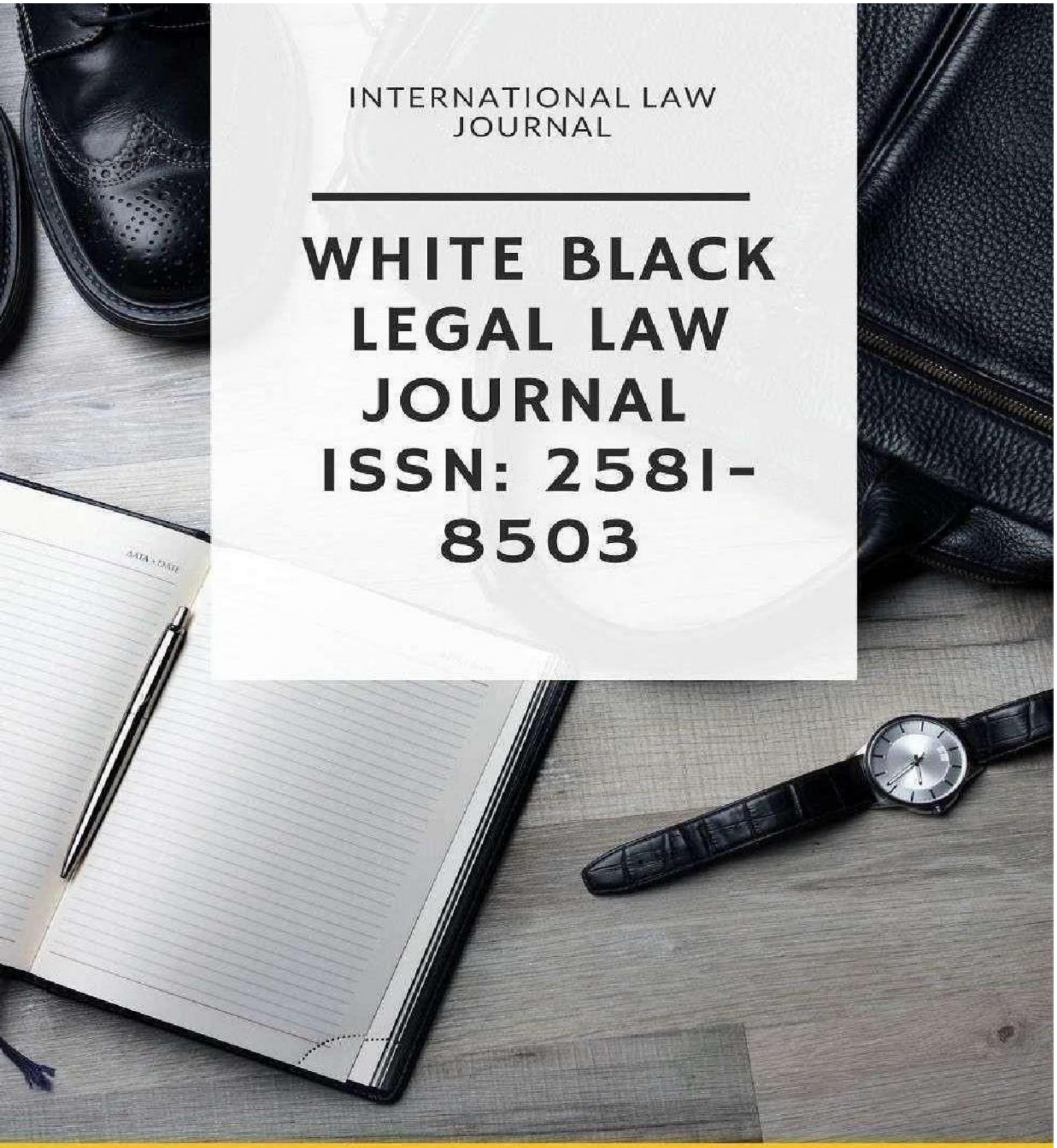


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IRRETRIEVABLE BREAKDOWN OF MARRIAGE UNDER THE HINDU MARRIAGE ACT, 1955: A COMPARATIVE ASSESSMENT WITH CANADA AND THE UNITED STATES AND THE CASE FOR STATUTORY RECOGNITION WITH ALIMONY SAFEGUARDS

