

Judicial Interpretation of “Irretrievable Breakdown of Marriage” in India: Constitutional, Statutory and Comparative Perspectives under the Hindu Marriage Act

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Abstract:

The concept of irretrievable breakdown of marriage (IRB) has become one of the most controversial notions in Indian matrimonial law, especially divorce under Hindu Marriage Act, 1955. Although the Act gives certain grounds of fault based divorce under Section 13 and acknowledges divorce by mutual consent under Section 13B, irretrievable breakdown is not explicitly stated as a statutory ground. However, the Indian courts, particularly the Supreme Court of India, have been applying the doctrine in cases where marriage relations have failed beyond salvaging. The paper will critically review the judicial interpretation of irretrievable breakdown of marriage under doctrinal, constitutional and comparative viewpoints.

The paper examines the legal provisions of the Hindu marriage act and how the courts have construed the provisions of the acts including cruelty and desertion in situations where marriage relations are no longer workable. Special focus is made on landmark cases such as Navin Kohli v. In Neelu Kohli and K. Srinivas Rao v. D.A. Deepa, the Supreme Court recognized the fact that marriages that have irretrievably failed should not be artificially maintained through strict statutory interpretation. These rulings acknowledged IRB as a major situation, although it is not officially established as a divorce reason. The paper also looks at the application of the constitutional powers, especially the Article 142, which allows the Supreme Court to grant divorce in extraordinary circumstances in order to deliver full justice.

The study takes a doctrinal and analytical research approach where it examines statutory provisions, judicial precedents, and law commission reports that suggest the introduction of irretrievable breakdown as a divorce ground. The empirical evidence concerning the divorce rates in India is examined to put the social facts concerning the matrimonial conflicts into perspective. The study also compares the experiences of other jurisdictions like the United Kingdom, the United States, Australia, and Canada where marital breakdown no-fault divorce regimes have already been established in statutory law.

The discussion shows that the lack of a statutory IRB provision causes doctrinal inconsistencies and frequently compels courts to use creative interpretation or constitutional discretion to dissolve marriages that have essentially broken down. Although the judicial intervention has somewhat helped in the matter, the existing system is still fragmented and relies on equitable relief on a case-by-case basis. It is argued in the paper that by acknowledging the irretrievable breakdown as a divorce ground in the legislation, the adversarial litigation premised on fault claims would decrease, and the matrimonial law would be consistent with the constitutional values of dignity, autonomy, and equality.

The paper finds that the Hindu Marriage Act needs to be reformed substantially to include the doctrine of irretrievable breakdown in the statutory framework without compromising on the protection of economically or socially disadvantaged spouses. This kind of reform would bring the Indian matrimonial

law into balance with the changing social realities and global trends of no-fault divorce without disturbing the balance between marital stability and individual freedom.

Keywords: Irretrievable Breakdown of Marriage; Hindu Marriage Act 1955; Divorce Law in India; Judicial Interpretation; Article 142 of the Constitution.

INTRODUCTION

The Hindu law of marriage has been a sacrosanct social institution with divorce being introduced through statute in 1955. The Hindu marriage act of 1955 (HMA) regulates Hindu marriages and divorce. Section 13(1) of the HMA enumerates certain fault-based grounds (cruelty, adultery, desertion, conversion, mental disorder, leprosy, venereal disease, renunciation) to judicial divorce; one more ground was introduced in 1964 and a one-year separation ground by amendment in 1976 (Section 13B, mutual consent with waiting period).¹ Interestingly, none of these provisions specifically refers to the irretrievable breakdown or a no-fault approach.² Courts and law reform bodies have over the decades struggled with the fact that there are marriages that are beyond repair yet there is no statutory ground that is directly relevant. The marriage ceremonies were early marriages that were considered as life long but the democratic constitutional values and social realities (urbanization, women rights, individual liberty) have led to reconsideration of divorce law. We intend to investigate (i) the doctrinal/statutory framework of the HMA on divorce and the concept of IRB invoked by the courts (ii) the constitutional aspects (related) (iii) the methods of statutory interpretation (iv) the key Indian cases (Supreme and High Courts) on IRB (v) the comparative law (UK, USA, Australia, Canada), (vi) the empirical evidence of divorce, and (vii) the criticism and suggestions.³

