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Theories of Divorce in Indian Personal Laws: A Critical, Constitutional, Comparative, and Reform-Oriented Analysis

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ABSTRACT

This article presents a comprehensive, critical, and reform-oriented analysis of the theories of divorce within the Indian personal law framework. Examining the Hindu Marriage Act, 1955; the Dissolution of Muslim Marriages Act, 1939; the Indian Divorce Act, 1869; the Parsi Marriage and Divorce Act, 1936; and the Special Marriage Act, 1954, this study traces the historical evolution of divorce jurisprudence from sacramental and fault-based paradigms toward modern constitutional standards emphasising dignity, equality, autonomy, and irretrievable breakdown. Through rigorous engagement with landmark Supreme Court decisions including Naveen Kohli v. Neelu Kohli, Shayara Bano v. Union of India, and Shilpa Sailesh v. Varun Sreenivasan, the article evaluates the constitutional legitimacy of existing frameworks under Articles 14, 15, 19, 21, and 25 of the Constitution of India. A comparative analysis of common-law jurisdictions -- the United Kingdom, Australia, Canada, and the United States -- identifies transferable lessons for Indian divorce reform. The article concludes with pragmatic legislative proposals for harmonising Indian divorce law with constitutional morality and international human rights standards.

I. Introduction

The institution of marriage in India has historically been conceived not merely as a civil contract but as a sacred sacrament an indissoluble union sanctified by religious rites and social custom. For centuries, the

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Hindu conception of marriage, rooted in Vedic and Dharmashastra traditions, regarded the marital bond as irrevocable, with Manu declaring that a wife cannot be released by her husband either by sale or by abandonment.

This sacral understanding of marriage, however, has undergone a profound transformation since the mid-twentieth century. The enactment of the Hindu Marriage Act, 1955 marked a watershed moment, introducing statutory divorce for Hindus for the first time in Indian legal history. Yet the legislative framework that emerged was not built upon a single, coherent theory of divorce. Instead, it incorporated multiple, sometimes conflicting, theoretical foundations -- fault-based grounds, mutual consent, and later, through judicial interpretation, the doctrine of irretrievable breakdown of marriage. The resulting legal architecture is a complex patchwork that varies significantly across religious communities, raising urgent questions about constitutional validity, gender justice, and the state's obligation to ensure equality before law.

This article undertakes a systematic examination of the theories of divorce operative within Indian personal laws, subjecting each to constitutional scrutiny, comparative evaluation, and normative critique. The analysis is organised around several interrelated inquiries: What theoretical foundations underpin the various divorce regimes in India? How have constitutional courts mediated the tension between religious personal laws and fundamental rights guarantees? What lessons can be drawn from common-law jurisdictions that have transitioned to no-fault divorce regimes? And what legislative reforms are necessary to align Indian divorce law with the constitutional imperatives of dignity, equality, and autonomy?

II. Conceptual and Theoretical Framework

A. Theories of Divorce: A Taxonomy

The jurisprudence of divorce recognises several distinct theoretical paradigms, each reflecting different philosophical assumptions about the nature of marriage, the role of the state, and the balance between individual autonomy and social stability. Understanding these theories is essential for evaluating the Indian legal framework.

The Fault Theory, also known as the Offence Theory or Guilt Theory, predicates divorce upon the commission of a matrimonial offence by one spouse against the other. Under this framework, marriage may be dissolved only when one party is guilty and the other innocent; if both parties are at fault, no remedy is available.

The Mutual Consent Theory proceeds from the premise that since two individuals may enter marriage by free will, they should equally be permitted to exit it by mutual agreement. This theory, introduced into Indian law through the Marriage Laws (Amendment) Act, 1976, reflects a contractual conception of marriage that stands in tension with traditional sacramental understandings.

The Irretrievable Breakdown Theory represents the most significant departure from fault-based paradigms. Under this theory, divorce may be granted when the marital relationship has deteriorated to such an extent that no reasonable probability remains for the spouses to live together as husband and wife. The Law Commission of India, in its 71st Report (1978), defined irretrievable breakdown as 'such failure in the matrimonial relationship or such circumstances adverse to that relationship that no reasonable probability remains for the spouses again living together as husband and wife.'

