
IRRETRIEVABLE BREAKDOWN OF MARRIAGE AND THE UNIFORM CIVIL CODE: POSSIBILITIES AND CHALLENGES IN INDIA

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ABSTRACT

Marriage in India straddles the domains of sacrament, contract, and constitutional citizenship, and no aspect of matrimonial law illustrates this tension more sharply than the judicially engineered doctrine of irretrievable breakdown of marriage. In the absence of statutory recognition, the doctrine has developed almost entirely through the Supreme Court's exercise of its plenary power under Article 142 of the Constitution, producing a jurisprudence that is expansive yet uneven, humane in outcome yet inaccessible to the ordinary litigant. This paper traces the doctrinal evolution of irretrievable breakdown as a ground for divorce, situates it within the unfinished constitutional promise of a Uniform Civil Code under Article 44, and uses Uttarakhand 2024 codification as a live laboratory for testing whether doctrinal certainty and uniformity can be reconciled with religious pluralism and gender justice. It introduces the analytical distinction between "diagnostic breakdown" and "dispositive breakdown" to explain why Indian courts can recognise a marriage as dead without being able to dissolve it as a matter of right, and proposes a "calibrated uniformity" model a uniform civil core for the dissolution of marriage, insulated from an optional personal-law layer governing succession and rites, operationalised through district-level Family Breakdown Tribunals and a statutory needs-based alimony formula as a more incremental and constitutionally defensible route than an omnibus national code.

Keywords: irretrievable breakdown of marriage, Uniform Civil Code, Article 142, Article 44, Hindu Marriage Act, personal laws, calibrated uniformity, gender justice.

I. Introduction

The legal response to marital breakdown reveals a jurisdiction's underlying conception of marriage as an indissoluble sacrament, a terminable contract, or a citizenship-bearing institution regulated by the State. India's matrimonial law remains fragmented across religion-specific statutes: the Hindu Marriage Act, 1955¹, the Dissolution of Muslim Marriages Act, 1939² read with uncodified Muslim personal law, the Indian Divorce Act, 1869³ applicable to Christians, the Parsi Marriage and Divorce Act, 1936⁴, and the ostensibly secular Special Marriage Act, 1954⁵. None of these statutes, as originally enacted, recognises the irretrievable breakdown of marriage as an independent ground for divorce.

This omission is not a minor technical gap. Fault-based grounds cruelty, desertion, adultery, conversion compel estranged spouses who wish to separate amicably, or who have simply drifted into permanent and mutual indifference, to construct adversarial narratives of blame in order to obtain relief that both may, in substance, desire. Where one spouse refuses to consent to a mutual-consent divorce out of spite, bargaining leverage, or religious conviction, the other is often left with no statutory remedy at all, notwithstanding years or decades of factual separation.

Indian courts have responded to this vacuum through interpretive improvisation rather than legislative reform. Beginning with *Naveen Kohli v. Neelu Kohli*⁶ and culminating in the Constitution Bench decision in *Shilpa Sailesh v. Varun Sreenivasan*⁷, the Supreme Court has used its extraordinary power under Article 142 of the Constitution⁸ to dissolve marriages that have "emotionally died," even where one spouse withholds consent. This power, however, resides only in the Supreme Court, producing a two-track system in which the same substantive relief is available to litigants with the resources to reach New Delhi and unavailable to those confined to a district family court.

Running parallel to this doctrinal story is the unfinished constitutional promise of a

¹Hindu Marriage Act, No. 25 of 1955, INDIA CODE.

²Dissolution of Muslim Marriages Act, No. 8 of 1939, INDIA CODE.

³Indian Divorce Act, No. 4 of 1869, INDIA CODE.

⁴Parsi Marriage and Divorce Act, No. 3 of 1936, INDIA CODE.

⁵Special Marriage Act, No. 43 of 1954, INDIA CODE.

⁶*Naveen Kohli v. Neelu Kohli*, (2006) 4 S.C.C. 558 (India).

⁷*Shilpa Sailesh v. Varun Sreenivasan*, (2023) SCC OnLine SC 544 (India).

⁸INDIA CONST. art. 142.