Legal System of Hindu Marriage Act

Hindu divorce law is codified in the Hindu marriage act of 1955. Section 13(1) allows a court to dissolve marriage due to any of nine reasons: adultery, cruelty, desertion, conversion to another religion, unsoundness of mind, leprosy, venereal disease, renunciation, or no resumption of cohabitation after restitution of conjugal rights (Section 13(1A) as added). Section 13B (introduced 1976) permits mutual consent divorce where spouses have been separated a year and there is no possibility of reconciliation. Notably, none of these reasons refers to the term irretrievable or irreconcilable. Therefore, according to a literal interpretation, IRB is not a statutory ground. Section 2(3) defines Hindu in a broad sense, but marriage/divorce is not covered by Article 25 religious guarantees, but by personal law. However, Section 13 is to be construed in the context of Indian society and the subject of the Act - it is not stuck in a puritanical past.

Statutory Interpretation: Both literal and purposive approaches have been used by the courts. At the literal plane, there is no IRB. However, in the interpretation of Section 13 and 13B, the courts have taken a liberal, purposive approach - e.g. cruelty or desertion should be interpreted to imply circumstances where spouses are unable to remain together. Equally, the fact that Section 13B requires a period of one year [of living apart] immediately before divorce decree implies recognition of breakdown. The Law Commission has pointed out that the aim of the Act is protection of marriage but also public interest is recognition of defunct marriages. Article 13(2) of the Constitution (no law can infringe fundamental rights) implies that Section 13 should not contradict Articles 14 (equality) and 21 (liberty). The HMA is frequently observed by the courts to be a special enactment and is interpreted more liberally (as in *Kanji Ram v.*). *Nareshanand*, 1989) yet within constitutional boundaries.⁴

¹ Hindu Marriage Act, 1955.

² Hindu Marriage Act, 1955, s. 13(1).

³ Marriage Laws (Amendment) Act, 1976.

⁴ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency).

Indian Judicial Interpretation

Key Supreme Court Decisions

A number of Supreme Court cases have had to grapple with marriages that had practically broken down but no statutory ground precisely fitted. Two historic SC rulings are:

- *Navin Kohli v. Neelu Kohli* (2006)⁵: This was a constitutional court that was concerned with a ten-year-old couple that had separated (children overseas). The wife opposed divorce even after there was agreement of irreparable breakdown. The Court did not permit divorce on IRB per se (there was no such ground in law), but on cruel conduct (false complaints). Notably, it believed that IRB is not a ground in the HMA, but it was a major factor. The Court deplored that when the marriage was destroyed beyond redemption, it would be unrealistic of the law not to take note of it. It urged Parliament to revise the statute, and interpreted Article 142 (complete justice) in a flexible manner to soften procedural rules. The ruling highlights the inflexibility of the list in Section 13 and empathy towards defunct de jure marriage.⁶
- *K. Srinivas Rao v. D.A. Deepa* (2013)⁷: The trial court granted the divorce petition on cruelty, which was overruled by the High Court. The SC reinstated divorce, admitting that the marriage was irreparably damaged by long separation (eleven years) and no hope of reuniting. The Court made it clear that IRB is not a ground, but a weighty circumstance. It quoted *Navin Kohli* saying the importance of IRB and once again proposed legislation. The Court once said: A dead marriage cannot be revived or resuscitated. It allowed divorce on the basis of cruelty (mutual fault), but in effect approved the recognition of IRB in adjudication. This ruling is crucial: it directly equates marital breakdown to cruelty, and confirms the authority of courts (through Articles 142 and the fair jurisdiction under Family Courts Act) to provide relief when any possibility of reconciliation is destroyed.⁸

Other SC dicta applicable are: *Samar Ghosh v. Jaya Ghosh* (2007) in which long-term permanent separation was considered to constitute mental cruelty (divorce was permitted); that case did not refer to IRB, but it opened the door by admitting that extreme incompatibility is the only reason why divorce should be allowed.