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Abstract

Indian divorce law asks an odd question of people whose marriages have quietly ended: who was at the fault? Under the Hindu Marriage Act, 1955, a spouse who wants divorce must either prove a matrimonial offence or secure the willing cooperation of a partner who may have every reason to withhold it. Irretrievable breakdown of marriage, meanwhile, has entered Indian law through the back door. The Supreme Court now dissolves "dead" marriages under Article 142 of the Constitution while the statute stays silent, and Parliament's most serious attempt at reform lapsed in 2014. This research paper asks whether irretrievable breakdown can and should become a statutory ground for divorce under the Act, and on what conditions. Using a doctrinal method supported by comparative analysis of Canada and the United States (with particular reference to California and New York), drawing exclusively on secondary sources, it examines the statutory scheme, the Law Commission's reports, the Marriage Laws (Amendment) Bills of 2010 and 2013, and the Supreme Court's recent decisions. It argues that the ground is viable and overdue, but only if divorce and financial protection are legislated together: a decree should not become final until the court is satisfied about maintenance, residence and the welfare of children. Drawing lessons from Canadian one-year separation under the Divorce Act and United States' no-fault models (California's irreconcilable differences and New York's irretrievable breakdown), the research paper shows that viable reform pairs an objective breakdown test with robust alimony and property safeguards. The research paper proposes a model with a three-year separation threshold, compulsory disclosure of assets, a two-stage decree, a hardship provision that works to secure arrangements instead of blocking dissolution, statutory guidance on matrimonial property, and stronger enforcement

of alimony orders.

Keywords: *Irretrievable breakdown of marriage; No-fault divorce; Hindu Marriage Act, 1955; Permanent alimony; Article 142; Matrimonial property*

I. INTRODUCTION

Picture a couple who separated eleven years ago. Each has filed something against the other: she has a maintenance petition and a criminal complaint pending, and he has a cruelty petition that has crawled through a family court and then a High Court. Neither can prove the other's fault, and neither will sign a joint petition, because a signature would surrender the only leverage either still holds. The marriage is over in every sense but the legal one. Under the Hindu Marriage Act, 1955 it nevertheless continues.

The Hindu Marriage Act, 1955 allows divorce on proof of a matrimonial offence, on mutual consent, or, in a narrow procedural way, after a failed judicial separation or restitution decree.[1] It does not allow divorce simply because the marriage has failed. What the Supreme Court now does is that using its power to do "complete justice" under Article 142 of the Constitution, a Constitution Bench in *Shilpa Sailesh v. Varun Sreenivasan* confirmed that it may dissolve a dead marriage even when one spouse objects.[2] Parliament has considered this idea more than once, most recently in 2013, without enacting it. The result is a ground which the statute does not recognize, applied by a court (Supreme Court) most litigants cannot reach.

The reason the legislature hesitated has not gone away. Where many women leave paid work to run homes, live in properties owned by husbands or in-laws, and struggle to enforce maintenance orders, a divorce obtainable against the other spouse's wishes is not a neutral device. Whoever writes the ground into the statute must also write the protections that make it safe to use. This paper therefore asks whether irretrievable breakdown is a workable statutory ground under the Hindu Marriage Act, 1955, what Indian courts, the Law Commission and Parliament teach about its design, and which alimony safeguards must accompany it. The method is doctrinal, drawing on the statute, case law, Law Commission reports and parliamentary documents, with a comparative look at Canada and the United States (California and New York in particular). The analysis stays within the Hindu Marriage Act, 1955, although much of it would apply equally to the Special Marriage Act, 1954.

[1]Hindu Marriage Act, 1955, No. 25 of 1955, §§ 13(1), 13(1A), 13B (India) [hereinafter Hindu Marriage Act, 1955]. As of September 2026, the Act contains no ground of irretrievable breakdown.

[2]*Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC Online SC 544 (India); India Const. art. 142.

II. HOW A HINDU MARRIAGE ENDS TODAY

The Hindu Marriage Act, 1955 makes Hindu marriage dissoluble, but it borrowed the fault-based model then prevailing in English law, in which divorce is granted to a wronged spouse against a guilty one. Section 13(1) lists adultery, cruelty, desertion, conversion, unsoundness of mind, communicable disease, renunciation of the world and presumed death, and section 13(2) adds grounds for wives alone. Each requires the petitioner to prove something about the respondent.

