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A DOCTRINAL STUDY OF THE CONVERGENCE BETWEEN MATRIMONIAL CRUELTY AND THE BREAKDOWN THEORY UNDER INDIAN LAWS

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I. ABSTRACT

*Marriage under Indian law has traditionally been understood as a sacrament and a status relationship rather than a dissoluble contract. The fault theory of divorce, inherited largely from English ecclesiastical law and codified in the Hindu Marriage Act, 1955 and allied matrimonial statutes, required a petitioner to prove a specific matrimonial offence adultery, desertion, or cruelty before a decree of divorce could be granted. Over the last five decades, however, the ground of cruelty has undergone a remarkable judicial transformation. Courts have progressively expanded the concept of “mental cruelty” to absorb within its situations where a marriage has, for all practical purposes, ceased to exist, even though no single act of the parties satisfies the classical, discrete definition of a matrimonial wrong. This paper traces that transformation and argues that cruelty, as judicially interpreted in India, has become the principal doctrinal vehicle through which courts recognise and give effect to the “irretrievable breakdown of marriage” theory a theory that Parliament has, despite repeated recommendations of the Law Commission of India, declined to enact as an independent statutory ground. The paper examines the statutory framework governing cruelty across personal laws, surveys the leading Judicial pronouncements from *Dastane v. Dastane* to *Shilpa Sailesh v. Varun Sreenivasan*, and critically evaluates the Supreme Court's use of Article 142 of the Constitution to dissolve marriages that are dead in substance though alive in law. It concludes by arguing for a calibrated legislative reform that would codify irretrievable breakdown as a distinct ground, subject to safeguards protecting the economically weaker spouse,*

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so that litigants need not rely on the judicial fiction of stretching “cruelty” to do the work that the breakdown principle was designed to do.

II. KEYWORDS

Matrimonial offences, Personal laws, Cruelty, Law Commission of India, Judicial pronouncements.

III. INTRODUCTION

The institution of marriage occupies a position of singular importance in Indian social and legal life. For centuries, Hindu law treated marriage as a sacrament, an indissoluble union solemnised for spiritual and social ends rather than a contract terminable at the will of the parties.² Muslim law, by contrast, always recognised marriage as a civil contract, and Islamic personal law has historically permitted dissolution through talaq, khula, and judicial process under the Dissolution of Muslim Marriages Act, 1939.³ The codification of Hindu personal law in the mid-1950s, and in particular the enactment of the Hindu Marriage Act, 1955, marked a decisive shift: for the first time, divorce was introduced as a legally sanctioned mode of terminating a Hindu marriage, albeit within the strict confines of the fault theory.⁴

Under the fault theory, a marriage could be dissolved only if one spouse could establish that the other had committed a specific matrimonial offence recognised by statute. Cruelty, along with adultery and desertion, was one such offence. The underlying assumption was that an “innocent” spouse ought to be permitted to escape a marriage tainted by the “guilt” of the other, while the guilty party could not, as a rule, take advantage of his or her own wrong to secure relief.⁵ This model worked reasonably well

²Paras Diwan, *Modern Hindu Law* 87-90 (24th ed. 2022).

³The Dissolution of Muslim Marriages Act, No. 8 of 1939, INDIA CODE; see Flavia Agnes, *Family Law Vol. 1: Family Laws and Constitutional Claims* 91-95 (2011).

⁴The Hindu Marriage Act, No. 25 of 1955, INDIA CODE; see Werner F. Menski, *Hindu Law: Beyond Tradition and Modernity* 397-402 (2003).

⁵The Hindu Marriage Act, No. 25 of 1955, § 23(1)(a), INDIA CODE.

so long as marital breakdown could be traced to an identifiable delinquency. It proved increasingly inadequate, however, in the vast range of cases where a marriage had simply ceased to function – where the parties had drifted into mutual incompatibility, prolonged separation, or an accumulation of small resentments that, taken individually, satisfied no single statutory ground, but which, taken together, rendered any prospect of cohabitation illusory.

It is precisely in this interstitial space that the ground of cruelty has performed an unusual doctrinal function in India. Originally conceived narrowly – requiring proof of conduct that endangered life, limb, or health, or created a reasonable apprehension of such danger cruelty has, through successive judicial pronouncements, been reinterpreted to include a wide and open-ended category described as ‘mental cruelty.’ Mental cruelty, unlike its physical counterpart, does not require a single dramatic act; it can be established by a course of conduct, an accumulation of incidents, or even a state of prolonged and complete estrangement, provided the cumulative effect is such that continued cohabitation has become impossible.⁶

In effect, Indian courts have used the elastic concept of mental cruelty as an instrument for granting dissolution in situations that, from a comparative and policy perspective, would properly be characterised as instances of irretrievable breakdown of marriage. This paper examines that convergence. Part II situates the concept of cruelty within its historical and comparative context. Part III sets out the statutory architecture governing cruelty as a ground for divorce and judicial separation across the principal personal law statutes in India.

Part IV traces the judicial evolution of the concept from the early jurisprudence of the Supreme Court to the most recent pronouncements, demonstrating how the threshold and content of “mental cruelty” have shifted over time. Part V examines the doctrine of irretrievable breakdown of marriage as an independent juristic concept, its treatment by

⁶*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, p. 101.

the Law Commission of India, and the reasons for legislative inertia. Part VI analyses the doctrinal convergence between cruelty and irretrievable breakdown, showing how courts most notably in *Naveen Kohli v. Neelu Kohli*⁷ and *Samar Ghosh v. Jaya Ghosh*⁸ have used findings of cruelty as the springboard for recognising breakdown, and how the Supreme Court's Constitution Bench in *Shilpa Sailesh v. Varun Sreenivasan*⁹ has now placed the breakdown principle on an independent constitutional footing through Article 142. Part VII considers the constitutional dimension of this development in greater depth. Part VIII offers a brief comparative perspective, drawing on English and other Commonwealth experience. Part IX critically evaluates the current position and argues for legislative reform, and Part X concludes.

The central thesis advanced in this paper is that the judicial expansion of cruelty in India has not occurred in a doctrinal vacuum. It has occurred precisely because Parliament has, for over four decades, declined to act upon the considered recommendation of the Law Commission of India to introduce irretrievable breakdown as an independent statutory ground for divorce.¹⁰ Faced with genuinely dead marriages and a statutory scheme that offers no direct route to dissolution in the absence of a discrete matrimonial offence, courts have had little option but to locate the substance of breakdown within the elastic language of “cruelty.” This has produced doctrinal gains a humane, fact-sensitive jurisprudence responsive to lived marital experience but also costs, including unpredictability, forum-dependence, and the awkward legal fiction of treating the plain fact of estrangement as if it were itself a species of cruelty.

A. Research Objectives

The present study is guided by the following objectives:

⁷*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

⁸*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

⁹*Shilpa Sailesh v. Varun Sreenivasan*, (2023) 4 SCC 692.

¹⁰Law Comm’n of India, Rep. No. 71, The Hindu Marriage Act, 1955 Irretrievable Breakdown of Marriage as a Ground of Divorce (1978).

1. To trace the historical and doctrinal evolution of cruelty as a ground for matrimonial relief under Indian personal laws.
2. To examine the judicial expansion of mental cruelty and its gradual convergence with the doctrine of irretrievable breakdown of marriage.
3. To analyse the role of Article 142 of the Constitution of India in enabling the Supreme Court to dissolve marriages that are dead in substance though formally subsisting in law.
4. To evaluate the need for legislative reform by codifying irretrievable breakdown of marriage as an independent statutory ground for divorce, subject to appropriate safeguards for the economically weaker spouse.

