpreted as an express "inclusion," or an explicit statement should be added to include children adopted by the parties to the marriage.²⁴ The waiting period of six months after the presentation of a petition for the grant of divorce should not be eliminated because it provides the parties with time to reconsider their decision regarding the petition for divorce.²⁵

The Secretary further explained that while the provision for irretrievable breakdown of marriage is helpful, it places a significant burden on the courts to interpret this provision carefully. Thus, the courts must exercise caution when dealing with cases where the husband has deserted or

²⁰ *Id.*

²¹ Standing Committee on Personnel, Public Grievances, Law and Justice, "45th Report on The Marriage Laws (Amendment) Bill, 2010" (March 2011)

²² *Id.* at 21 (Chapter III of the report)

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

abandoned the wife and filed a petition for divorce under this section after living separately for three years. Moreover, in cases where the woman is vulnerable, the courts must avoid granting an ex-parte decree.²⁶ To ensure that the rights of children adopted by the parties to the marriage are protected, it is essential to interpret section 13(E) of the proposed Bill as an express "inclusion" or to add an explicit statement that includes adopted children. Finally, the waiting period of six months after the presentation of a petition for divorce should not be eliminated because it provides the parties with time to reconsider their decision regarding the petition for divorce.²⁷

VII. POSITION OF GOVERNMENT

In the Lok Sabha on 30th November 2016, Simha Shri Prathap, a Member of Parliament, asked an unstarred question (2403) about the government's stance on making marriage laws more favorable towards women and granting the option for both parties to file for divorce due to an "irretrievable breakdown" of the marriage.²⁸ The Honourable Minister of State for Law and Justice replied that currently, no such proposal is being considered.²⁹

VIII. JUDICIARY - IRRETRIEVABLE BREAKDOWN OF MARRIAGE IN INDIA

The judgment by the Full Bench of the Delhi High Court in *Ram Kali v Gopal Das*³⁰ acknowledged the current trend of not requiring the continuation of a union that has irretrievably collapsed. The court commented that it would be impractical and irrational to force the parties to maintain the appearance of a marriage when the rift between them is total, and there is no likelihood of them ever living together as spouses. This approach would not only be impracticable, but also inhumane.

In the case of *Ms. Jorden Diengdeh v. S. S. Chopra*³¹, the Supreme Court noted the importance of adding irretrievable breakdown of marriage and mutual consent as legitimate grounds for divorce in all cases. The court also recommended that the legislature should intervene in matters of marriage and divorce to establish a consistent set of rules and regulations. This would provide a legal means for couples in situations similar to the one presented in the case to dissolve their marriages and move on from their unhappy situations

In the case of *Geeta Mullick v. Brojo Gopal Mullick*³², the Calcutta High Court ruled that the

²⁶ *Id.*

²⁷ *Id.*

²⁸ <https://loksabha.nic.in/Questions/QResult15.aspx?qref=43165&lsno=16> (last visited on Mar 30, 2023)

²⁹ *Id.*

³⁰ *Ram Kali v Gopal Das*, (1971) I.L.R. 1 Delhi 10(F.B.). (India.).

³¹ *Ms. Jorden Diengdeh v. S. S. Chopra*, AIR 1985 SC 935 (India.).

³² *Geeta Mullick v. Brojo Gopal Mullick*, AIR 2003 Cal. 321 (India.).

dissolution of the marriage between the parties cannot be granted by either the trial Court or the High Court solely on the basis of irretrievable breakdown of the marriage, without the existence of one or more grounds as specified under section 13(1) of the Hindu Marriage Act, 1955.³³

The Supreme Court, in the case of *V. Bhagat v. D. Bhagat*³⁴, ruled that the mere irretrievable breakdown of a marriage is not a sufficient basis for divorce. However, the court recognized that this factor may be considered when reviewing the evidence to determine if the alleged grounds for divorce have been established and when deciding on the appropriate relief to be granted.

According to the decision in *Tapan Kumar Chakraborty v. Jyotsna Chakraborty*³⁵ by the Calcutta High Court, a divorce cannot be granted solely based on the grounds of irretrievable breakdown of marriage in a petition filed under the Hindu Marriage Act or the Special Marriage Act.

The Supreme Court ruled in *Kanchan Devi v. Pramod Kumar Mittal*³⁶ that the marriage between the appellant and respondent had irretrievably broken down and reconciliation was impossible. Accordingly, the court, exercising its powers under Art. 142 of the Indian Constitution, ordered that the marriage be dissolved by a decree of divorce.

In the case of *Savitri Pandey v. Prem Chandra Pandey*³⁷, the parties were married on 06.05.1987 and lived together for a short period of 45 days, until 21.06.1987. The wife filed a petition for divorce under section 13 of the Hindu Marriage and Divorce Act, and on 08.07.1996, the court granted a decree dissolving the marriage between the parties. The husband appealed the decision before the High Court. During the pendency of the appeal, the wife contracted a second marriage and alleged that her husband had an illicit relationship. On 08.01.2002, the Supreme Court issued a judgment in this case.

The highest court ruled that dissolution of marriage cannot be granted solely based on the claim of one party that the marriage has broken down and serves no purpose. The legislature, despite the court's observation, has not deemed it appropriate to allow dissolution of marriage on such claims. There may be cases where, based on the facts, it is determined that the marriage has become dead due to both parties' contributory acts of commission and omission, and in such cases, keeping the marriage alive would serve no useful purpose. The court stated that the

³³ *Id.*, para 7 (India.).

