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The Anatomy of a Silent Divorce

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ABSTRACT

Silent Divorce a stage in the Marriage that is described as the emotional and physical disconnection between a legally married couple who merely exist as roommates. Understanding the gap between this sociological reality and the legal framework. Which has broadened its interpretation over the years. Though not a legal ground for divorce but its symptoms often align with the legal concept of mental cruelty under the **Hindu Marriage Act, 1955**. The judiciary has broadened the interpretation of "cruelty". Initially a ground for judicial separation under the act, later amended to include it a direct ground of divorce further interpretation of the same, expanded its scope to include emotional abandonment, psychological distress, verbal abuse, false accusations as form of *mental cruelty;* providing a legal pathway for those in such relationships. Furthermore, the concept of **Irretrievable Breakdown of Marriage (IBM),** though not a statutory ground, has been recognized by the Supreme Court, allowing it to grant a divorce directly in such cases. Despite these legal evolutions toward recognizing "dead" relationships, the low divorce rate in India highlights the significant societal stigma and challenges including financial dependency and social consequences that often prevent individuals from seeking legal separation. A multifaceted approach involving social as well as legal progress, moving away from those *traditional fault-based approach* is necessary to address the issue, accepting the emotional wellbeing and compatibility of both the spouses.

Keywords: Divorce, Emotional, Mental and Psychological, Mental cruelty, Irretrievable Breakdown of Marriage, Hindu Marriage Act, Emotional Abandonment

INTRODUCTION

In the contemporary Indian society, a concept of “silent divorce” is being observed within the martial relationships. Although not a recognized legal concept, describes a situation where spouses, despite remaining legally married and often living together, become emotionally, mentally, and physically disconnected from one another. They may coexist as mere roommates, managing day to day responsibilities but lacking any genuine intimacy or shared life. This is noticeable by a significant absence of meaningful communication, an uncomfortable lack of conflicts a complete dearth of physical or emotional connection, no shared dreams or future goals, and a pervasive indifference towards each other’s lives and feelings. This rather than indicating marital bliss indicates a dying connection, leading to an unspoken marital breakdown.

This article aims to bridge the gap between this sociological reality and the prevailing legal framework for Divorce.

EXISTING LEGAL FRAMEWORK

1.Hindu Marriage Act, 1955: Foundational Grounds for Divorce

The Hindu Marriage Act, 1955, serves as the primary legislation governing the legal dissolution of marri-

iage for individuals identifying as Hindus, Buddhists, Jains, and Sikhs in India. Section 13 of this Act outlines the specific grounds upon which either spouse can seek a divorce.

Traditional Fault-Based Grounds

The Hindu Marriage Act primarily adopted a fault-based approach[1] to divorce, necessitating that one spouse should prove the commission of a matrimonial offense by the other party. These traditional grounds include:

Adultery: Engaging in voluntary sexual relations outside the marital bond. While no longer a criminal offense as per a Supreme Court judgment in 2018, it remains a ground for divorce.

Cruelty: Considering both physical and mental cruelty that endangers the spouse's health, safety, or overall well-being.

Desertion: Abandonment by a spouse for a continuous period of at least two years without a valid reason.

Conversion: If a spouse converts to another religion without the consent of the other.

Unsoundness of Mind: A mental illness of a spouse that is incurable and is making marital life unendurable.

Incurable Leprosy: one spouse suffers from incurable and communicable leprosy.

Venereal Disease: Diseases that are communicable and incurable can also be a ground for divorce.

Renunciation of the World: If a spouse renounces worldly life.

Presumption of Death: If a spouse has not been heard from for a minimum of seven years.[2]

Mutual Consent Divorce – Section 13B

A significant amendment to the Act introduced Section 13B, which provides for divorce by mutual consent. This provision allows for dissolution of marriage if both parties agree. However, it mandates a waiting period of one year after separation and a minimum of six months after filing the petition before a decree can be granted. A crucial aspect of this ground is its requirement for the continued cooperation and consent of both parties throughout the process; if either party withdraws consent, this ground for divorce becomes unavailable.

