

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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LEGAL PERSPECTIVES ON THE CAUSES OF DIVORCE: A COMPARATIVE STUDY OF FAULT- BASED AND NO-FAULT DIVORCE SYSTEMS IN INDIA AND THE UNITED KINGDOM

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Introduction

Divorce law reflects the social, moral, religious, and constitutional values of a society. The legal framework governing dissolution of marriage determines not only the rights of spouses but also the role of the State in regulating personal relationships. This study examines the contrasting divorce systems of India and the United Kingdom, focusing on the evolution of fault-based and no-fault divorce regimes. While India continues to retain a predominantly fault-oriented model under different personal laws, the United Kingdom has transitioned to a modern no-fault regime through the Divorce, Dissolution and Separation Act 2020.

The research explores how both jurisdictions address marital breakdown, judicial intervention, gender justice, and individual autonomy. India inherited the fault-based approach from English ecclesiastical law during the colonial period. However, post-independence India developed a pluralistic personal law system where different religious communities are governed by separate matrimonial laws. Consequently, the grounds and procedures for divorce vary according to religion. By contrast, the UK adopted a uniform secular system and gradually moved towards a non-adversarial no-fault structure.

This comparative analysis highlights the strengths and limitations of both systems and evaluates the possibility of introducing a broader irretrievable breakdown principle into Indian divorce law.

Objectives of the Study

The principal objectives of this study are to examine the conceptual foundations of fault-based and no-fault divorce systems; analyse the statutory framework governing divorce in India and

the United Kingdom; evaluate judicial developments relating to irretrievable breakdown of marriage; assess the socio-legal and gender implications of fault-based litigation; and identify possible reforms for Indian divorce law using comparative insights from the UK experience.

Research Methodology

The research adopts a doctrinal and comparative legal methodology. Primary sources include statutes, constitutional provisions, judicial precedents, and Law Commission reports from India and the United Kingdom. Secondary sources such as scholarly books, journal articles, and policy papers have also been examined. The comparative method is used to identify structural similarities, differences, and reform trends in the two jurisdictions.

Fault-Based Divorce: Concept and Criticism

The fault-based divorce model permits dissolution only when one spouse proves matrimonial misconduct by the other. Grounds such as adultery, cruelty, desertion, conversion, insanity, or communicable disease are treated as legal wrongs justifying divorce. Historically, this model emerged from ecclesiastical law where marriage was viewed as a sacred and indissoluble institution. The doctrine aimed to preserve the sanctity of marriage and protect the innocent spouse.

Supporters of the fault model argue that it maintains moral accountability within marriage and discourages arbitrary dissolution. Traditionally, fault-based systems also provided economic and legal protection to dependent spouses, particularly women, by preventing husbands from abandoning marriages without consequence.

However, modern criticism of the fault system is substantial. It promotes adversarial litigation, requires spouses to publicly prove intimate misconduct, and often intensifies hostility between parties. The process becomes emotionally exhausting, financially burdensome, and time-consuming. In many cases, spouses exaggerate allegations merely to satisfy statutory requirements. Scholars and courts increasingly recognise that marital breakdown is rarely attributable to one party alone and that forcing couples to assign blame may worsen family conflict and negatively affect children.

No-Fault Divorce and Irretrievable Breakdown

No-fault divorce eliminates the requirement of proving wrongdoing. Instead, dissolution is based on the recognition that the marriage has irretrievably broken down. The rationale behind this approach is that divorce law should facilitate the orderly termination of relationships that have already failed rather than compel parties to remain in dysfunctional marriages.

Proponents of no-fault divorce argue that it reduces litigation, minimises emotional harm, and promotes cooperative post-separation arrangements. It also reflects modern constitutional values such as dignity, privacy, and individual autonomy. By removing the requirement to establish fault, courts can focus on financial relief and child welfare rather than personal accusations.

Despite these advantages, critics contend that no-fault divorce weakens the institution of marriage and may disadvantage economically dependent spouses. Some religious groups oppose the idea on moral grounds, arguing that marriage should not be dissolved unilaterally without proof of serious misconduct.

The concept of irretrievable breakdown of marriage functions as a bridge between fault and no-fault systems. In many jurisdictions, it is recognised as the most realistic basis for dissolution because it focuses on the actual collapse of the marital relationship rather than the conduct of spouses.

Divorce Law in India

India's divorce law structure is unique because it is governed by multiple personal law systems based on religion. The Hindu Marriage Act 1955, Special Marriage Act 1954, Dissolution of Muslim Marriages Act 1939, and Divorce Act 1869 contain separate provisions relating to divorce.

Under the Hindu Marriage Act 1955, divorce is primarily fault-based. Grounds include adultery, cruelty, desertion, conversion, mental disorder, venereal disease, renunciation, and presumption of death. Section 13B introduced divorce by mutual consent, which represents a limited form of consensual no-fault divorce. However, unilateral no-fault divorce remains unavailable.

The Supreme Court of India has repeatedly acknowledged the inadequacies of the fault system. In *Naveen Kohli v. Neelu Kohli* (2006), the Court recommended legislative recognition of irretrievable breakdown of marriage as an independent ground for divorce. Similarly, in *K. Srinivas Rao v. D.A. Deepa* (2013), the Court observed that forcing parties to continue dead marriages serves no useful social purpose. Nevertheless, Parliament has not enacted comprehensive reform.