B. Research Questions

The paper seeks to address the following research questions:

1. To what extent has the judicial interpretation of cruelty in Indian matrimonial law absorbed the principle of irretrievable breakdown of marriage?
2. Whether the use of mental cruelty as a judicial route to dissolve irretrievably broken marriages creates doctrinal uncertainty within the fault-based divorce framework?
3. Whether Article 142 of the Constitution provides an adequate substitute for legislative recognition of irretrievable breakdown of marriage as an independent ground for divorce?

C. Research Methodology

This paper adopts a doctrinal and analytical legal research methodology. It relies primarily on statutory provisions contained in Indian matrimonial laws, including the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, and the Dissolution of Muslim Marriages Act, 1939.

It also analyses leading judicial decisions of the Supreme Court of India and relevant High Courts on matrimonial cruelty, mental cruelty, irretrievable breakdown of marriage, and the exercise of powers under Article 142 of the Constitution. The study further draws upon Law Commission of India reports and comparative legal materials from England, Australia, and the United States to evaluate the Indian position and to support the case for calibrated legislative reform.

IV. THE CONCEPTUAL AND HISTORICAL FOUNDATIONS OF CRUELTY IN MATRIMONIAL LAW

A. Cruelty Under English Ecclesiastical and Common Law

The concept of cruelty as a matrimonial wrong originates in English ecclesiastical law, where it was historically confined to conduct that endangered life, limb, or health, giving rise to a well-founded apprehension of danger.¹¹ The classic formulation, associated with the judgment in *Russell v. Russell*, required proof of actual or apprehended physical injury; mere incompatibility of temperament, unhappiness, or the ordinary “wear and tear” of married life fell outside its scope.¹²

English courts subsequently softened this rigid physical-injury standard, particularly in cases such as *Gollins v. Gollins*¹³ and *Sheldon v. Sheldon*¹⁴, both of which are cited with approval by the Indian Supreme Court in its own exposition of the doctrine. Lord Denning's observation in *Sheldon v. Sheldon*, that “the categories of cruelty are not closed,” has been repeatedly invoked by Indian courts to justify an evolving, non-exhaustive understanding of the concept.¹⁵

¹¹*Russell v. Russell*, [1897] A.C. 395, 455-58 (H.L.) (appeal taken from Eng.).

¹²*Id.*; see Nomita Aggarwal, *Family Law in India* 143-45 (2018).

¹³*Gollins v. Gollins*, [1964] A.C. 644 (H.L.) (appeal taken from Eng.), cited in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, p 47.

¹⁴*Sheldon v. Sheldon*, [1966] 2 All E.R. 257 (Eng. C.A.), cited in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, p 48.

¹⁵*Sheldon v. Sheldon*, [1966] 2 All E.R. 257, 259 (Eng. C.A.).

B. Transplantation into Indian Personal Law

When cruelty was incorporated into the Hindu Marriage Act, 1955 as a ground first for judicial separation and, after the 1976 Amendment, for divorce as well, Indian courts initially adhered closely to the English standard, requiring proof of danger to life, limb, or health.¹⁶ The watershed came with the Supreme Court's decision in *Dr. N.G. Dastane v. Mrs. S. Dastane*, where Chandrachud, J. (as he then was) laid down the test that has governed the field ever since: the conduct complained of must be such as to cause in the mind of the petitioner a reasonable apprehension that it would be harmful or injurious to live with the respondent.¹⁷

Importantly, the Dastane test does not require proof beyond reasonable doubt, as in a criminal proceeding; it requires proof on a preponderance of probabilities, tempered by the gravity and weight of the allegations.¹⁸ The Court in Dastane also cautioned that “trivialities” and the “reasonable wear and tear of married life” must be ignored, and that spouses “take each other for better or worse.”¹⁹

C. From Physical Danger to Psychological Injury

The most significant conceptual shift in Indian matrimonial jurisprudence has been the recognition that cruelty need not be physical at all. In *Shobha Rani v. Madhukar Reddi*, the Supreme Court held that cruelty may be “mental or physical, intentional or unintentional,” and that while physical cruelty is comparatively easy to establish through direct evidence, mental cruelty is inherently a matter of inference to be drawn from the entire conduct of the parties and its effect upon the complaining spouse.²⁰

The Court further observed that there has been a “marked change” in social and marital life, and that courts should not search for rigid or dated standards while appreciating

¹⁶The Hindu Marriage Act, No. 25 of 1955, § 10 (as originally enacted), INDIA CODE.

¹⁷*Dr. N.G. Dastane v. Mrs. S. Dastane*, (1975) 2 SCC 326, 30.

¹⁸*Id.* pp. 23-24.

¹⁹*Id.* p55.

²⁰*Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105, p 4.

what constitutes mental cruelty in a given case.²¹ This inferential, fact-sensitive, and non-formulaic approach has since become the settled methodology of Indian courts, and it is this very methodology that has permitted the ground of cruelty to expand so as to encompass situations of pure marital breakdown.

V. STATUTORY FRAMEWORK GOVERNING CRUELTY AS A GROUND FOR MATRIMONIAL RELIEF

A. The Hindu Marriage Act, 1955

Section 13(1)(i-a) of the Hindu Marriage Act, 1955, inserted by the Marriage Laws (Amendment) Act, 1976, permits either spouse to present a petition for divorce on the ground that the other party “has, after the solemnization of the marriage, treated the petitioner with cruelty.”²² Prior to the 1976 Amendment, cruelty was available only as a ground for judicial separation under the original Section 10, and the statute additionally required that the petitioner's life, limb, or health be in danger, or that there be a reasonable apprehension of such danger a codification of the older English standard.²³

The 1976 Amendment deliberately removed this qualifying language, leaving the word “cruelty” undefined, so as to confer upon courts the interpretative latitude necessary to respond to the full diversity of marital conduct.²⁴ Section 23(1)(a) of the Act operates as an important check upon this latitude: relief cannot be granted to a petitioner who is “taking advantage of his or her own wrong,” thereby preserving a residual fault-based logic even within an increasingly liberal cruelty jurisprudence.²⁵

B. The Special Marriage Act, 1954

²¹Id. pp.5-6.

²²The Hindu Marriage Act, No. 25 of 1955, § 13(1) (i-a), INDIA CODE, as inserted by the Marriage Laws (Amendment) Act, No. 68 of 1976, INDIA CODE.

²³The Hindu Marriage Act, No. 25 of 1955, § 10(1)(b) (as originally enacted), INDIA CODE.

²⁴See Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558, p. 47.

²⁵The Hindu Marriage Act, No. 25 of 1955, § 23(1)(a), INDIA CODE.

Parallel provision exists in Section 27(1)(d) of the Special Marriage Act, 1954, which governs marriages solemnised outside personal-law systems, including inter-religious and civil marriages. As in the Hindu Marriage Act, cruelty under the Special Marriage Act is undefined, and courts have applied the same interpretative principles developed under the 1955 Act a point of some interpretive convenience, since a number of leading cruelty decisions, including *Samar Ghosh v. Jaya Ghosh*, arose out of marriages solemnised under the Special Marriage Act.²⁶

C. The Indian Divorce Act, 1869

The Indian Divorce Act, 1869, which governs the dissolution of Christian marriages, was substantially amended in 2001 to bring it into closer alignment with the Hindu Marriage Act and the Special Marriage Act. Section 10(1)(x) of the amended Act now permits a decree of divorce where one spouse “has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the other party.”²⁷ Notably, this statutory language directly reproduces the *Dastane* test, illustrating how judicial articulation of the standard for cruelty under Hindu law came, in time, to inform legislative drafting under other personal law statutes.