Parliament softened this model twice. Section 13(1A), inserted in 1964, allows either spouse seek divorce if cohabitation has not resumed for one year (originally two) after a decree of judicial separation or of restitution of conjugal rights.[3] Section 13B, added in 1976, allows divorce by mutual consent after one year of living apart, with a waiting period of at least six months between the two motions. Both rest on the idea of breakdown, yet neither recognizes it directly: the first makes a spouse run two cases to obtain one divorce, and the second works only if two people who have fallen out can still agree.

To obtain divorce under mutual consent ,it must continue until the decree is passed, so either spouse can withdraw it at the last moment.[4] The six-month cooling-off period is directory and can be waived where reconciliation is not realistic.[5]

Three strains follow. The first is proof: fault must be established about events that took place behind closed doors, years earlier, and outcomes are hard to predict, so a sincere petitioner who cannot prove fault stays married. The second is the veto: consent becomes a bargaining chip, often traded for money, and the law has no principled way to tell a fair holdout from a tactic of attrition. The third is blame: fault litigation invites each side to plead the worst about the other, and the allegations spill into criminal complaints, maintenance and custody proceedings, with children growing up in the middle of it.

III. FROM COMMISSION REPORTS TO ARTICLE 142

A. The Law Commission and the Courts

The Law Commission first recommended irretrievable breakdown as a ground for divorce in its 71st Report in 1978, with a period of living apart as the test.[6] It returned to the subject in its

[3]Hindu Marriage (Amendment) Act, 1964, No. 44 of 1964 (India); Marriage Laws (Amendment) Act, 1976, No. 68 of 1976 (India).

[4]*Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25 (India); *Hitesh Bhatnagar v. Deepa Bhatnagar*, (2011) 5 SCC 234 (India).

[5]*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 (India).

[6]Law Comm'n of India, 71st Report on the Hindu Marriage Act, 1955 — Irretrievable Breakdown of Marriage as

217th Report in 2009, stressing that the economic interests of the wife and children must be protected as part of any such reform.[7]

The Supreme Court has nudged Parliament for even longer. It urged recognition of breakdown as a ground in 1985, dissolved marriages under Article 142 in *Ashok Hurra*, and in *Naveen Kohli* granted a decree and asked the Union to consider amending the Act.[8] It has not always spoken with one voice. It has also cautioned that judges cannot supply a ground Parliament has withheld, and it has held that the breakdown doctrine is not open to High Courts or trial courts.[9] In 2023 *Shilpa Sailesh* settled the matter going in route of the Article 142, as a matter of careful discretion and not a right a party can demand.[10] The relevant factors include how long the parties lived together and have lived apart, the seriousness of their allegations, and failed attempts at reconciliation.[11]

What is striking is how the Court handles money in these cases. It has dissolved a marriage after twelve years of separation and directed ₹20 lakh to the wife with the couple's daughter in mind; granted a divorce after less than a year of cohabitation and nine years apart, with ₹2 crore as permanent alimony; and, after two decades of separation, fixed ₹5 crore for the wife and ₹1 crore for the couple's son.[12] In each, dissolution and money were decided together. It is the best evidence that they belong together, and it exposes the weakness of the present arrangement: these sums were fixed after affidavits of assets and lengthy hearings in a forum few litigants ever reach.

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B. The Bills That Lapsed

The most developed legislative attempt, the Marriage Laws (Amendment) Bill, 2010, proposed three new sections.[13] Section 13C made breakdown a ground, proved by three years of continuous separation. Section 13D let a wife who was the respondent oppose the decree on

a Ground of Divorce (1978). A Bill to implement it, the Marriage Laws (Amendment) Bill, 1981 (India), lapsed.

[7]Law Comm'n of India, 217th Report on Irretrievable Breakdown of Marriage — another Ground for Divorce (2009).

[8]*Jorden Diengdeh v. S.S. Chopra*, (1985) 3 SCC 62 (India); *Ashok Hurra v. Rupa Bipin Zaveri*, (1997) 4 SCC 226 (India); *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558 (India).

[9]*Vishnu Dutt Sharma v. Manju Sharma*, (2009) 6 SCC 379 (India); *Anil Kumar Jain v. Maya Jain*, (2009) 10 SCC 415 (India).

[10]*Shilpa Sailesh*, 2023 SCC Online SC 544. The Court also held that the power cannot be invoked as of right.

[11]*Parvin Kumar Jain v. Anju Jain*, 2024 INSC 961 (India) (setting out the factors identified in *Shilpa Sailesh* and reiterated in *Kiran Jyot Maini v. Anish Pramod Patel*, 2024 INSC 530 (India)).