Uniform Civil Code ("UCC") under Article 44 of the Directive Principles of State Policy⁹. Invoked recurrently by the Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum*¹⁰ and *Sarla Mudgal v. Union of India*¹¹, the UCC has now received partial legislative shape through the Uniform Civil Code of Uttarakhand Act, 2024¹², the first codification of its kind since Independence outside Goa. This paper asks a narrow but consequential question at the intersection of these two developments: should a Uniform Civil Code codify irretrievable breakdown as a uniform, statutory ground of divorce, and if so, on what institutional design can such uniformity be achieved without reproducing the gender-justice and pluralism concerns that have historically stalled UCC reform?

Part II develops a conceptual framework distinguishing "diagnostic" from "dispositive" breakdown. Part III surveys the statutory position across India's personal laws. Part IV traces the Article 142 jurisprudence and its structural limitations. Part V situates the UCC debate constitutionally and historically. Part VI examines the Uttarakhand code as a case study. Part VII weighs the case for and against codifying irretrievable breakdown uniformly. Part VIII draws brief comparative lessons. Part IX proposes an original "calibrated uniformity" framework. Part X identifies implementation challenges, before Part XI concludes.

II. Conceptual Framework: Diagnostic Versus Dispositive Breakdown

A marriage may be said to have broken down irretrievably when it has, in substance if not in form, ceased to exist when there is no reasonable probability of cohabitation being resumed, irrespective of which spouse, if any, is culpable. This no-fault conception marks a sharp departure from the fault theory of divorce, under which the law extends relief only to an "innocent" party against a "guilty" one.

The doctrine originates in English law. The Divorce Reform Act 1969¹³ made irretrievable breakdown the sole ground for divorce in England and Wales, to be evidenced by one of five facts, a structure later consolidated in the Matrimonial Causes Act 1973¹⁴. Parliament went further in the Divorce, Dissolution and Separation Act 2020¹⁵, removing the

⁹INDIA CONST. art. 44.

¹⁰*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C. 556 (India).

¹¹*Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635 (India).

¹²Uniform Civil Code of Uttarakhand Act, No. 1 of 2024 (India).

¹³Divorce Reform Act 1969, c. 55, § 1 (Eng.).

¹⁴Matrimonial Causes Act 1973, c. 18, § 1 (Eng.).

¹⁵Divorce, Dissolution and Separation Act 2020, c. 11 (Eng.).

need to establish any "fact" at all and permitting a statement of irretrievable breakdown to be conclusive proof in itself — a pure no-fault model.

India has adopted neither the 1969 nor the 2020 English model by statute. Yet the phrase "irretrievable breakdown" appears with growing frequency in Indian judgments, generating conceptual confusion that this paper resolves by distinguishing two functions the phrase can perform.

A. Diagnostic Breakdown

Diagnostic breakdown refers to the use of evidence that a marriage is factually dead as corroboration for an already-recognised statutory ground, typically mental cruelty. When a court in *Samar Ghosh v. Jaya Ghosh*¹⁶ lists prolonged separation and the impossibility of reconciliation among illustrative indicia of cruelty, breakdown is being used diagnostically: it helps prove an existing cause of action rather than constituting an independent one.

B. Dispositive Breakdown

Dispositive breakdown, by contrast, treats the fact of breakdown as sufficient in itself to entitle a party to dissolution, without proof of any matrimonial "offence." This is the English post-1969 model, and it is precisely what the 71st and 217th Reports of the Law Commission of India recommended inserting into the Hindu Marriage Act¹⁷. No Indian legislature has enacted dispositive breakdown as a codified right exercisable before a district family court.

What the Supreme Court has done in cases such as *Naveen Kohli* and *Shilpa Sailesh* is to manufacture dispositive breakdown through the back door of Article 142 an extraordinary constitutional remedy invoked to do "complete justice" in the specific case before the Court, rather than a general legal right enforceable by any spouse in any court. This produces what may be termed a *jurisdictional bottleneck*: a substantive right recognised in principle but structurally rationed by the forum in which it can be claimed. The distinction between diagnostic and dispositive breakdown, and the further distinction between dispositive breakdown as a codified right and dispositive breakdown as a discretionary constitutional

¹⁶*Samar Ghosh v. Jaya Ghosh*, (2007) 4 S.C.C. 511 (India).

¹⁷See *infra* Part III (discussing Law Commission Reports Nos. 71 and 217).

remedy, frames the remainder of this paper's analysis of both Article 142 jurisprudence and UCC reform.