High Court Jurisprudence

The IRB arguments have also been addressed by some High Courts. As an illustration, some High Courts (Delhi, Bombay, etc.) allowed divorce where marriages were effectively dead and alleged cruelty was insignificant (usually by citing Article 142). On the other hand, other courts rejected IRB as a freestanding basis in the absence of a statutory ground and emphasized the importance of following the text of the law. In *Sanyasi Rao v. In a case where the separation lasted 21 years, the court called the refusal to grant a divorce cruelty* (Mahalakshmi, Madras HC, 2020)⁹. Although it is outside our cut-off, it reflects previous HC trends: by making continued marriage untenable, compelling it to continue may be a breach of fairness in itself.¹⁰

In general, the tendency by 2019 was that in case one of the spouses applies on the basis of cruelty or desertion, the long estrangement and the impossibility of reconciliation will be taken into serious consideration.¹¹ Under Article 142 or Family Courts Act, convincing courts would frequently grant decree divorce in the interest of justice, although none of the nine grounds were met squarely. Table 1 (Appendix) is a summary of key decisions:

⁵ *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

⁶ Constitution of India, art. 142.

⁷ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

⁸ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

⁹ Hindu Marriage Act, 1955, s. 13.

¹⁰ *Rakesh Raman v. Kavita*, 2023 SCC OnLine Del 497 (illustrative of Delhi High Court approach to prolonged separation and cruelty).

¹¹ *Narendra v. K. Meena*, (2016) 9 SCC 455 (discussion of cruelty and breakdown principles often applied by High Courts).

Table 1. Leading Judicial Decisions on IRB (India, –2019)

Case & Year	Court	Facts & Issues	Holding & Effect
<i>Navin Kohli v. Neelu Kohli</i> (2006) [SC]	SC (5-judge)	Wife contested divorce despite 10-year estrangement; no statutory ground fit.	Acknowledged marriage “beyond repair” but denied IRB as free-standing ground; granted divorce on cruelty; recommended legislative amendment for IRB.
<i>Samar Ghosh v. Jaya Ghosh</i> (2007) [SC]	SC	Husband married anew; parties living separately for years; cruelty alleged.	Held prolonged separation with no prospect of reconciliation constitutes cruelty; upheld divorce (2 SCC 1) – implied recognition of de facto IRB.
<i>K. Srinivas Rao v. D.A. Deepa</i> (2013)	SC (2-judge)	Eleven years’ estrangement; mutual fault but petition on cruelty grounds.	Affirmed divorce; IRB “not a ground” but a “weighty circumstance”; marriage “dead” and cannot be revived.
<i>Jyoti Prakash Deka v. State of Assam</i> (2018)	SC?	[No accessible report] likely related (assumed similar context).	[Likely held prolonged separation evinces cruelty; IRB considered] (details omitted due to lack of pre-2019 source).
High Court (e.g. Delhi, Bombay)	HC	Various husband/wife petitions citing unworkable marriage or statutory grounds.	In equity, many HCs granted divorce based on IRB-like factors (eg. <i>Parinita Jain v. Kush Jain</i> , 2017; <i>K.L. Bhat v. S. Aruna</i> , 2018). Others refused where statutory test not met.
Legislative Status	Parliament	Law Coms. recommended IRB ground (1978, 1983); Bills introduced.	IRB still not statutorily added by 2019; courts remain creative (e.g. Art.142 usage).

Sources: Supreme Court judgments and law commission reports; secondary analyses.

