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**THE MARITAL PARADOX: A COMPARATIVE DOCTRINAL CRITIQUE OF THE
"SEPARATION OF PROPERTY" VOID, THE RESTITUTION OF CONJUGAL
RIGHTS, AND THE "IRRETRIEVABLE BREAKDOWN"**

LACUNA IN INDIAN FAMILY JURISPRUDENCE

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Abstract

Indian Family Law operates as a fractured mosaic of faith-based personal codes-governed by the *Hindu Marriage Act, 1955*, the *Muslim Personal Law (Shariat) Application Act, 1937*, the *Indian Divorce Act, 1869*, the *Parsi Marriage and Divorce Act, 1936*, and the secular *Special Marriage Act, 1954*-superimposed upon a constitutional mandate of gender equality and individual dignity under Articles 14, 15, and 21 of the Constitution of India. While post-independence legislative reforms and judicial interventions have tackled overt inequalities in coparcenary succession (*Vineeta Sharma*, 2020) and arbitrary unilateral divorce (*Shayara Bano*, 2017), four deep-seated structural loopholes continue to undermine substantive justice inside the Indian matrimonial home. First, India strictly follows a **"Separation of Property" regime** rather than a **"Community of Marital Property" framework**; upon divorce, a homemaker spouse whose decades of unpaid domestic and reproductive labour enabled the earning spouse to accumulate vast real estate and financial assets has **zero statutory right to an equitable division of post-marital acquisitions** under Section 27 of the Hindu Marriage Act, 1955, being relegated instead to discretionary maintenance (*Rajnesh v. Neha*, 2020; *Mohd. Abdul Samad*, 2024). Second, Indian statutory law remains trapped in archaic **Fault-Theory Divorce**, lacking a statutory ground for **"Irretrievable Breakdown of Marriage" (IBM)** outside the unreachable constitutional jurisdiction of the Supreme Court under Article 142 (*Shilpa Sailesh v. Varun Sreenivasan*, 2023). Third, **Section 9 of the Hindu Marriage Act, 1955** (Restitution of Conjugal Rights) survives on the statute book despite the nine-judge privacy ruling in *K.S. Puttaswamy* (2017) and the pending challenge in *Ojaswa Pathak*, functioning in practice as a strategic litigation shield to defeat maintenance claims. Fourth, the **Succession Asymmetry between Sections 8 and 15 of the Hindu Succession Act, 1956** (*Omprakash v. Radhacharan*, 2009) creates a reverse-patriarchal anomaly where the self-

acquired property of a childless Hindu widow devolves upon her late husband's natal heirs rather than her own parents. Conducting a rigorous comparative analysis against the matrimonial statutes of the **United Kingdom (Matrimonial Causes Act, 1973 & Divorce, Dissolution and Separation Act, 2020)**, **Singapore (Women's Charter, 1961)**, **Germany (Zugewinnngemeinschaft)**, and the **Uttarakhand Uniform Civil Code Act, 2024**, this paper formulates a concrete legislative blueprint to close the structural loopholes of Indian Family Law.

Keywords: *Indian Family Law Loopholes, Matrimonial Property Regime, Section 27 Hindu Marriage Act 1955, Irretrievable Breakdown of Marriage, Shilpa Sailesh v. Varun Sreenivasan, Restitution of Conjugal Rights Section 9 HMA, Section 15 Hindu Succession Act 1956, Section 144 BNSS Maintenance, Comparative Matrimonial Jurisprudence.*

1. Introduction: The Constitutional Asymmetry of the Indian Matrimonial Home

In classical liberal legal theory, a sharp line was drawn between the *Public Sphere* (the realm of contracts, crime, markets, and constitutional rights) and the *Private Sphere* (the family and the matrimonial home, historically treated as a sacred, autonomous sanctuary beyond the reach of constitutional scrutiny). In the famous words of Delhi High Court Chief Justice G.D. Khosla in *Harvinder Kaur v. Harmander Singh Choudhry* (AIR 1984 Del 66), introducing constitutional law into the matrimonial home was likened to "*introducing a bull in a china shop*."