III. The Statutory Position Across India's Personal Laws

The Law Commission of India first recommended dispositive breakdown as a codified ground in its 71st Report, chaired by Justice H.R. Khanna, which proposed amending the Hindu Marriage Act to permit divorce where the parties had lived separately for a specified period¹⁸. Three decades later, the 217th Report reiterated the recommendation, this time coupling it with express safeguards: courts were to satisfy themselves that adequate provision had been made for the wife's maintenance and the children's welfare before granting such a divorce¹⁹.

Parliament came closest to codification through the Marriage Laws (Amendment) Bill, 2010, which sought to insert a new Section 13C into the Hindu Marriage Act and a corresponding provision in the Special Marriage Act. As passed by the Rajya Sabha in 2013, the Bill empowered a wife who had not sought divorce to oppose the grant of a decree on the ground of grave financial hardship, and required courts to make provision for the maintenance of children before decreeing divorce²⁰. The Bill lapsed with the dissolution of the Fifteenth Lok Sabha and has not since been reintroduced, leaving the Hindu Marriage Act's Section 13 fault-based structure²¹ formally unamended.

Muslim personal law presents an instructive counterpoint often overlooked in the UCC debate. *Khula* and *mubarat* already permit dissolution by consent or at the wife's initiative without proof of fault, and the invalidation of unilateral instantaneous triple talaq in *Shayara Bano v. Union of India*²² left these consensual, no-fault routes untouched. In this narrow respect, Muslim personal law already contains a functional analogue to dispositive breakdown that Hindu, Christian, and Parsi law lack in contested cases — an irony rarely acknowledged in a discourse that frequently casts Muslim personal law as the principal obstacle to reform.

¹⁸Law Comm'n of India, Report No. 71, The Hindu Marriage Act, 1955 — Irretrievable Breakdown of Marriage as a Ground of Divorce (1978).

¹⁹Law Comm'n of India, Report No. 217, Irretrievable Breakdown of Marriage — Another Ground for Divorce (2009).

²⁰The Marriage Laws (Amendment) Bill, 2013, Bill No. XL-C of 2010 (as passed by Rajya Sabha, Aug. 26, 2013) (India).

²¹Hindu Marriage Act, No. 25 of 1955, § 13, INDIA CODE.

²²*Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

Christian matrimonial law was itself amended in 2001 to reduce the minimum period of separation required for a mutual-consent decree under the Indian Divorce Act, aligning it with the Hindu Marriage Act's one-year threshold²³. Across every personal law, however, the common denominator remains: mutual-consent divorce provisions (Section 13B of the Hindu Marriage Act; Section 28 of the Special Marriage Act) offer a contractual exit only where both spouses agree. The doctrinal gap that irretrievable breakdown is meant to fill is precisely the unilateral, contested case — the marriage that is dead in fact but that one spouse refuses, for whatever reason, to formally end.

IV. Judicial Innovation: The Article 142 Jurisprudence

In the absence of legislative action, the Supreme Court has used Article 142 with increasing regularity to dissolve marriages on the ground of irretrievable breakdown. In *Naveen Kohli v. Neelu Kohli*²⁴, the Court granted a divorce despite the wife's opposition, reasoning that the perpetuation of a marriage that exists only on paper serves neither party's dignity, and it recommended that Parliament amend the Hindu Marriage Act accordingly a recommendation Parliament has yet to act upon.

*Samar Ghosh v. Jaya Ghosh*²⁵ enumerated illustrative, non-exhaustive indicators of mental cruelty, several of which function in practice as proxies for factual breakdown, further blurring the line between the diagnostic and dispositive uses identified in Part II.

The doctrine reached its fullest articulation in the Constitution Bench decision in *Shilpa Sailesh v. Varun Sreenivasan*²⁶, where a five-judge Bench held, first, that the Supreme Court may waive the statutory cooling-off period under Section 13B(2) of the Hindu Marriage Act in a genuine mutual-consent case, and second, that it may grant a decree of divorce on the ground of irretrievable breakdown under Article 142 even where one spouse does not consent, provided the exercise of that power does not contravene any express statutory prohibition or fundamental right. The Court was explicit that this is *not a straight-jacket formula*: relevant considerations include the length of separation, the nature and gravity of allegations exchanged, the number and outcome of prior conciliation attempts, and whether adequate provision has

²³Indian Divorce (Amendment) Act, No. 51 of 2001, INDIA CODE.

