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# NAVIGATING THE SCOPE OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE: SHILPA SAILESH VS. VARUN SREENIVASAN

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## **Introduction**

Marriage has served as a fundamental institution, at the core of the social fabric of human civilization. The primary purpose of marriage, across all societies has been the procreation of children, their legitimacy, and fostering companionship, emotional and physical support for spouses. However, in traditional Hinduism marriage has been viewed as a sacred and indissoluble bond between two individuals which transcends this life to seven lifetimes. Divorce was considered an alien concept, as the dissolution of such a sacred bond was socially unacceptable and religiously unthinkable.

However, in the modern era, changes in the societal and cultural norms coupled with recognition of individual rights has led to a redefined institution of marriage. Marriage, as an institution has moved beyond the confines of religion and traditions resulting in a sharp rise in the decision to dissolve marriages rather than succumbing to the societal pressure of living in an unhappy marriage. In recognition of this turning point, The Hindu Marriage Act of 1955 (“HMA”), introduced provisions to enable married couples to legally dissolve their marriage, a concept which was otherwise foreign to the Hindu society.

Under the HMA, divorce is primarily based on the fault-based theory and mutual consent. Sections 13(1) and 13(2) of the HMA have laid down the fault-based grounds for divorce, which *inter alia* include adultery, cruelty and desertion whereas section 13B allows for the dissolution of a marriage by mutual consent. These provisions reflect the emergent view that marriage is not an eternal and unbreakable sacrament, but rather a relationship that can be legally dissolved under specific circumstances.

The HMA however, has failed to incorporate “Irretrievable Breakdown of Marriage” as a ground for divorce. “Irretrievable Breakdown of Marriage” as ground for divorce found a place in the Law Commission of India’s 71st and 217th reports. Irretrievable breakdown refers to a complete breakdown of marriage emotionally, psychologically and socially making any

possibility of reconciliation or revival impossible, often due to prolonged separation, mutual antagonism, or other irreconcilable differences.

The absence of this ground in the HMA has led to a patchwork of judicial decisions, where courts have struggled to interpret and apply existing provisions to cases where a marriage has reached its breaking point. In the absence of a specific legal framework for irretrievable breakdown, courts have had to rely on the existing fault-based grounds, which may not always address the complexities of modern marriages. As a result, individuals seeking a divorce on the grounds of irretrievable breakdown have had to navigate an often unclear and inconsistent legal landscape. However, in the case of *'Shilpa Sailesh vs. Varun Sreenivasan'*<sup>2</sup> the Supreme Court of India has attempted to clarify the conflicting body of judgments on this issue, revolutionizing the judiciary's approach to marital disputes and the divorce.

#### **Following are the facts of the case:**

The case involved a prolonged matrimonial dispute between Shilpa Sailesh and Varun Sreenivasan, who sought a divorce due to their marriage's irretrievable breakdown. They had been living separately in Pune & Muscat for over six years and every attempt of reconciliation between them had failed. An ugly showdown between the estranged couple involving multiple legal civil as well as criminal proceedings culminated in the Supreme Court's decision. On May 06, 2015, the Supreme Court granted them a divorce but kept the petition open to address broader issues regarding irretrievable breakdown of marriage as a ground for divorce, scope of Article 142. An amicus curiae was appointed for assistance. A five-judge Constitution Bench constituted by Sanjay Kishan Kaul, J., Sanjiv Khanna, J., Vikram Nath, J., Abhay S. Oka, J. and J.K. Maheshwari, J., delivered a unanimous judgment on May 1, 2023.

#### **Issues framed:**

- a) What is the scope of the power and jurisdiction of the Supreme Court under Article 142(1) of the Constitution?
- b) Whether the Supreme Court can waive the statutory notice period and procedural requirements of Section 13B of the HMA, to grant a divorce by mutual consent, while also resolving related criminal proceedings under Article 142 of the Constitution. If permissible, then under which circumstances the Court should exercise this power?
- c) Whether the power of the Supreme Court under Article 142 is inhibited in a case where the court opines that there is an irretrievable breakdown of marriage, but still one of the

parties is not consenting to the terms?