[12]*Rajib Kumar Roy v. Sushmita Saha*, 2023 SCC Online SC 1221 (India); *Kiran Jyot Maini*, 2024 INSC 530; *Parvin Kumar Jain*, 2024 INSC 961.

[13]The Marriage Laws (Amendment) Bill, 2010, Bill No. XLI of 2010, cl. 3 (India) (introduced in the Rajya Sabha on Aug. 4, 2010) (proposing new §§ 13C–13E).

the ground that dissolution would cause her grave financial hardship, so that the court could dismiss the petition or stay it until the hardship was removed. Section 13E barred a decree unless adequate provision had been made for the children. After a Standing Committee report and revisions, the Rajya Sabha passed a modified Bill in August 2013, when the Law Minister said that the wife's share in the husband's self-acquired property would be for the court to decide, that she would share in movable property, and that inherited property would be counted in fixing alimony.[14] The Bill also proposed removing the six-month waiting period from mutual-consent divorce, an idea later applied in practice through *Amardeep Singh* and *Shilpa Sailesh*. It lapsed with the dissolution of the Lok Sabha in 2014.

Parliament's hesitation was never really about breakdown itself. It was about what happens to the financially weaker spouse afterwards, and that is the design question this paper takes up.

IV. IS THE GROUND VIABLE?

A. The Case for Statutory Recognition

Five arguments support recognition. The first is cases decided through Article 142 and lies behind sections 13(1A) and 13B, and leaving it unwritten only ensures that it operates without standards. The second is dignity. The Supreme Court treats the choice of a life partner as part of personal liberty under Article 21,[15] and although the analogy to leaving a marriage should not be pressed too far, since it touches another person's legitimate expectations, keeping two adults bound after all shared life has ended only because one refuses to release the other sits uneasily with that reasoning. The third is access: only the Supreme Court can grant relief on this basis, which makes it remote for most people, whereas a statutory ground would bring it to family courts and bring it earlier.

The fourth is less blame. If prolonged separation suffices, the incentive to plead exaggerated fault falls, although that is an expectation and not something that can be shown without data. The fifth is consistency: the law already permits mutual consent (section 13B) and failed reconciliation (section 13(1A)) to end a marriage, and recognizing breakdown directly would complete a logic Parliament began in 1964.

[14]Dep't-Related Parliamentary Standing Comm. on Pers., Pub. Grievances, L. & Just., Report on the Marriage Laws (Amendment) Bill, 2010 (2011) (India); the Marriage Laws (Amendment) Bill, 2013, Bill No. XLI-C of 2010 (as passed by the Rajya Sabha) (India); *Rajya Sabha Passes Marriage Laws Amendment Bill*, Bus. Standard (Aug. 26, 2013), https://www.business-standard.com/article/news-ians/rajya-sabha-passes-marriage-laws-amendment-bill-113082600879_1.html.

[15]*Shafin Jahan v. Asokan K.M., (2018)16 SCC368 (India).*

B. The Concerns

The objections deserve answers on their merits. The main one, which stalled the earlier Bills, is economic vulnerability. Many wives have left paid work, live in a home which husband's family owns, and hold little in their own names, in any of such case a no-fault divorce obtained by waiting out a separation period could leave them without a home or an income. This concerns the financial consequences of divorce and not the ground itself, since the same wife is equally exposed when a husband wins a fault-based decree, but where no fault or consent is needed the law carries a heavier duty of protection.

A long separation period, a duty on the court to examine why the parties separated, and the equitable principle in section 23(1)(a) that a petitioner should not profit from his or her own wrong. Children require that no decree become final until their welfare and maintenance are arranged, which section 26 already makes possible. The argument from sacrament no longer describes a statute that has treated marriage as dissoluble since 1955, so the real question is on what terms marriages end.

C. An Assessment

On balance the ground is viable. Nearly every objection concerns what happens after the decree. A statute that made divorce easier without settling the financial consequences would repeat the asymmetry that stopped the earlier Bills, and it would deserve to fail.

V. COMPARATIVE PERSPECTIVES

Canada and the United States offer useful comparative guidance for the design of an irretrievable-breakdown ground under the Hindu Marriage Act. Both jurisdictions have long accepted no-fault or breakdown-based divorce and have developed relatively mature frameworks linking (or deliberately separating) dissolution from financial protection. The discussion below focuses exclusively on these two systems, with particular reference to the Canadian Divorce Act and to the approaches taken in California and New York.

