

## CODIFYING IRRETRIEVABLE BREAKDOWN OF MARRIAGE IN INDIAN FAMILY LAW: ENSURING RELEASE OR RUIN?

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*S. Akshayaa*<sup>1</sup>

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### ABSTRACT

*Divorce is the legal dissolution of marriage, marking the end of matrimonial obligations between spouses. In India, it is predominantly governed by personal laws rooted in community-specific norms. This shattered religion-based legal framework often transforms divorce into a complex socio-legal issue within Indian jurisprudence. Under the traditional codified personal laws, divorce grounds are based on fault-based principles, where the parties are often forced to allege cruelty or adultery to secure divorce, even mutual incompatibility is the main issue. In recent times, the judicial recognition of Irretrievable Breakdown of Marriage (IBM) as a potential ground for divorce represents a growing shift from fault-based systems to no-fault system. However, it is less effective without statutory recognition. This doctrinal legal research critically analyses the psychological needs and social consequences associated with the statutory recognition of IBM as a ground for divorce. This paper also shows the legal position of IBM in various other countries. This paper suggests a constant remedy to strike a balance between individual rights and institutional safeguards in matrimonial laws.*

**Keywords:** Irretrievable Breakdown of Marriage, Matrimonial Obligations, Statutory Recognition, Divorce, Personal Laws.

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<sup>1</sup> Akshayaa, Government Law College, Chengalpattu.

## INTRODUCTION

*“Divorce isn’t such a tragedy. A tragedy is staying in an unhappy marriage, teaching your children the wrong things about love.” – Jennifer Weiner<sup>2</sup>*

Marriage is an important social institution that forms the core foundation of the family structure. Historically, Indian society regarded marriage, especially under Hindu law, as a sacrament that denotes an indissoluble and lifelong bond between spouses. However, in contemporary times, marriage has transitioned into a more contractual and individual-centric institution and when marital relationships become emotionally or functionally unsustainable, individuals increasingly prefer separation over forced cohabitation.<sup>3</sup> Irretrievable Breakdown of Marriage (IBM) refers to a state of broken marriages which cannot be reconstructed, often resulting in prolonged emotional and psychological harm to the parties involved. In such cases, there is no purpose for compelling them to remain married, where, divorce becomes a significant remedy. Indian divorce law has traditionally followed a fault-based model, where parties must prove grounds such as cruelty, adultery, desertion, or mental illness under statutes like the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. These traditional grounds focus on blaming the fault of the parties and results in adversarial litigation. In this context, the absence of a no-fault ground like IBM often undermines both the dignity and emotional well-being of the individuals involved. However, the Supreme Court of India has invoked its special jurisdiction under Article 147 of the Indian Constitution to grant divorce on the grounds of IBM in many cases.<sup>4</sup> Moreover, the 71st Law Commission Report submitted in 1977, and the 217th Law Commission Report submitted in 2009 recommended Irretrievable Breakdown of Marriage to be another Ground for Divorce. In this context, the upper house of the parliament in 2010, introduced the Marriage Laws (Amendment) Bill, sought to incorporate IBM as a ground for divorce under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, based on recommendations made in the Supreme Court judgments and the law commission reports. However, this relief is limited to cases where constitutional authority is invoked. It is to be noted that the Bill faced many challenges and remains unenforced till now. The absence of legislative codification of IBM

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<sup>2</sup> Jennifer Weiner, Outcomes of a Divorce, *Novak Djokovic Found.*, <https://novakdjokovicfoundation.org/outcomes-of-divorce/> (last visited Nov. 14, 2025).

<sup>3</sup> Ayushee Sinha, Irretrievable Breakdown of Marriage: An Analysis, *IJLLR J.* (May 24, 2023), <https://www.ijllr.com/post/irretrievable-breakdown-of-marriage-an-analysis>.

<sup>4</sup> Supreme Court’s Power to Directly Grant Divorce, *Sup. Ct. Observer*, <https://www.scobserver.in/cases/supreme-courts-power-to-directly-grant-divorce/> (last visited Nov. 14, 2025).

creates a troubling inconsistency, especially when the parties are forced to fabricate fault or engage in prolonged litigation to obtain relief. This article examines the evolution of IBM, critiques the downfalls of IBM as a legal ground for divorce, draws comparative insights from jurisdictions that have codified no-fault grounds for divorce, and argues for the urgent legislative remedy to ensure timely, fair, and dignified dissolution of IBM.