2.Mental Cruelty: Emotional and Psychological Abuse

The concept of "cruelty" as a ground for divorce under the Hindu Marriage Act, 1955, has undergone evolution over time, particularly in its interpretation to incorporate mental and emotional abuse. This expansion is crucial for addressing the non-physical characteristic of "silent divorce."

Evolution of "Cruelty" as a Ground for Divorce

Initially, "cruelty" was only a ground for judicial separation under the Hindu Marriage Act, 1955. With the landmark Supreme Court case of *Narayan Ganesh Dastane v. Sucheta Narayan Dastane (1975).*[3] This judgment played a significant role in leading to the 1976 amendment, which incorporated cruelty as a direct ground for divorce under Section 13(1)(ia). The Court emphasized that each case must be judged on its specific facts, which led to the inclusion of the phrase "persistently or repeatedly" to establish cruelty.

[1] LegalWellbeing. (n.d.). *Divorce- Hindu law*. [cite_start]Retrieved September 4, 2025, from https://legalwellbeing.in/divorce-hindu-law/?hl=en-I

[2] Sahodar. (n.d.). Grounds for divorce under Indian law. [cite_start]Retrieved September 4, 2025, from https://sahodar.in/grounds-for-divorce-under-indian-law/?hl=en-GB.

[3] AdvocatesClub. (n.d.). *Understanding Cruelty as Grounds for Divorce: Legal Insights and Case Examples*. [cite_start]Retrieved September 4 , 2025, from https://advocatesclub.in/matrimonial-law/understanding-cruelty-as-grounds-for-divorce-legal-insights-and-case-examples/?hl=en-I

Judicial Interpretation of "Mental Cruelty"

Cruelty, in its expanded judicial interpretation, it is defined as any action by one partner that makes it difficult for the other to live with them by causing physical or psychological suffering.

The judiciary has identified various forms of mental cruelty that resonate with the symptoms of a "silent divorce":

Lack of Communication/Emotional Abandonment: This includes neglecting the emotional needs of the spouse and engaging in profound emotional detachment. These behaviours directly align with the core characteristics of silent divorce, where meaningful conversations vanish and partners lead separate emotional lives.

Verbal Abuse and Humiliation: Persistent use of derogatory language, insults, or constant belittling of the spouse.

False Accusations: Making false allegations of adultery, mental illness, impotence, or unchastity.

For instance, in Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate (2003)[4], the Supreme Court held that disgusting accusations of unchastity made by a husband against his wife constituted a grave assault on her character and health, amounting to severe cruelty.

Persistent Refusal to Consummate Marriage: This can be interpreted as amounting to mental cruelty or desertion.

Mocking Physical Infirmity: A 2025 decision by the Odisha High Court affirmed that a wife's demeaning remarks about her husband's physical disabilities constituted mental cruelty, validating a divorce decree.

Sustained False or Reckless Allegations: Conduct that damages a spouse's dignity and professional standing, as seen in Bharti Jaiswal Consummate Case (2021)[5], can also be deemed mental cruelty.

The signs of "silent divorce," including widespread indifference, a deep emotional disconnection, and the lack of shared aspirations, directly overlap with the legally recognized grounds of "mental cruelty," specifically emotional abandonment and the indifferences. Since "silent divorce" itself is not a legal ground for dissolution, the broad interpretation of "mental cruelty" serves as the primary legal backups for individuals experiencing such relationships to seek relief. The judiciary's willingness to interpret cruelty broadly, moving beyond physical harm to include subtle emotional and psychological distress, provides a legal remedy for the unspoken reality of silent divorces.

However, proving instances of "silent" cruelty presents a significant challenge. The very nature of these issues—lack of communication, absence of conflict, and emotional detachment; often result in the absence of visible actions or witnesses to substantiate the claims. This necessitates a shift from proving specific "acts" to demonstrating a "course of conduct" that makes the marriage intolerable. This evidentiary hurdle demands that courts adopt a nuanced approach, considering the impact of the personality and conduct of one spouse on the mind of the other. This difficulty in documenting emotional neglect can disproportionately affect individuals, leading to extended legal battles or continued suffering within the marriage.

