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# Reimagining the Right to Marry in India: From Constitutional Guarantees to the Demand for No-Fault Divorce

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## ABSTRACT

*Marriage, as a legal union, constitutes a critical facet of the right to life and personal liberty under Article 21 of the Indian Constitution, which asserts that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." While the right to marry is not expressly articulated within the constitutional text, judicial interpretation has firmly established it as a fundamental right inherent to personal autonomy and individual freedom. This constitutional dimension was emphatically affirmed in the landmark judgment of \*Lata Singh v. State of Uttar Pradesh\*, wherein Hon'ble Justices Ashok Bhan and Markandey Katju of the Supreme Court upheld an adult woman's unassailable right to marry a person of her choice. The court's directive to grant her police protection against coercive societal pressures underscored the State's role in safeguarding individual liberties against patriarchal norms and social ostracism. Furthermore, the right to marry transcends domestic jurisprudence and finds recognition within international human rights law. Article 16 of the Universal Declaration of Human Rights enshrines the right of every individual to marry and establish a family, free from coercion, reflecting a broader commitment to personal dignity, equality, and the sanctity of individual choice. However, while recognizing the freedom to marry, it is imperative to address the constraints posed by existing divorce laws in India. The rigidity of these laws can tether individuals in oppressive or irreconcilable marriages, thereby contradicting the very essence of marital liberty. Liberalizing divorce legislation is thus essential to complement the right to marry, ensuring that individuals retain the freedom to both enter and exit matrimonial bonds with dignity and agency. In this context, a comprehensive examination of the legal framework governing marriage in India necessitates a dual focus: upholding the constitutional guarantee of marital choice while reforming divorce laws to align with evolving notions of personal autonomy and justice.*

**Keywords:** *Right to marry, Article 21, personal liberty, marital autonomy, individual freedom, divorce law reform, constitutional guarantee, personal dignity, marital choice.*

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## **I. INTRODUCTION**

Marriage, as a legal and social institution, is deeply intertwined with personal autonomy, dignity, and the pursuit of emotional and social fulfillment. In India, while the Constitution does not explicitly mention the right to marry, this right has been read into Article 21, which guarantees the right to life and personal liberty. This constitutional protection, however, must be understood as encompassing not merely the right to enter into marriage, but also the right to sustain a meaningful and dignified marital relationship—and, where necessary, to exit one that has irretrievably broken down. The present legal framework under the Hindu Marriage Act, 1955, remains heavily reliant on fault-based grounds, compelling individuals to litigate through allegations of cruelty, desertion, or adultery to obtain divorce. Such a system fails to account for marriages that have emotionally collapsed but do not meet strict statutory criteria, thereby violating the constitutional values of autonomy, equality, and dignity. This research explores the evolving judicial interpretation of the right to marry in India, the limitations of the existing divorce framework, and the urgent need to recognize irretrievable breakdown of marriage as a statutory, gender-neutral ground for divorce. By situating the issue within the constitutional, human rights, and doctrinal context, the study argues that true marital liberty requires both the freedom to choose one's partner and the legal capacity to exit a marriage that no longer serves its foundational purpose.

## **II. CONSTITUTIONAL FRAMEWORK AND THE RIGHT TO MARRY**

India's Constitution enshrines a range of fundamental rights that safeguard individual liberty and dignity. Among these, Article 21 guarantees the right to life and personal liberty, which has been interpreted to include the freedom to make personal decisions central to human dignity and autonomy. Though the right to marry is not explicitly enumerated in the Constitution, it is inherently linked to the fundamental freedom to make choices in matters of personal relationships, family life, and intimate associations.