Canada provides a clear statutory model under the federal Divorce Act. Section 8 establishes a single ground of "breakdown of the marriage," which is proved either by the spouses having lived separate and apart for at least one year immediately preceding the determination of the proceeding, or by adultery or physical or mental cruelty rendering continued cohabitation intolerable. The one-year separation route is the predominant no-fault pathway; spouses may file on the day of separation, but the divorce cannot be granted until the year has elapsed.

Section 8(3) deems the parties to have lived separate and apart for any period during which they lived apart and either had the intention to do so, and short periods of resumed cohabitation (totalling not more than ninety days) for the purpose of reconciliation do not interrupt the period. On the financial side, the court must be satisfied that reasonable arrangements have been made for the support of any children of the marriage before granting the divorce. Spousal support is available as corollary relief under section 15.2; the court considers the condition, means, needs and other circumstances of each spouse (including the length of cohabitation) and is expressly directed not to take marital misconduct into account. The objectives include recognising economic advantages or disadvantages arising from the marriage or its breakdown, apportioning the financial consequences of child care, and relieving economic hardship. Although not statutory, the Spousal Support Advisory Guidelines supply structured ranges for amount and duration and are widely used by courts and counsel. Canada thus pairs an accessible objective test of breakdown with mandatory attention to child support and a developed, non-fault framework for spousal support.

In the United States every jurisdiction now permits no-fault divorce, typically framed as irretrievable breakdown, irreconcilable differences or incompatibility. California, a pure no-fault state, allows dissolution on a finding of irreconcilable differences that have caused the irremediable breakdown of the marriage; the waiting period is six months from service of the petition, and community property is divided equally while spousal support is determined under Family Code section 4320 factors that emphasise need, ability to pay, duration of marriage, contributions to education or career, and domestic violence history, but not marital fault as such. New York added irretrievable breakdown of the relationship for a period of at least six months as a ground under Domestic Relations Law section 170(7). Critically, no judgment of divorce may be entered on that ground until the economic issues—equitable distribution of marital property, spousal maintenance, child support, counsel fees and custody—have been resolved by agreement or court determination. New York also employs statutory guideline formulas for post-divorce maintenance. These American examples illustrate two useful design choices for India: an objective or statement-based test that does not require proof of misconduct, and, especially in New York, an explicit statutory link that prevents the divorce from becoming final until financial and parenting arrangements are in place.

Taken together, the Canadian and United States models reinforce the paper's central claim that the viability of an irretrievable-breakdown ground depends less on the precise length of the separation period than on the simultaneous statutory architecture of disclosure, support factors, property adjustment and enforcement.

VI. ALIMONY: THE TOOLKIT AND ITS GAPS

On paper the HINDU MARRIAGE ACT, 1955 offers a fairly complete toolkit: maintenance and litigation expenses during proceedings (section 24), a gross sum or periodical payments at or after the decree (section 25), orders for children (section 26) and the disposal of property presented at marriage (section 27). Sections 24 and 25 are gender-neutral in form, so a husband with no independent income may also claim. Outside the Act, a wife may claim maintenance under section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and monetary relief and residence under the Protection of Women from Domestic Violence Act, 2005.[16] The Supreme Court has supplied the detail. *Rajnesh v. Neha* prescribed a standard affidavit of assets, income and liabilities, addressed overlapping claims, and directed maintenance from the date of application.[17] For permanent alimony there is no formula. Courts weigh status, income, the wife's needs and accustomed standard of life, employment sacrifices for the family and the husband's capacity,[18] and the aim is a decent standard of living for the dependent spouse, not punishment of the other.[19]

Five gaps remain. First, the standards are judge-made: the statute gives only a general discretion, and the Court itself calls its factors guidelines and not a rigid rubric. Second, disclosure is still a battle. In *Parvin Kumar Jain* the Family Court found the husband evasive about his income and assets and the High Court recorded selective disclosure,[20] yet the Act attaches no consequences to non-disclosure. Third, there is no matrimonial property regime. Ownership generally follows title, so a wife's unpaid domestic and care work has no direct legal counterpart, and alimony must do work that a property regime would do elsewhere.