### **Findings of the Court:**

In examining its powers under Article 142, the Supreme Court noted that this authority is rooted in the principles of justice, equity, and good conscience. The Supreme Court is not restricted from issuing orders that a Family Court or High Court could, including granting mutual consent divorces under Section 13B of the HMA, as long as the conditions are met. However, the Court must apply this power carefully, adhering to the objective criteria and the specific details of each case. It cannot disregard existing laws or fundamental public policy principles. The Court's discretion under Article 142 allows it to bypass the mandatory waiting period for a second motion in divorce cases when a marriage has completely failed. This discretion must be exercised with caution and cannot be claimed as a right through writ petitions under Article 32. For a divorce to be granted on the grounds of irretrievable breakdown, the Court must be convinced that the marriage is utterly unworkable and emotionally dead. If one spouse opposes the divorce despite the marriage's failure, the Court can still grant the divorce if continuing the marriage is unjustifiable. Additionally, the Court can dispose related criminal cases if the parties have reached a settlement.

The Apex Court also noted that the fault theory, which involves assigning blame and fault, may not be suitable for resolving many rare and exceptional matrimonial cases. Considering the specific circumstances of a case, the court can relax the fault theory to ensure complete justice for the parties, using its inherent power under Article 142 of the Constitution without breaching self-imposed limits. Therefore, the fault theory in Section 13(1) of the HMA does not restrict the court from delivering complete justice through Article 142. As a result, the court can dissolve a marriage based on a settlement between the parties and can also set aside related proceedings, including criminal ones.

The Supreme Court outlined key factors to assess if a marriage has irretrievably broken down, including:

1. Duration of cohabitation after marriage,
2. Date of the last cohabitation,
3. Nature of allegations made by the spouses against each other and their families,
4. Legal proceedings initiated by either spouse, resulting orders, and their impact on the relationship,

5. Attempts through court intervention or mediation to resolve disputes, including the number and timing of these attempts.

The Court stressed that a significant separation period, typically six years or more, is crucial. Factors such as the spouses' socio-economic status, educational background, the presence and needs of children, and the dependency of the spouse and children must be considered. The Court also highlighted the importance of addressing custody and welfare of minor children, adequate alimony for the wife, and economic rights of the children. It clarified that these factors do not restrict the Supreme Court's power under Article 142, which should be exercised based on the specific circumstances of each case.

### **Critical Analysis**

The *Shilpa Sailesh* case represents a landmark shift in the legal treatment of marriage, divorce, and family law in India. The ruling is significant not only for its recognition of the “irretrievable breakdown of marriage” as a valid ground for divorce, but also for its use of *Article 142(1)* of the Indian Constitution to grant a divorce and bypass certain statutory requirements laid out in the Hindu Marriage Act, 1955 (HMA). This decision marks a departure from traditional legal norms in India, reflecting the judiciary's evolving approach to marital disputes in response to societal changes.

### **Progressive Interpretation of Divorce Grounds: Emphasizing Emotional Well-being and Autonomy**

At the heart of the Court's decision is its progressive interpretation of divorce grounds. Traditionally, divorce laws in India have focused on fault-based grounds, such as adultery, cruelty, and desertion, or mutual consent as defined in *Section 13B* of the HMA. These provisions did not account for the complex and emotional realities of modern marriages, where the relationship may have broken down beyond repair even if no specific fault could be attributed to either party.

By recognizing *irretrievable breakdown of marriage* as a valid ground for divorce, the Court aligns more closely with contemporary legal frameworks, especially those in Western countries, where the emotional and psychological health of individuals is increasingly prioritized in family law. This progressive stance acknowledges that when a marriage has irreparably failed and emotional well-being has been compromised, continuing the relationship may serve no constructive purpose for either party. As such, it reflects a growing alignment

with global family law trends that emphasize individual autonomy and well-being over rigid statutory constructs.