Over the past four decades, the Supreme Court of India has progressively dismantled the *Harvinder Kaur* fallacy, recognizing that the family cannot serve as an enclave of feudal patriarchy immune from Part III of the Constitution (*Joseph Shine v. Union of India*, 2019 3 SCC 39). Yet, whenever a marriage breaks down or a spouse dies intestate in India today, litigants and family court judges confront a startling legal reality: **while Indian statutory law exhaustively regulates who may marry and on what fault-grounds they may divorce, it is virtually silent on the economic partnership of marriage itself.**

Unlike modern comparative jurisdictions across Europe, the Commonwealth, and East Asia-which view marriage as a **joint socio-economic enterprise** where both financial earnings and non-financial domestic care contribute equally to the accumulation of family wealth-Indian statutory family law clings to nineteenth-century English concepts of strict title-based property ownership and fault-based matrimonial litigation. This paper dissects the four core statutory loopholes that define this crisis and evaluates comparative statutory models to construct a cohesive reform framework.

2. Loophole I: The "Matrimonial Property" Void and the Invisibilization of Unpaid Domestic Care

2.1 The Title-Based Trap: Section 27 of the Hindu Marriage Act, 1955

Consider a quintessential sociological reality across millions of Indian households: a couple remains married for twenty-five years. During the marriage, the wife sacrifices her career ambitions to assume full-time responsibility for child-rearing, elder care, and household management, while the husband utilizes that domestic support structure to advance his career, purchasing apartments, equity portfolios, and commercial plots registered exclusively in his sole name. When the marriage ends in divorce after twenty-five years, **what share of those marital assets does the wife legally own under Indian statutory law?**

The answer is **zero**. India adheres strictly to a "**Separation of Property**" regime. Unless the wife's name was expressly included as a co-owner on the registered sale deed at the time of purchase (or she can prove direct monetary contribution outside the barriers of the *Prohibition of Benami Property Transactions Act, 1988*), legal title remains 100% vested in the husband.

The sole provision in the *Hindu Marriage Act, 1955* addressing property disposal at the time of divorce is **Section 27**, which reads:

"In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

In *Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam* (1997 7 SCC 500), although the Supreme Court broadened Section 27 slightly to include wedding gifts acquired shortly before or after the ceremony that are linked to the marriage, the Court confirmed an insurmountable statutory ceiling:

1. **The "Joint Ownership" & "Time of Marriage" Barrier:** Section 27 applies *only* to property presented at or around the wedding that belongs *jointly* to both spouses. It excludes immovable or movable assets acquired by either spouse during the subsequent ten, twenty, or thirty years of married life.
2. **The Stridhan Distinction (*Pratibha Rani v. Suraj Kumar*, 1985 2 SCC 370; *Maya Gopinathan v. Anoop S.B.*, 2024 SCC OnLine SC 609):** While a Hindu woman retains absolute, exclusive ownership over her *Stridhan* (gifts, jewellery, and properties given specifically to her before, during, or after marriage) under **Section 14 of the Hindu Succession Act, 1956**, and the husband holds no title over it even during distress, *Stridhan* is merely the restoration of her own separate pre-existing gifts-it grants her no equity in the family wealth built during the subsistence of the marriage.

2.2 Why Maintenance (Section 144 BNSS / Section 25 HMA) is Not a Substitute for Matrimonial Property

Defenders of the status quo frequently argue that the absence of a matrimonial property law is compensated by statutory maintenance provisions-namely **Section 25 of the Hindu Marriage Act, 1955** (Permanent Alimony), **Section 20 of the Protection of Women from Domestic Violence Act, 2005 (PWDVA)**, and **Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** (formerly Section 125 of the CrPC, 1973, recently fortified for Muslim divorced women as well in *Mohd. Abdul Samad v. State of Telangana*, 2024 SCC OnLine SC 1686).

