DEAD IN SUBSTANCE, ALIVE IN LAW: IRRETRIEVABLE BREAKDOWN OF MARRIAGE AND THE UNFULFILLED PROMISE OF ARTICLE 21

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ABSTRACT

The Hindu Marriage Act of 1955 regulates the ending of marriage for a significant portion of India's population within a purely fault- based system, necessitating that a partner pursuing divorce prove a particular matrimonial wrongdoing by the other. The irretrievable breakdown of marriage, despite years of judicial support and two recommendations from the law commission, is not included among the legal grounds for divorce. In Shilpa Sailesh V. Varun Srinivasan (2023), a Constitutional bench of the Supreme Count of India utilized its exceptional authority as per Article 142 of the constitution to annul marriages on this basis, accomplishing judicially what Parliament has consistently declined to legislate. This paper contends that this institutional paradox is not just a legislative oddity but a constitutional shortcoming. The right to dignity, privacy and personal liberty under Article 21 shaped over decades of the Supreme Court rulings, safeguards not only freedom from physical confinement. Furthermore, the autonomy to put together essential preferences regarding one's personal life, including the choice to exit a marriage that is irrevocably over. Depending solely on judicial intervention to address this gap, this paper contends, is an insufficient and unjust solution that only advantages those who can afford to litigate at the highest level. Utilizing insights from England, Australia and the United States, the paper suggests an amendment to the Hindu Marriage Act 1955, complemented by robust financial safeguards for at-risk Spouses, as the constitutionally fitting and belated solutions.

When the State forces people to stay legally married to someone they no longer share a life with, it isn't protecting marriage, it is just prolonging the pain of something that has already ended.

The Hindu Marriage Act, 1955, governing institution of marital unions among Hindus in India was drafted in a different era, reflects the set notion of marital roles. Under the act, a Hindu cannot walk into the court and say "this marriage is over, please dissolve it." Instead, they must point a finger, alleging cruelty, adultery or desertion as a ground for its dissolution. The situation arises even when the honest truth is simple, the marriage died quietly, an undramatic death, somewhere along the way. This fault-based system though save the Sacrament of marriage but sometimes, forces real human situations, into fixed legal checklist, pushing people toward false allegations and bitter courtroom battles just to access divorce which they both know is assured. This also bring hardships to children, financial mismanagement and concern to dignity of people so involved.

What makes this particularly striking is that the courts have known this since time immemorial. In the year 2023, the Supreme court's constitutional bench took matters into its own hands and by using its special authority under article 142 of the constitution made a remarkable judgement, dissolving marriage on the basis of irretrievable breakdown in the case of Shilpa Sailesh v. Varun Sreenivasan[1] . This has not come sudden. The law commission had recommended this reform as far back as 1978, repeated in 2009, and even a bill made through Rajya Sabha, but quietly died in the Lok Sabha. So, today, India's highest court is doing routinely what India's parliament has refused to do for four decades.

This paper argues that this is more than an awkward institutional mismatch, it can be seen as, a failure of constitutional duty. Trapping people within marriages that exists only on paper violates their fundamental right to dignity, privacy and personal liberty under Article 21, as recognised by the Supreme Court, in the leading case of K.S. Puttaswamy v. Union of India [2] and Navtej Singh Johar v. Union of India [3]. And while the Supreme Court 's intervention in Shilpa Sailesh case deserves credit, article 142 [4] is not a real solution, rather it is an emergency exit available only to those wealthy enough to litigate all the way to Supreme Court . Everyone

[1] Shilpa Sailesh v. Varun Sreenivasan (2023) 12 SCC 1.
[2] K.S. Puttaswamy v. Union of India (2017) 10 SCC 1.
[3] Navtej Singh Johar v. Union of India (2018) 10 SCC 1.
[4] Consitution of India, art.142.

else remains stuck in the loop of said rules.

The Hindu Marriage Act of 1955 governs matrimonial relations for a substantial majority of India's population. Section 13 of the lays down the basis upon which either spouse to a marriage may seek its dissolution, including adultery, cruelty, desertion for a prolonged period of not less than two years, conversion to another religion, unsoundness of mind, virulent and incurable leprosy, venereal disease, renunciation of World [5], Section 13B provides for divorce by mutual consent. requiring both parties to have lived separately for a period of one year and to jointly petition for dissolution [6]. The problem with this setup is that it assumes marriages end because someone did something wrong. In reality, many marriages simply fade gradually, quietly and without any dramatic act of fact on either side. People grow apart. The relationship becomes hollow. None of this fits neatly into' cruelty' or' adultery and yet the law offers no other exit.