The ruling represents a shift from the outdated view of marriage as an eternal, sacred bond towards a more pragmatic understanding that allows for dissolution when the union has ceased to function, regardless of blame. This evolution of legal reasoning is in line with modern societal values, where personal autonomy, happiness, and mental health are deemed essential for individuals to thrive.

### **Article 142(1) and the Court's Role in Evolving Legal Standards**

In this case, the Supreme Court invoked *Article 142(1)* of the Indian Constitution, which grants it the power to pass any order necessary for doing complete justice in any matter. This provision allows the Court to step in when there is a lacuna or when existing laws fall short of addressing contemporary issues, thus enabling it to craft more tailored, just outcomes. The Court exercised this discretionary power to bypass the statutory waiting period for mutual consent divorce under *Section 13B* of the HMA, allowing for a more flexible and compassionate resolution to the case.

The Court's approach demonstrates its recognition that legal frameworks must evolve in response to societal changes. The ruling not only addresses the specific case at hand but also provides a precedent for future cases where a marriage has broken down irreparably. By using its discretion under *Article 142(1)*, the Court has paved the way for a more nuanced, case-by-case approach to divorce that considers the individual circumstances of each marriage, rather than forcing couples to adhere to rigid statutory timelines and procedures.

### **Challenges and Criticism: Judicial Overreach and Legal Inconsistencies**

While the decision has been lauded for its progressive stance, it has also sparked significant criticism, particularly regarding the potential overreach of judicial power. Critics argue that by bypassing certain provisions of the HMA, such as the mandatory waiting period for mutual consent divorce, the Supreme Court has undermined legislative intent. Specifically, *Section 13B* of the HMA was designed to provide a cooling-off period for couples, allowing them time to reconsider the decision to divorce and, if possible, reconcile. Critics suggest that the Court's decision to waive this provision could undermine the purpose of such safeguards, which were intended to protect the sanctity of marriage and ensure careful reflection before ending it.

Additionally, the use of *Article 142(1)* raises concerns about the potential for judicial

overreach. The broad discretionary powers granted under this provision allow the Court to create solutions that may not always be based on clear, objective criteria. This flexibility can be seen as both a strength and a potential weakness. While it enables the Court to address complex, case-specific situations, it also risks introducing subjectivity and inconsistency into legal decision-making. This ambiguity could weaken the predictability of legal outcomes and lead to uneven application of the law in future cases, potentially undermining legal certainty.

There is also the concern that such expansive use of judicial discretion could strain the already burdened judiciary. The power to bypass statutory requirements may lead to an increased number of cases in which parties seek judicial intervention outside of existing legal frameworks. This could result in delays in resolving other critical matters and create an additional burden on the Court, ultimately affecting the efficiency of the judicial system.

### **The Need for Legislative Reform and Clearer Guidelines**

While the *Shilpa Sailesh* ruling reflects the Court's attempt to address contemporary issues in marital relationships, it highlights the need for legislative reform to formally recognize irretrievable breakdown of marriage as a ground for divorce. The absence of such a provision in the HMA has led to inconsistent judicial interpretations and outcomes. By including this ground explicitly in the legislation, Parliament can provide clearer guidelines and prevent any potential misuse of judicial discretion.

Moreover, integrating irretrievable breakdown of marriage as a ground for divorce would ensure consistency in the legal process, offering a more predictable path for individuals seeking a dissolution of marriage. Such an amendment would require careful consideration of the social and legal implications, including provisions for protecting vulnerable individuals—such as spouses who may be financially or emotionally dependent on the other, and the welfare of children.

The legal community and Parliament must engage in consultations to formulate a more balanced approach that allows judicial discretion under *Article 142* while simultaneously establishing clearer, more standardized guidelines. This would ensure that the principles of fairness, justice, and predictability are maintained in future divorce cases.