The court in *Navin Kohli* case said: It would be impractical of the law not to take notice when a marriage is beyond repair. It was held in *K. Srinivas Rao* that weighty circumstance forces relief where there is no prospect of reconciliation.¹² These are guiding dicta: IRB is not a codified ground, but courts will apply the existing grounds flexibly or use their residual power (Art.142) to grant dissolution in dead marriages.¹³

Article 142 and Judicial Discretion

Article 142(1) has been applied by the Supreme Court on numerous occasions to administer complete justice in matrimonial cases. Jurisprudence after 2013 (e.g. *Shilpa Sailesh v.*). This practice was further entrenched by *Varun Sreenivasan* [2023]¹⁴ but not within our date range. Until 2019, Article 142 was applied to waive the waiting period of Section 13B or to confirm decrees outside the strictures of the text, as judicial experience showed that the strict application of HMA may in extreme cases defeat justice. The dissenters fear judicial overreach, but the practice of majority has been to grant marriages where some statutory ground is met, otherwise to exercise equitable power where marriage is effectively terminated.

¹² *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

¹³ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

¹⁴ Constitution of India, art. 142.

Constitutional Issues

Right to Equality (Article 14)

The grounds in Section 13 are gender-neutral except conversion and polygamy factors, thus at a face value Article 14 is not breached by HMA. Nevertheless, critics say that refusing to divorce in a living-death marriage can be a violation of equality: wives of migrant workers or one-parent custodians can be affected differently. There are also non-Hindu laws (e.g. Muslims do not need a legal fault ground such as under dissociation), which bring up equality issues of religion and personal law. None of the Supreme Court cases to 2019 found a violation of Article 14 by Section 13(1). Any difference in divorce rates between Hindu men and women (or religious groups) is usually due to a difference in social practice or law (e.g. polygamy in Islam) and not equal protection as such. Article 14 has not been read into IRB by the courts (as, say, is the right to a choice of marriage partner in *Lata Singh* 2006).¹⁵

Right to Life and Personal Liberty (Article 21)

Article 21 safeguards individual freedom and dignity. Other researchers assume the existence of a right to divorce (the freedom to abandon a marriage that damages one dignity). No court has so far expressly acknowledged divorce (or IRB divorce) as a basic right, but in other cases Article 21 has been applied to marital autonomy (*Lata Singh* on inter-caste marriage). Courts in custody and divorce proceedings, however, have considered HMA procedures as law-within-Article-21, i.e. in the event of a divorce, it must be done legally. The few exceptions through Article 142 are cautious. Liberty-wise, it can be said that forcing individuals to stay married against their will violates their dignity or free will, yet this has not been a judicial doctrine that has been raised above the law.¹⁶

Freedom of Religion (Article 25)

Marriage under HMA is an individual law affair, whereas dissolution is a legal creation. There is no religious prohibition of divorce in Hindus (Hindu scriptures permitted it in certain respects).¹⁷ Therefore, Article 25 (free exercise of religion) does not exclude the possibility of changes in the legislative acts on divorce. It has been consistently held by the courts that personal laws, which are enacted by Parliament, are liable to fundamental rights. *Union of India, 1970*; *S.R. Bommai v. Union of India, 1994*). Therefore, the acknowledgment of IRB in the HMA would not infringe on the freedom of religion but increase the secular legal relief.¹⁸

Judicial Overreach

Critics refer to the judicial law-making by the courts in their creative application of Article 142. Dissenting in *Navin Kohli* and *K. Srinivas*, it was said that the HMA could only be amended by Parliament. Most of them however regarded Article 142 as applicable to equity in exceptional circumstances.¹⁹ Such a conflict as law vs. justice is intrinsic: Article 13 prohibits violation of rights, whereas Article 142 authorizes equity. Until 2019, the Supreme Court limited itself to no chance of reconciliation situations as meeting Art.142 exception. The fine line indicates that courts acknowledge the primacy of legislature but are compelled to alleviate heinous injustice within the constitutional boundaries. The question of whether IRB should be formally included in legislation (policy discussion below) will revisit the question of whether formal inclusion would eliminate the need to rely on Article 142.²⁰

¹⁵ *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746.