³⁴ *V. Bhagat v. D. Bhagat*, AIR 1994 SC 710 (India.).

³⁵ *Tapan Kumar Chakraborty v. Jyotsna Chakraborty*, AIR 1997 Cal. 134 (India.).

³⁶ *Kanchan Devi v. Pramod Kumar Mittal*, AIR 1996 SC 3192. (India.).

³⁷ *Savitri Pandey v. Prem Chandra Pandey*, AIR 2002 SC 591 (India.).

sanctity of marriage cannot be subjected to the whims of one of the troublesome spouses. In this case, the appellant is attempting to take advantage of her own wrongdoing, and under the circumstances, the court cannot invoke its jurisdiction under Article 142 of the Constitution to dissolve the marriage between the parties.

In the case of *Vinita Saxena v. Pankaj Pandit*³⁸, the court considered the following humane aspects: The appellant got married at the age of 24, but the marriage only lasted for four to five months before she was forced to leave her matrimonial home. The marriage was not consummated as the respondent was unable to fulfill his matrimonial duties. The parties have been living separately since 1993 and have not seen each other in 13 years. It is clear that a workable solution is not possible as both parties have reached the point of no return and cannot reconcile. They have been fighting a legal battle since 1994. The appellant has a Ph.D., while the respondent is not gainfully employed anywhere, and has not appeared before the trial or high court after leaving his deposition incomplete during the trial. The court concludes that it is not possible for the parties to stay together as husband and wife, and that the wife's stay with the respondent is harmful to her health.

Based on the facts and circumstances of the case, and considering all the aspects that relate to human life, there are strong and compelling reasons to allow the appeal and grant relief to the appellant. It is unacceptable to keep the appellant in chains and allow her to live a life devoid of basic human dignity. The lower courts' orders have caused a significant miscarriage of justice, as the appellant has been forced to endure a lifeless relationship for over 13 years. Given the injustice and suffering inflicted on the appellant, this case is a clear instance where Article 136 of the Constitution of India should be invoked to overturn the lower courts' findings and restore justice.

The cases of *Samar Ghosh vs Jaya Ghosh*³⁹, *Sanghamitra Ghosh vs Kajal Kumar Ghosh*⁴⁰, and *Ashok Hurra v Rupa Bipin Zaveri*⁴¹ all cited the 71st Report of the Law Commission of India, which discusses the concept of "Irretrievable Breakdown of Marriage".

In the case of *Naveen Kohli vs. Neelu Kohli*⁴², the respondent (Neelu Kohli) filed multiple cases against the appellant (Naveen Kohli). These included FIR No. 100/96 under Sections 379/323 IPC at Police Station Kohna, a case under Sections 323/324 registered at Police Station Panki, Kanpur City, FIR No. 156 of 1996 at Police Station Panki, a case under Section 420/468 IPC at

³⁸ *Vinita Saxena v. Pankaj Pandit*, JT 2006 (3) SC 587 (India.).

³⁹ *Samar Ghosh vs Jaya Ghosh*, (2007) 4 SCC 511 (India.).

⁴⁰ *Sanghamitra Ghosh vs Kajal Kumar Ghosh*, (2007) 2 SCC 220 (India.).

⁴¹ *Ashok Hurra v Rupa Bipin Zaveri*, (1997) 4 SCC 226 (India.).

⁴² *Naveen Kohli vs. Neelu Kohli*, AIR 2006 SC 1675 (India.).

Police Station Kotwali, a case under Sections 420/467/468 and 471 IPC, a complaint under Sections 498A/323/504/506 IPC at Police Station Kohna, and a protest petition against the appellant's bail application in criminal cases at Police Station Kotwali and Kohna. The respondent also filed a complaint in the Women Cell, Delhi in September 1997 against the appellant's lawyer and friend for alleged criminal intimidation, a complaint under sections 397/398 before the Company Law Board, New Delhi, and a complaint in Case No.1365 of 1988 against the appellant. Additionally, the respondent made efforts to get the appellant arrested by filing a complaint in the Parliament Street Police Station, New Delhi, and issued a notice for breaking the Nucleus of the HUF on 31.3.1999. Furthermore, the respondent filed a complaint under Section 24 of the Hindu Marriage Act, withdrew Rs. 9,50,000/- from the appellant's bank account in a clandestine manner, and gave an affidavit before the High Court on 22.1.01 to get non-bailable warrants issued against the appellant. The respondent also issued an advertisement in a national newspaper that the appellant was only her employee and cautioned business associates to avoid dealing with the appellant.

In the case of *Naveen Kohli vs. Neelu Kohli*⁴³, the court found that the respondent was not willing to agree to a divorce by mutual consent. After carefully considering all the evidence, the court concluded that the respondent's stubborn and uncaring attitude was causing mental anguish to the appellant. This behavior left no doubt in the court's mind that the respondent was engaging in mental cruelty. The court determined that the marriage had irretrievably broken down and there was no chance of reconciliation or cohabitation. Consequently, the court suggested that the Union of India should consider amending the Hindu Marriage Act, 1955, to include "irretrievable breakdown of marriage" as a ground for divorce.