### **Conclusion: A Progressive Yet Challenging Path Forward**

The *Shilpa Sailesh* ruling represents a transformative moment in Indian family law, offering a compassionate and forward-thinking approach to divorce. By recognizing irretrievable

breakdown as a valid ground for divorce and utilizing *Article 142(1)*, the Court has shown its adaptability to modern societal needs. However, this decision also underscores the challenges of maintaining a balance between judicial discretion and legal consistency.

As the Court continues to apply its discretionary powers in future cases, including those that may further refine the application of irretrievable breakdown as a ground for divorce, it is essential for lawmakers to step in. Clearer guidelines and legislative reforms will be necessary to ensure that the evolving family law framework remains just, predictable, and efficient. As India's divorce laws continue to evolve, the integration of irretrievable breakdown as a statutory ground will offer a more nuanced and just approach to marital dissolution, better aligning legal practice with the realities of modern relationships.

The Supreme Court's ruling in the *Shilpa Sailesh* case marks a pivotal shift in the discourse surrounding marriage, divorce, and family law in India. By embracing a progressive interpretation of divorce grounds, notably recognizing irretrievable breakdown as a valid reason for dissolution, and leveraging Article 142(1) of the Indian Constitution, the Court has diverged from traditional legal norms. This decision reflects a growing alignment with international family law trends, emphasizing emotional well-being and autonomy over rigid statutory requirements. The ruling signifies the Court's commitment to evolving with societal changes, striving to enhance social harmony and family stability through mediation and conflict resolution. By employing its discretionary powers, the Court demonstrates a forward-thinking approach to legal reform, reinforcing its role as a leader in addressing contemporary needs.

However, the judgment has sparked significant criticism. Concerns include the potential undermining of legislative intent, particularly regarding Section 13-B of the HMA, by allowing divorce without strict adherence to established statutory requirements. This could be viewed as judicial overreach, affecting the separation of powers and legal consistency. The Court's broad interpretation of Article 142(1) raises issues about the lack of clear, objective criteria, which might lead to subjective interpretations and inconsistent applications of the law. This ambiguity could weaken legal certainty and introduce unpredictability. Additionally, the extensive discretionary powers could strain the judiciary, causing delays in resolving other critical cases and impacting overall system efficiency.

In conclusion, while the *Shilpa Sailesh* ruling represents a progressive and compassionate approach to divorce, addressing the complexities of modern marital issues, it also brings to light critical challenges. The Court's use of Article 142(1) underscores its role in filling

legislative gaps and adapting to societal changes. Nevertheless, the ruling highlights the need for clearer guidelines and safeguards to prevent misuse and ensure consistent application. As the Supreme Court continues to apply its discretion in subsequent cases, including those of Sneha Singh<sup>2</sup>, Mansi Khatri<sup>3</sup>, Sulakshana Kumari<sup>4</sup>, Monika Singh<sup>5</sup>, Vidushi Sharma<sup>6</sup>, and Monika Narendra Sharma<sup>7</sup>, the legal community and Parliament must consider legislative amendments to formally integrate irretrievable breakdown as a ground for divorce. This will require thorough consultation and the establishment of robust safeguards to balance judicial discretion with legal predictability and efficiency.

**Cases:**

1. *Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544 (India).
2. *Sneha Singh v. Anupam Pushkar*, T.App.(C) No. 1388 of 2022 (India).
3. *Mansi Khatri v. Gaurav Khatri*, T.App.(C) No. 1595 of 2022 (India).
4. *Sulakshana Kumari @ Dolly v. Ritesh Kumar Singh*, T.App.(C) No. 2561 of 2022 (India).
5. *Monika Singh v. Kripa Sindhu*, T.App.(C) No. 2088 of 2022 (India).
6. *Vidushi Sharma v. Rohen Vajpayee and Anr.*, T.App.(C) No. 1287 of 2022 (India).
7. *Monika Narendra Sharma v. Mukeshkumar Ramnath Bhagal*, C.A. No. 4315 of 2023 (India).

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5. Komal Singh, *Case Commentary: Shilpa Sailesh v. Varun Sreenivasan*, Indian Journal of Law and Legal Research (Aug. 16, 2023).