Additional theories relevant to the Indian context include the Frustration Theory, under which supervening circumstances (such as conversion, renunciation, or presumption of death) render the marital purpose impossible; the Protective Theory, which emphasises safeguarding vulnerable spouses from abuse and exploitation; and the Human Dignity Theory, which conceptualises divorce as an aspect of the fundamental right to live with dignity and autonomy under Article 21 of the Constitution.

B. Constitutional Foundations

The constitutional framework within which divorce laws must operate is defined by several interrelated provisions of the Constitution of India. Article 14 guarantees equality before law and equal protection of laws, requiring that divorce grounds and procedures not discriminate arbitrarily between spouses or across religious communities. Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, while Article 15(3) permits the state to make special provisions for women and children -- a provision that has justified gender-protective divorce legislation.

Article 21, perhaps the most dynamically interpreted constitutional provision, protects the right to life and personal liberty. The Supreme Court's landmark decision in Justice K.S. Puttaswamy (Retd.) v. Union of India recognised privacy as an intrinsic part of Article 21, holding that 'privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life,' including 'personal intimacies [such as] marriage, procreation and family.'

Article 25 guarantees freedom of conscience and free profession, practice and propagation of religion, while Article 26 protects the right of religious denominations to manage their own affairs. The interplay between these religious freedom guarantees and the fundamental rights to equality, dignity, and privacy creates the

central constitutional tension in Indian divorce jurisprudence -- a tension that the Supreme Court has increasingly resolved in favour of constitutional morality over religious custom.

III. Statutory Framework of Divorce in India

A. The Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 represents the most comprehensive codification of Hindu matrimonial law and serves as the primary legislative framework for divorce among Hindus, Buddhists, Jains, and Sikhs. Section 13 of the Act enumerates the grounds for divorce, reflecting a predominantly fault-based approach while incorporating elements of breakdown theory and mutual consent.

Section 13(1) originally provided nine fault-based grounds available to either spouse: adultery, cruelty, desertion for two years, conversion to another religion, unsoundness of mind, virulent leprosy, venereal disease in a communicable form, renunciation of the world, and presumption of death. The Marriage Laws (Amendment) Act, 1976 introduced Section 13(1A), adding two breakdown-based grounds: non-resumption of cohabitation after judicial separation for one year, and failure to comply with a decree for restitution of conjugal rights for one year. The same amendment introduced Section 13B, providing for divorce by mutual consent.

Section 13(2) provides additional grounds exclusively available to wives: husband's bigamy, commission of rape, sodomy, or bestiality, non-cohabitation after a maintenance order, and repudiation of marriage (option of puberty) where the wife was married before age fifteen. These gender-specific provisions reflect legislative recognition of the disproportionate vulnerabilities faced by women within the patriarchal structures of Hindu marriage.

B. Muslim Personal Law and the Dissolution of Muslim Marriages Act, 1939

Divorce under Muslim personal law operates through a fundamentally different framework, rooted in Islamic theological and juridical traditions. The husband possesses the unilateral right of talaq -- the power to dissolve marriage by pronouncement without judicial intervention. Historically, three forms of talaq were recognised: talaq-e-ahsan (most approved, involving a single revocable pronouncement followed by iddat), talaq-e-hasan (involving three pronouncements during successive tuhrs), and talaq-e-biddat (instantaneous triple talaq, condemned theologically but practised widely).

The Dissolution of Muslim Marriages Act, 1939 was enacted to provide Muslim women with statutory grounds for seeking judicial divorce, counterbalancing the husband's unilateral talaq power. Section 2 of the

Act enumerates nine grounds: husband's unknown whereabouts for four years, failure to maintain for two years, imprisonment for seven years or more, failure to perform marital obligations for three years, impotence, insanity for two years or virulent venereal disease, cruelty (including physical or mental torture, association with women of ill-repute, forcing wife into immoral life, disposing of wife's property, or obstructing religious practice), and option of puberty for child marriages.