IX. RECOGNITION IN OTHER COUNTRIES OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

a. Australia

The concept of irretrievable breakdown of marriage is recognized as a ground for divorce in Australia. This refers to a situation where the marital relationship between the parties has broken down irreversibly, and reconciliation is not possible. The Family Law Act 1975 (Cth) governs family law matters in Australia and Section 48⁴⁴ of the act provides that a divorce order can be granted if the court is satisfied that the marriage has broken down irretrievably and the parties have been separated for at least 12 months. The court will take into account various factors,

⁴³ Id.

⁴⁴ The Family Law Act, 1975 (Cth) s 48 (Austl.)

such as the length of the separation period, communication and conflict between the parties, impact on any children, and attempts at reconciliation, when determining whether a marriage has irretrievably broken down.⁴⁵

The grounds for filing a divorce order in Australia are outlined in Section 48 of the Family Law Act 1975.⁴⁶ According to this section, a divorce order can only be granted if the marriage has irretrievably broken down. The parties must have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for the divorce order. However, if the court determines that there is a reasonable likelihood of cohabitation being resumed, a divorce order will not be made. This requirement is in place to discourage premature divorce applications and encourage reconciliation efforts. Overall, Section 48 of the Family Law Act 1975⁴⁷ provides a clear framework for the grounds on which an application for a divorce order may be made in Australia, emphasizing the importance of irretrievable breakdown of the marriage and encouraging parties to consider reconciliation before filing for divorce.

It is important to note that irretrievable breakdown is not the only ground for divorce in Australia, as fault-based grounds such as adultery, cruelty, and desertion are also recognized under the Family Law Act. However, fault-based grounds are less commonly used and require proof of fault by the party seeking divorce. The court will consider the individual circumstances of each case when determining whether the marriage has irretrievably broken down, and it is a matter of fact rather than law. Case law has established that irretrievable breakdown is a subjective test, and the court must be satisfied that there is no reasonable likelihood of the parties resuming cohabitation.

The legal concept of irretrievable breakdown of marriage in Australia is determined through a subjective test, with each case being assessed individually based on its own set of circumstances. The High Court of Australia in the case of *Stanford v Stanford*⁴⁸ held that irretrievable breakdown is a factual matter, rather than a legal one, and that the court must be convinced that the marriage has reached a point where there is no possibility of the parties resuming cohabitation. In the case of *Vrkic v Vrkic*⁴⁹, the Family Court of Australia identified several factors that should be considered when assessing whether a marriage has irretrievably broken down. These factors included the duration of the separation, the absence of communication and

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Stanford v Stanford* [2012] HCA 52 (Austl.)

⁴⁹ *Vrkic v Vrkic* [2019] FamCA 899 (Austl.)

trust between the parties, and the impact of the breakdown on any children of the marriage. In summary, the ground for divorce in Australia due to irretrievable breakdown refers to a situation where reconciliation is impossible. The court will evaluate the specific circumstances of each case and take into account various factors, such as the length of separation, level of communication and conflict, and any negative impact on the children of the marriage.

b. Canada

The concept of divorce in Canada is based on the idea of an irreparable breakdown of marriage. The Divorce Act⁵⁰ is responsible for managing divorce cases in Canada. According to Section 8(2) of the Act, a court may grant a divorce if it is satisfied that the marriage has broken down. An irretrievable breakdown of marriage is a situation where a marital relationship has declined to a point where the parties cannot continue living together as husband and wife. The reasons for such a breakdown may vary, including infidelity, physical or emotional abuse, financial problems, or communication breakdown.⁵¹

In Canada, a court of competent jurisdiction can grant a divorce to one or both spouses upon application, provided that the marriage has broken down. The breakdown of the marriage is recognized in two specific circumstances. Firstly, when the spouses have lived apart for a minimum of one year immediately before the divorce proceeding and were living separately at the commencement of the proceeding. Secondly, if the spouse against whom the divorce proceeding is brought has committed adultery or treated the other spouse with physical or mental cruelty that has made continued cohabitation intolerable since the celebration of the marriage.⁵²

Regarding the calculation of the separation period, two conditions apply. First, the spouses are considered to have lived separately during any period when they lived apart, and either of them intended to live separately. Second, a period when spouses have lived separately is not considered interrupted or terminated, even if either spouse has become incapable of forming or continuing to live separately due to their own volition. This also applies if the spouses have reconciled for up to ninety days with the primary purpose of reconciliation.⁵³

In summary, Canadian law permits a court of competent jurisdiction to grant a divorce upon application from either spouse. The grounds for the divorce are based on the breakdown of the marriage, which can be established through a one-year separation period or if one spouse has

⁵⁰ The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) (Can.).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

committed adultery or treated the other spouse with physical or mental cruelty. The separation period is calculated based on the intention of the spouses to live separately, and any periods of reconciliation are not considered to have interrupted or terminated the period of separation.

To obtain a divorce on the grounds of irretrievable breakdown, one of the parties must apply to the court, indicating that the marriage has broken down, and there is no reasonable prospect of reconciliation. If the court is satisfied with the application, it may grant a divorce.