The Special Marriage Act 1954 largely mirrors the Hindu Marriage Act and retains fault-based grounds despite providing a secular framework for civil marriages.

Muslim divorce law in India combines uncodified personal law with statutory provisions. The Dissolution of Muslim Marriages Act 1939 grants Muslim women the right to seek judicial divorce on several grounds including cruelty, non-maintenance, imprisonment, and disappearance of the husband. However, structural inequalities persist because husbands historically enjoyed broader unilateral rights of dissolution. In *Shayara Bano v. Union of India* (2017), the Supreme Court invalidated instant triple talaq as unconstitutional, representing a significant development in gender justice.

Christian divorce law under the Divorce Act 1869 was originally discriminatory because wives had to prove adultery along with additional matrimonial offences. Amendments in 2001 removed this inequality and introduced gender-neutral grounds. Nevertheless, the framework continues to remain largely fault-based.

Overall, India's divorce system continues to rely heavily on adversarial litigation. Mutual consent divorce exists, but when one spouse opposes dissolution, parties must still establish fault through lengthy court proceedings.

Divorce Law in the United Kingdom

The United Kingdom historically followed a strict fault-based divorce model influenced by ecclesiastical principles. Before 1857, divorce was available only through private Acts of Parliament. The Matrimonial Causes Act 1857 secularised divorce law and introduced judicial divorce. Subsequent reforms gradually expanded the grounds for dissolution.

The Divorce Reform Act 1969 introduced “irretrievable breakdown of marriage” as the sole ground for divorce. However, the Matrimonial Causes Act 1973 required this breakdown to be proved through one of five facts, including adultery, unreasonable behaviour, desertion, or periods of separation. In practice, fault allegations continued to dominate the system.

The shortcomings of this framework became evident in *Owens v. Owens* (2018), where the Supreme Court refused to grant divorce because the wife’s allegations were considered legally insufficient. The case attracted widespread criticism and highlighted the injustice of forcing parties to remain in marriages that had effectively collapsed.

In response, the UK enacted the Divorce, Dissolution and Separation Act 2020, which came into force in April 2022. The Act abolished the requirement of proving fault and replaced it with a simple statement that the marriage has irretrievably broken down. The statement is conclusive and cannot generally be contested by the other spouse. The legislation permits both unilateral and joint applications and aims to reduce hostility and emotional conflict.

The UK model represents a major shift towards a facilitative and non-adversarial approach. Courts no longer examine marital misconduct during the divorce process itself, though issues of finance and child welfare remain subject to judicial oversight.

Comparative Analysis

The comparison between India and the United Kingdom reveals significant structural differences. India continues to preserve fault-based divorce as the primary basis for unilateral dissolution, while the UK has completely removed fault from the process. The Indian model remains deeply influenced by religious pluralism and personal law, whereas the UK follows a secular and uniform legal framework.

A major consequence of India’s fault-based system is prolonged adversarial litigation. Parties must produce evidence, examine witnesses, and establish matrimonial wrongdoing. Judicial delays and procedural complexity often make divorce proceedings lengthy and expensive. The economically weaker spouse, usually women, bears a disproportionate burden.

The UK’s no-fault model significantly reduces conflict at the stage of obtaining divorce. Since

the question of marital misconduct is removed, the process becomes less hostile and more accessible. This encourages cooperative settlement of financial and child-related issues.

Gender implications also differ. In India, fault-based litigation can operate as a barrier for women lacking financial independence. Although mutual consent provisions exist, they require continuing agreement between both spouses. The UK system, by permitting unilateral no-fault divorce, strengthens personal autonomy but has also generated concerns regarding inadequate recognition of serious matrimonial misconduct.

Religion remains central to Indian matrimonial law. Different religious communities continue to be governed by distinct legal frameworks, creating inconsistency and inequality in access to divorce. In contrast, the UK's secular approach separates civil marriage from religious doctrine and applies a uniform system to all citizens.

The study finds that India is gradually moving toward recognition of irretrievable breakdown through judicial interpretation, particularly under Article 142 of the Constitution. However, such relief is confined to the Supreme Court and remains inaccessible to ordinary litigants.

Conclusion

This comparative study demonstrates that divorce law is closely connected to constitutional values, social policy, and changing perceptions of marriage. The United Kingdom has embraced a modern no-fault framework that prioritises dignity, autonomy, and reduction of conflict. India, although witnessing judicial support for reform, continues to rely predominantly on fault-based personal law systems.

The research concludes that the continued insistence on fault in India often prolongs suffering, increases litigation, and fails to reflect the reality of marital breakdown. Introducing irretrievable breakdown of marriage as an independent statutory ground, accompanied by strong safeguards for financially dependent spouses, would align Indian law with contemporary principles of justice and equality.

At the same time, reform must ensure that economically vulnerable spouses are protected through effective maintenance, property division, and child welfare mechanisms. The

experience of the United Kingdom demonstrates that the protective functions traditionally associated with fault can be achieved through ancillary relief rather than by making fault a condition for divorce.

Ultimately, the transition from fault-based to no-fault divorce reflects a broader global movement away from moral condemnation toward a pragmatic and humane understanding of marital dissolution. India's future reforms must balance individual autonomy, social realities, and constitutional commitments to equality and dignity.

Keywords: Divorce law, fault-based divorce, no-fault divorce, irretrievable breakdown, Hindu Marriage Act, Divorce Dissolution and Separation Act 2020, comparative family law, India, United Kingdom, matrimonial law.