This creates what is sometimes called the 'hostage marriage' problem. If one spouse wants to move out of marriage but is unable to prove the fault of the other spouse, and the other refuses to consent to a mutual divorce, they are simply stuck. There is no legal remedy. Courts have tried to work around this by stretching the definition of cruelty. In V Bhagat v. D. Bhagat[7], the Supreme Court essentially permitted divorce because the matrimonial bond is beyond repair, dressing it up as a cruelty finding to fit within the statute. It was an honest judicial acknowledgment that the law as written does not match the reality it is supposed to govern.

The inadequacy of the fault- based framework was not gone unnoticed by law reform bodies. Back in the year 1978, the law commission recommended in its 71st Report that irretrievable breakdown be included as a reason for seeking divorce, nothing that fault-based litigation served no one when the marriage was already dead in every meaningful sense [8]. The 217th Report in 2009 said the same thing again, this time with detailed proposals for protecting Financially vulnerable spouses[9].

[5] Hindu Marriage Act, 1955, Section 13 Divorce
[6] Hindu Marriage Act. 1955, Section 13B Divorce by Mutual Consent
[7] V. Bhagat v. D. Bhagat (1994) 1 SCC 337
[8] Law Commission of India, 71st Report on The Hindu Marriage Act,1955 and the Special Marriage Act,1954 (1978)
[9] Law Commission of India, 217th Report on Irretrievable Breakdown of Marriage as a Ground for Divorce (2009)

Despite these recommendations, legislative reform has proven elusive. The Marriage Laws (Amendment) Bill, 2013, came closest, and approved by the Rajya Sabha but never made through the Lok Sabha, dying quietly when parliament was dissolved[10] . No serious attempt has been made since.

The question arises why has parliament repeatedly walked away from this reform? The most honest answer is fear. It is specifically, the fear that a no-fault ground would allow husbands to walk out on financially dependent wives without maintenance or property settlement. The concern is real and deserves to be taken seriously. But here is the thing, it is an argument about what should happen after divorce, and not about whether divorce should be available in the first place. The solution to financial vulnerability is stronger maintenance and property laws, and not locking people inside marriages that has been already ended. Conflating these two questions is precisely how four decades of reform have been lost.

The Judicial Journey : From Judicial Fiction to Article 142

Long before the Supreme Court's formal pronouncement in Shilpa Sailesh,[11] the judiciary had been grappling with the inadequacy of the Hindu Marriage Act's fault- based grounds of divorce. Faced with marriages that had manifestly and irretrievably collapsed, courts developed a practice of granting divorce on available statutory grounds and the most commonly used ground is cruelty, while acknowledging that the real basis for dissolution was the complete breakdown of the matrimonial relationships. This practice of judicial proxies, while being pragmatically motivated, produced a body of matrimonial jurisprudence characterised by legal fiction and institutional strain. The Supreme court did exactly this in V. Bhagat v. D.Bhagat[12] the Court allowed divorce on the ground of cruelty, but in doing so, it openly acknowledged the extended and hostile lawsuit involving the spouses had itself destroyed any remaining possibility of the marriage surviving. The real message was clear even if the legal language was constrained, this marriages over and keeping it alive on paper helps no one. The court simply did not have a better statutory provision to reach that conclusion.

This become a pattern. In Naveen Kohli v. Neela Kohli [13] the Supreme Court dropped all pretence of subtlety and directly told parliament to amend the Act and include irretrievable

[10] Marriage Laws(Amendment) Bill 2013, Bill no. LIII of 2010 (as passed by the Rajya Sabha)
[11] Shilpa Sailesh v. Varun Sreenivasan (2023) 12 SCC 1.
[12] V. Bhagat v. D. Bhagat (1994) 1 SCC 337
[13] Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558

breakdown as a divorce ground. Parliament ignored it. In Samar Ghosh V. Jaya Ghosh[14] , the court again used the breakdown of the marriage as a lens through which to assess cruelty. The concept kept appearing in judgements, acknowledged, endorsed, relied upon, yet always forced to wear to Costume of a different statutory ground because the law offered no other choice. What emerged from this era was a quiet judicial consensus that the Act's fault-based framework was broken, but a consensus expressed in workarounds rather than direct reform, because direct reform was in Parliament's ambit.