It is important to note that if there is a reasonable chance of reconciliation, the court will not grant a divorce on the basis of irretrievable breakdown. The Supreme Court of Canada has also addressed the issue of irretrievable breakdown in several cases. In *Moge v. Moge*⁵⁴, the court held that irretrievable breakdown was a sufficient ground for divorce as long as there was no reasonable prospect of reconciliation. Similarly, in *Pettkus v. Becker*⁵⁵, the court recognized that sometimes the breakdown of a marriage may be due to factors beyond the parties' control, making irretrievable breakdown a necessary ground for divorce.

Overall, the concept of irretrievable breakdown of marriage is an essential aspect of Canadian family law. It allows parties to seek a divorce when the marital relationship has broken down beyond repair, while also recognizing the importance of reconciliation in some cases.

c. German

The German Civil Code, Section 1565, stipulates that a marriage can be dissolved by divorce when it has irretrievably broken down.⁵⁶ The breakdown is determined by the absence of conjugal community between the spouses, and when there is no hope for its restoration. Moreover, the law specifies that if the spouses have not lived separately for a year, the marriage can only be dissolved by divorce if continuing the marriage would cause unreasonable hardship to the petitioner, attributable to reasons that lie within the person of the other spouse.

In addition, Section 1566 provides for a presumption of marriage breakdown under specific circumstances. For example, when both spouses have lived apart for a year, and they both seek divorce, or when the respondent consents to divorce, it is irrebuttably presumed that the marriage has broken down. Similarly, if the spouses have lived separately for three years, it is also irrebuttably presumed that the marriage has broken down.⁵⁷

⁵⁴ *Moge v. Moge* [1992] 3 S.C.R. 813 (Can.).

⁵⁵ *Lothar Pettkus v Rosa Becker* [1980] 2 S.C.R. 834 (Can.)

⁵⁶ Bürgerlichen Gesetzbuches [BGB][CIVIL CODE], § 1565

https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p5366 (Ger.)

⁵⁷ Bürgerlichen Gesetzbuches [BGB][CIVIL CODE], § 1566

https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p5366 (Ger.)

These provisions highlight the significance of conjugal community breakdown between spouses as the key factor in the divorce process. The law acknowledges that mutual respect and support are the foundation of a marital relationship, and when that foundation erodes, it may not be reasonable to expect the spouses to restore the marriage. Moreover, the law recognizes that living separately for an extended period can have a significant impact on the relationship between spouses, resulting in an irrebuttable presumption of marriage breakdown.⁵⁸

In conclusion, the German Civil Code provides clear guidance on the circumstances under which a marriage can be dissolved by divorce. The provisions in Sections 1565 and 1566 prioritize the welfare of the parties involved in the divorce process, acknowledging that continuing a broken marriage can be detrimental to the petitioner's mental and emotional health. By emphasizing the importance of conjugal community and the impact of living separately, the law provides a balanced approach to the dissolution of marriage in Germany.

d. Malta

The Civil Code in Malta specifies the conditions that must be met before a divorce can be granted. These include a joint request for divorce by both spouses or by one spouse against the other. The spouses must have lived apart for a minimum of four years out of the last five years or for at least four years from the date of legal separation.⁵⁹ In addition, there must be no reasonable hope of reconciliation, and the spouses and all of their children must receive adequate maintenance as provided for in Article 57.⁶⁰ It is worth noting that the right to maintenance can be renounced by the spouses at any time. Maintenance ordered by the court through a judgment of separation or agreed upon between the spouses in a separation agreement will be deemed sufficient. Moreover, any divorce between separated spouses will not alter any preexisting agreements, except for those resulting from the legal consequences of divorce.⁶¹ In conclusion, the Maltese Civil Code sets specific requirements for obtaining a divorce, which include joint demand, living apart, and the lack of hope of reconciliation. The court also takes into account adequate maintenance for the spouses and their children. Nevertheless, the spouses have the option to waive their right to maintenance, and divorce will not modify any existing arrangements between them, except for those resulting from legal consequences.

e. Russia

The legal framework for the dissolution of marriage in Russia is governed by Article 22 of the

⁵⁸ Id..

⁵⁹ <https://legislation.mt/eli/cap/16/eng/pdf>, (last visited on Mar 30, 2023)

⁶⁰ Id.

⁶¹ Id.

Russian Family Code of 1995⁶². This article states that if one spouse objects to the dissolution of the marriage, the court may grant the dissolution if it determines that continued cohabitation and family preservation is impossible. In such cases, the court may attempt to reconcile the spouses and may delay the proceedings for up to three months to facilitate this process.⁶³ During the proceedings, the court may take steps to reconcile the spouses and address any underlying issues that may have led to the marriage breakdown. If reconciliation efforts fail and one spouse insists on the dissolution of the marriage, the court may grant the dissolution. It should be noted that the court's primary concern in these cases is the welfare of any children involved, and the court may consider the children's interests and needs when making decisions related to the dissolution of the marriage. Additionally, both spouses are afforded equal rights and obligations under Russian law regarding the dissolution of the marriage, with the goal of ensuring fairness and equity in the process.⁶⁴ In summary, Article 22 of the Russian Family Code provides a legal framework for the dissolution of marriage in court when one spouse objects. The court may attempt reconciliation and delay proceedings, but may ultimately grant the dissolution if necessary, with the welfare of any children involved as a primary consideration. The law aims to protect the interests of both parties in a fair and equitable manner.

f. United Kingdom

No-fault divorce is a concept that has become increasingly popular in recent times. It allows couples to obtain a divorce without the need to prove that the other party has committed any wrongdoing. The United Kingdom is one of many countries that have implemented the concept of no-fault divorce.