D. The Parsi Marriage and Divorce Act, 1936

Section 32(dd) of the Parsi Marriage and Divorce Act, 1936, as amended, similarly permits divorce on the ground that the defendant has treated the plaintiff with cruelty, subject to a limitation period and to the same broad principle that cruelty need not be physical to be actionable.²⁸

E. The Dissolution of Muslim Marriages Act, 1939

²⁶The Special Marriage Act, No. 43 of 1954, § 27(1)(d), INDIA CODE; *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, p. 2.

²⁷The Indian Divorce Act, No. 4 of 1869, § 10(1)(x), INDIA CODE (as amended by the Indian Divorce (Amendment) Act, No. 51 of 2001).

²⁸The Parsi Marriage and Divorce Act, No. 3 of 1936, § 32(dd), INDIA CODE.

Muslim personal law in India accommodates cruelty through a different statutory route. Section 2(viii) of the Dissolution of Muslim Marriages Act, 1939 entitles a Muslim wife to a decree dissolving her marriage where the husband treats her with cruelty, and the provision enumerates specific instances habitual assault, association with women of ill repute, forcing an un-Islamic mode of life, disposing of her property, obstructing her religious observance, and failure to treat her equitably among co-wives in accordance with the Quranic injunction which are deemed to constitute cruelty for this purpose.²⁹

Unlike the open-textured formulations found in the Hindu Marriage Act and the Special Marriage Act, the 1939 Act adopts an illustrative, quasi-exhaustive drafting technique, though Indian courts have generally construed the enumerated grounds liberally and have permitted the underlying rationale of the provision protection of the wife from an intolerable marital environment to inform its application.

F. Overlapping Criminal and Civil Remedies

The civil concept of matrimonial cruelty operates alongside, and is analytically distinct from, cruelty as a criminal offence. Section 498-A of the Indian Penal Code, 1860 (now substantially re-enacted as Section 85 read with Section 86 of the Bharatiya Nyaya Sanhita, 2023³⁰) criminalises “cruelty” by a husband or his relatives towards a married woman, defined to include wilful conduct likely to drive the woman to suicide or to cause grave injury, as well as harassment connected with an unlawful demand for property or dowry.³¹

Additionally, the Protection of Women from Domestic Violence Act, 2005 defines “domestic violence” in Section 3 to encompass physical, sexual, verbal, emotional, and economic abuse, and provides civil remedies protection orders, residence orders, and monetary relief independent of, and without prejudice to, any matrimonial proceeding.³²

²⁹The Dissolution of Muslim Marriages Act, No. 8 of 1939, § 2(viii), INDIA CODE.

³⁰The Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 85-86, INDIA CODE.

³¹The Indian Penal Code, No. 45 of 1860, § 498-A, INDIA CODE (repealed 2023).

³²The Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3, INDIA CODE.

While these statutes serve distinct protective and remedial purposes, findings recorded in criminal or domestic-violence proceedings frequently inform, and are sometimes relied upon by, civil courts adjudicating a matrimonial cruelty petition, particularly where a pattern of harassment or false accusation is in issue.³³

G. Procedural Safeguards: Condonation, Connivance, and Collusion

The liberalisation of the substantive concept of cruelty has not been accompanied by any dilution of the procedural safeguards that historically attended fault-based matrimonial relief. Section 23(1) of the Hindu Marriage Act, 1955 requires the court, before granting any decree, to satisfy itself that the petitioner is not taking advantage of his or her own wrong, that the petition is not the result of collusion between the parties, and specifically in relation to cruelty that the petitioner has not condoned the cruelty alleged.³⁴

Condonation, as explained in *Dastane v. Dastane*, involves both a forgiveness of the matrimonial offence and a restoration of the offending spouse to his or her original marital position, typically evidenced by resumption of cohabitation with knowledge of the relevant conduct; condonation is, however, always conditional, and revives upon repetition of cruelty or commission of a further matrimonial offence.³⁵ These procedural filters continue to operate even within the expanded, breakdown-inflected conception of mental cruelty, and courts have on occasion declined relief, notwithstanding a finding that a marriage has functionally broken down, where the decree sought would in substance reward the petitioner's own matrimonial misconduct.³⁶

The persistence of these safeguards illustrates that the convergence traced in this paper has not produced a wholesale abandonment of fault principles; rather, it has produced a

³³See *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226, 44-49.

³⁴The Hindu Marriage Act, No. 25 of 1955, § 23(1)(a)-(c), INDIA CODE.

³⁵*Dr. N.G. Dastane v. Mrs. S. Dastane*, (1975) 2 SCC 326, 57-63.

³⁶See *id.* 60-63 (discussing the conditional and revivable character of condonation).

hybrid regime in which fault-based procedural filters continue to operate upon an increasingly breakdown-oriented substantive standard.

VI. JUDICIAL INTERPRETATION OF CRUELTY: EVOLUTION THROUGH CASE LAW

A. *Dastane v. Dastane*: Laying the Foundational Test

The starting point of modern Indian cruelty jurisprudence remains *Dr. N.G. Dastane v. Mrs. S. Dastane*.³⁷ The husband, an agricultural scientist, sought judicial separation alleging that his wife's conduct including her hostility towards his family, her intemperate language, and threats of self-harm amounted to cruelty. The Supreme Court held that the standard of proof in matrimonial cases is the ordinary civil standard of preponderance of probability, not the criminal standard of proof beyond reasonable doubt, though the degree of probability required would vary with the gravity of the allegation.³⁸

More significantly, the Court articulated what remains the touchstone test: whether the conduct is of such a character as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious to live with the respondent.³⁹ The Court simultaneously cautioned against treating the ordinary friction and irritation of married life as cruelty, observing that spouses must be taken to accept each other “for better or worse.”⁴⁰ *Dastane* thus performed a dual function: it liberalised the standard of proof, while retaining a meaningful threshold of gravity a balance that later decisions would recalibrate, generally in the direction of a lower threshold.

B. *Shobha Rani v. Madhukar Reddi*: The Turn Towards Mental Cruelty

³⁷*Dr. N.G. Dastane v. Mrs. S. Dastane*, (1975) 2 SCC 326.

³⁸*Id.* pp. 23-27.

³⁹*Id.* p 30.

⁴⁰*Id.* p 55.

In *Shobha Rani v. Madhukar Reddi*, the Supreme Court dealt with a case involving persistent demands for dowry. The Court held that the word “cruelty” in Section 13(1)(i-a) has “no fixed definition,” and that it may be physical or mental.⁴¹ Crucially, the Court held that where cruelty is mental, direct evidence is often unavailable, and courts must draw an inference from the entirety of the parties’ conduct and its impact on the complaining spouse; conduct that is inherently reprehensible may itself justify an inference of cruelty without independent proof of its effect.⁴² The Court also observed that a persistent demand for dowry, accompanied by harassment, would itself amount to cruelty, thereby linking the doctrinal category of mental cruelty to the broader social phenomenon of dowry-related harassment then engaging legislative attention.⁴³

C. V. Bhagat v. D. Bhagat: Cruelty and the Threshold of Intolerability

In *V. Bhagat v. D. Bhagat*, the Supreme Court considered a case in which the wife had made allegations, in her written statement, that the husband was suffering from a mental disorder and that his family had a history of insanity. The Court held that such reckless and unsubstantiated allegations of a defamatory character, made in judicial pleadings, themselves constituted mental cruelty of a serious kind.⁴⁴ The Court articulated the test in terms that have since become canonical: mental cruelty is that conduct which inflicts upon the other party such mental pain and suffering as would make it not reasonably possible for that party to continue to live with the other, having regard to the social status, educational level, and the milieu in which the parties live.⁴⁵

Notably, the Bench in *V. Bhagat* also granted a decree of divorce on facts that, in substance, disclosed an irretrievably broken marriage, observing that continuing the marital tie merely because no formal ground was technically established would be an

⁴¹*Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105, p 4.