Fourth, timing and enforcement. A decree can be granted while money questions are open, and enforcing an order can take years. There is a further point that is easy to miss: today the veto under section 13B works informally as protection, because without the dependent spouse's signature the divorce does not happen. A ground that needs no consent removes that leverage, and the law must replace it with something formal. Fifth, section 25(3) allows an order to be varied if a recipient wife has not remained chaste,[21] a standard of sexual conduct that sits badly

[16]HINDU MARRIAGE ACT, 1955 §§ 24–27; Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 144 (India); Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, §§ 17, 20 (India).
[17]*Rajnesh v. Neha*, (2021) 2 SCC 324 (India).
[18]*Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 (India); *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 (India).
[19]*Parvin Kumar Jain*, 2024 INSC 961 (reiterating *Kiran Jyot Maini*, 2024 INSC 530).
[20]*Parvin Kumar Jain*, 2024 INSC 961 (describing the factors as guidelines and not a "straitjacket rubric", and recounting the findings of the Family Court and the Delhi High Court on non-disclosure).
[21]Hindu Marriage Act, 1955 § 25(3).

with a reform meant to move away from blame.

VII. A PROPOSED MODEL

A workable reform would treat the ground and the safeguards as one package, building on the 2010 and 2013 Bills, the Court's Article 142 practice and the comparative experience above.

1. **The ground.** Either spouse may petition on the ground that the marriage has irretrievably broken down, shown by three years of continuous living apart, following the 71st Report and the 2010 Bill. The court keeps discretion to refuse if the marriage has not in fact broken down, and must examine why the parties separated and whether the petitioner engineered it. "Living apart" should be read realistically, since many couples cannot afford separate homes, with the burden on the petitioner.
2. **Conciliation and disclosure.** One structured, time-bound attempt at mediation, with the outcome recorded, and the *Rajnesh* affidavit made a statutory filing for both spouses, with stated consequences for non-disclosure, including adverse inferences, costs and a power to reopen orders on later proof of concealment.
3. **A two-stage decree.** Once the ground is made out, a conditional decree becomes absolute only when the court is satisfied that its orders for the spouse and the children, including education through the period of dependency, are in place. To stop a payer from holding the decree hostage, the court should accept security in place of immediate payment, such as a charge on property, a deposit in court or a guarantee.
4. **A hardship provision that secures instead of blocks.** The idea behind proposed section 13D is sound, but dismissal restores the very trap the reform removes. A respondent who shows grave financial hardship should obtain a stay until arrangements eliminate it, with dismissal only in exceptional cases. The provision should be gender-neutral, as sections 24 and 25 are, while directing courts to weigh career sacrifice and unpaid care work.
5. **Statutory factors and property.** Section 25 should list the factors from *Rajnesh* and *Kiran Jyot Maini*, recognize non-financial contributions and the duration of the marriage, and state that alimony is support and not punishment. Courts should have a factor-based, rebuttable power to order an equitable share in property acquired during the marriage, whoever holds title; a rigid equal-division rule would suit neither India's property tradition nor very short marriages. The chastity condition in section 25(3) should be deleted.

6. **Enforcement.** Alimony orders should be enforceable as decrees, with a statutory charge on identified property, attachment of income, interest on arrears and periodic review.
7. **Prospective operation and review.** The ground should apply to petitions filed after commencement, and Parliament should require a review after a fixed period, using outcome data collected by family courts on separation periods, financial orders and compliance. Since this paper rests on doctrinal analysis and not on data, such a review is the honest way to test its assumptions.

Two objections are foreseeable. A two-stage decree may seem to lengthen what the ground should shorten, but delay arises only from non-compliance, which security limits. A hardship plea may invite delay by a wealthy respondent, but on this model it postpones the final decree without defeating it. None of this works unless family courts have the judges, mediators and registries to match.

VIII. CONCLUSION

The debate over irretrievable breakdown is often framed as a contest between the freedom to leave a failed marriage and the protection of a spouse who would be left worse off. That framing misleads. The two are compatible if the law is drafted to secure both, and the Supreme Court has already shown that it can dissolve a marriage and fix a fair financial settlement in one order. What it cannot do now is offer that to most people. Parliament stopped in 2010 and 2013 partly because the safeguards were unsettled. They are easier to specify today, with a mature body of alimony principles, an affidavit of disclosure and comparative experience to draw on. The recommendation is therefore conditional but firm: make irretrievable breakdown a statutory ground under the HINDU MARRIAGE ACT, 1955, but do not let a decree become final until the court is satisfied that those affected can live on their own terms. Done that way, reform will not be about letting people walk out of marriages more easily. It will be about treating them fairly on the way out.

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