The Matrimonial Causes Act 1973 primarily governs the law relating to divorce in the United Kingdom. Prior to the implementation of the no-fault divorce provisions, a spouse was required to prove that the other spouse had committed adultery, unreasonable behavior, desertion, or that they had been separated for a period of at least two years (if both parties consented to the divorce) or five years (if only one party consented).

In 2018, the UK government announced its intention to introduce no-fault divorce legislation. This led to the passing of the Divorce, Dissolution and Separation Act 2020⁶⁵, which introduced significant changes to the existing law. Under the new law, couples can obtain a divorce by making a statement to the court that the marriage has broken down irretrievably. There is no

⁶² SEMEINYI KODEKS ROSSIISKOI FEDERATSII [SK RF] [Family Code] art. 22 (Russ.).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Divorce, Dissolution and Separation Act 2020, (c. 11) (Eng.).

longer any need to establish any wrongdoing on the part of either spouse.

The introduction of no-fault divorce in the UK has been widely applauded as a positive development. It is perceived as a way to decrease bitterness and hostility between couples seeking a divorce and make the process of obtaining a divorce less traumatic and adversarial.

The Matrimonial Causes Act 1973, Section 1 of the UK allows for divorce orders to be requested by one or both parties of a marriage on the grounds that the marriage has irretrievably broken down, subject to section 3.⁶⁶ To do so, the applicant(s) must provide a statement confirming that the marriage has irretrievably broken down. Once the court receives the application, it must accept the statement as conclusive evidence and issue a conditional divorce order, which becomes final only after six weeks. The court may issue a conditional order only if the applicant(s) confirm that they want the application to continue, which cannot occur until after 20 weeks from the start of proceedings. The Lord Chancellor may amend Section 1, but the total period of subsections (4)(b) and (5) cannot exceed 26 weeks.⁶⁷ Nonetheless, the court may shorten the period in a specific case. The Family Procedure Rules allow for an application by both parties to become an application by one party, with provisions for the statement made to be treated as made by only one party. This provision does not affect Section 75 of the Courts Act 2003.⁶⁸

*White v White*⁶⁹ is a significant case in the UK's development of no-fault divorce. The court held that when dividing assets in a divorce, equality should be the starting point. This means that both parties should be entitled to an equal share of the assets unless there are justifiable reasons otherwise. The decision was based on the principle that marriage is a partnership, and both parties should be treated equally. *Miller v Miller*⁷⁰ is another important case that established that the contribution of each party to the marriage, both financial and non-financial, should be taken into account when dividing assets. This recognizes both parties' contributions to the marriage.

In *Owens v Owens*⁷¹, the court considered whether a wife could be granted a divorce on the grounds of unreasonable behavior by her husband. The court held that the behavior must be "of a nature and degree" that the petitioner cannot reasonably be expected to live with the respondent. This case highlighted the need for no-fault divorce reform, as it demonstrated the

⁶⁶ Matrimonial Causes Act 1973, (c. 18) §1 (Eng.)

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ UKHL 54, 1 AC 596

⁷⁰ 478 A.2d 351 (1984)

⁷¹ *Owens v Owens*, [2018] UKSC 41

current system's unfairness to those seeking a divorce.

g. New Zealand

Section 39 of the Family Proceeding Act in New Zealand specifies that a marriage or civil union can only be dissolved if it has irreconcilably broken down.⁷² To establish the ground for an order, the court must be satisfied that the parties have been living apart for a minimum of two years before the application for dissolution is filed, and no further evidence is necessary. It's worth noting that a separation agreement, whether written, oral or by deed, that has been in full effect for two years preceding the application, can be presented as evidence of living apart. If the ground is established as per the Act, the court will issue an order dissolving the marriage or civil union, but this is subject to Section 45. In order to obtain the dissolution order, it is crucial to establish the legal grounds as required by the law.⁷³

Case law has had a significant impact on interpreting and applying Section 39. For instance, in *Hathaway v Hathaway*⁷⁴, the court held that a party did not need to prove the precise cause of the marriage breakdown but only that it had irretrievably broken down.

Similarly, in *K v K*⁷⁵, the court held that irretrievable breakdown could be established if the marriage had broken down to the extent that it was no longer a viable relationship, even if the parties had not lived apart for the required two-year period.

In *De Muth v De Muth*⁷⁶, the Court of Appeal examined the definition of "living apart" for the purpose of establishing separation as a ground for dissolution. The court held that "living apart" did not necessarily require the parties to live in separate houses, but rather that they must be leading separate lives. The court also considered factors such as the sharing of household tasks, social activities, and financial arrangements to determine whether the parties were living apart.

X. IMPLEMENTATION CHALLENGES AND MEASURES

The implementation of irretrievable breakdown of marriage as a basis for divorce in India is likely to encounter obstacles. India's legal system and society are steeped in traditional beliefs and values, making it difficult to introduce a novel concept of divorce. Furthermore, practical challenges may emerge during the implementation of this concept. In this section, we will outline the possible challenges and suggest measures to tackle them.

⁷² The Family Proceeding Act, 1980 s 39 (N.Z.).