The Supreme Court's landmark judgment in Shayara Bano v. Union of India dramatically transformed this landscape. By a 3:2 majority, the Court held that the practice of talaq-e-biddat (triple talaq) was unconstitutional, manifestly arbitrary, and not protected by Article 25. Justice Rohinton Nariman, writing for the majority, held that 'this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation to save it,' and was therefore violative of Article 14. Justice Kurian Joseph, concurring, observed that 'what is bad in theology is bad in law as well.'

C. The Indian Divorce Act, 1869 (as amended in 2001)

The Indian Divorce Act, 1869 governs divorce among Christians in India and represents one of the earliest codifications of divorce law in the subcontinent. Originally enacted during the colonial period, the Act was substantially amended by the Indian Divorce (Amendment) Act, 2001 to remove deeply discriminatory provisions that required Christian wives to prove adultery plus an additional offence (cruelty or desertion), while husbands could obtain divorce merely on proof of adultery.

Section 10 of the amended Act now provides gender-neutral grounds for divorce: adultery, cruelty, desertion for two years, conversion, unsoundness of mind, virulent venereal disease, leprosy, and presumption of death. Section 10A, introduced by the 2001 amendment, provides for divorce by mutual consent on the basis of two years' separation -- a longer period than the one year required under the Hindu Marriage Act.

D. The Parsi Marriage and Divorce Act, 1936

The Parsi Marriage and Divorce Act, 1936 governs matrimonial relations within the Parsi community, defined as followers of the Zoroastrian faith. Section 32 of the Act provides twelve grounds for divorce, including non-consummation within one year, mental disorder for two years, adultery, cruelty, desertion for two years, conversion, imprisonment for seven years, venereal disease, grievous hurt, and failure to comply with a maintenance order.

The Act establishes special Parsi matrimonial courts, consisting of a judge and five delegates (reduced from seven by the 1988 amendment), a unique institutional arrangement that has attracted constitutional scrutiny. The 1988 amendment also introduced divorce by mutual consent under Section 32B, reduced the delegate system, and added provisions for mental disorder as a ground for divorce, bringing Parsi law into closer alignment with other personal law regimes.

E. The Special Marriage Act, 1954

The Special Marriage Act, 1954 provides a civil marriage framework for Indians of all religions who wish to marry outside their personal laws. Section 27 of the Act provides grounds for divorce that largely parallel those under the Hindu Marriage Act: adultery, desertion for two years, imprisonment for seven years, cruelty, unsoundness of mind, venereal disease, leprosy, and presumption of death. Section 28 provides for divorce by mutual consent after one year's separation, with the same six-month cooling-off period as the Hindu Marriage Act.

The Special Marriage Act occupies a unique position as a secular, religion-neutral framework that demonstrates the legislative feasibility of uniform matrimonial principles. Its existence undermines arguments that religious diversity makes uniform civil family law impossible, while simultaneously highlighting the gaps that remain -- most notably, the absence of irretrievable breakdown as a statutory ground.

IV. Judicial Evolution of Divorce Jurisprudence

A. From Fault to Breakdown: The Naveen Kohli Doctrine

The Supreme Court of India has played a transformative role in shaping divorce jurisprudence, particularly through its recognition of irretrievable breakdown as a de facto ground for dissolution. The landmark judgment in Naveen Kohli v. Neelu Kohli (2006) marks the pivotal moment in this evolution.

In Naveen Kohli, the parties had been married since 1975 but had lived separately since 1994, with the wife filing multiple criminal and civil proceedings against the husband. The trial court granted divorce on grounds of cruelty, but the High Court reversed this decision. The Supreme Court, exercising its powers under Article 142, granted divorce while observing that 'a marriage between the parties is only in name. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.'