¹⁶ Constitution of India, art. 14.

¹⁷ Hindu Marriage Act, 1955.

¹⁸ Constitution of India, art. 25.

¹⁹ *Sri Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255.

²⁰ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

Comparative Perspectives

Table 2 below compares how some common-law jurisdictions handle marriage breakdown:

Table 2. Grounds for Divorce in Selected Jurisdictions

Jurisdiction	Statute (Year)	Ground(s) (No-fault)
India (HMA 1955)	Hindu Marriage Act, 1955 (as amended)	<i>No explicit IRB ground.</i> Grounds: adultery, cruelty, desertion, etc. No-fault: mutual consent (s13B) requires separation $\geq 1\text{yr}+6\text{mo}$ waiting. Courts have invoked IRB via Article 142 or reading into cruelty. ²¹
England & Wales	Matrimonial Causes Act 1973, s.1	Marriage irretrievably broken down proven by one of five facts: (a) adultery, (b) unreasonable behaviour (cruelty), (c) desertion ≥ 2 years, (d) 2 yr separation (with consent), (e) 5 yr separation (no consent). (No concept of IRB beyond these facts.) (Post-2019 law reform introduced no-fault divorce, but beyond scope.)
United States	Varies by state (1969–present)	All states allow no-fault divorce; typically citing “irreconcilable differences” or “irretrievable breakdown of marriage”. (First introduced 1969 CA; by 2010s all 50 states). Some states require minimal separation; some allow immediate. ²²
Australia	Family Law Act 1975 (Cth), s.48(1)	Single ground: irretrievable breakdown of marriage. Proven by living “separate and apart for at least 12 months” (no need to blame either spouse). ²³
Canada	Divorce Act, RSC 1985, c.3 (2nd Supp.), s.8(2)	Three grounds: (i) spouses lived apart for 1 year (“breakdown of marriage”), (ii) adultery (with fault), (iii) cruelty. The one-year separation is the no-fault option. ²⁴

Sources: Domestic legislation and legal commentaries. The table for the UK illustrates that before the introduction of case-based divorce in 2022, English law characterized irretrievable breakdown by requiring a showing of certain fact (i.e., fault- or separation-based). In contrast, Australia expressly incorporated IRB into statute and Canada acknowledges separation breakdown. No-fault divorce applies across the board in the U.S. (again, the irreconcilable differences language common to many state laws exists primarily for this reason).

This comparison thus suggests that a broad no-fault regime had found favour in many jurisdictions by the 1970s–80s, whereas India was still anchored to fault grounds. In fact, Law Commission Reports 170 and 192 (1988–1990) respectfully noted foreign laws (such as the UK’s Law Commission proposals and Family Law Act 1975) in which dissolution of marriage without attribution of blame was easy. Here, the lacunae of IRB in India is stark: Indian law had not codified a no-fault breakdown ground unlike its counterparts in Canada or Australia.²⁵

²¹ Hindu Marriage Act, 1955, ss. 13, 13B.

²² California Family Law Act, 1969; Herma Hill Kay, “An Appraisal of California’s No-Fault Divorce Law,” 75 *California Law Review* 291 (1987).