⁷³ *Id.*

⁷⁴ *Hathaway v Hathaway* [1981] 1 NZLR 336

⁷⁵ *K v K* [1993] 3 NZLR 257

⁷⁶ *De Muth v De Muth* [2006] NZCA 42

One of the significant obstacles is the lack of knowledge and education concerning divorce and its consequences. Many individuals in India still consider divorce taboo and may not be informed of their legal rights and options. Thus, creating awareness programs and educating the public about divorce and its implications may help to surmount this challenge. The government, non-governmental organizations (NGOs), and other entities can conduct campaigns to inform people of their legal rights and the divorce procedures. Additionally, implementing irretrievable breakdown of marriage as a ground for divorce may encounter difficulties related to potential misuse or abuse of the provision. This could involve situations where a spouse falsely alleges that their marriage has irretrievably broken down, motivated by financial gain, seeking revenge or evading legal consequences such as alimony or child support payments. To prevent such abuse, safeguards need to be put in place, such as mandatory counseling or mediation for both spouses before allowing divorce on the grounds of irretrievable breakdown. In cases where one spouse refuses to accept the breakdown of the marriage, a waiting or cooling-off period could be introduced before granting divorce on the grounds of irretrievable breakdown. This period could provide both parties with adequate time to consider the implications of divorce and explore other options.

It is crucial to consider the potential impact of irretrievable breakdown of marriage on women's rights in India. Women in India have historically faced discrimination in divorce cases, with men having an advantage in negotiations and legal proceedings. Thus, any legal framework should prioritize the protection of women's rights and interests.

In addition, it is vital to address cultural and societal resistance to divorce. In India, divorce is often viewed as a failure and can lead to social stigma for both partners. It may be necessary to shift the cultural mindset towards divorce and encourage a more accepting and tolerant view of it as a legitimate option for couples facing irreconcilable differences.

Furthermore, a potential challenge is the lack of adequate legal infrastructure and resources in some parts of India. Divorce cases can be complicated and require specialized legal expertise that may not be available in some regions. Thus, measures can be taken to provide training and support to lawyers and judges in those areas to ensure that they have the necessary expertise to handle divorce cases effectively.

Another challenge is the possibility of an increase in the number of divorce cases in India. If irretrievable breakdown of marriage is accepted as a ground for divorce, there may be a surge in the number of divorce cases. This could result in a possible of high number of cases filling and overwhelm the already-overburdened Indian judiciary. Therefore, solutions such as

establishing specialized divorce courts, increasing the number of judges and support staff, and introducing alternative dispute resolution mechanisms such as mediation could be implemented to address this challenge.

In addition, determining when a marriage has irretrievably broken down may pose practical challenges. Unlike other grounds for divorce, such as cruelty or desertion, which have precise definitions and criteria, the concept of irretrievable breakdown is subjective and open to interpretation. Therefore, establishing clear guidelines and standards could ensure consistency and fairness in determining whether a marriage has irretrievably broken down.

Another challenge is the potential impact on the welfare of children. Divorce can be traumatic for children, and their interests and welfare must be considered in any divorce proceedings. Thus, it is essential to establish a legal framework that safeguards the rights of children and guarantees their welfare is taken into account.

To tackle these challenges, various strategies could be implemented. Firstly, the government and other organizations can conduct awareness campaigns and educational programs to inform people about divorce and its implications. Secondly, the government can consider establishing specialized divorce courts or alternative dispute resolution mechanisms such as mediation to handle the potential increase in the number of divorce cases. Thirdly, clear guidelines and standards could be established to ensure consistency and fairness in determining whether a marriage has irretrievably broken down. Finally, a legal framework could be established to safeguard the rights and welfare of children in divorce proceedings.

The introduction of irretrievable breakdown of marriage as a ground for divorce in India may encounter several challenges. However, these obstacles can be overcome through a blend of legal, social, and educational approaches. By tackling these challenges, India could establish a legal framework that supports gender equality, reduces the emotional and financial burden on spouses, and promotes better outcomes for children in divorce cases.

XI. PROPOSED CHANGES IN LEGISLATION

The Hindu Marriage Act of 1955 governs Hindu marriages in India and outlines several grounds for divorce. However, it does not acknowledge irretrievable breakdown of marriage as a ground for divorce, meaning individuals seeking a divorce in India must establish one of the existing grounds such as cruelty, desertion, or adultery, which can be emotionally and financially taxing. To incorporate irretrievable breakdown of marriage as a ground for divorce in India, amendments to the Hindu Marriage Act and other relevant legislation may be required. One

possibility is to insert a new provision that defines irretrievable breakdown of marriage and provides guidance on how to establish it. This new provision could also include measures to safeguard the interests of both parties and ensure the best interests of any children involved are taken into account.

Another approach is to amend the existing grounds for divorce under the Hindu Marriage Act to include irretrievable breakdown of marriage. This could involve altering the definition of cruelty, desertion, or other grounds to include situations where the marriage has irretrievably broken down. Additionally, mandatory counseling could be established to ensure that individuals seeking a divorce have exhausted all possible avenues of reconciliation before filing for divorce on the grounds of irretrievable breakdown of marriage.