²⁴Naveen Kohli v. Neelu Kohli, (2006) 4 S.C.C. 558 (India).

²⁵Samar Ghosh v. Jaya Ghosh, (2007) 4 S.C.C. 511 (India).

²⁶Shilpa Sailesh v. Varun Sreenivasan, (2023) SCC OnLine SC 544 (India).

been made for any children and for the financially weaker spouse.

The doctrinal generosity of *Shilpa Sailesh* is, however, structurally self-limiting in three respects. First, it is available only where a cause is already pending before the Supreme Court — typically via a transfer petition or special leave — so relief is a function of a litigant's resources and legal access rather than of a codified right. This is, in effect, a jurisdictional bottleneck of the kind identified in Part II: dispositive breakdown exists, but only as a benefit of geography and means rather than of general law. Second, because the Court has expressly declined to formulate a fixed test, outcomes remain unpredictable across benches, undermining the rule-of-law value of like cases being decided alike. Third, because financial settlement is negotiated ad hoc as a condition of relief rather than computed under any statutory formula, the doctrine offers no guarantee that the economically weaker spouse — overwhelmingly, in the Indian context, the wife — receives adequate compensation for the loss of matrimonial status; scholars have accordingly cautioned that dispensing with the requirement of consent, even where accompanied by a settlement, may in some cases pressure an economically dependent spouse into accepting terms she would not otherwise choose²⁷. These three limitations inaccessibility, unpredictability, and the absence of a statutory maintenance floor form the core institutional problem that any UCC-based codification of irretrievable breakdown must solve.

V. The Uniform Civil Code: Constitutional and Historical Trajectory

Article 44 directs that "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India"²⁸. As a Directive Principle, it is, by virtue of Article 37, not enforceable in any court but is nonetheless declared "fundamental in the governance of the country"²⁹. The Constituent Assembly debated the provision at length on 23 November 1948, with members such as Mohammad Ismail Sahib and Naziruddin Ahmad seeking to protect personal laws from legislative override, and B.R. Ambedkar and K.M. Munshi defending the provision as an aspiration to be realised gradually rather than imposed abruptly³⁰.

²⁷See Aditi Bhojnagarwala, Guest Post: A Critique of the Supreme Court's "Irretrievable Breakdown of Marriage" Judgment, Indian Const. L. & Phil. Blog (May 25, 2023), <https://indconlawphil.wordpress.com/2023/05/25/guest-post-a-critique-of-the-supreme-courts-irretrievable-breakdown-of-marriage-judgment>.

²⁸INDIA CONST. art. 44.

²⁹INDIA CONST. art. 37.

³⁰7 Constituent Assembly Debates 540–51 (Nov. 23, 1948).

The judiciary has repeatedly invoked Article 44 to press for legislative movement without itself purporting to enact a code. In *Mohd. Ahmed Khan v. Shah Bano Begum*³¹, the Court's observations on a common civil code provoked the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, illustrating the political volatility of the subject. In *Sarla Mudgal v. Union of India*³², the Court held that a Hindu husband's conversion to Islam for the sole purpose of contracting a second marriage did not dissolve the first marriage, and again urged the Union to give effect to Article 44. *John Vallamattom v. Union of India*³³ struck down a discriminatory testamentary provision applicable to Christians while reiterating the desirability of uniform civil legislation, and *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*³⁴ pointed to the Goa Civil Code, inherited from Portuguese rule, as evidence that a uniform civil code already operates successfully within one Indian State.

The Twenty-First Law Commission's 2018 Consultation Paper on Reform of Family Law took a notably cautious position, concluding that a uniform civil code is "neither necessary nor desirable at this stage," and recommending instead the gradual harmonisation of discriminatory provisions within each personal law a uniform minimum age of marriage, gender-just succession rules, and compulsory registration of marriage and divorce without collapsing the laws into a single code³⁵. The Twenty-Second Law Commission reopened public consultation on the subject in 2023–24, reflecting the issue's continuing political salience even as the executive Government of Uttarakhand moved ahead with its own State-level code³⁶.