### **EVOLUTION OF IBM IN INDIA: FROM FAULT TO NO-FAULT**

*"Nothing is as bad as a marriage that is a hopeless failure."*

*D. H. Lawrence*<sup>5</sup>

Indian personal laws like the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 traditionally recognized the fault-based grounds for divorce like cruelty, desertion, adultery, venereal disease, mental disorder, conversion, and so on. However, this system leads to adversarial litigation, blame-shifting, and psychological distress. These inconvenient situations arise due to absence of no-fault grounds like IBM. IBM can be defined as "Such failure in matrimonial relationship or such adverse circumstances to relationship that no reasonable probability remains for spouses living together again as husband and wife."<sup>6</sup> The inclusion of IBM as a ground may help to eliminate fabrication of grounds, prolonged litigation and unjust decisions. The Law Commission of India in its 71st Report, 1978 has recommended that incorporation of IBM as a no-fault ground for divorce but the parliament had not taken any legislative action. In 2009, to reaffirm and strengthen the earlier recommendation the 217th law report suggested detailed draft amendments in the marriage laws. In this context, the Marriage Laws (Amendment) Bill, 2010, which sought to insert Section 13C in the Hindu Marriage Act, 1955 and Section 28A in the Special Marriage Act, 1954, was presented and passed by the upper house of the parliament. The Bill was presented in the lower house by Shri M. Veerappa Moily, Minister of Law and Justice, which remains pending.<sup>7</sup> The Bill is a step towards the recognition of IBM as a legal ground for divorce to reduce unnecessary litigation and ensure fair justice.

### **IBM AS GROUND FOR DIVORCE: PSYCHOLOGICAL RELIEF VS SOCIAL NORMS**

Parties in the cases of IBM often face various psychological issues and seek remedies from the

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<sup>5</sup> D.H. Lawrence, 75 Quotes About Unhappy Marriage and Staying in a Loveless Relationship, *MomJunction* (June 12, 2023), [https://www.momjunction.com/articles/unhappy-marriage-quotes\\_00680354/#google\\_vignette](https://www.momjunction.com/articles/unhappy-marriage-quotes_00680354/#google_vignette).

<sup>6</sup> Law Comm'n of India, *71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground for Divorce* (1978).

<sup>7</sup> Ku Meenakshi Prabhakar Kale, The Concept of Irretrievable Breakdown of Marriage as a Ground of Divorce: A Study, 1 *Indian J.L. & Soc'y* 12 (2023), <https://doi.org/10.5281/zenodo.10081341>.

courts by filing divorce. Sometimes, the law acts as a hindrance when, despite prolonged separation, one party refuses to consent to a divorce out of revenge or personal motives, while the other is unable to establish any fault.<sup>8</sup> To overcome such limitations the Marriage Laws (Amendment) Bill, 2010 marked a progressive moment in Indian divorce law by attempting to formally introduce IBM as a no-fault ground for divorce. The Bill proposed amendments to Section 13 of the Hindu Marriage Act, 1955, and Section 28 of the Special Marriage Act, 1954. The core objective of the Bill is to offer a realistic legal no-fault solution to marriages that had become unworkable. The Bill empowered either party to seek divorce solely on the basis that the marriage had broken down beyond repair. The Bill also states that the wife as respondent is entitled to oppose the grant of a decree of divorce on the grounds of IBM that dissolution of the marriage will result in grave financial hardship to her.<sup>9</sup> While progressive in intention, the concept of IBM in the Bill faced various social and legal criticisms. Since marriage is a social institution, it is difficult to determine whether it has irretrievably broken down. The primary legal concern is the absence of clearly defined criteria to establish what constitutes an “irretrievable breakdown,” which could allow for unfair application. Under the fault-based principle, the party at fault is directed to compensate the affected party. However, under the no-fault principle, determining the liability of the parties becomes challenging. The Bill should also address the lack of rehabilitation mechanisms and procedural safeguards, particularly for rural and marginalized individuals. While the Bill represented a necessary step towards aligning Indian divorce law with evolving social realities and international standards, its failure to materialize reflects a missed opportunity to institutionalize a balanced and equitable no-fault divorce regime.

### **JUDICIAL RECOGNITION OF IBM: WHEN LAWS REMAIN SILENT**

*“A marriage that is dead for all purposes cannot be revived by a judicial verdict.”*

*- Supreme Court of India<sup>10</sup>*

The Apex court of India is active in rendering justice to the affected parties in irretrievably broken-down marriages as there is no proper law to regulate them. The opportunity to grant divorce on the grounds of IBM is available only with the Supreme Court of India under Article 142 of the Constitution. The Supreme Court, in exercise of power under Article 142(1) of the

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<sup>8</sup> Kanu Priya, Irretrievable Breakdown of Marriage as Ground of Divorce Under Hindu Law: Judicial Analysis, 3 *Indian J.L. & Legal Res.* (2021),

[https://3fdef50cadd34615a675a91741bcb5c0.usrfiles.com/ugd/3fdef5\\_84541f9455c446879f81ea23117bfl d4.pdf](https://3fdef50cadd34615a675a91741bcb5c0.usrfiles.com/ugd/3fdef5_84541f9455c446879f81ea23117bfl d4.pdf).