To protect both parties in the event of divorce on the grounds of irretrievable breakdown of marriage, the Hindu Marriage Act could be amended to provide for financial support to the economically weaker party. This could include provisions for alimony, maintenance, and division of property. However, any amendments to the Hindu Marriage Act and other relevant legislation should be made after careful consideration and consultation with stakeholders, and in accordance with the Constitution of India and international human rights norms to safeguard the welfare of both parties and protect the rights of any children involved.

Implementation of the amendments would require efficient and transparent legal system, adequate infrastructure, and trained personnel to handle the increased workload that may arise. A phased approach could be adopted, beginning with awareness campaigns, followed by counseling centers and training programs for counselors and lawyers, and culminating in the implementation of the amended provisions.

Besides amendments to the Hindu Marriage Act, other legislation that pertains to marriage and divorce in India may need to be amended. For example, the Guardians and Wards Act of 1890, which deals with the custody of children in divorce cases, may need to be revised to prioritize the welfare of children when irretrievable breakdown of marriage is cited as a ground for divorce. Numerous countries, such as Australia, Canada, and the United States, have already adopted irretrievable breakdown of marriage as a ground for divorce, and India could draw on their experiences in implementing the necessary amendments to its laws.

In summary, incorporating irretrievable breakdown of marriage as a ground for divorce in India is a significant step toward ensuring that divorce proceedings are conducted in a just, efficient, and compassionate manner. However, this change must be executed with caution and foresight to safeguard the rights of all parties involved. Amending the Hindu Marriage Act and other

relevant legislation and providing the requisite infrastructure and training to legal professionals will be critical in successfully implementing this concept.

XII. THE SOCIETAL AND CULTURAL PERCEPTION OF DIVORCE IN INDIA

Understanding the necessity of irretrievable breakdown of marriage as a ground for divorce in India requires an examination of the social and cultural factors surrounding divorce in the country. India views marriage as a sacred institution, and divorce is stigmatized. Seeking a divorce can be difficult, especially for women, as society often blames and ostracizes them for the failure of their marriage. Furthermore, marriage is considered a lifelong commitment, and divorce is perceived as a failure to honour this commitment.

The cultural aspects of religion, caste, and family values also influence attitudes towards divorce in India. In Hinduism, marriage is a sacrament, and divorce is discouraged. Marriage is often seen as a union between two families, and divorce is viewed as a threat to the family's honour and reputation.

The financial dependence of women on their husbands can also impact their decision to seek a divorce. Women may fear the social and economic consequences of divorce, including losing custody of their children or being unable to remarry. To effectively incorporate irretrievable breakdown of marriage as a ground for divorce, legal reforms must account for the cultural context and address social and economic barriers that prevent individuals, particularly women, from seeking a divorce. Additionally, promoting gender equality through social awareness campaigns and community outreach programs can encourage a positive attitude towards divorce and ensure the successful adoption of this concept in the Indian context. With divorce rates in India on the rise, it is important to consider the social and cultural context surrounding this issue. Data from the National Family Health Survey shows that the rate of divorce in India has doubled over the past decade, indicating a need for legal reforms to address changing marriage and family dynamics. One possible approach is to adopt the concept of irretrievable breakdown of marriage as a ground for divorce. This approach acknowledges that some marriages may have irreparably broken down, and forcing spouses to stay in these marriages can be emotionally distressing and harmful to their mental health. It is worth noting that this concept is already recognized in many countries such as the United Kingdom, Australia, and Canada.

However, legal reforms alone may not be enough to address the challenges surrounding divorce in India. It is crucial to accompany legal reforms with social and cultural reforms to ensure that they are effective and beneficial for all individuals seeking a divorce. Initiatives such as awareness campaigns and community outreach programs can help change attitudes towards

divorce and promote gender equality. Legal reforms should also aim to address social and economic barriers that prevent individuals, particularly women, from seeking a divorce, such as lack of access to legal aid, social stigma, and economic dependency.

There are also legal and practical considerations that must be taken into account when adopting irretrievable breakdown of marriage as a ground for divorce in India. The concept must be defined clearly and comprehensively to account for the complexities of individual cases. The impact on child custody and support must also be considered, and provisions should be put in place to prioritize the best interests of the child. Strengthening alternative dispute resolution mechanisms such as mediation and counseling can also help provide the necessary support and guidance to individuals seeking a divorce.

Finally, India can learn from the experiences of other countries that have adopted irretrievable breakdown of marriage as a ground for divorce. Analyzing legal frameworks and case law in countries such as the United Kingdom, Australia, and Canada can provide valuable insights into the benefits and challenges of adopting this concept in India. By doing so, India can ensure that its legal reforms are informed by international best practices and are effective and beneficial for all individuals seeking a divorce.

When it comes to adopting "irretrievable breakdown of marriage" as a valid reason for divorce in India, it is essential to consider various factors, including social and cultural norms, legal and practical matters, and insights from other nations. By taking a nuanced approach that addresses these challenges and prioritizes social and cultural reforms alongside legal changes, India has an opportunity to promote gender equality and provide much-needed resources and support to individuals seeking a divorce, making the process more manageable for all involved.