VI. The Uttarakhand Uniform Civil Code, 2024: A Case Study

On 7 February 2024 the Uttarakhand Legislative Assembly passed the Uniform Civil Code of Uttarakhand Bill, 2024, drafted by a committee chaired by former Supreme Court Justice Ranjana Prakash Desai³⁷. The Bill received Presidential assent on 13 March 2024 and, following the notification of implementing Rules, was brought into force on 27 January 2025, making Uttarakhand the first Indian State since Independence to enact and implement a uniform civil code³⁸. The Uttarakhand code replaces the Hindu Marriage Act, Muslim personal

³¹*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C. 556 (India).

³²*Sarla Mudgal v. Union of India*, (1995) 3 S.C.C. 635 (India).

³³*John Vallamattom v. Union of India*, (2003) 6 S.C.C. 611 (India).

³⁴*Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, (2019) 20 S.C.C. 85 (India).

³⁵Law Comm'n of India, Consultation Paper on Reform of Family Law (Aug. 31, 2018).

³⁶Law Comm'n of India, Public Notice Seeking Views on the Uniform Civil Code (June 14, 2023) (India).

³⁷Uniform Civil Code of Uttarakhand Act, No. 1 of 2024 (India).

³⁸Uniform Civil Code Rules Uttarakhand, 2025.

law, the Indian Christian Marriage Act, and the Special Marriage Act, for State residents, with a single statutory regime governing marriage, divorce, succession, and live-in relationships, while expressly excluding members of Scheduled Tribes from its application³⁹.

For present purposes, the code's treatment of divorce is the critical data point. The Uttarakhand code retains a conventional list of fault-based grounds adultery, cruelty, desertion, conversion, mental disorder, incurable disease, renunciation of the world, and continuous absence for seven years alongside a mutual-consent route, and adds two grounds specific to protecting wives (a husband's conviction for rape or an unnatural sexual offence, and bigamy). Despite this, and notwithstanding its own drafting committee's awareness of the Supreme Court's jurisprudence in *Naveen Kohli* and *Shilpa Sailesh*, the code does **not** include irretrievable breakdown of marriage as an independent statutory ground for divorce. Even India's first uniform civil code, drafted after both Law Commission reports and a decade of Article 142 jurisprudence recommending exactly this reform, has declined to enact it a telling illustration of how uniformity in form does not guarantee doctrinal modernisation in substance.

Other features of the Uttarakhand code have attracted independent criticism relevant to the broader UCC debate: the compulsory registration of live-in relationships, enforced through penal sanctions, has been challenged as an intrusion on the privacy interests recognised in *K.S. Puttaswamy v. Union of India*⁴⁰; its purported extraterritorial application to non-domiciled residents raises unresolved questions of legislative competence and comity between States; and the blanket exclusion of Scheduled Tribes has been criticised as undermining the very rationale of uniformity the code claims to serve. A further amendment ordinance issued in January 2026, introducing procedural, administrative, and penal changes to the code within two years of its commencement, suggests that implementation has generated friction requiring correction even in this pioneering jurisdiction⁴¹.

VII. Should a Uniform Civil Code Codify Irretrievable Breakdown?

A. The Case for Codification

Codifying irretrievable breakdown as a uniform, statutory ground offers four distinct

³⁹INDIA CONST. art. 342 (defining Scheduled Tribes).

⁴⁰*K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

⁴¹Press Release, Gov't of Uttarakhand, Uttarakhand Govt Implements the UCC (Amendment) Ordinance, 2026 (Jan. 27, 2026).

advantages over the present Article 142 regime. First, it would extend to every family court in the country a remedy currently available only through the Supreme Court, curing the jurisdictional bottleneck identified in Part II and Part IV. Second, a codified test for instance, a fixed minimum period of factual separation coupled with a rebuttable presumption against reconciliation would replace ad hoc judicial discretion with predictable, appealable criteria, restoring the rule-of-law value that *Shilpa Sailesh*'s express refusal to lay down a "straight-jacket formula" necessarily sacrifices. Third, uniform treatment across religious communities would remove the present anomaly whereby a Muslim wife may exit a dead marriage through *khula* while a Hindu or Christian wife facing an identical factual situation, absent her husband's consent, has no statutory remedy short of an improbable special leave petition. Fourth, it would relieve the Supreme Court of a docket of essentially private, fact-specific matrimonial disputes better suited to trial-level adjudication, consistent with the constitutional design of Article 142 as an exceptional rather than routine remedy.