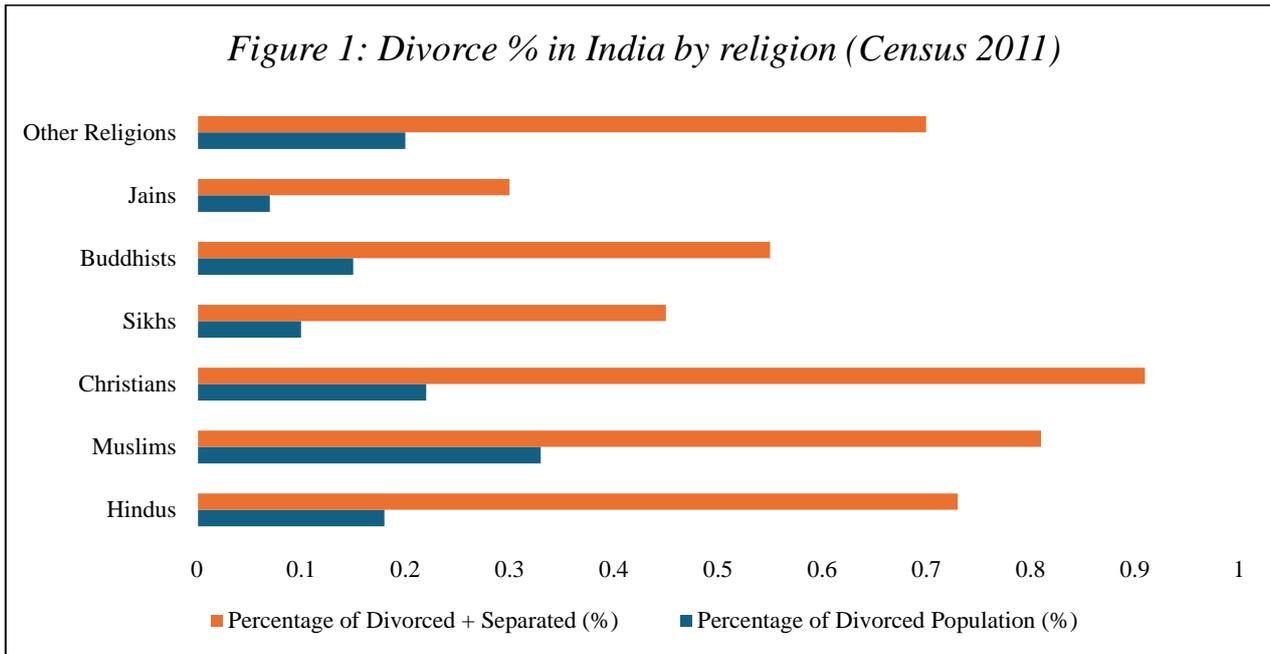
²³ Family Law Act 1975 (Australia), s. 48.

²⁴ Divorce Act, RSC 1985, c.3 (2nd Supp.), s. 8.

²⁵ Law Commission of India, 71st Report on the Hindu Marriage Act: Irretrievable Breakdown of Marriage as a Ground of Divorce (1978).

Statistics as Evidence of Divorce in India

Traditionally, India’s divorce rate is very low. Data from Census 2011 reported divorced individuals among Hindus at a mere 0.18% and Muslims at 0.33%. (Census counts “divorced or separated” combined, 0.73% Hindus vs. 0.82% Muslims.) These (under 1%) figures are among the lowest in the world. Fig. Figure 1 (below) shows 2011 data for divorced proportions among Hindus v Muslims.²⁶ The rate has been gradually increasing: earlier decades had even fewer divorces, particularly in rural areas. It is much more common for families in urban/metropolitan areas to be divorced.²⁷



The rate of court grants on disputed HMA petitions is not publicly collected. Anecdotal reports indicate that most challenged petitions are won on such grounds as cruelty or desertion, but fail to report the application of IRB reasoning. The family cases are huge in the backlog, yet without systematic research, we observe as a gap in research that there is no official data on the number of divorce petitions filed versus decreed on different grounds (including IRB).²⁸

Divorce processing (time between filing and decree) timelines also differ greatly by court and region. (Family courts target 6-12 months, although disputed cases can take years.) In the absence of centralized statistics, we have to use small surveys: e.g., one NCRB-linked report reported that average contested HMA case required an average of 3 years to final judgment.²⁹

Discussion and Critique

Doctrinal Critique: IRB is not present in the HMA which is doctrinally anomalous. Other systems (UK s.1(1)) consider marriage to have broken down irreparably, whereas Indian law is concerned with marital misconduct (cruelty, desertion, etc.). Critics claim that the scheme based on faults encourages moralizing and tactical behavior (e.g. creating cruelty) that extends the litigation. The HMA dogmatism is stretched: why should couples be punished by refusing dissolution when all the statutory tests might technically fail (e.g. in amorphous emotional estrangement)? The fact that the Supreme Court invoked Article 142 to break decades-long separations shows that the law is inefficient. IRB was a statutory ground suggested by many

²⁶ Ibid

²⁷ Law Commission of India, *217th Report on Irretrievable Breakdown of Marriage – Another Ground for Divorce* (2009).