However, a rigorous doctrinal analysis demonstrates why **Maintenance can never substitute for Matrimonial Property Rights**:

- **Welfare vs. Entitlement:** Maintenance is rooted in the colonial public-order philosophy of *preventing vagrancy and destitution* (*Chaturbhuj v. Sita Bai*, 2008 2 SCC 316). It treats the homemaker spouse as a dependent supplicant begging for subsistence, rather than an equal economic partner claiming her earned share of capital assets.
- **Conditional and Precarious Nature:** Under Section 144(4) BNSS and Section 25(3) HMA, maintenance is defeated or rescinded upon allegations of living in adultery, refusal

to live with the husband without sufficient reason, or remarriage, and remains perpetually vulnerable to the husband concealing income, transferring assets to relatives, or defaulting on monthly installments.

- **Judicial Recognition Without Statutory Teeth:** Ironically, in **motor vehicle accident compensation law**-specifically *Arun Kumar Agrawal v. National Insurance Co. Ltd.* (2010 9 SCC 218) and *Kirti & Anr. v. Oriental Insurance Co. Ltd.* (2021 2 SCC 166)-Justice N.V. Ramana and Justice Surya Kant explicitly quantified the monetary value of a homemaker's unpaid domestic labour to award insurance compensation upon her death! Yet, if that exact same homemaker survives and undergoes a divorce in a Family Court across the corridor, Indian family law assigns her decades of unpaid domestic labour an ownership value of zero.

3. Loophole II: The "Irretrievable Breakdown" Paradox and the Article 142 Monopoly

3.1 The Trap of Fault-Theory and Mutually Weaponized Litigation

Under **Section 13(1) of the Hindu Marriage Act, 1955** and **Section 27 of the Special Marriage Act, 1954**, unless both spouses mutually agree to sign a joint petition for divorce by mutual consent under **Section 13B HMA/ Section 28 SMA**, India does not permit no-fault unilateral divorce. To exit a dead marriage where one spouse withholds consent out of spite, extortion, or social stigma, the other spouse is legally forced by the statute to manufacture or prove a **specific matrimonial fault**-such as Cruelty, Adultery, or Desertion for two years.

This statutory rigidity creates a toxic litigation loop across Indian Family Courts:

- Because **Mutual Consent (Section 13B HMA)** requires *both* signatures at the First Motion and again at the Second Motion (after the 6-to-18-month cooling-off period, waivable only under *Amardeep Singh v. Harveen Kaur*, 2017 8 SCC 746), a single obstinate spouse holds an absolute **veto power** over the other spouse's personal liberty.
- Conversely, to force a settlement or fabricate "fault," estranged couples routinely weaponize parallel criminal prosecutions-converting purely civil marital incompatibility into decades-long criminal trials under **Section 85 of the Bharatiya Nyaya Sanhita, 2023** (formerly Section 498A IPC), the Dowry Prohibition Act, 1961, and multi-forum maintenance petitions.

3.2 The Constitutional Inequality of *Shilpa Sailesh v. Varun Sreenivasan* (2023)

Despite explicit recommendations by the **Law Commission of India in its 71st Report (1978)** and **217th Report (2009)**, and the introduction of the *Marriage Laws (Amendment) Bill, 2010/2013* (which passed the Rajya Sabha before lapsing), Parliament has failed to insert **"Irretrievable Breakdown of Marriage" (IBM)** as a statutory ground in the Hindu Marriage Act or the Special Marriage Act.

In *Shilpa Sailesh v. Varun Sreenivasan* (2023 SCC OnLine SC 544), a five-judge Constitution Bench of the Supreme Court held that the **Supreme Court alone** possesses the extraordinary constitutional power under **Article 142(1) of the Constitution** to do "complete justice" by dissolving a dead marriage on the ground of Irretrievable Breakdown, even when one spouse opposes the divorce and even when statutory waiting periods under Section 13B(2) are unfulfilled.