The right to equality under Article 14 and the prohibition of discrimination under Article 15 further reinforce that individuals cannot be denied the right to marry based on religion, caste, sex, or any other prohibited ground. Additionally, Article 19(1)(a) protect freedom of expression, which support the liberty to choose a life partner and reside with them freely. The Supreme Court of India unanimously recognized the right to privacy as a fundamental right under Article 21. Privacy includes autonomy over personal decisions, bodily integrity, and intimate relationships. Right to privacy recognized the decisions such as whom to marry,

whom to be intimate with, and where to live are integral aspects of one's identity and dignity.<sup>2</sup>

At the international level, India is a signatory to core human rights instruments that recognize marriage as a fundamental human right. Article 16 of the Universal Declaration of Human Rights (UDHR)<sup>3</sup> states that "men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family," and that marriage shall be entered into "only with the free and full consent of the intending spouses."

Similarly, Article 23 of the International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup> recognizes "the right of men and women of marriageable age to marry and to found a family," affirming that such rights are universal and must be exercised with full, free consent.

These international norms reflect a consensus that the right to marry freely is a universal human right, directly tied to the notions of dignity, privacy, and equality. As a signatory to both the UDHR and ICCPR, India is obligated to interpret its domestic laws in consonance with these international standards. Indeed, Indian courts have frequently relied on international human rights instruments to reinforce constitutional rights, especially where there is no conflict with municipal law.

Therefore, when read together—the Indian Constitution (particularly Article 21), Supreme Court jurisprudence, and India's international obligations under the UDHR and ICCPR—unequivocally affirm that marrying a person of one's own choice is not only a constitutional right but also a fundamental human right. Any interference with this right undermines the values of dignity, freedom, equality, and non-discrimination, which are the foundational principles of both Indian democracy and the international human rights regime.

### III. RIGHT TO CHOOSE A SPOUSE: JUDICIAL INTERPRETATION

The Supreme Court has, over the years, made significant strides in interpreting the right to marry as an essential component of individual freedom. The Indian judiciary has consistently upheld the right to choose a spouse as an essential component of personal liberty under Article 21 of the Constitution. This right is grounded in the broader constitutional values of dignity, autonomy, and freedom of choice in personal relationships. In *Lata Singh v. State of Uttar Pradesh*, the Supreme Court affirmed that a major individual has the absolute right to marry a person of their choice, and that any interference by family or community amounts to a

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<sup>2</sup> Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 S.C.C. 1 (India).

<sup>3</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

<sup>4</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

violation of constitutional protections<sup>5</sup>. Similarly, in *Shafin Jahan v. Asokan K.M.*, the Court emphasized that the right to choose a life partner is intrinsic to individual autonomy and cannot be subjected to extraneous pressures, including parental or societal opposition. Reinforcing this position<sup>6</sup>, the Court in *Shakti Vahini v. Union of India* declared that honour-based violence and attempts by extra-constitutional bodies such as khap panchayats to prevent consensual adult marriages are illegal and unconstitutional. Expanding the scope of this right<sup>7</sup>, the Allahabad High Court in *Salamat Ansari v. State of Uttar Pradesh* ruled that the right to choose a partner—regardless of religion—is protected under Articles 21 and 25, thus linking personal liberty with religious freedom<sup>8</sup>. These interpretations find further constitutional support in the landmark judgment of *K.S. Puttaswamy v. Union of India*, where the Supreme Court recognized privacy as a fundamental right, including within it the decisional autonomy over intimate and personal choices such as marriage<sup>9</sup>. The jurisprudence is further strengthened by progressive decisions such as *Navtej Singh Johar v. Union of India*, which underscore the constitutional value of individual autonomy in forming intimate relationships<sup>10</sup>. Together, these rulings construct a robust legal framework that affirms the right to marry a person of one's choice as a fundamental right, impervious to familial, societal, or communal restrictions.

#### IV. THE RIGHT TO A MEANINGFUL MARRIAGE AND JUDICIAL EMPHASIS ON DIGNITY AND CONSENT

Indian constitutional jurisprudence has evolved to recognize that the right to marry does not merely imply the freedom to enter into a marital union, but also entails the right to enjoy a relationship rooted in mutual consent, dignity, and emotional well-being. This doctrinal development rests fundamentally on the interpretation of Article 21 of the Constitution, which guarantees the right to life and personal liberty.<sup>11</sup> Courts have increasingly acknowledged that a marriage devoid of companionship, trust, and personal satisfaction becomes a hollow formality, potentially infringing on the individual's autonomy and dignity.