<sup>9</sup> *Marriage Laws (Amendment) Bill*, No. 56 of 2010, Statement of Objects and Reasons (India).

<sup>10</sup> *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558 (India).

Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown and this discretionary power is to be exercised to do ‘complete justice’ to the parties, wherein the Supreme Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified.<sup>11</sup> The Court observed that in the cases of long separation, the parties having mutually agreed to separate, then the litigation for divorce should not be prolonged.<sup>12</sup> The lack of no-fault grounds for divorce may force the parties to blame each other to avoid prolonged litigation. When the fault grounds proved to be inadequate in several extraordinary circumstances divorce shall be granted on the ground of IBM.<sup>13</sup> In the *Rishikesh Sharma v. Saroj Sharma* case, the Supreme Court after considering that the wife, who has been living separately for more than four decades, had instituted cases against the husband, observed that “the marriage is dead from every angle and is impossible to revive and thus, no purpose would be served in keeping both the parties retained in marriage”.<sup>14</sup> Though the IBM has no statutory recognition, the court can direct the dissolution of marriage in order to lessen the misery of the parties involved in long-drawn legal battles.<sup>15</sup> Despite legislative inaction in recognizing IBM as a ground for divorce, the judiciary has interpreted the right to divorce within the ambit of the right to liberty and dignity guaranteed under Article 21 of the Constitution, which cannot be confined to traditional fault-based grounds. Critics argue that reliance on judicial discretion creates uncertainty, prolongs litigation, and deepens emotional trauma but, recognising IBM as a statutory right, they contend, would align Indian law with international practice and uphold the principle that no person should be forced to remain in a marriage that has irretrievably collapsed.<sup>16</sup>

### **INTERNATIONAL LAWS OF BROKEN RELATIONSHIP: A COMPARATIVE STUDY**

While discussing the position of a particular concept in India, it is common to refer to the position of the same in other countries. Likewise, the concept of irretrievable breakdown of marriages as a ground for divorce and its impact are referred to various countries and are

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<sup>11</sup> *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 7 SCC 1 (India).

<sup>12</sup> *Amit Kumar v. Suman Beniwal*, (2021) SCC OnLine SC 1270 (India).

<sup>13</sup> *Naveen Kohli*, supra note 10.

<sup>14</sup> *Rishikesh Sharma v. Saroj Sharma*, (2007) 2 SCC 263 (India).

<sup>15</sup> *Savitri Pandey v. Prem Chandra Pandey*, AIR 2005 SC 534 (India).

<sup>16</sup> Weiterleitungshinweis, Irretrievable Breakdown of Marriage as Ground for Divorce: Analysis, *LiveLaw*, <https://www.livelaw.in/amp/articles/irretrievable-breakdown-of-marriage-as-ground-for-divorce-analysis-305767> (last visited Nov. 14, 2025).

summarized below.

**AMERICA**

The United States of America, a well-developed nation ensures freedom and safety of the citizens within its territory. No-fault divorce is available in all 50 states of America.<sup>17</sup> For example, Section 2310 of the California Family Code, 2024 states, “Dissolution of the marriage or legal separation of the parties may be based on Irreconcilable differences, which have caused the irremediable breakdown of the marriage.”<sup>18</sup> Similarly, Section 170(7) of the New York Domestic Relations law, provides an elaborate provision for divorce on the grounds of IBM. According to this law, divorce can be granted when the relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage shall be resolved by the parties, or determined by the court and incorporated into the judgment of divorce.<sup>19</sup> Likewise the statutes of Massachusetts, Pennsylvania, New Jersey, New Mexico, acknowledged IBM as a no-fault ground for divorce.

**ENGLAND**

The United Kingdom is the major European territories under its colony. The England family law recognized IBM as a legal ground for divorce. The parliament of England enacted the Matrimonial Causes Act 1973 which regulates the procedures for marriage, divorce and other family affairs states that either or both parties to a marriage may apply to the court for an order (a “divorce order”) which dissolves the marriage on the ground that the marriage has broken down irretrievably.<sup>20</sup> However, the petitioner has to prove their broken marriage with relevant facts and evidence. This rigid procedure was replaced by the Divorce, Dissolution and Separation Act, 2020. This Act inserted IBM as a ground for divorce under section 1 of 1973 Act. The provision reads, “Either or both parties to a marriage may apply to the court for an order (a “divorce order”) which dissolves the marriage on the ground that the

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<sup>17</sup> Irremediable or Irretrievable Breakdown, *Legal Info. Inst.*, [https://www.law.cornell.edu/wex/irremediable\\_or\\_irretrievable\\_breakdown](https://www.law.cornell.edu/wex/irremediable_or_irretrievable_breakdown) (last visited Nov. 15, 2025).

<sup>18</sup> Cal. Fam. Code § 2310(a) (2024).