In 2023, the Supreme Court decided it had waited long. In Shilpa Sailesh V. Varun Sreenivasan [15]a five judge Constitutional bench unanimously determined that the Supreme Court can exert its special authority derived from Article 142 of the Constitution of India to annul marriage due to irretrievable breakdown. Without the need for either party to demonstrate adultery, cruelty, desertion, or any other fault. The court established criteria for the exercise of this power, the time period of the split, presence of any child and their well-being, the financial situation of both parties, and whether sincere efforts at reconciliation have been attempted and unsuccessful. This is was a landmark moment, India's Supreme Court, for the very first time , explicitly stated what years of rulings had only suggested that irretrievable breakdown serves as a valid, independent reason for terminating a marriage. It was a courageous and compassionate choice, motivated by the Court's acknowledgment that the current law was inflicting genuine and unwarranted pain on actual individuals.

This brings in another question, Why Article 142 [16]is Not Enough? The Shilpa Sailesh case, for all its significance does not solve the problem. It merely relocates it. This paper identifies three fundamental reasons why article 142 cannot serve as a permanent substitute for statutory reform.

The first is that it establishes a discretion, not a privilege. Under Shilpa Sailesh case[17], a party cannot enter a court and request a divorce based on irretrievable breakdown. They are permitted to request the Apex Court of India to implement its discretion in their favour. However, the constitutional right as outlined in Article 21 [18]cannot function in that manner. Rights are claims, they are upheld by law, not bestowed as a matter of judicial goodwill. Linking the accessibility

[14] Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511
[15] Shilpa Sailesh v. Varun Sreenivasan (2023) 12 SCC 1.
[16] Consitution of India, art.142.
[17] Shilpa Sailesh v. Varun Sreenivasan (2023) 12 SCC 1
[18] Constitution of India, art. 21

of this remedy to the Supreme Court's judgement fundamentally erodes its nature as a right.

Secondly, it is available solely to those who are privileged. Article 142 [19]is an authority that solely the Supreme Court of India can wield. Judges in a family court in Patna or Coimbatore cannot terminate a marriage based on this reason, regardless of how clearly the marriage has ended. This indicates that the solution devised by Shilpa Sailesh is in reality, accessible only to those who can bear the costs of pursuing their case to the Supreme Court, an exceedingly small percentage of matrimonial litigants in India. All others stay confined. A privilege that is available solely to the affluent is not genuinely a privilege.

The third issue is the problem of the Separation of Powers. The Supreme Court Bar Association v. Union of India, [20]the Supreme Court stated that the application of Article 142 of Constitution of India is incapable to establish new legal rights or to supersede substantive laws. Shilpa Sailesh perches uncomfortably near that boundary. By successfully establishing a new basis for divorce available through the Supreme Court, the Constitution Bench was essentially engaging in an act that resembles legislative action. This action does not claim that Shilpa Sailesh was incorrect, the human necessity that influenced the choice was genuine and pressing. However, it states that the ruling strengthens the argument for parliamentary reform rather than weakens it. The court has demonstrated the essence of justice, Parliament must now ensure It is accessible to all.

The Constitutional Case: Article 21 and the Right to Exit a Dead Marriage

From Physical Liberty to Constitutional Dignity: The Evolution of Article 21

Article 21 of the Constitution says that no person can be deprived of their life or personal liberty except by a procedure established by law.[21] When it was first interpreted, this was understood fairly narrowly essentially as a protection against unlawful imprisonment or physical detention. That changed dramatically with Maneka Gandhi v- Union of India [22] in 1978, when the Supreme Court held that the procedure used to deprive someone of liberty must itself be fair, just and reasonable, with a single holding, article 21 transformed from a procedural safeguard

[19] Constitution of India, art. 142
[20] Supreme Court Bar Association v. Union of India (1998) 4 SCC 37
[21] Constitution of India, art. 21
[22] Maneka Gandhi v. Union of India (1978) 1 SCC 248

into something far more powerful, a constitutional guarantee of substantive dignity.