A notable articulation of this view can be found in *Amutha v. A.R. Subramanian*, where the Supreme Court, interpreting Section 13(1)(ia) of the Hindu Marriage Act, held that “forcing a couple to remain in a marriage that brings them unhappiness and conflict goes against what

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<sup>5</sup> *Lata Singh v. State of Uttar Pradesh*, (2006) 5 S.C.C. 475 (India).

<sup>6</sup> *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 368 (India).

<sup>7</sup> *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India).

<sup>8</sup> *Salamat Ansari v. State of Uttar Pradesh*, 2020 SCC OnLine All 1382 (All.).

<sup>9</sup> *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 S.C.C. 1 (India).

<sup>10</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

<sup>11</sup> INDIA CONST. art. 21.

marriage is meant to be.”<sup>12</sup> The Court invoked Article 142 of the Constitution to dissolve the marriage on the ground of irretrievable breakdown, emphasizing that the continuation of a broken relationship does more harm than good to either party.<sup>13</sup>

This reasoning was further reinforced in *ABC v. XYZ*,<sup>14</sup> where Justices Vikram Nath and Prasanna B. Varale held that irretrievable breakdown of marriage, though not statutorily codified, is sufficient to justify judicial dissolution when the facts show that the relationship has become emotionally barren and unworkable.<sup>15</sup> The Court observed that compelling individuals to persist in such marriages prolongs their misery and defeats the institution’s purpose. Similarly, in *X v. Y*, the Court reiterated that where marital discord has reached a point of no remedy, it is unjust and futile to expect legal or emotional reconciliation, and accordingly exercised its power under Article 142 to grant divorce.<sup>16</sup>

The principle that consent is a foundational element of marriage was also firmly established in a 2018 decision, where the Court held that a marriage performed without the bride’s free and informed consent is voidable under Hindu law and stands on par with one entered through fraud.<sup>17</sup> This position underscores the idea that legal validity alone does not suffice—emotional and personal agency are equally vital in sustaining a lawful marital bond.

Collectively, these cases form a coherent doctrinal trajectory in Indian matrimonial law, which recognizes that the right to marry includes the right to exit a dysfunctional or degrading relationship. The judiciary’s interpretation affirms that personal liberty, human dignity, and emotional fulfilment are essential to a meaningful marriage, thereby aligning Indian constitutional values with global human rights standards.

## V. RIGOR OF DIVORCE NORMS AND ITS IMPACT ON THE RIGHT TO A MEANINGFUL MARRIAGE

India’s current divorce framework under the Hindu Marriage Act emphasizes fault-based grounds—such as cruelty, adultery, or desertion—while excluding the critical concept of irretrievable breakdown, thereby limiting individuals’ ability to exit marriages that are

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<sup>12</sup> *Amutha v. A.R. Subramanian*, 2023 SCC OnLine SC [Exact citation not yet reported] (India).

<sup>13</sup> *Id.*

<sup>14</sup> *ABC v. XYZ*, 2024 INSC 1033 (India).

<sup>15</sup> *Id.*

<sup>16</sup> *X v. Y*, 2025 INSC 413 (India).

<sup>17</sup> *Bride’s Consent Case*, Supreme Court of India, C.A. No. [unreported, Apr. 11, 2018] (India); see also *Bride’s Consent to Marriage Is Implicit in Hindu Law, Says Supreme Court*, The Hindu (Apr. 11, 2018), <https://www.thehindu.com/news/national/brides-consent-to-marriage-is-implicit-in-hindu-law-says-supreme-court/article23502559.ece>.

emotionally hollow yet legally binding.<sup>18</sup> Since the 71st and 217th Law Commission reports, legal scholars have urged reform by recommended introduction of irretrievable breakdown as a standalone ground, arguing that continuing a marital shell with no hope of reconciliation inflicts injustice both on the spouses and the broader societal interest.<sup>19</sup>