⁴²*Id.* p 4(a)-(b).

⁴³*Id.* pp 9-10.

⁴⁴*V. Bhagat v. D. Bhagat*, (1994) 1 SCC 337, pp.16-18.

⁴⁵*Id.* p 16.

exercise in futility, causing cruelty to both parties.⁴⁶ This is among the earliest instances of the Supreme Court explicitly acknowledging that prolonging a dead marriage is itself a species of cruelty a conceptual bridge between the discrete matrimonial offence of cruelty and the broader, breakdown-oriented rationale that would come to dominate later jurisprudence.

D. Vijay Kumar Ramchandra Bhate, Chetan Dass, and the Consolidation of Mental Cruelty

Through the 1990s and 2000s, the Supreme Court and various High Courts progressively broadened the range of conduct recognised as amounting to mental cruelty: false and reckless allegations of unchastity or adultery made in pleadings or in public;⁴⁷ persistent nagging, humiliation, or indifference; unilateral and unjustified refusal of conjugal relations or of the desire to have children; prolonged, unexplained desertion; and repeated filing of false criminal complaints designed to harass a spouse or the spouse's family.⁴⁸

The consistent thread running through this body of case law is the Court's insistence that mental cruelty cannot be reduced to a checklist; it must be assessed holistically, in light of the entire matrimonial history of the parties, their social and educational background, and the cumulative psychological impact of the respondent's conduct.⁴⁹

E. Samar Ghosh v. Jaya Ghosh: The Illustrative Catalogue

The most influential modern authority on mental cruelty is *Samar Ghosh v. Jaya Ghosh*, decided by a three-judge Bench of the Supreme Court in 2007.⁵⁰ The parties, both senior officers of the Indian Administrative Service, had married under the Special Marriage

⁴⁶Id. 20-22.

⁴⁷*Vijay Kumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, (2003) 6 SCC 334, pp 13-16.

⁴⁸*Chetan Dass v. Kamla Devi*, (2001) 4 SCC 250, 15-16; *A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22, pp 10-12.

⁴⁹*A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22, p10.

⁵⁰*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

Act, 1954. The husband alleged that the wife's persistent coldness, her unilateral decision not to have children, her refusal of physical relations without justification, and prolonged separation amounted to mental cruelty.

Reversing the High Court, the Supreme Court granted the decree of divorce and, in doing so, undertook an extensive comparative survey of English, American, Canadian, and Australian authority on the meaning of cruelty.⁵¹ The Court reiterated that “no uniform standard can ever be laid down for guidance” in matters of mental cruelty and that “there can be no straight-jacket formula” for its determination; mere trivial irritations, ordinary quarrels, and the normal wear and tear of married life would not suffice.⁵²

At the same time, the Court proceeded to lay down an illustrative expressly non-exhaustive list of circumstances that might constitute mental cruelty, including sustained, unjustifiable conduct causing such mental pain and suffering that it would be impossible for the parties to continue living together; conduct which, on a comprehensive appraisal of the entire matrimonial life, makes it unreasonable to expect the wronged party to continue cohabiting with the other; persistent refusal to have marital relations without a valid or medical reason; unilateral decisions on reproductive matters, such as refusal to have children, contrary to the wishes of the other spouse; and most significantly for the purposes of this paper a situation where the parties have been living separately for a substantial period of time with no possibility of reconciliation, such that continuation of the marital tie would itself amount to cruelty.⁵³

The Samar Ghosh catalogue is significant precisely because it collapses the distinction between “cruelty” in the classical, discrete sense and “irretrievable breakdown” in the broader systemic sense: prolonged separation and the death of the marital relationship

⁵¹Id. pp 40-75 (surveying English, American, Canadian, and Australian authority).

⁵²Id. pp 76-77.

⁵³Id. p101(ii)-(xiv) (setting out the illustrative, non-exhaustive catalogue of circumstances constituting mental cruelty, including prolonged separation without possibility of reconciliation).

are, on the Court's own formulation, themselves instances of mental cruelty, entitling the petitioner to a decree of divorce.

F. K. Srinivas Rao v. D.A. Deepa and Subsequent Refinement

In *K. Srinivas Rao v. D.A. Deepa*, the Supreme Court held that the filing of false, unsubstantiated criminal complaints by a wife against her husband, followed by a long period of estrangement, constituted mental cruelty entitling the husband to a decree of divorce, notwithstanding that the wife had not been shown to be independently at fault for the initial breakdown.⁵⁴ The Court explicitly invoked its power under Article 142 of the Constitution to grant a decree of divorce by converting a mutual consent framework, recognising that continuation of an acrimonious and hopelessly broken marriage served no useful social purpose.⁵⁵

Subsequent decisions, including *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*⁵⁶ and *Manisha Tyagi v. Deepak Kumar*,⁵⁷ have reaffirmed and applied the *Samar Ghosh* framework, with courts increasingly comfortable treating long-term separation, mutual estrangement, and the practical impossibility of reconciliation as constitutive of mental cruelty rather than as a separate and independent factual matrix requiring distinct legal recognition.

G. Naveen Kohli v. Neelu Kohli: Cruelty, Breakdown, and the Call for Legislative Reform

If *Samar Ghosh* represents the doctrinal high-water mark of mental cruelty as a capacious, breakdown-absorbing category, *Naveen Kohli v. Neelu Kohli* represents the moment at which the Supreme Court most directly confronted the tension between the fault-based statutory scheme and the reality of dead marriages.⁵⁸ The parties had been

⁵⁴*K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226, pp 21-28.

⁵⁵*Id.* pp 45-49.

⁵⁶*Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, pp24-31.

⁵⁷*Manisha Tyagi v. Deepak Kumar*, (2010) 4 SCC 339, pp18-22.

⁵⁸*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

married in 1975 and had three children; over time, the relationship deteriorated into mutual acrimony, marked by a series of criminal complaints filed by the wife, a public notice issued by her disparaging the husband, and prolonged separation exceeding a decade.⁵⁹

The husband was granted a divorce on the ground of cruelty by the trial court, a decision reversed by the High Court and ultimately restored by the Supreme Court. In restoring the decree, the Court found that the wife's conduct including the multiplicity of litigation and public humiliation of the husband amounted to cruelty within the meaning of Section 13(1)(i-a).⁶⁰ The Court went further, however, and addressed the broader problem directly: it observed that “a marriage that is dead for all purposes cannot be revived by a judicial verdict,” and that once a marriage has broken down beyond repair, it would be “unrealistic for the law not to take notice of that fact,” since to compel parties to remain formally bound in such circumstances would be “harmful to society and injurious to the interests of the parties.”⁶¹

The Court extensively reviewed the 71st Report of the Law Commission of India, submitted in April 1978, which had recommended the introduction of irretrievable breakdown of marriage as an independent ground for divorce, and noted that despite this recommendation and despite the passage of nearly three decades, Parliament had taken no action.⁶² The Court accordingly recommended that Parliament give serious and urgent consideration to amending the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown as a distinct statutory ground, while granting the decree of divorce in the case before it on the ground of cruelty.⁶³

⁵⁹Id. pp 2-10.