[4] *Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate*, (2003). [cite_start]Retrieved September 3, 2025, from https://indiankanoon.org/doc/1228342

[5] *Bharti Jaiswal Consummate Case*, (2021). [cite_start]Retrieved September 3, 2025, from https://www.latestlaws.com/adr/latest-news/sc-defaming-partner-amounts-to-mental-cruelty-and-is-a-ground-for-divorce-read-judgment

3. Irretrievable Breakdown of Marriage (IBM): Acknowledging the "Dead" Marriage

The concept of *Irretrievable Breakdown of Marriage (IBM)* stands as a major contribution of the Indian judiciary in the evolution of matrimonial jurisprudence, accepting that a marriage can cease to exist even if a formal marriage exists.

Concept of IBM: When a Marriage is Beyond Repair

A situation where a marriage has broken down irreparably, leaving no possibility of reunion between the spouses. It signifies that the marriage is "emotionally dead, unworkable, beyond salvage[6]," and has reached a point where it is "merely a shell out of which the substance is gone"[7]. The legal system, when faced with such a reality, recognizes that maintaining a legal tie while the emotional and other bonds that are the essence of marriage have disappeared, shows "scant regard for the feelings and emotions of the parties"[8].

Legal Position in India: Not a Statutory Ground (Yet)

Despite numerous judicial observations and recommendations, "irretrievable breakdown of marriage" is not explicitly included as a statutory ground for divorce under the Hindu Marriage Act, 1955. Consequently, Lower courts and even High Courts generally cannot dissolve a marriage solely on this ground in the absence of one or more grounds specified under Section 13(1).

Judicial Observations and Recommendations for Statutory Inclusion

The Law Commission of India, in its 71st and 217th Reports, strongly recommended amendments to the Hindu Marriage Act, 1955, to incorporate IBM[9] as a new ground for divorce. Furthermore, the Supreme Court, in the significant case of Naveen Kohli v. Neelu Kohli (2006),[10] explicitly recommended that the Legislature "seriously consider bringing an amendment" to the Hindu Marriage Act, 1955, to include IBM. Earlier, in Ms. Jorden Diengdeh v. S.S. Chopra (1985)[11], the Supreme Court had already observed the necessity of introducing IBM and mutual consent as grounds in all cases.

The Supreme Court of India in Shilpa Sailesh v. Varun Sreenivasan (2023)[12] A five-judge constitutional bench explicitly held that the Supreme Court can directly grant a divorce on grounds of 'irretrievable breakdown of marriage' under Article 142 and can dissolve a marriage on the ground of "irretrievable breakdown" to ensure "complete justice". Article 142 allows the Supreme Court to go beyond procedural and substantive law to achieve the "ends of justice," although this power is to be exercised with "due restraint" and "care and caution".

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[6]JusCorpus. (n.d.). *Irretrievable breakdown of marriage: a ground for divorce*. [cite_start]Retrieved September 4, 2025, from https://www.juscorpus.com/irretrievable-breakdown-of-marriage-a-ground-for-divorce/?hl=en-I

[7] Mahesh Tiwari Legal. (n.d.). *Irretrievable breakdown of marriage*. [cite_start]Retrieved August 4, 2025, from https://www.maheshtiwarilegal.com/divorce-case/irretrievable-breakdown-of-marriage?hl=en-I

[8] Law Commission of India, Irretrievable Breakdown of Marriage – Another Ground for Divorce, Report No. 217 (March 2009), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081084-2.pdf

[9] IRRETRIEVABLE BREAKDOWN OF MARRIAGE

[10]JusCorpus. (n.d.). *Irretrievable breakdown of marriage: a ground for divorce*. [cite_start]Retrieved September 4, 2025, from https://www.juscorpus.com/irretrievable-breakdown-of-marriage-a-ground-for-divorce/?hl=en-I

[11] *Jorden Diengdeh v. S.S. Chopra*, (1985). [cite_start]Retrieved September 9, 2025, from https://www.casemine.com/judgement/in/5609ac1ee4b014971140e14

[12] *Shilpa Sailesh v. Varun Sreenivasan*, (2023). [cite_start]Retrieved September 9, 2025, from https://www.scobserver.in/reports/divorce-under-article-142-judgement-in-plain-english/?hl=en-G

COMPATABLITY AND IRRECONCILABLE DIFFERENCES: MODERN GROUNDS OF DIVORCE

Although "incompatibility" or "irreconcilable differences" are not explicitly provided as independent grounds for divorce under the Hindu Marriage Act, they represent the realities that lead to situations legally categorized as "mental cruelty" or "irretrievable breakdown"[13].