Judicial pronouncements, although significant, remain ad hoc. In *Naveen Kohli v. Neelu Kohli*, the Court went so far as to suggest legislative incorporation of breakdown theory into matrimonial law, remarking that where marriages “ceased to exist both in substance and in reality,” continuing them was not in the public interest.<sup>20</sup> Similarly, *Rishikesh Sharma v. Saroj Sharma* and *Samar Ghosh v. Jaya Ghosh* affirmed that irretrievable breakdown can be equated to mental cruelty and may justify divorce, even in the absence of statutory grounds.<sup>21</sup>

Yet, these judicial acknowledgements contrast starkly with statutory rigidity: courts can dissolve marriages under Article 142 only in exceptional circumstances, as seen in *K. Srinivas Rao v. D.A. Deepa* and *V. Bhagat v. D. Bhagat*, leaving many trapped in unhappy unions.<sup>22</sup> The disconnect was sharply critiqued by doctrinal scholarship, including Pendem & Suhruth 2024, which argued that “a marriage may survive legally yet die emotionally,” demanding reform to uphold the right to a meaningful marital relationship grounded in dignity and consent.<sup>23</sup>

Consequently, the absence of a uniform, no-fault divorce mechanism undermines the constitutional promise of personal liberty and emotional well-being under Article 21, compelling courts to compensate for legislative gaps—yet perpetuating uncertainty and unequal access to justice.

## VI. LIBERALIZING DIVORCE LAW: IRRETRIEVABLE BREAKDOWN AS A CONSTITUTIONAL COMPLEMENT TO THE RIGHT TO MARRY

Liberalizing divorce legislation is thus essential to complement the right to marry, ensuring that individuals retain the freedom to both enter and exit matrimonial bonds with dignity and agency. While Indian law guarantees the right to marry as a constitutional facet of personal

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<sup>18</sup> Hindu Marriage Act, No. 25 of 1955, § 13(1) (India).

<sup>19</sup> Law Comm’n of India, 71st Report: The Hindu Marriage Act, 1955—Irretrievable Breakdown of Marriage as a Ground for Divorce (Apr. 1978); Law Comm’n of India, 217th Report: Irretrievable Breakdown of Marriage—Another Ground for Divorce (Mar. 2009) (India).

<sup>20</sup> Pendem Suhruth & Srivatsav, *An Evaluative Study on Irretrievable Breakdown of Marriage*, 7 **J. Fam. & Adoption L.** 112 (2024) (India).

<sup>21</sup> *Naveen Kohli v. Neelu Kohli*, (2006) 4 S.C.C. 558 (India).

<sup>22</sup> *Rishikesh Sharma v. Saroj Sharma*, (2006) 12 S.C.C. 785 (India); *Samar Ghosh v. Jaya Ghosh*, (2007) 4 S.C.C. 511 (India).

<sup>23</sup> *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 S.C.C. 226 (India); *V. Bhagat v. D. Bhagat*, (1994) 1 S.C.C. 337 (India).

liberty under Article 21, the lack of a liberal, accessible exit mechanism—especially the absence of irretrievable breakdown of marriage as a statutory ground—undermines this right in practice. The prevailing fault-based divorce model under Section 13 of the Hindu Marriage Act, 1955 requires the petitioner to prove blameworthy conduct by the other spouse, such as cruelty, adultery, or desertion.<sup>24</sup> This not only leads to adversarial litigation and stigma but also makes it impossible for individuals to dissolve marriages that have broken down emotionally or functionally, but without legally provable “fault.”

In contrast, the irretrievable breakdown theory shifts the focus from fault and blame to the factual end of marital companionship, emphasizing the functional reality of the relationship. It recognizes that if a marriage has become unviable due to prolonged separation, lack of mutual trust, or emotional disconnection, compelling its continuation serves no social or legal purpose.<sup>25</sup> This approach aligns more closely with constitutional values, including dignity, autonomy, and mental well-being, as upheld by the Supreme Court in evolving Article 21 jurisprudence.