What ensured was years of the Supreme Court progressively expanding the substance of that assurance. In Francis Coralie Mullin case[23] the court stated that the right to life encompasses the right to exist with fundamental human dignity. In Olga Tellis[24] case it was stated that the right to livelihood constitutes part of the right to life, as, without the means to exist, the right to life loses its significance. In Unni Krishnan case [25], it broadened the guarantee to encompass the right to education. Everyone of these choices contributed additional depth to the interpretation of article 21, together defining it as the constitutional clause that safeguards everything essential for an individual to exist as a free, dignified, and sufficient human being.

The Puttaswamy Revolution: Privacy, dignity and Intimate Autonomy

The most important development in this story, at least for the purpose of this study, is the Supreme Court's nine-judge bench decision in K.S. Puttaswamy V. Union of India[26] in 2017, which recognised the right to privacy as a fundamental right under Article 21. But it wasn't , just about data protection or surveillance. The court went much deeper than that, Justice Chandrachud's opinion introduced the concept of decisional autonomy, the idea that every person has the constitutional right to make fundamental choices about their own life, their own body and their own intimate relationships, free from state interference.

When one acknowledge that principle, applying it to matrimonial law becomes hard to avoid. If Article 21 safeguards an individual's right to make essential choices regarding their personal life, it should encompass the choice to exit relationship that has homed into a source of pain. In Lata Singh v. State of Uttar Pradesh[27], and Shafin Jahan v. Asokan K M[28], The Supreme Court acknowledged that the ability to select a partner is safeguarded by the constitution. However, autonomy that exists solely at the beginning of a relationship and disappears when exiting is not true autonomy. The constitutional reasoning should operate in both ways. Navtej Singh Johar v. Union of India[29] reinforces this powerfully.

[23] Francis Coralie Mullin v. Union Territory of Delhi (1981) 1 SCC 608
[24] Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545
[25] Unni Krishnan v. State of Andhra Pradesh (1993) 1 SCC 645
[26] K.S Puttaswamy v. Union of India (2017) 10 SCC 1
[27] Lata Singh v State of Uttar Pradesh (2006) 5 SCC 475
[28] Shafin Jahan v. Asokan K.M. (2018) 16 SCC 368
[29] Navtej Singh Johar v. Union of India (2018) 10 SCC 1

In striking down section 377[30], the Supreme Court held that the state has no business compelling people to remain bound to relationships or identities that violate their dignity and sense of self. The context was different, but the principle is identical, the State cannot use law to trap a person inside an intimate situation that destroys rather than fulfils them. A marriage that has irretrievably broken down does precisely that.

Compelled Litigation as a Constitutional Harm: The Fault-based System under Scrutiny

There is a second, independent constitutional problem with the current system. This one exists even before we get to the question of whether divorce should be available. The fault-based framework forces people who want to end a genuinely dead marriage to publicly accuse each other of cruelty, adultery or desertion. sometimes, truthfully, sometimes not . When no real fault exists, spouses are effectively compelled to manufacture or overemphasised allegations just to access a legal remedy that should be available to them as of right.

This is not a little hassle. Years of contentious divorce battles, life with allegations, counter-allegations, and the public exposure of personal anguish, inflicts genuine and significant psychological damage on both spouses and on any children involved. In Consumer Education and Research Centre V. Union of India[31] the supreme court acknowledged that mental health is included in the right to life as stated in Article 21. A legal system that consistently and systematically inflicts this type of psychological damage, not as an inherent characteristic, is not simply a passive observer of a rights infringement. It plays an active role in it.

Beyond Negative Liberty: The State's Positive Obligation Under Article 21

The last constitutional point is arguably the most significant. Article 21 is generally seen as placing a negative obligation on the state, refrain from taking away individual's life or freedom without proper legal procedures . However, the Supreme Court has progressively acknowledged that Article 21 encompasses a positive responsibility; the state must proactively establish circumstances where dignified living can occur, rather than merely avoiding actions that undermine it. In Paschim Banga Khet Mazdoor Samity v. State of West Bengal [32] the court determined that the state has a positive obligation to guarantee that the right to life is not

[30] Indian Penal Code, 1860, S 377 (now repealed by the Bharatiya Nyaya Sanhita,2023)
[31] Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42
[32] Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996) 4 SCC 37

rendered meaningless due to its inaction.