Implicit Recognition within Existing Grounds

The Law Commission and the Supreme Court have repeatedly emphasized that when a marriage has "ceased to exist in substance and in reality," there is "hardly any utility in maintaining the marriage as a facade, when the emotional and other bonds which are of the essence of marriage have disappeared". This sentiment directly addresses the core issue of incompatibility, accepting that a relationship without any emotional connection serves no purpose.

The Hindu Marriage Act is primarily fault-based. Nonetheless, the judiciary's interpretation effectively proves that the legal system is adapting to a "no-fault" reality without explicitly codifying a "no-fault" ground. This points to a progressive shift, recognising that marriage aims for mutual well-being. It moves the focus from placing blame to recognizing the existence of a dead relationship.

SOCITAL STIGMA AND CHALLENGES OF DIVORCE IN INDIA

India's divorce rate is one of the lowest globally, views as low as 0.01%. Women who go through divorce face serious social ramifications, often being considered "tainted," experiencing misbehaviour at their parental homes, and a subject of taunts, mockery and humiliation, leading to significant mental pain[14]. The fear of consequences, including cut off from the family, lack of financial resources, also contributes to the low reporting of domestic violence. Economically and socially, divorced women commonly deal with problems in maintenance for themselves and their children, leading to financial dependency.

Contemporary research indicates that factors leading to marital dissolution in India goes beyond issues like domestic violence and dowry and modern factors like women's autonomy in choosing partners, childlessness, patriarchal dominance, infidelity, lack of communication, the decline of the joint family system, women's education, interference from family members and unrealistic expectations are also emerging as crucial factors influencing marital relationships[15].

PSYCOLOGICAL IMPACT

The "silent" nature of these divorces means that the suffering is often internal and goes unaddressed, causing mental health burdens for both partners. For women, these burdens are then overpowered by severe social and economic challenges post-divorce. As for men the difficulty to express emotional pain, often due to traditional gender roles which has contributed to their struggle with expressing vulnerability, feelings of abandonment, loneliness, shame, and embarrassment.

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[13] Library of Congress. (2023). *India: Supreme Court Recognizes Irreconciliable Differences as a Ground for Divorce Under Hindu Law*. [cite_start]Retrieved September 4, 2025, from https://www.loc.gov/item/global-legal-monitor/2023-05-29/india-supreme-court-recognizes-irreconciliable-differences-as-a-ground-for-divorce-under-hindu-law/?hl=en-I

[14] Sanjay V. Patel. Divorce is a social problem study. International Journal of Advances in Social Sciences. 2024; 12(1):9-2. doi: 10.52711/2454-2679.2024.00003 accessed on September 4, 2025

[15] Thodukayil, O. F. S., Palaniswamy, U., & Kunjumon, A. (2025). The Causes of Divorce and Its Effects on Women: A Systematic Review. [cite_start]*Marriage & Family Review*, 1-36. https://doi.org/10.1080/01494929.2025.248478 Retrieved September 4, 2025

CONCLUSION

The Law Commission has observed that when a marriage "becomes a friction, though supported by a legal tie, by refusing to serve 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"

While legal options are opening, social acceptance still lags. The practical reality for many in "silent divorces" remains one of suffering and hardship within the marriage rather than seeking legal separation, The low divorce rate despite high rates of domestic violence serves as an indicator of this societal barrier. Addressing "silent divorce" in depth requires a multi-faceted approach that goes beyond legal reforms; it also needs sociological shifts and psychological support. We must tackle the strong stigma around divorce, offer solid economic and social support for individuals, especially women, after divorce, and create spaces where everyone can express their emotions and show vulnerability. The ongoing development of Indian matrimonial law shows it is moving towards a system that values emotional health and true compatibility instead of just maintaining a legal bond.