XIII. BENEFITS OF ACKNOWLEDGING IRRETRIEVABLE BREAKDOWN OF MARRIAGE

Incorporating "Irretrievable breakdown of marriage" as a valid ground for divorce in India offers several advantages. First, it can reduce the emotional and financial stress that often accompanies traditional grounds for divorce such as adultery, cruelty, or desertion. These grounds can lead to a lengthy and contentious legal process, causing parties involved to endure prolonged emotional and financial strain. By recognizing "Irretrievable breakdown of marriage" as a legitimate reason for divorce, parties can avoid prolonged legal battles and move on with their lives more quickly and efficiently.

Another benefit of accepting "Irretrievable breakdown of marriage" as a ground for divorce is the reduction of the social stigma attached to divorce in India, which is often viewed negatively in Indian society, particularly for women, who may face social ostracism and discrimination.

By acknowledging that not all marriages are meant to last forever and that sometimes divorce is the best option for all parties involved, Indian society can become more accepting of divorce.

In addition, incorporating "irretrievable breakdown of marriage" as a ground for divorce can benefit children who may be affected by a divorce. By providing a less adversarial and more amicable way to end a marriage, parties can focus on co-parenting and the welfare of their children, rather than on fighting over custody or financial issues. Divorce can be especially difficult for children, and it is crucial to ensure that their well-being is protected. By providing a no-fault ground for divorce, irretrievable breakdown of marriage can help prevent the detrimental effects of bitter and hostile divorce proceedings on children. Additionally, this ground can facilitate co-parenting arrangements and ensure that children maintain a healthy relationship with both parents after the divorce. The incorporation of irretrievable breakdown of marriage as a legitimate reason for divorce has various advantages. It has the potential to ease the emotional and financial burden that spouses often encounter during typical divorce proceedings. Conventional divorce proceedings based on grounds such as cruelty or desertion can result in long and expensive legal battles. By providing a no-fault ground for divorce, irretrievable breakdown of marriage can lessen the bitterness and hostility associated with divorce and enable couples to end their marriage in a more cordial and dignified manner.

Another significant benefit of introducing irretrievable breakdown of marriage as a ground for divorce is that it promotes gender equality. In traditional divorce proceedings, women frequently find themselves at a disadvantage since they are required to demonstrate fault on the part of their husbands. This can be especially challenging in situations where both parties are at fault or where fault cannot be conclusively established. By providing a no-fault ground for divorce, irretrievable breakdown of marriage can ensure that women are not unfairly burdened in divorce cases.

The adoption of irretrievable breakdown of marriage as a divorce ground can enhance personal autonomy. Presently, the Hindu Marriage Act, 1955, confines divorce to certain grounds, which restricts individual decision-making and may trap one partner in a joyless marriage. By introducing a no-fault ground, individuals can exercise greater autonomy and make choices that serve their best interests. Additionally, the economic benefits of the irretrievable breakdown of marriage as a divorce ground cannot be overemphasized. India expends significant judicial time and resources on divorce cases, and introducing a no-fault ground can expedite the process, reducing the time and resources required. It's essential to note that several countries, including the United States, Canada, and Australia, have successfully introduced no-fault divorce grounds and recognized the associated benefits.

XIV. CONCLUSION

The worldwide acceptance of irretrievable breakdown of marriage as a legitimate ground for divorce is gaining momentum. However, this ground is not yet recognized in India, where there is a growing need to introduce it. This is primarily to reduce the acrimony associated with divorce and to make it more accessible to couples seeking to end their marriages. Many developed countries, including the United States, Canada, Australia, New Zealand and the United Kingdom, have already recognized irretrievable breakdown as a valid ground for divorce, with evidence indicating that it is an effective tool for resolving marital disputes. Introducing this ground for divorce in India would help to reduce the backlog of cases in the court system, which currently requires proof of fault or mutual consent for divorce, a time-consuming and costly process. The introduction of irretrievable breakdown as a ground for divorce would thus provide a quicker and less contentious way to dissolve marriages, which would be beneficial for all parties involved. Hence, recognizing irretrievable breakdown as a ground for divorce is necessary to keep up with changing societal norms and provide a more efficient and less acrimonious way to dissolve marriages in India.

XV. RECOMMENDATIONS

Recommendations to adopt Irretrievable Breakdown of Marriage as a ground for divorce in India:

1. **Comprehensive Review of Existing Divorce Laws:** A comprehensive review of existing divorce laws is necessary to identify gaps and propose amendments to incorporate irretrievable breakdown of marriage as a ground for divorce.
2. **Launch Nationwide Awareness Campaign:** A nationwide awareness campaign should be launched to educate the public about the concept and its potential benefits.
3. **Engagement of Women's Rights Groups:** Women's rights groups should be engaged to ensure that gender equality and women's empowerment are considered in the implementation of irretrievable breakdown of marriage as a ground for divorce.
4. **Provide Adequate Training to Judges and Legal Professionals:** Judges and legal professionals should receive adequate training to handle cases of irretrievable breakdown of marriage with sensitivity and ensure that justice is served in such cases.
5. **Establish a Robust Dispute Resolution System:** A robust dispute resolution system should be established to prevent an increase in litigation.
6. **Monitor and Evaluate the Implementation:** The implementation of irretrievable

breakdown of marriage as a ground for divorce should be monitored and evaluated regularly to ensure that it is executed fairly and effectively.

7. Dialogue with International Organizations and Other Countries: Dialogue with international organizations and other countries should be maintained to identify best practices and lessons learned in the implementation of irretrievable breakdown of marriage as a ground for divorce.

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