Apply that to this situation. The government established the institution of marriage, the state regulates the circumstances in which it may conclude. For more than forty years, despite two law Commission reports, a Bill that succeeded in one house of the Parliament, and a Supreme Court that has been addressing the issue through its unique powers, the state has opted to retain a legal structure that confines citizens within lifeless marriages. that does not constitute impartial legislative inactivity within the positive obligation aspect of Article 21, this is constitutionally unsustainable.

Counterarguments & Their Constitutional Rebuttal

The Women's Protection Objection: A legitimate Concern, A Misdirected Solution

This objection has more than any other hindered divorce reform in India, and it warrants a thoughtful response rather than a rejection. The worry is valid, in a nation where numerous married women rely financially on their spouses, a no fault-divorce provision might turn into a means of abandonment. A husband might just announce the marriage is finished, leave, and abandon his wife without financial stability or legal options. Women's organization and lawmakers raising this issue are not being obstructive , they are addressing a real social concern.

However, the issue with this argument is that it conflates who entirely distinct questions. The initial inquiry is if a marriage that has permanently disintegrated ought to be subject to legal termination. The second question concerns what financial support a dependent spouse should obtain when a marriage terminates. These are distinct questions with varied responses and considering them as identical has been the primary barrier to reform for four decades.

The solution to the second question , how to safeguard financially vulnerable spouses, is not to prevent divorce. It ensures that when divorces occurs, the financially disadvantaged party is sufficiently supported. The 217th Report from the law commission[33] outlined precisely how this can be achieved, required financial settlement as a necessary condition prior to granting any divorce decree, reinforce permanent alimony regulations, and implement matrimonial

[33] Law Commission of India, 217th Report on Irretrievable Breakdown of Marriage as a Ground for Divorce (2009)

property sharing to ensure that assists accumulated during the marriages are equitably divided. These protections can and must be put into place alongside the new divorce ground, rather than as a substitute for it.

Additionally, there is another point that should be mentioned. The fault- based system does not truly safeguards vulnerable women as its supports asset. A wealthy and resolute husband can prolong manage dispute for years draining his wife both financially and emotionally and ultimately secure a divorce based on cruelty or abandonment claims regardless. The fault requirement does not prevent divorce, It merely prolongs the process, increases costs, and causes most harm. The security it provides is mostly hypothetical. The damage it inflicts in fully genuine.

The State Interest Argument: When Institutional Preservation Meets Proportionality

A frequent counterargument is that state has a valid concern in safeguarding the marriage institution, and that simplifying the divorce process would compromise that concern. There is validity in this, marriage serves as a social institution, not merely a personal agreement, and the government is justified in being concerned about its stability.

However, the key constitutional issue is not whether the state maintains a vested interest in marriage. The issue at hand robust to warrant surpassing a fundamental right under Article 21. According to the proportionality standard established by the Supreme Court in Modern Dental College V. State of Madhya Pradesh[34] any limitation on a fundamental right must be essential, logical, and balanced. The advantage to the public good must truly surpass the damage to the person involved.

The existing framework does not pass the test, compelling two individuals who haven't lived together for years to stay legally married does not safeguard marriage as an institution. It safeguards a sheet of paper. The state's genuine interest in marriage, as a band of companionship, shared support, and farming is not fulfilled by forcing two individuals to stay in a legal partnership that has in every practical way, already ended. the Supreme Court stated in Shafin Jahan[35] that the government lacks the power to control personal intimate decisions. If the state cannot prevent a person from marrying, it is hard to understand how it can legally

[34] Modern Dental College v. State of Madhya Pradesh (2016) 7 SCC 353
[35] Shafin Jahan v. Asokan K.M (2018) 16 SCC 368

prevent them from dissolving a marriage that has already concluded in all respects except the title.

The Democratic Will Argument: Political Caution is not Constitutional Justification

The third concern is institutional. Parliament has been presented several chances to establish irretrievable breakdown as a reason for divorce and has rejected it on each occasion. Shouldn't the judicial system honour that democratic decision and remain within its boundaries.