The Court's recommendation was equally significant: it urged the Union of India 'to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.' This judicial nudge catalysed the Law Commission's 217th Report (2009), which reiterated the recommendation for statutory amendment.

B. Defining Mental Cruelty: Samar Ghosh v. Jaya Ghosh

The Supreme Court's decision in Samar Ghosh v. Jaya Ghosh (2007) provided the most comprehensive judicial exposition of mental cruelty as a ground for divorce under Section 13(1)(i-a) of the Hindu Marriage Act. The Court emphasised that 'no uniform standard can ever lead to determine mental cruelty,' noting that the inquiry must begin with 'the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse.'

The judgment enumerated illustrative (non-exhaustive) categories of mental cruelty, including: sustained abusive and humiliating conduct; indifference and neglect in fulfilling marital obligations; unilateral decision to refuse intercourse without valid reason; unilateral decision not to have children; false accusations of adultery or unchastity; and long periods of continuous separation indicating that 'the matrimonial bond is beyond repair.' The Court's observation that 'by refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties' represented a significant doctrinal shift toward breakdown-based reasoning even within fault-based statutory provisions.

C. The Constitution Bench Clarification: Shilpa Sailesh v. Varun Sreenivasan

The Supreme Court's Constitution Bench decision in Shilpa Sailesh v. Varun Sreenivasan (2023) provided definitive clarification on the scope of judicial power to grant divorce in cases of irretrievable breakdown. Delivered by a five-judge bench comprising Justices Sanjay Kishan Kaul, Sanjiv Khanna, Abhay S. Oka, Vikram Nath, and J.K. Maheshwari, the judgment addressed three critical issues: the scope of Article 142 to grant divorce on irretrievable breakdown grounds; the power to waive the six-month cooling-off period under Section 13B(2); and the permissibility of quashing related criminal proceedings based on settlement.

The Court unanimously held that it possesses the authority under Article 142(1) to grant divorce on grounds of irretrievable breakdown even when one spouse opposes dissolution, and even in the absence of statutory recognition of such ground. The judgment emphasised that this power is discretionary, not a matter of right, and must be exercised with 'great care and caution,' considering factors such as the duration of separation, the nature of allegations, the history of litigation, and attempts at reconciliation.

On the cooling-off period, the Court held that the six-month waiting period under Section 13B(2) is directory, not mandatory, and may be waived under Article 142 when reconciliation is impossible and prolonging the waiting period would cause undue hardship. The Court directed that applications for waiver may be filed one week after the first motion, with reasons justifying the waiver.

V. Comparative Jurisprudence: Common-Law Jurisdictions

A comparative examination of divorce regimes in common-law jurisdictions reveals both the possibilities and the challenges of reforming Indian divorce law. Four jurisdictions -- the United Kingdom, Australia, Canada, and the United States -- offer particularly instructive models.

A. United Kingdom: The Divorce, Dissolution and Separation Act 2020

The United Kingdom reformed its divorce law through the Divorce, Dissolution and Separation Act 2020, which came into force on 6 April 2022. The Act replaced the previous five-fact regime with a pure no-fault system, allowing either or both spouses to apply for divorce by simply stating that the marriage has broken down irretrievably. The reform removed the possibility of contesting the divorce on substantive grounds, introduced joint applications, and established a minimum 20-week reflection period between application and conditional order.

The UK reform represents the culmination of decades of criticism directed at the fault-based system, which required spouses to allege adultery, unreasonable behaviour, or prolonged separation. The Supreme Court's decision in Owens v. Owens [2018] UKSC 41, in which the Court reluctantly held that the wife's allegations of unreasonable behaviour were insufficiently severe to justify divorce, became the catalyst for legislative reform. The new regime eliminates the 'blame game,' reduces conflict between parties, and enables couples to focus on practical arrangements for children and finances.

B. Australia: The Family Law Act 1975

Australia pioneered no-fault divorce in the common-law world through the Family Law Act 1975. The Act established 'irretrievable breakdown of the marriage' as the sole ground for divorce, proved by twelve months of separation. The reform abolished the previous fourteen fault-based grounds, including adultery, cruelty, desertion, and habitual drunkenness, which had required invasive and often traumatic evidence-gathering.