<sup>19</sup> N.Y. Dom. Rel. Law § 170(7).

<sup>20</sup> *Matrimonial Causes Act 1973*, ch. 18, § 1 (Eng. & Wales).

marriage has broken down irretrievably”.<sup>21</sup>

### **CHINA**

The Republic of China, one of the powerful communist nations, provides equal protection to its citizens. Article 1079 of Civil Code of the People’s Republic of China, states that the spouses have been separated for no less than two full years due to marital discord under the civil code of China including IBM as the ground for divorce.<sup>22</sup> The laws of China indirectly acknowledged IBM as marital discord.

### **FRANCE**

The French government enacted various laws for the welfare of its citizens. One of such laws is the French civil code, 1804 which governs civil laws including matrimonial laws. This traditional law provides various fault-based grounds such as adultery, cruelty and so on. After 2004 amendment, Article 237 acknowledged IBM as a ground for divorce and Article 238 states the presumption of broken relationship, explains that the definitive alteration of the marital bond results from the cessation of community of life between the spouses, where they have been living apart for one year at the time of the application for divorce.<sup>23</sup>

### **AUSTRALIA**

Australia is one among the well-developed nations with effective and compassionate laws. The Family Law Act, 1975 repealed the former fault-based divorce law named Matrimonial Causes Act 1959. Section 48 of Family Law Act, 1975 acknowledged IBM as a legal ground for divorce. Section 48(2) provides that the marriage is taken to have broken down irretrievably if the parties have separated and lived apart for at least 12 months, and there is no reasonable likelihood of resuming cohabitation.<sup>24</sup>

### **NEW ZEALAND**

New Zealand has a unified and simplified matrimonial law. New Zealand introduced IBM through the Family Proceedings Act 1980, replacing the old Matrimonial Proceedings Act 1963. Section 39 of 1980 Act provides that when proof is provided by showing the spouses have lived apart for two years or more, and at least one party does not wish to resume cohabitation, such marriage may be dissolved only on the ground that the marriage has broken down

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<sup>21</sup> *Divorce, Dissolution and Separation Act 2020*, c. 11 (Eng. & Wales).

<sup>22</sup> *Civil Code of the People’s Republic of China* art. 1079 (2020).

<sup>23</sup> *Code civil* [C. civ.] art. 238 (Fr.).

<sup>24</sup> *Family Law Act 1975*, No. 53, § 48(2) (Cth).

irreconcilably.<sup>25</sup>

This comparative study highlights that India can draw from these jurisdictions to create a legally sound and socially sensitive approach to divorce that prioritizes dignity, emotional well-being, and legal clarity.

### SUGGESTIONS TO ADDRESS CHALLENGES

It is necessary to take legislative measures to institutionalize no-fault divorce through IBM, ensuring that individuals are not trapped in relationships that have ceased to exist in substance. The following are some suggestions to address the challenges involved in the enforcement of the Marriage Laws (Amendment) Bill, 2010 to recognise IBM as a no-fault ground for divorce.

1. The uncertain definition of IBM leads to vague interpretation. The Bill should provide proper definition and conditions to constitute IBM.
2. Educating the parties regarding the availability of IBM as a ground for divorce can reduce false allegations.
3. Complicated divorce procedures should be reduced. The Bill should introduce simple no fault procedures for divorce.
4. Launching awareness programs to create social support systems and to ensure uniform application of IBM.
5. The provisions of IBM should be based on the psychological factors rather than facts and evidence.

### CONCLUSION

The recognition of IBM as a ground for divorce reflects a necessary evolution in Indian family law. The current fault-based principles under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 often compels parties to falsely blame each other or engage in prolonged litigation to obtain a divorce. This not only burdens the judiciary but also inflicts psychological and emotional disturbance on both parties. The Marriage Laws (Amendment) Bill, 2010 sought to address this gap by introducing IBM as a no-fault ground. It offers an accessible, dignified, and non-adversarial legal recourse. However, its failure to be enforced reflects a legislative hesitation to break away the traditional principles of marriage. Despite this legislative gap, the Supreme Court has consistently invoked Article 142 of the Constitution to grant divorce in cases of IBM, without forcing parties to stay in emotionally dead relationships. Though these judicial

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<sup>25</sup> *Family Proceedings Act 1980*, § 39 (N.Z.).

## LEX MENTE

interpretations serve as important precedents, they cannot serve as a substitute for statutory provisions. Further, the lack of uniformity and limited accessibility of Article 142 relief continues to reduce the principle of equal access to justice. A comparative review of jurisdictions clearly shows that no-fault divorce laws can coexist with safeguards that prevent misuse and protect vulnerable parties. For India, codifying IBM into its family laws would not only harmonize judicial practice with statutory law but also uphold the constitutional values of personal liberty, dignity, and the right to life.