⁶⁰Id. pp55-60.

⁶¹Id. p 62.

⁶²Id. pp 63-70 (discussing Law Comm'n of India, Rep. No. 71 (1978)).

⁶³Id. pp 74-79.

Naveen Kohli is thus a paradigmatic illustration of the phenomenon this paper identifies: a marriage whose defining and dispositive characteristic was breakdown, resolved by the Court through the vehicle of cruelty, accompanied by an explicit judicial acknowledgment that the statutory category being invoked was, in substance, a proxy for a ground Parliament had not enacted.

H. Gender Dimensions of the Cruelty Jurisprudence

Any assessment of the cruelty jurisprudence must reckon with its gendered dimensions. Historically, the ground of cruelty has served a vital protective function for wives subjected to physical violence, dowry-related harassment, and other forms of domestic abuse, and the Supreme Court's decision in *Shobha Rani v. Madhukar Reddi* is itself illustrative of this protective lineage, arising as it did out of persistent dowry demands.⁶⁴ At the same time, the expansion of mental cruelty to include matters such as unilateral refusal to bear children, filing of criminal complaints subsequently found to be false, or public assertions damaging to a spouse's reputation, has generated a body of case law in which husbands have increasingly succeeded in obtaining divorce decrees against wives, on the footing that the wife's resort to legal process itself constituted cruelty.⁶⁵

Feminist legal scholars have cautioned that this trend risks discouraging genuine complainants from approaching courts or law enforcement for fear that an unsuccessful or partially substantiated complaint may later be characterised as “cruelty” justifying dissolution of the marriage to their disadvantage, particularly given the continuing economic vulnerability of many Indian wives upon divorce.⁶⁶ This tension underscores the importance, emphasised in Part IX below, of coupling any expansion or codification of breakdown-based relief with robust, non-discretionary financial safeguards for the economically weaker spouse.

⁶⁴*Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105, pp 8-10.

⁶⁵*K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226, pp 21-28.

⁶⁶Flavia Agnes, *Family Law Vol. 1: Family Laws and Constitutional Claims* 220-27 (2011).

I. Synthesis: The Doctrinal Trajectory

Read together, this line of authority discloses a clear trajectory. Dastane established a workable but comparatively demanding threshold rooted in “reasonable apprehension” of harm. Shobha Rani and V. Bhagat opened the category of mental cruelty to inferential and holistic assessment, untethered from any requirement of physical danger. Samar Ghosh systematised this inferential approach into an illustrative catalogue that expressly includes prolonged separation and the practical impossibility of reconciliation. Naveen Kohli made explicit what Samar Ghosh had left implicit: that courts were, in substance, using cruelty to grant relief in cases that were properly cases of irretrievable breakdown, and that this was a second-best judicial solution to a first-best legislative problem that Parliament had failed to solve.

VII. THE DOCTRINE OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE

A. Conceptual Basis

Irretrievable breakdown of marriage is a “no-fault” ground for divorce, resting on the premise that where a marriage has, as a matter of fact, ceased to serve any of its social, emotional, or relational functions, and where there is no reasonable probability of the parties resuming cohabitation, the law should permit dissolution without requiring proof that either party is to “blame.”⁶⁷ The doctrine represents a fundamental departure from the fault theory: it looks not backward, at the conduct of the parties, but forward, at the viability of the marital relationship.

England adopted a modified version of the breakdown principle in the Divorce Reform Act 1969 (subsequently consolidated in the Matrimonial Causes Act 1973), under which irretrievable breakdown became the sole ground for divorce, evidenced by one of five specified facts, including adultery, unreasonable behaviour, desertion, and separation for

⁶⁷Law Comm’n of India, Rep. No. 71, at 5-9 (1978).

a specified period.⁶⁸ Several other common law jurisdictions, including Australia (under the Family Law Act 1975) and a majority of jurisdictions in the United States, have similarly moved to breakdown-based or no-fault divorce regimes.⁶⁹

B. The Law Commission of India's 71st Report (1978)

The Law Commission of India first examined this question in detail in its 71st Report, titled “The Hindu Marriage Act, 1955 Irretrievable Breakdown of Marriage as a Ground of Divorce,” submitted to the Government on 7 April 1978.⁷⁰ The Commission concluded that restricting divorce to specific matrimonial offences caused genuine injustice to spouses who, through no identifiable fault of either party, found themselves trapped in marriages that had ceased to function in any meaningful sense.

It recommended that irretrievable breakdown be introduced as an independent ground for divorce under the Hindu Marriage Act, generally to be evidenced by a minimum period of separation, and recommended the incorporation of safeguards to protect the interests of the financially weaker spouse typically the wife including provision for adequate maintenance and protection of matrimonial property rights.⁷¹

C. The 217th Report (2009) and the Marriage Laws (Amendment) Bill

The Law Commission returned to the subject three decades later in its 217th Report of 2009, again recommending the introduction of irretrievable breakdown as a ground for divorce, while emphasising the necessity of robust financial safeguards for wives and

⁶⁸Matrimonial Causes Act 1973, c. 18, § 1 (Eng.); see also Divorce Reform Act 1969, c. 55 (Eng.) (repealed 1973).

⁶⁹Family Law Act 1975 (Cth) § 48 (Austl.); see Nomita Aggarwal, Family Law in India 210-14 (2018) (surveying U.S. no-fault divorce regimes).

⁷⁰Law Comm’n of India, Rep. No. 71, The Hindu Marriage Act, 1955 Irretrievable Breakdown of Marriage as a Ground of Divorce, at 1 (1978).

⁷¹Id. at 45-58.

children, given continuing patterns of economic disadvantage faced by women upon marital dissolution.⁷²

Successive governments introduced the Marriage Laws (Amendment) Bill, first in 2010 in the Rajya Sabha and subsequently in modified form in 2013, seeking to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to insert irretrievable breakdown as an independent ground, coupled with provisions permitting a wife to contest the grant of divorce on this ground where she could show that dissolution would result in grave financial hardship, and empowering courts to secure adequate provision for the maintenance of children.⁷³ Despite passing the Rajya Sabha in 2013, the Bill lapsed with the dissolution of the fifteenth Lok Sabha and has not since been re-introduced, leaving irretrievable breakdown without any statutory foothold in Indian matrimonial law even today.⁷⁴

D. Judicial Recognition Notwithstanding Legislative Inertia

In the face of this persistent legislative inaction, the judiciary and in particular the Supreme Court exercising its extraordinary jurisdiction has stepped into the vacuum. As early as the 1990s, the Supreme Court began invoking irretrievable breakdown, not as an independent statutory ground (which the Hindu Marriage Act does not recognise), but as a factor justifying the exercise of the Court's plenary power under Article 142 of the Constitution "to do complete justice" in matrimonial causes pending before it.⁷⁵

This power, unique to the Supreme Court and unavailable to any other court in the Indian judicial hierarchy, has allowed the apex court to grant decrees of divorce in cases of

⁷²Law Comm'n of India, Rep. No. 217, Irretrievable Breakdown of Marriage – Another Ground for Divorce, at 12-20 (2009).

⁷³Marriage Laws (Amendment) Bill, 2013, Bill No. LX-D of 2013, §§ 2-4 (India) (as passed by the Rajya Sabha).

⁷⁴See *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 4 SCC 692, p 12 (noting the lapse of the Marriage Laws (Amendment) Bill).