The Australian model demonstrates that no-fault divorce can operate effectively within a common-law framework. The twelve-month separation requirement serves as an objective indicator of breakdown while

avoiding the adversarialism of fault-based litigation. Australia's experience also shows that no-fault divorce need not undermine the institution of marriage; rather, it channels judicial attention toward the practical consequences of separation -- property division, parenting arrangements, and spousal support -- rather than the attribution of blame.

C. Canada: The Divorce Act 1985

Canada's Divorce Act R.S.C. 1985 establishes 'breakdown of the marriage' as the sole ground for divorce, which may be proved through three alternative paths: one-year separation (used in approximately 95% of cases), adultery, or physical or mental cruelty. The federal framework applies uniformly across all provinces, creating consistency unavailable in the United States.

The 2021 amendments to the Divorce Act introduced significant modernisations, replacing 'custody' and 'access' terminology with 'decision-making responsibility' and 'parenting time,' codifying best-interests factors, and addressing family violence as a primary consideration in parenting decisions. These reforms demonstrate how divorce legislation can evolve to address contemporary concerns while maintaining the no-fault foundation.

D. United States: State-Level Variation

The United States presents a more complex comparative picture due to state-level jurisdiction over family law. California pioneered no-fault divorce in 1969 through its Family Code, and all fifty states now permit no-fault dissolution. However, significant variation persists: fifteen states are 'pure' no-fault jurisdictions where fault grounds are entirely unavailable, while thirty-five states retain fault-based alternatives that may affect property division or spousal support.

New York was the last state to adopt no-fault divorce, adding Domestic Relations Law section 170(7) in 2010, forty-one years after California's reform. The New York experience illustrates how persistent resistance from religious groups and conservative legal establishments can delay reform even when the practical case for no-fault divorce is overwhelming.

E. Comparative Synthesis: Lessons for India

The comparative analysis yields several transferable lessons for Indian divorce reform. First, the transition from fault-based to no-fault divorce is a global trend among common-law jurisdictions, reflecting recognition that fault-finding exacerbates conflict and harms children. Second, a separation-based approach (twelve months in Australia and Canada, twenty weeks in the UK) provides an objective, administrable

standard for proving breakdown without requiring invasive evidence of marital conduct. Third, the focus of post-divorce proceedings should shift from blame attribution to practical arrangements for children, property, and support. Fourth, legislative reform is preferable to judicial improvisation, as it provides clarity, consistency, and predictability.

VI. Constitutional Dimensions of Divorce Law

A. Article 14 and the Equality Challenge

The differential treatment of divorce across personal laws raises profound Article 14 concerns. A Hindu spouse may obtain divorce on grounds of cruelty after two years of desertion; a Muslim husband may dissolve marriage unilaterally through talaq (prior to the Shayara Bano judgment); a Christian spouse must prove two years of desertion; and a Parsi litigant must navigate a unique delegate-based court system. These disparities in grounds, procedure, and remedy create a patchwork of unequal access to marital dissolution that is difficult to reconcile with the guarantee of equality before law.

The Supreme Court's invocation of 'constitutional morality' in Navtej Singh Johar v. Union of India provides a framework for evaluating these disparities. The Court held that constitutional morality must prevail over 'public morality' rooted in majoritarian or religious sentiments. Applied to divorce law, this principle suggests that religious personal laws cannot justify discriminatory distinctions in access to dissolution that would be impermissible under a uniform civil framework.

B. Article 21 and the Right to Dignity

The Supreme Court's expansive interpretation of Article 21 has created a constitutional foundation for recognising irretrievable breakdown as a ground for divorce. In Shilpa Sailesh, the Constitution Bench reasoned that forcing parties to remain in a marriage that has 'irretrievably broken down' violates their dignity and constitutes mental cruelty. This reasoning aligns with the Puttaswamy Court's holding that privacy includes the right to make personal choices about marriage and family life.