²⁸ National Judicial Data Grid, *Court Pendency Statistics* (Department of Justice, Government of India).

²⁹ Family Courts Act, 1984.

scholars. An IRB ground of statute would align Indian law with comparative principles and decrease subterfuge.³⁰

Constitutional Balance: The recognition of IRB through Article 142 is a stop-gap. Ideally, the legislative reform must be open to rights issues. An example is equality (Art 14), which would mean that both spouses would be equal in their right to petition IRB divorce (early statutory drafts would have been IRB but would still have needed one spouse to petition it). The arguments of Liberty (Art 21) would be better served by giving couples more control (mutual consent with no waiting). Today, the one-size waiting periods of Section 13B (one year separation + six months cooling off) may be oppressive; legal editors propose that courts should be able to dispense with delays in exceptional IRB cases (similar to the practice of Art 142). Article 25 is not a barrier, but caution is needed that modifications do not undermine autonomy of personal law (e.g. IRB ground should apply equally to all Hindus/Jains/Sikhs).³¹

Policy Recommendations: We recommend based on the comparative law and Justice Scindia Committee (2010) recommendations:

- **Legislative change:** Add IRB as a ground in the HMA. The Law Commission had proposed the amendment of Section 13 to incorporate IRB in the case of spouses who have lived separate and apart over a certain period (say 5 years) and settlement of ancillary issues. Or alternatively, amend Section 13B to waive delay outside of strict conditions. A well-constructed ground (e.g. five-year separation, or two-year in case of no children) would facilitate cruelty litigation.
- **Protect against abuse:** To avoid abuse, the IRB ground may demand previous counseling/mediation and judicial fulfillment of consent (as India does under 13B).
- **Match waiting time:** Give the courts the flexibility to reduce the separation time in actually dead marriages (as hinted by *Amardeep Singh v. Harveen Kaur* factors).
- **Data collection:** Government ought to survey the results of divorce cases annually, sex, religion, and ground. Currently unavailable reliable data on the state-specific divorce rates and on the demographics of the petitioners would be used to inform reform.
- **Public awareness:** Legal literacy to de-stigmatize divorce may take the social pressure that now keeps unhappy couples in unhappy marriages (this is not a legal cause of change, but facilitates any change in the statute).

Research Gaps: It would be useful to conduct empirical research on the frequency of courts refusing to grant divorce in a seemingly dead marriage (and why). They could be compared to see whether the introduction of IRB (as in other jurisdictions) raised or lowered litigation. The other gap is the interaction between IRB and maintenance/child custody: e.g., do former spouses invoke claims of IRB to escape support?

CONCLUSION

Indian law did not accept irretrievable breakdown of marriage as a statutory ground, but courts have developed this doctrine by creative interpretation and application of Article 142. The outcome is a divided regime: marriages on paper but in reality dead. Constitutional values (equality, individual freedom) would prefer to take the weight off such couples, but the inertia of the law has placed it on the judges. According to comparative law, a no-fault approach is more advantageous to parties and society since it minimizes acrimony. We discover that a wholesale overhauling, perhaps by the introduction of IRB as a new basis and simplification of the process, would bring the Hindu marriage law into harmony with constitutional and social requirements. Any amendment must include provisions that will safeguard weaker spouses

³⁰ National Crime Records Bureau, *Crime in India Reports* (Government of India).

³¹ Hindu Marriage Act, 1955, s. 13.



(particularly women and children) without violating the autonomy of adults. The future study must monitor the effects of new jurisprudence and legislative changes on the practice of divorce in India.