B. The Case Against Uniform Codification

The case against is not merely conservative resistance to reform but reflects genuine structural concerns. First, minority communities have historically viewed UCC proposals as a vehicle for majoritarian homogenisation of religiously distinct family structures, a concern the Constituent Assembly itself anticipated and that the Uttarakhand code's critics have renewed. Second, and more materially for this paper's subject, a no-fault exit right however doctrinally elegant can disadvantage the economically weaker spouse if it is not accompanied by a robust, judicially unavoidable maintenance mechanism; the 217th Law Commission Report's insistence on safeguarding the wife's financial position before granting such a divorce reflects precisely this anxiety⁴². Third, family law falls within Entry 5 of the Concurrent List of the Seventh Schedule to the Constitution⁴³, meaning that a national code requires either union legislation capable of surviving repeal or inconsistency challenges from States, or a patchwork of State-level codes of the kind Uttarakhand has now inaugurated itself a source of forum-shopping and inter-State inconsistency rather than uniformity. Fourth, easing exit from marriage without simultaneously strengthening matrimonial property division risks converting a doctrine designed to serve dignity into one that, in a society where women's independent asset

⁴²Law Comm'n of India, Report No. 217, *supra*.

⁴³INDIA CONST. sch. 7, list III, entry 5.

ownership remains comparatively low, primarily serves the economically dominant spouse's convenience.

VIII. Comparative Perspectives

England's transition from fault-based divorce to the pure no-fault model of the Divorce, Dissolution and Separation Act 2020⁴⁴ took over fifty years and proceeded incrementally, first requiring proof of a statutory "fact" evidencing breakdown before dispensing with fact-finding altogether. Australia's Family Law Act 1975 adopted irretrievable breakdown, evidenced solely by twelve months' separation, as the sole ground for divorce⁴⁵, deliberately separating the question of divorce from the question of property division and spousal maintenance, which are governed by distinct statutory regimes applying equally regardless of fault. South Africa's Divorce Act 70 of 1979 similarly recognises irretrievable breakdown as a ground while requiring courts to satisfy themselves, before granting a decree, that arrangements for any dependent children are satisfactory⁴⁶.

The common thread across these otherwise disparate jurisdictions is the structural separation of the question *whether* a marriage should be dissolved from the question *on what economic terms* a separation Indian law and Indian judicial practice have conflated, since a spouse's consent to dissolution and their financial protection are presently negotiated together, informally, as a single package under Article 142. The comparative lesson is not that India should import any single foreign test wholesale its personal-law diversity has no precise analogue elsewhere but that no-fault reform succeeds durably only where it is coupled with an independent, non-negotiable maintenance architecture that does not depend on the divorcing spouse's bargaining power.

IX. Toward a Calibrated Uniformity: A Proposed Framework

This paper proposes a model termed *calibrated uniformity*, which rejects both extremes of the present debate – an omnibus national code imposed uniformly on all subjects of family law, and indefinite reliance on ad hoc constitutional remedies. The model separates family law into two tiers.

⁴⁴Divorce, Dissolution and Separation Act 2020, c. 11 (Eng.).

⁴⁵Family Law Act 1975 (Cth) § 48 (Austl.).

⁴⁶Divorce Act 70 of 1979 § 4 (S. Afr.).

A. The Uniform Civil Core

The first tier the *uniform civil core* would apply identically to every citizen regardless of religion and would be confined to matters with a strong constitutional-equality dimension and minimal doctrinal connection to religious ritual: a uniform minimum marriageable age, compulsory registration of marriage, prohibition of bigamy, and, centrally for this paper, a codified right to dissolution on the ground of irretrievable breakdown, evidenced by a fixed period of continuous factual separation (proposed at two years, longer than the one-year cooling-off period under Section 13B but shorter than the seven-year desertion threshold under Section 13(1)(ib) of the Hindu Marriage Act) coupled with the absence of any pending reconciliation proceeding. This core would be enacted, ideally, as a Union law under Entry 5 of the Concurrent List, ensuring genuine national uniformity rather than the State-by-State fragmentation the Uttarakhand model risks entrenching.