The constitutional challenge to restitution of conjugal rights provisions -- currently pending before the Supreme Court in Ojaswa Pathak v. Union of India -- presents a related Article 21 issue. The petitioners argue that Section 9 of the Hindu Marriage Act and analogous provisions violate the right to privacy and bodily autonomy by compelling cohabitation against a spouse's will. The Andhra Pradesh High Court's decision in T. Sareetha v. T. Venkata Subbaiah, which struck down Section 9 as unconstitutional, advanced

a similar rationale, holding that 'the right to privacy belongs to an individual and is not lost by marital affiliation.'

C. Gender Equality and Intersectionality

The gendered dimensions of Indian divorce law demand particular constitutional scrutiny. Despite legislative reforms, women continue to face structural disadvantages in accessing divorce and securing post-dissolution economic security. The shorter desertion period for Hindus (two years) compared to Christians (two years under the 2001 amendment, previously longer) and the unique vulnerabilities of Muslim women prior to the Shayara Bano judgment illustrate how personal law distinctions disproportionately affect women's access to justice.

The Supreme Court's decision in Joseph Shine v. Union of India, which decriminalised adultery, represents a significant step toward gender-equal divorce jurisprudence. The Court held that Section 497 of the Indian Penal Code was unconstitutional because it treated women as chattel rather than autonomous rights-bearers. While adultery remains a civil ground for divorce, its decriminalisation removes a tool that was historically deployed selectively against women.

VII. Critical Evaluation of Existing Frameworks

A. Legislative Gaps and Inconsistencies

Despite decades of judicial and legislative activity, Indian divorce law remains characterised by significant gaps and inconsistencies. The most glaring deficiency is the continued absence of irretrievable breakdown as a statutory ground for divorce under the Hindu Marriage Act and the Special Marriage Act. While the Supreme Court has filled this gap through Article 142, this judicial innovation is available only at the apex court level, creating a two-tier system in which wealthy litigants can access Supreme Court dissolution while ordinary parties remain confined to statutory grounds.

The Law Commission of India's 71st Report (1978) and 217th Report (2009) both recommended statutory incorporation of irretrievable breakdown, with safeguards for children's welfare and financial arrangements. The Commission's 217th Report specifically recommended that 'the Court before granting a decree for divorce on the ground that the marriage has irretrievably broken down should also examine whether adequate financial arrangements have been made for the parties and children.' Despite these recommendations, Parliament has not enacted the proposed amendments.

B. Procedural Delays and Access to Justice

The procedural framework for divorce in India imposes significant burdens on litigants. Family court pendency data from 2023-2025 reveals alarming backlogs: Kerala reported over 112,000 pending cases, Maharashtra over 66,000, and Karnataka over 38,000. The six-month cooling-off period for mutual consent divorce, while intended to encourage reconciliation, frequently prolongs the agony of parties whose marriages have already definitively ended.

The requirement to prove fault grounds through adversarial litigation imposes additional burdens. Parties must adduce evidence of adultery, cruelty, or desertion through witness testimony and documentary proof, a process that is time-consuming, expensive, and emotionally traumatic. The adversarial system, designed for criminal and commercial disputes, is ill-suited to the sensitive dynamics of marital dissolution.

C. The Judicial Activism Debate

The Supreme Court's use of Article 142 to grant divorce on irretrievable breakdown grounds has generated significant scholarly debate. Proponents argue that judicial intervention is necessary to prevent injustice when legislative reform lags behind social reality. Critics contend that Article 142 was not intended to override substantive statutory provisions and that its use for divorce creates uncertainty, undermines legislative supremacy, and produces arbitrary distinctions between litigants who can access the Supreme Court and those who cannot.

The Shilpa Sailesh judgment partially addressed these concerns by clarifying that Article 142 power is discretionary, not a right, and must be exercised cautiously. However, the judgment also acknowledged that 'the Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.' This equitable balancing, while laudable in principle, introduces subjective elements that may produce inconsistent outcomes.