⁷⁵See, e.g., *Chandrakala Menon v. Vipin Menon*, (1993) 2 SCC 6, p 4; *Kanchan Devi v. Promod Kumar Mittal*, (1996) 8 SCC 90, p 3.

prolonged, hopeless separation even where none of the statutory grounds under Section 13 of the Hindu Marriage Act was, strictly speaking, made out — a practice this paper next examines in the specific context of its convergence with the cruelty jurisprudence discussed in Part IV.

VIII. CONVERGENCE: CRUELTY AS THE JUDICIAL ROUTE TO IRRETRIEVABLE BREAKDOWN

A. Two Parallel Tracks That Have Merged

Indian matrimonial jurisprudence has, in effect, developed along two parallel tracks that increasingly intersect. The first track is the statutory ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act and its equivalents, judicially expanded, as shown in Part IV, to embrace prolonged separation and the practical impossibility of reconciliation as species of mental cruelty. The second track is the extra-statutory, constitutionally-grounded doctrine of irretrievable breakdown, invoked principally by the Supreme Court under Article 142.

These tracks converge because a single set of facts a marriage that has subsisted in name only for years, marked by separation, litigation, and mutual hostility can typically be characterised, without artificiality, in the language of either doctrine. Courts, particularly at the level of the High Courts (which lack Article 142 power), have therefore tended to route relief through the cruelty ground, treating the fact and duration of separation itself, together with the conduct precipitating and sustaining it, as constitutive of cruelty within the meaning of Section 13(1) (i-a).

B. The “Cruelty of Compelled Cohabitation”

A recurring rhetorical and doctrinal move across the case law is the proposition that compelling parties to remain bound in a marriage that has irretrievably broken down is itself a form of cruelty. Cruelty not merely to the petitioning spouse but to both parties,

and derivatively to any children of the marriage.⁷⁶ This reasoning appears as early as *V. Bhagat v. D. Bhagat*, is echoed in *Naveen Kohli v. Neelu Kohli*, and recurs in numerous High Court decisions, including a line of Delhi High Court authority holding that a marital relationship which has “become more bitter and acrimonious over the years” inflicts cruelty on both sides, such that maintaining “the façade of this broken marriage alive” does injustice to both parties.⁷⁷ This formulation is doctrinally significant: it does not treat breakdown as a free-standing ground parasitic upon, or separate from, cruelty; it treats breakdown itself as the cruelty, thereby permitting courts to grant relief under the existing statutory language without having to acknowledge that they are, in substance, applying an unenacted ground.

C. Samar Ghosh's Institutionalisation of the Convergence

As discussed in Part IV the Samar Ghosh catalogue explicitly lists prolonged separation without reasonable possibility of reconciliation as an instance of mental cruelty.⁷⁸ This is the single most consequential doctrinal move in this entire line of authority, because it formally imports the breakdown principle into the statutory cruelty ground, without requiring legislative amendment.

Once “irretrievable breakdown” is itself classified as a species of “cruelty,” any court applying Section 13(1) (i-a) is empowered indeed, following binding precedent, arguably required to grant a divorce upon proof of hopeless and prolonged separation, whether or not any additional matrimonial delinquency is established. High Courts across the country have applied this branch of the Samar Ghosh test with considerable frequency, often citing the illustrative catalogue verbatim, to grant divorce in cases where the only

⁷⁶*V. Bhagat v. D. Bhagat*, (1994) 1 SCC 337, ¶ 21.

⁷⁷*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558, p 62; see also BW Legal World, *Irretrievable Breakdown of Marriage Is Ground of Cruelty for Divorce*, SC Holds (2023) (discussing Delhi High Court authority to similar effect).

⁷⁸*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, p 101(x).

truly proven fact is years of separation and the manifest absence of any prospect of reconciliation.⁷⁹

D. K. Srinivas Rao and the Article 142 Overlay

The decision in *K. Srinivas Rao v. D.A. Deepa* illustrates a further stage of convergence, in which the Supreme Court, having found mental cruelty established (on the basis of false criminal complaints), proceeded to invoke Article 142 to grant a decree of divorce notwithstanding the pendency of other proceedings between the parties, treating the irretrievable breakdown of the relationship as a factor reinforcing, rather than displacing, its finding on the merits of the cruelty ground.⁸⁰ The Court thus deployed both doctrinal tracks in tandem: cruelty was established as a matter of statutory interpretation, and breakdown was invoked as a matter of constitutional remedial power, to arrive at a single, mutually reinforcing conclusion.

E. Shilpa Sailesh v. Varun Sreenivasan: Constitutional Consolidation

The most significant recent development is the Constitution Bench decision in *Shilpa Sailesh v. Varun Sreenivasan*, delivered on 1 May 2023.⁸¹ The reference arose out of doubts expressed regarding the Supreme Court's power under Article 142 to waive the mandatory statutory cooling-off period prescribed by Section 13-B(2) of the Hindu Marriage Act, 1955 for divorce by mutual consent, and, more fundamentally, whether the Court could grant a decree of divorce on the ground of irretrievable breakdown of marriage under Article 142 even where one of the parties did not consent to dissolution.⁸²

The five-judge Bench, speaking through Sanjiv Khanna, J., held that Article 142 empowers the Supreme Court to depart from the ordinary requirements of procedural and, in appropriate circumstances, substantive law where necessary to do complete

⁷⁹See, e.g., *Manisha Tyagi v. Deepak Kumar*, (2010) 4 SCC 339, pp 20-22.

⁸⁰*K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226, pp 45-49.

⁸¹*Shilpa Sailesh v. Varun Sreenivasan*, (2023) 4 SCC 692.

⁸²*Id.* pp 1-3.

justice, provided that such departure does not contravene fundamental considerations of public policy underlying the relevant legislation.⁸³

Applying this framework, the Court held that it may grant a decree of divorce directly, dispensing with the reference to a family court, on the ground that the marriage has irretrievably broken down, even in the face of opposition from one spouse, where it is satisfied on the basis of factors such as the duration of separation, the failure of mediation and conciliation efforts, and the extent of litigation between the parties that the marriage is beyond salvage and that compelling continuation of the tie would only prolong the parties' mutual suffering.⁸⁴ The Court simultaneously reaffirmed that mediation and reconciliation must first be genuinely attempted, and that where children or issues of maintenance and property are involved, comprehensive and just terms of settlement must be secured before dissolution is granted.⁸⁵

Significantly, the Court expressly cited and relied upon its own reasoning in *Naveen Kohli v. Neelu Kohli* regarding the futility of preserving a dead marriage, thereby drawing an explicit doctrinal line between the cruelty jurisprudence discussed in Part IV and the constitutional breakdown jurisprudence culminating in *Shilpa Sailesh*.⁸⁶

F. The Structural Significance of the Convergence

The convergence traced in this Part carries three structural implications. First, it means that the practical content of “cruelty” under Section 13(1) (i-a), as applied by Indian courts, today extends considerably beyond anything recognisable as cruelty in the ordinary, non-technical sense of the word; it has become, in substantial part, a term of art denoting marital breakdown.

⁸³Id. pp 40-52.

⁸⁴Id. pp. 53-58.

⁸⁵Id. pp. 59-62.

⁸⁶Id. p57 (citing *Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558, p. 62).

Second, it creates a jurisdictional asymmetry: because the constitutional Article 142 route is available only to the Supreme Court, litigants before family courts and High Courts must continue to frame breakdown-based claims in the vocabulary of cruelty (or, less commonly, desertion), while litigants who are able to reach the Supreme Court may obtain relief directly on the ground of breakdown, without needing to establish fault at all.