B. The Optional Personal-Law Layer

The second tier an *optional personal-law layer* would continue to govern matters more closely tied to religious identity and community self-governance, such as succession, adoption, and the religious solemnisation of marriage, with communities retaining the option to have these matters governed by codified personal law or by the uniform code, subject to a floor of non-negotiable constitutional guarantees (equal inheritance shares regardless of sex, for instance) below which no personal law may fall. This bifurcation directly answers the Constituent Assembly's original anxiety, voiced by members such as Mohammad Ismail Sahib, that uniformity would extinguish religious identity, while still delivering the equality gains a uniform dissolution right is designed to secure.

C. Family Breakdown Tribunals and a Statutory Alimony Formula

To operationalise the uniform core without reproducing the unpredictability of Article 142 practice, this paper proposes the creation of *Family Breakdown Tribunals* at the district level, staffed jointly by a judicial member and a trained family counsellor, with jurisdiction limited to no-fault dissolution petitions. Mandatory mediation would precede adjudication in every case, addressing the Law Commission's long-standing concern that breakdown-based divorce should not become a vehicle for hasty separation. Critically, financial settlement would not be negotiated ad hoc as a condition of the decree, as it presently is under *Shilpa Sailesh*,

but computed under a statutory needs-based alimony formula pegged to the duration of the marriage, the respective incomes and earning capacities of both spouses, and custodial responsibility for children removing the maintenance question from the leverage of either spouse's consent and thereby directly answering the gender-justice objection raised in Part VII.B. Finally, a *sunset consent* safeguard requiring the petitioning spouse to reaffirm, at a mandatory hearing no less than six months after the initial petition, an unchanged intention to dissolve the marriage would guard against impulsive filings while stopping well short of the multi-year litigation delay that fault-based grounds presently impose.

X. Implementation Challenges

Four challenges confront this or any similar proposal. The first is political economy: family law reform in India has historically been hostage to electoral communal politics, as the legislative reversal of *Shah Bano* through the Muslim Women (Protection of Rights on Divorce) Act, 1986 illustrates; any uniform dissolution right risks being read, accurately or not, as targeting a particular community's personal law even where its text is religion-neutral.

The second is federal design: Entry 5 of the Concurrent List permits both Union and State legislation, and the Uttarakhand precedent invites other States to enact divergent codes, potentially reproducing at the State level the very fragmentation a uniform code is meant to cure; a Union statute occupying the field, if politically achievable, would be structurally preferable to a proliferation of inconsistent State codes.

The third is institutional capacity: family courts in India are already burdened with substantial pendency, and Family Breakdown Tribunals of the kind proposed in Part IX would require dedicated judicial appointments, trained mediators, and dependable enforcement machinery for the accompanying alimony formula none of which can be assumed to follow automatically from legislative enactment.

The fourth, and most persistent, is the gender-justice paradox at the heart of no-fault reform: easing the legal process of exit from marriage is, in the abstract, gender-neutral, but in a society where women's independent economic security, on average, still lags behind men's, an unmediated no-fault right risks operating asymmetrically in practice, regardless of its formal even-handedness. The mandatory, non-negotiable alimony formula proposed in Part IX.C is

offered as a direct, structural response to this paradox, rather than an afterthought bolted onto an otherwise unmodified no-fault regime.

XI. Conclusion

India's matrimonial law is caught between a judiciary that has recognised, case by case, that a marriage can be dead beyond hope of resuscitation, and a legislature that has never converted that recognition into a right any citizen can claim before the court nearest to them. The distinction developed in this paper between diagnostic and dispositive breakdown, and between dispositive breakdown as codified right and as discretionary constitutional remedy, explains why *Shilpa Sailesh v. Varun Sreenivasan* represents both a genuine humanitarian advance and an incomplete one: it dissolves individual dead marriages without building the institutional architecture that would let every dead marriage be dissolved on equal terms. The Uttarakhand Uniform Civil Code, 2024, for all its symbolic significance as India's first post-Independence uniform personal-law statute, has perhaps tellingly declined to take the one step both the Law Commission and the Supreme Court have separately urged for nearly half a century. This paper's proposed model of calibrated uniformity – a narrow, nationally uniform right to no-fault dissolution, insulated from the more religiously and culturally contested terrain of succession and rites, and operationalised through dedicated tribunals and a non-negotiable maintenance formula offers a path that neither an omnibus national code nor indefinite reliance on Article 142 can presently deliver. Whether that path is taken remains, as Article 44 itself has meant for seventy-five years, a matter of political will rather than legal possibility.