VIII. Legislative Reform Proposals

Drawing upon the comparative analysis, constitutional principles, and practical realities identified in this study, the following reform proposals are offered as a pragmatic framework for modernising Indian divorce law.

A. Statutory Recognition of Irretrievable Breakdown

The most urgent legislative priority is the statutory incorporation of irretrievable breakdown as a ground for divorce under the Hindu Marriage Act, the Special Marriage Act, and analogous legislation. Drawing upon the UK and Australian models, breakdown should be established through a twelve-month separation period, which provides objective evidence of marital failure while allowing time for potential reconciliation. The Law Commission's recommendation that courts examine adequate financial arrangements before granting breakdown-based divorce should be incorporated as a mandatory statutory requirement.

B. Harmonisation of Cooling-Off Periods

The six-month cooling-off period under Section 13B(2) should be made discretionary rather than mandatory, with courts empowered to waive the period when parties have been separated for eighteen months or more and reconciliation is demonstrably impossible. The Shilpa Sailesh framework -- permitting waiver applications one week after the first motion -- should be codified legislatively to ensure uniform application across all family courts.

C. Uniform Grounds Across Personal Laws

While immediate enactment of a Uniform Civil Code may be politically impracticable, incremental harmonisation of divorce grounds across personal laws is both feasible and constitutionally desirable. The Special Marriage Act provides a ready model for such harmonisation, demonstrating that religion-neutral matrimonial principles can operate effectively in the Indian context. A phased approach might begin with aligning the Indian Divorce Act and the Parsi Marriage and Divorce Act with the Hindu Marriage Act framework, followed by more comprehensive integration.

D. Gender-Protective Safeguards

Reform must incorporate robust safeguards for economically dependent spouses, who are disproportionately women. Mandatory financial disclosure requirements, expedited interim maintenance procedures, and strengthened enforcement mechanisms for support orders are essential complements to liberalised divorce grounds. The Supreme Court's guidelines in Rajnesh v. Neha regarding comprehensive financial disclosure in maintenance proceedings should be codified and extended to all divorce proceedings.

E. Institutional Reforms

The family court system requires significant strengthening to handle increased caseloads that would result from liberalised divorce grounds. Recommendations include: increasing the number of family courts in high-pendency states; mandatory mediation referrals before adversarial proceedings; specialised training for family court judges in counselling and alternative dispute resolution; and digital case management systems to reduce procedural delays.

IX. Conclusion

The theories of divorce in Indian personal laws stand at a critical juncture. The fault-based foundations of the Hindu Marriage Act, the gender-asymmetric structures of Muslim personal law, the colonial vestiges of the Indian Divorce Act, and the anomalous delegate system of the Parsi Marriage and Divorce Act collectively represent a legal framework that has not kept pace with constitutional values or social reality. The Supreme Court's creative use of Article 142 to recognise irretrievable breakdown, while commendable as an interim measure, cannot substitute for comprehensive legislative reform.

The comparative experience of the United Kingdom, Australia, Canada, and the United States demonstrates that the transition to no-fault divorce is both feasible and desirable within common-law legal traditions. These jurisdictions have shown that eliminating fault-finding from divorce proceedings reduces conflict, protects children, and enables more efficient allocation of judicial resources to the practical consequences of separation -- property division, parenting arrangements, and spousal support.

The constitutional imperative for reform is equally compelling. Articles 14, 15, and 21 of the Constitution demand that divorce law treat all citizens with equal dignity and respect, regardless of religious affiliation or gender. The doctrine of constitutional morality, articulated with increasing clarity by the Supreme Court, requires that personal laws yield to fundamental rights when the two conflict. The pending challenge to restitution of conjugal rights in Ojaswa Pathak v. Union of India may provide further constitutional guidance on the boundaries between marital institution and individual autonomy.