Third, and most importantly for the reform argument developed in Part IX, the convergence demonstrates empirically that Indian judges, across the hierarchy, have concluded independently, over nearly five decades, and via two distinct doctrinal routes that irretrievable breakdown ought to be a ground for divorce. The persistence of this judicial consensus, unmatched by legislative action, is itself strong evidence that the existing statutory architecture is inadequate to contemporary social reality.

IX. ARTICLE 142 AND THE CONSTITUTIONAL DIMENSION

A. The Nature and Limits of the Power

Article 142(1) of the Constitution of India empowers the Supreme Court, in the exercise of its jurisdiction, to pass such decree or order as is necessary for doing “complete justice” in any cause or matter pending before it.⁸⁷ The provision has been the subject of extensive jurisprudential debate regarding its scope: whether it permits the Court to override express statutory provisions, or whether its function is confined to filling procedural gaps and moulding relief within the framework of existing substantive law.⁸⁸

In *Shilpa Sailesh*, the Constitution Bench sought to resolve this tension by articulating a middle path: Article 142 permits departure from procedural requirements, and even from some substantive statutory conditions, where doing so serves the cause of justice without offending “fundamental considerations of public policy” reflected in the relevant

⁸⁷INDIA CONST. art. 142.

⁸⁸See *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 4 SCC 692, pp 33-39 (surveying the scope-of-Article-142 debate).

statute.⁸⁹ Applying this test to Section 13-B of the Hindu Marriage Act, the Court held that the six-month cooling-off period is a directory, not a mandatory, safeguard intended to allow for reflection and reconciliation, and that its waiver, where reconciliation is demonstrably futile, does not offend the underlying legislative policy.⁹⁰

B. Extending the Power to Contested Breakdown

The more consequential holding in *Shilpa Sailesh* is the extension of Article 142 to contested cases that is, cases in which one spouse does not consent to divorce, but the Court is independently satisfied that the marriage has broken down beyond repair. The Court held that the absence of consent does not, by itself, bar the exercise of Article 142 power, though it must be exercised “with great care and caution,” taking into account factors such as the length of the marriage, the period of separation, the nature and number of litigations between the parties, attempts at settlement or mediation and their outcome, the period of cohabitation, and the overall interests of any children born of the marriage.⁹¹

This holding effectively completes the doctrinal arc traced in this paper: whereas the cruelty jurisprudence discussed in Part IV required courts to characterise breakdown-related facts as “cruelty” in order to grant relief, the Article 142 jurisprudence culminating in *Shilpa Sailesh* permits the Supreme Court to grant relief on the ground of breakdown as such, without any need for that legal fiction though only before the Supreme Court itself, and not before any subordinate forum.

C. Continuing Limitations

It is important to note the limits of this development. *Shilpa Sailesh* does not purport to amend the Hindu Marriage Act, and it does not create a general, subordinate-court-

⁸⁹Id. pp 40-44.

⁹⁰Id. pp 63-70 (on Section 13-B of the Hindu Marriage Act, No. 25 of 1955); see also *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746, pp 15-19 (holding the six-month waiting period directory rather than mandatory in appropriate cases).

⁹¹*Shilpa Sailesh v. Varun Sreenivasan*, (2023) 4 SCC 692, pp 54-56.

accessible ground of irretrievable breakdown; the Court was emphatic that its power under Article 142 is *sui generis*, discretionary, and available only in proceedings that have reached the Supreme Court itself.⁹² Family courts and High Courts remain bound by the statutory grounds set out in Section 13, meaning that the vast majority of matrimonial litigants – who lack the resources, standing, or occasion to approach the Supreme Court under Article 32, Article 136, or by way of transfer petition must continue to rely on the cruelty jurisprudence discussed in Part IV to obtain dissolution of a dead marriage.

The Court itself acknowledged this asymmetry, and reiterated, following Naveen Kohli, that the “more just, humane, and reasonable” course would be for Parliament to enact irretrievable breakdown as a statutory ground of general application.⁹³

X. A COMPARATIVE PERSPECTIVE

A. England and Wales

England abandoned the pure fault theory through the Divorce Reform Act 1969, later consolidated into the Matrimonial Causes Act 1973, which made irretrievable breakdown the sole ground for divorce, to be evidenced by proof of one of five specified facts, several of which (including unreasonable behaviour) function analogously to cruelty under Indian law, while others (including two years' separation with consent, or five years' separation without consent) operate as pure no-fault mechanisms untethered to any finding of misconduct.⁹⁴ More recently, the Divorce, Dissolution and Separation Act 2020 removed the requirement to establish any of the five facts altogether, permitting either or both spouses simply to assert that the marriage has broken down irretrievably, thereby completing England's transition to a wholly no-fault system.⁹⁵

B. Australia and the United States

⁹²*Id.* pp 71-73.

⁹³*Id.* p.74 (citing Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558, pp 74-79).

⁹⁴Matrimonial Causes Act 1973, c. 18, § 1(2) (Eng.).

⁹⁵Divorce, Dissolution and Separation Act 2020, c. 11, § 1 (Eng.).

Australia's Family Law Act 1975 similarly makes irretrievable breakdown, evidenced by twelve months' separation, the sole ground for divorce, dispensing entirely with fault-based grounds.⁹⁶ In the United States, the overwhelming majority of states now provide for no-fault divorce, typically on grounds of "irreconcilable differences" or a specified period of separation, though a minority retain fault-based grounds as an alternative avenue, particularly relevant to determinations of alimony or property division.⁹⁷

C. South Asian Comparators

Within South Asia, Pakistan and Bangladesh, both of which inherited broadly similar personal law traditions, have adopted the Dissolution of Muslim Marriages Act, 1939 framework for Muslim marriages while permitting divorce through khula and, for Muslim wives, through the Muslim Family Laws Ordinance, 1961, which introduces arbitration council procedures without requiring proof of a discrete matrimonial offence in every case.⁹⁸ Nepal's Muluki Civil Code, 2017 goes further, expressly recognising incompatibility and mutual consent as grounds for divorce, without insisting upon proof of fault.⁹⁹ India's continued adherence to a fault-centred statutory scheme for its majority Hindu population mitigated only by judicial improvisation thus stands in contrast not only to developed common law jurisdictions but increasingly to the trend within its own region.

D. Implications for the Indian Position

Viewed against this comparative backdrop, India presents an unusual and somewhat anomalous position: a jurisdiction whose apex court has, through two independent and mutually reinforcing lines of authority the cruelty jurisprudence and the Article 142 jurisprudence arrived at a de facto acceptance of the breakdown principle, while the

⁹⁶Family Law Act 1975 (6th edn) § 48 (Austl.).

⁹⁷Nomita Aggarwal, *Family Law in India* 210-16 (2018).

⁹⁸Muslim Family Laws Ordinance, 1961, § 7 (Pak.); The Dissolution of Muslim Marriages Act, No. 8 of 1939, INDIA CODE.

⁹⁹Muluki Civil Code, 2017, § 94 (Findings) (Nepal).

underlying legislative framework remains firmly rooted in fault theory. This is not merely of academic interest; it produces the practical disadvantages canvassed in Part IX below, including unpredictability, inequitable access to relief depending on a litigant's proximity to the Supreme Court, and continued reliance on a vocabulary of blame in circumstances where no blame, in any meaningful sense, exists.

XI. CRITICAL ANALYSIS AND THE CASE FOR LEGISLATIVE REFORM

A. The Costs of Judicial Improvisation

The judicial expansion of cruelty to absorb breakdown-type facts has undoubtedly served an important humane function, preventing thousands of litigants from being trapped indefinitely in marriages that exist only on paper. It has, however, come at a doctrinal and practical cost.