This is a substantial argument that warrants a substantial reply. Courts ought to typically be careful in replacing their judgment with that of Parliament a disputed social issues, this is indeed correct. However, that principle of restraint has never implied that courts should remain passive when legislative inaction leads to a breach of fundamental rights. The Supreme Court Of India stated precisely this in Vishaka v. State of Rajasthan[36] , when parliament creates a gap that leads to the infringement of fundamental rights, the Court is not just empowered to intervene, it is obligated to take action.

A more profound issue arises from interpreting Parliament's silence as an intentional democratic decision. The legislative background of this reform indicated that the lack of parliamentary action has been influenced not by a principled policy decision but rather by political hesitance, interest group pressure, and crucially the ongoing misunderstanding between the right to divorce and its financial implications. A democratic choice based on a conceptual mistake does not deserve on sound and precise reasoning. Parliament has not indicated "We have evaluated irretrievable breakdown and concluded it is incorrect" . It has stated "we are concerned about the political repercussions of taking actions." These are quite distinct matters, and just one merits constitutional respect.

Comparative Overview: Lessons for Indian Reforms

England & Wales : From Residual Fault to Complete No-Fault Divorce

The development of English marriage law provides the most valuable comparative insight for Indian reform. The divorce reform act of 1969 [37]established irretrievable breakdown as the exclusive reason for divorce in England and Wales superseding the earlier fault-based system.

[36] Vishaka v State of Rajasthan (1997) 6 SCC 241
[37] Divorce Reform Act 1969 (England and Wales)

The 1969 Act, however, maintained a stipulation that parties must prove one of five" facts" to show breakdown, such as adultery, unreasonable behaviour, and desertion, thus, keeping a residual fault component within the no- fault structure. The outcome was a system that was theoretically based on integration but still practically necessitated the assignment of blame, creating many of the same confrontational dynamics that the reform aimed to remove.

The Divorce, Dissolution and Separation Act 2020 [38]which enforced in April 2022 ultimately eliminated this residual fault element. The 2020 Act eliminated the need to prove any of the five parts, allowing either or both partied to seek a divorce by declaring that the marriage has irretrievably broken. Significantly, the 2020 Act eliminated the opt for one spouse to challenge the divorce, directly tackling the "hostage marriage" issue that still impacts Indian matrimonial law. The Lord Chancellor, while presenting the Bill, noted that the former system had led to unnecessary strife and suffering, especially for Children, emphasising that the law should not force individuals to remain in concluded marriages, but should instead address the aftermath of separation with respect and equity. [39]

The English experience imparts two lessons particularly significant for India. Initially, it shows that the gradual removal of fault from divorce legislation does not weaken the marriage institution, England has not experienced a downfall in marital stability linked to no-fault divorce in the fifty years following the 1969 reform. Secondly, and more significantly for the current discussion, The 2020 Act's elimination of the option to contest divorce demonstrates a constitutional reasoning that parallels the argument presented , that no spouse should have the power to keep the other trapped in a marriage that has definitively concluded.

Australia: The Cleanest Legislative Model

While England's progress was slow, Australia's was definitive. The family law 1975[40] established irretrievable breakdown as the only basis for divorce. To obtain a divorce in Australia, one must demonstrate that they have been living apart for twelve months, from their spouse. That is all, no blame, no accusations. Consent from the other spouse is not required. The sole extra condition is that if there are minors (under eighteen), the court must be assured

[38] Divorce, Dissolution and Separation Act 2020 (UK), c 11
[39] Lord Chancellor, Second Reading Speech on the Divorce, Dissolution and Separation Bill, Hansard,HL Deb, 2 June 2020
[40] Family Law Act 1975 (Cth),S 48, 55A (Australia)

that suitable provisions have been established for their well-being.

The charm of the Australian approach lies in its transparency. It states the truth about marriage that it concludes when individuals involved are no longer functioning as a married couple, and that the law's role is to acknowledge that fact, rather than ignoring it. It virtually eliminates that adversarial aspect of divorce, resulting in reduced psychological harm, lower legal expenses and diminished conflict for families enduring a challenging period.