Judicial support for this doctrine began to crystallize in cases like *Naveen Kohli v. Neelu Kohli*, where the Court explicitly recommended statutory recognition of irretrievable breakdown, observing that maintaining a marriage that had “ceased to exist both in substance and reality” was unjust.<sup>26</sup> This view was further endorsed in *Samar Ghosh v. Jaya Ghosh*, where the Court laid down broad parameters of mental cruelty, implicitly incorporating breakdown theory.<sup>27</sup> More recently, in *Shilpa Sailesh v. Varun Sreenivasan*, a Constitution Bench held that the Supreme Court can dissolve marriages based on irretrievable breakdown by exercising its powers under Article 142, thereby granting substantive relief where statutory provisions fall short.<sup>28</sup>

Despite such progressive jurisprudence, the lack of legislative codification continues to place an unequal burden on parties who cannot afford long, fault-based litigation or access to the Supreme Court. The Law Commission of India, in both its 71st and 217th Reports, strongly advocated for including irretrievable breakdown as a legally recognized, no-fault ground for divorce, citing its importance for ensuring access to justice, reducing acrimony, and upholding

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<sup>24</sup> Hindu Marriage Act, No. 25 of 1955, § 13(1) (India).

<sup>25</sup> Pendem Suhruth & Srivatsav, *An Evaluative Study on Irretrievable Breakdown of Marriage*, 7 **J. Fam. & Adoption L.** 112 (2024) (India).

<sup>26</sup> *Naveen Kohli v. Neelu Kohli*, (2006) 4 S.C.C. 558 (India).

<sup>27</sup> *Samar Ghosh v. Jaya Ghosh*, (2007) 4 S.C.C. 511 (India).

<sup>28</sup> *Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544 (India).



the spirit of marital liberty.<sup>29</sup>

Recognizing irretrievable breakdown as a statutory ground would thus not only reflect legal realism but would also fulfill the constitutional mandate of ensuring personal freedom and dignity within intimate relationships. It represents a necessary shift from a punitive and moralistic framework toward one that respects individual autonomy, thereby making the right to marry truly reciprocal—a right to both enter and exit a marriage with equal constitutional protection.

## VII. CONCLUSION

The right to marry, while not explicitly stated, is firmly embedded within the constitutional guarantees of Articles 14, 15, and 21, which ensure equality, non-discrimination, and personal liberty. However, this right must be understood not merely as the freedom to enter into marriage, but also as the right to a meaningful marital relationship, grounded in dignity, autonomy, and emotional well-being. The right to life under Article 21 is expansive and includes the right to a life of quality, which cannot be fulfilled if individuals are compelled to endure irreparably broken or emotionally hollow marriages. Forcing a person to remain in an unhappy or hostile union violates their right to personal liberty and dignity, and effectively reduces marriage to a legal obligation devoid of substance.

The continued reliance on a fault-based divorce regime under the Hindu Marriage Act restricts the ability to exit such marriages, imposing unjust burdens and often exacerbating mental and emotional suffering. Although the Supreme Court has used Article 142 to recognize irretrievable breakdown of marriage as a basis for dissolution, this judicial remedy remains discretionary and inaccessible to most. The absence of a codified, no-fault divorce framework not only undermines access to justice but also reinforces structural inequalities, particularly along gender lines.

Therefore, legislative recognition of irretrievable breakdown as a statutory ground for divorce is no longer just a policy suggestion—it is a constitutional imperative. It is essential to ensure that the right to marry includes the right to separate with dignity, and that individuals are not constitutionally compelled to remain in relationships that compromise their physical, emotional, or mental health. A liberal, gender-equitable, and dignity-based divorce law is crucial to honoring the full scope of constitutional freedoms and human rights in India.

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<sup>29</sup> Law Comm'n of India, 71st Report: The Hindu Marriage Act, 1955—Irretrievable Breakdown of Marriage as a Ground for Divorce (Apr. 1978); Law Comm'n of India, 217th Report: Irretrievable Breakdown of Marriage—Another Ground for Divorce (Mar. 2009) (India).