First, it has rendered the content of “cruelty” under Section 13(1)(i-a) unstable and difficult to predict, since the same underlying facts years of separation, mutual hostility, absence of cohabitation may or may not be characterised as cruelty depending upon the particular bench, the manner in which the pleadings are framed, and the emphasis placed on fault-based versus breakdown-based reasoning.¹⁰⁰

Second, it perpetuates an adversarial and blame-attributing framework in situations where the underlying reality is one of mutual, faultless estrangement, requiring the petitioning spouse often unnecessarily to cast the other in the role of wrongdoer merely to satisfy the formal requirements of Section 13(1)(i-a). This can aggravate, rather than ameliorate, the acrimony between the parties, with adverse consequences for co-parenting and post-divorce relations. Third, it creates the jurisdictional asymmetry noted in Part VI.F and Part VII.C: full, unmediated access to the breakdown principle exists only

¹⁰⁰See Flavia Agnes, *Family Law Vol. 1: Family Laws and Constitutional Claims* 210-18 (2011) (critiquing the unpredictability of judicially expanded mental cruelty).

before the Supreme Court under Article 142, while litigants before family courts and High Courts must continue to labour under the fiction that breakdown itself is a form of cruelty.

B. The Risk of Doctrinal Overreach and the Need for Safeguards

At the same time, caution is warranted before treating unqualified adoption of a breakdown ground as a costless reform. The Law Commission's own reports, in both 1978 and 2009, recognised that a pure breakdown principle carries the risk of enabling an economically dominant spouse historically, though not invariably, the husband to exit a marriage unilaterally, leaving a financially dependent spouse and any children without adequate protection.¹⁰¹ Comparative experience, particularly in jurisdictions that moved rapidly to no-fault divorce, suggests that the economic vulnerability of financially dependent spouses following divorce is a real and persistent concern, warranting robust statutory safeguards rather than reliance on judicial discretion alone.¹⁰²

The 2010 and 2013 versions of the Marriage Laws (Amendment) Bill accordingly incorporated provisions permitting a wife to resist a divorce petition founded on breakdown where she could demonstrate grave financial hardship, and mandating that courts secure adequate provision for maintenance and the welfare of children before granting such a decree an approach that, in this author's view, represents the appropriate template for eventual legislative reform.¹⁰³

C. Assessing the Adequacy of the Article 142 Route as a Substitute for Legislation

It might be argued that the Constitution Bench's ruling in *Shilpa Sailesh v. Varun Sreenivasan* has, as a practical matter, resolved the difficulty by furnishing an independent, breakdown-based route to divorce, thereby reducing the urgency of

¹⁰¹Law Comm'n of India, Rep. No. 217, Irretrievable Breakdown of Marriage -Another Ground for Divorce, at 15-20 (2009); Law Comm'n of India, Rep. No. 71, at 50-58 (1978).

¹⁰²Nomita Aggarwal, *Family Law in India* 214-16 (2018).

¹⁰³Marriage Laws (Amendment) Bill, 2013, Bill No. LX-D of 2013, §§ 3-4 (India) (as passed by the Rajya Sabha).

legislative reform. This argument, while not without force, is ultimately unpersuasive. The Article 142 jurisdiction is discretionary, available only before the Supreme Court, and as the Court itself repeatedly emphasised to be exercised “with great care and caution,” rather than as a matter of litigant entitlement.¹⁰⁴

Access to the Supreme Court, whether by special leave, transfer petition, or writ, remains financially and procedurally burdensome for the ordinary litigant, and the overwhelming majority of matrimonial disputes are resolved, if at all, at the level of the family court or the High Court, neither of which possesses an equivalent power.¹⁰⁵ The result is a two-tier system: a narrow, well-resourced class of litigants who can invoke Article 142 to secure a clean, breakdown-based divorce without having to prove fault, and a much larger class who must continue to litigate cruelty often for years, across multiple appellate tiers in order to achieve, in substance, the same outcome. This asymmetry is itself an argument for legislative codification: a right that depends upon one's capacity to reach the apex court is not a right meaningfully available to the citizenry at large.

D. Recommendations

On the basis of the foregoing analysis, this paper advances four recommendations. First, Parliament should revive and enact, in updated form, the substance of the Marriage Laws (Amendment) Bill, inserting irretrievable breakdown of marriage as an independent statutory ground for divorce under the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, evidenced by a defined minimum period of separation (a period of not less than two to three years being consistent with comparative practice and with the Law Commission's own recommendations).

Second, any such provision must be accompanied by a statutory “hardship bar” empowering the respondent spouse to resist dissolution, or to secure enhanced financial

¹⁰⁴Shilpa Sailesh v. Varun Sreenivasan, (2023) 4 SCC 692, pp. 54-56.

¹⁰⁵See *id.* p. 74 (acknowledging the limited, apex-court-specific character of the Article 142 remedy).

protection as a condition of dissolution, upon proof of grave financial or other hardship, broadly along the lines proposed in the lapsed 2013 Bill.

Third, jurisdiction to grant relief on the breakdown ground should be extended to family courts and district courts generally, rather than remaining the practical preserve of the Supreme Court's Article 142 power, so as to democratise access to this relief and remove the present jurisdictional asymmetry.

Fourth, and in the interim period pending legislative action, courts should continue to apply the Samar Ghosh framework candidly and consistently, expressly acknowledging as the Supreme Court itself has done in *Naveen Kohli* and *Shilpa Sailesh* that findings of prolonged, hopeless estrangement are being treated as constitutive of cruelty (or invoked under Article 142) precisely because Parliament has not yet provided a more direct and honest doctrinal route to the same result.

XII. CONCLUSION

The trajectory of Indian matrimonial jurisprudence on cruelty, traced across nearly five decades from *Dastane v. Dastane* to *Shilpa Sailesh v. Varun Sreenivasan*, tells a coherent and, in many respects, a remarkable story. Confronted with a statutory scheme that confined divorce to proof of discrete matrimonial offences, and with a legislature that has, since at least 1978, been repeatedly advised to introduce irretrievable breakdown as an independent ground but has consistently declined to act, Indian courts have not stood still. They have instead reshaped the meaning of “cruelty” an originally narrow, physical-harm-oriented concept into a broad, inferential, and fact-sensitive category capable of encompassing the practical reality of a marriage that has, for all functional purposes, ceased to exist.

The Supreme Court's decisions in *Naveen Kohli v. Neelu Kohli* and *Samar Ghosh v. Jaya Ghosh* institutionalised this transformation within the statutory language of Section 13(1) (i-a), while the Court's more recent recourse to Article 142, culminating in the Constitution Bench ruling in *Shilpa Sailesh v. Varun Sreenivasan*, has placed the

breakdown principle on an independent, if constitutionally and jurisdictionally circumscribed, footing. This judicial achievement deserves recognition; it has spared innumerable litigants from the cruelty in the ordinary sense of that word of indefinite entrapment in dead marriages.

But it remains, in the final analysis, a second-best solution to a problem that only Parliament can properly resolve. A statute that continues to speak the language of fault, while its judicial interpreters have long since moved to the language of breakdown, is a statute in need of amendment. The recommendations of the Law Commission of India, first made in 1978 and reiterated in 2009, remain as sound and as urgent today as they were then: irretrievable breakdown of marriage should be enacted as an independent, appropriately safeguarded ground for divorce, so that Indian family law may finally speak in its own voice, rather than through the borrowed and increasingly strained vocabulary of cruelty.

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