This model aligns closest with the recommendations made by India's law commission, which serves as the appropriate framework for reform in India, with minor adjustments for it's specific content. A separation duration of two to three years instead of twelve months would better signify the importance of marriage in India, while a compulsory financial settlement would safeguard dependent partners The fundamental principal, that disintegration, demonstrated by division, is adequate, ought to be fully embraced.

United States: No Fault Divorce and its Constitutional Underpinnings

The American experience introduces a constitutional aspect to the comparative scenario. In 1969, California implemented a purely no-fault divorce system, becoming the first jurisdiction globally to adopt this approach, which all fifty U.S. States later embraced in the ensuring decades. [41]

The U.S Supreme Court held in Boddie v. Connecticut [42] is also significant. The court determined that the Due Process Clause of the Constitution mandates that access to divorce should not be rendered virtually unachievable for those who lack the financial means. The constitutional principle supporting that decision, that the right to dissolve a marriage is a constitutional entitlement rather than a matter of legislative generosity, aligns directly with the Article 21. Regardless of whether one consider the American or Indian Constitutional systems, the fundamental concept remains unchanged, the State must not limit the option to exit a failed marriage to only a few individuals.

The Comparative Synthesis: What India can and should adopt

The trend among the three jurisdictions is uniform and distinct. Nations that adopted no- fault

[41] California Family Law Act 1969 (USA)
[42] Boodie v Connecticut, 401, U.S. 371 (1971)

divorce did not experience a breakdown in their social cohesion. They observed that their divorce proceedings turned less painful, less contentious, and more compassionate. They safeguarded At-risk spouses not by preventing divorce but by ensuring the financial outcomes of divorce were more equitable, via maintenance, property division, and obligatory settlement stipulations.

India does not have copy any of these models precisely. However, it must embrace their core message, that the option to leave a hopelessly damaged marriage can be extended to all, with adequate protections, without undermining the institution of marriage. Global experience demonstrates that it can be done.

The constitutional argument so presented suggests a legislative solution that is both simple and long overdue. Parliament can revise section 13 of the Hindu Marriage Act[43] to include irretrievable breakdown as a ground for divorce, demonstrated by a least a two-year separation, as a separate, consent free basis for divorce, available at the Family court level and not just via the Supreme Court's exceptional jurisdiction. It can be accompanied at the same time by an enhanced financial protection framework, and establishment of a marital property sharing, that acknowledges the non-financial contributors of dependent partners. The right to leave a stagnant marriage and the safeguarding of vulnerable partners are not opposing aims, they are responsibilities that the law can fulfil simultaneously. This could constitute a constitutionally adequate response to the rights vacuum, as identified. Thus, a carefully designed reform appears entirely capable of achieving all underlining goals.

Conclusion

At its heart, the paper is about a simple proposition that the promise by the Constitution of dignity and personal liberty means very little if it does not extent to the most intimate decisions of a person's life. The analysis, suggests that Hindu matrimonial law, as it currently stands, has not yet fully honoured that promise. The positive aspect is that respecting it demand nothing exceptional, its necessitates a single legislative change, along with financial protections for those most at risk, and the political determination to implement it.

The path forward is neither unprecedented nor unclear. The judicial groundwork has been laid by decades of Supreme Court jurisprudence culminating in Shilpa Sailesh case. The legislative

[43] Hindu Marriage Act,1955, S 13 Divorce

template has existed since the law commission's 71st Report in 1978, the comparative experience of England. Australia, and the United States demonstrates that no- fault divorce, accompanied by robust financial safeguards, produces more humane, more accessible and more constitutionally coherent matrimonial law systems. India has every resource it could consider to undertake this reform thoughtfully and well.

What Shilpa Sailesh showed is that Indian law is capable of recognising the dignity of those trapped in irretrievably broken marriages. What a statutory amendment to section 13 would achieve is making that recognition available to every citizen, not just those who reach the Supreme Court. That is not a radical proposition. It is simply the Constitution, fully honoured at last.

Every significant change in family law including the end of child marriage and the acknowledgment of daughters as coparceners was once deemed premature, risky and unnecessary. There formers have always been validated by history. There is no reason to think this occasion will vary in anyway. The right to marry has always been unquestioned. It is time the right to depart one with honour, with justice, and without a legal struggle rooted in falsehood, was established beyond question as well. Thus, a reform is not a concession to change, it is a commitment to justice.