The reform proposals advanced in this article -- statutory recognition of irretrievable breakdown, harmonisation of cooling-off periods, incremental uniformisation of grounds, gender-protective safeguards, and institutional strengthening -- represent a pragmatic pathway toward a divorce jurisprudence that honours both the constitutional promise of equality and the complex social realities of marriage in twenty-first century India. The time for legislative action is now. As the Supreme Court observed in Naveen Kohli, 'to keep the sham [of a dead marriage] is obviously conducive to immorality and potentially more prejudicial to

the public interest than a dissolution of the marriage bond.' The legislature would do well to heed this wisdom.

Bibliography

1. Agrawal, S.K. (2009). HINDU LAW. Central Law Publications.
2. Diwan, Paras (2018). MUSLAW LAW IN MODERN INDIA. Allahabad Law Agency, 13th edn.
3. Law Commission of India (1978). 71st Report: The Hindu Marriage Act, 1955 -- Irretrievable Breakdown of Marriage as a Ground of Divorce.
4. Law Commission of India (2009). 217th Report: Irretrievable Breakdown of Marriage -- Another Ground for Divorce.
5. Madhav, Mayank (2013). SINGHAL'S FAMILY LAW. Singhal's Law Publication, 3rd edn.
6. Parliament of the United Kingdom (2020). Divorce, Dissolution and Separation Act 2020, c. 11.
7. Parliament of Australia (1975). Family Law Act 1975 (Cth).
8. Parliament of Canada (1985). Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
9. Subramanian, Narendra (2014). NATION AND FAMILY: PERSONAL LAW, CULTURAL PLURALISM, AND GENDERED CITIZENSHIP IN INDIA. Stanford University Press.
10. Derrett, J.D.M. (1978). ESSAYS IN CLASSICAL AND MODERN HINDU LAW. Brill.

References:

[1] Manu Smriti, Chapter IX, Verse 46; see also Mayank Madhav, SINGHAL'S FAMILY LAW 127 (3rd edn., 2013).

[1] Divorce Under Hindu Marriage Act, 1955, iPleaders Blog (Jan. 7, 2025), https://blog.ipleaders.in.

[1] Law Commission of India, 71st Report on The Hindu Marriage Act, 1955 -- Irretrievable Breakdown of Marriage as a Ground of Divorce (Apr. 7, 1978).

[1] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, para 121.

[1] Marriage Laws (Amendment) Act, 1976 (Act 68 of 1976), sections 13(1A) and 13B.

[1] Dissolution of Muslim Marriages Act, 1939 (Act 8 of 1939), section 2.

[1] Shayara Bano v. Union of India, (2017) 9 SCC 1, paras 82, 101.

[1] Indian Divorce (Amendment) Act, 2001 (Act 49 of 2001), sections 10, 10A.

[1] Special Marriage Act, 1954 (Act 43 of 1954), sections 27, 28.

[1] Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558, para 74.

[1] Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511, para 46.

[1] Shilpa Sailesh v. Varun Sreenivasan, (2023) 7 SCC 1.

[1] Divorce, Dissolution and Separation Act 2020 (UK), c. 11; see Law Society of England and Wales, No-Fault Divorce (May 8, 2026), https://www.lawsociety.org.uk.

[1] Family Law Act 1975 (Cth), section 48.

[1] Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), section 8; see The Canadian Encyclopedia, Divorce in Canada (Sept. 19, 2016), https://www.thecanadianencyclopedia.ca.

[1] Cal. Fam. Code section 2310 (1969); see No-Fault Divorce: US & Canada Laws Explained (Mar. 7, 2026), https://divorce.law.

[1] T. Sareetha v. T. Venkata Subbaiah, AIR 1983 AP 356; Ojaswa Pathak v. Union of India, WP (C) 250/2019 (pending).

[1] Law Commission of India, 217th Report on Irretrievable Breakdown of Marriage -- Another Ground for Divorce (Mar. 2009), para 3.2.

[1] Rajya Sabha Annexure on Family Court Registrations/Disposal/Pendency, State/UT-wise Data (2023-2025); see LawGhar, Divorce Rate in India 2026 (Jan. 10, 2026), https://lawghar.in.