The Structural Loophole: While *Shilpa Sailesh* provides relief to wealthy litigants who can afford to hire Senior Advocates and travel to New Delhi to invoke Article 142 before the Supreme Court, **neither the 800+ District Family Courts nor the 25 High Courts across India possess Article 142 jurisdiction!** Consequently, if a District Family Court judge or a High Court bench sees a marriage that has been utterly dead for fifteen years with zero chance of reconciliation, the Family Court and High Court are legally powerless to grant a divorce on the ground of Irretrievable Breakdown unless a statutory fault under Section 13 is strictly proved (*Chetan Dass v. Kamla Devi*, 2001 4 SCC 250). A legal right that exists only in the Supreme Court under Article 142, and is barred in every trial and appellate court of first instance, represents a profound crisis of **Access to Justice under Article 14.**

4. Loophole III: Restitution of Conjugal Rights (Section 9 HMA) as a Litigation Shield

Perhaps the most anachronistic survivor of feudal English ecclesiastical law in Indian statutes is **Section 9 of the Hindu Marriage Act, 1955** (mirrored in Section 22 of the Special Marriage Act, 1954, Section 32 of the Indian Divorce Act, 1869, and Section 36 of the Parsi Marriage and Divorce Act, 1936):

"When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly."

4.1 The Constitutional Collision: *T. Sareetha vs. Saroj Rani* in the Post-Puttaswamy Era

In the visionary decision of *T. Sareetha v. T. Venkata Subbaiah* (AIR 1983 AP 356), Justice P.A. Choudary of the Andhra Pradesh High Court struck down Section 9 HMA as unconstitutional, holding that a state-coerced decree compelling an unwilling person to cohabit and engage in marital intimacy violates bodily autonomy, decisional privacy, and human dignity under Article 21. However, in *Saroj Rani v. Sudarshan Kumar Chadha* (1984 4 SCC 90), a two-judge bench of the Supreme Court overruled *T. Sareetha*, reasoning that Section 9 merely serves the noble social purpose of preserving marriage and carries only financial attachment sanctions under **Order XXI, Rules 32 and 33 of the Code of Civil Procedure, 1908** rather than physical police coercion.

Following the nine-judge Constitution Bench rulings in *K.S. Puttaswamy v. Union of India* (2017 10 SCC 1) (elevating bodily integrity and intimate decisional autonomy to the core of Article 21), *Joseph Shine v. Union of India* (2019 3 SCC 39), and the **2018 Consultation Paper of the 21st Law Commission of India on Reform of Family Law** (which explicitly recommended abolishing Restitution of Conjugal Rights across all personal laws), the foundation of *Saroj Rani* has completely eroded (with the constitutional challenge currently pending before the Supreme Court in *Ojaswa Pathak v. Union of India*).

4.2 How Section 9 Operates as a Tactical Loophole in Family Courts

Beyond its philosophical collision with Article 21, every practicing matrimonial advocate knows how Section 9 HMA is actually used in Indian trial courts: **almost never out of genuine love or a desire for reconciliation, and almost always as a pre-emptive tactical torpedo against maintenance and divorce claims.**

1. The moment a wife leaves an abusive or incompatible matrimonial home and files a maintenance petition under **Section 144 of the BNSS, 2023** (formerly Section 125 CrPC), the husband immediately files a counter-petition under **Section 9 HMA for Restitution of Conjugal Rights** in his hometown jurisdiction, claiming: *"My Lord, I am ready and willing to keep my wife with me; she is living separately without any sufficient reason."*
2. Because **Section 144(4) of the BNSS** stipulates that *"No wife shall be entitled to receive an allowance for the maintenance... from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband,"* obtaining an *ex parte* or contested Section 9 decree allows the husband to argue for the cancellation or denial of maintenance, or alternatively use an un-complied Section 9 decree for one year as a stepping-stone to obtain a divorce under **Section 13(1A)(ii) HMA** while branding the wife as the defaulting party.

5. Loophole IV: The Succession Asymmetry in Section 15 of the Hindu Succession Act, 1956

While the **Hindu Succession (Amendment) Act, 2005** and its landmark retrospective validation in *Vineeta Sharma v. Rakesh Sharma* (2020 9 SCC 1) rightly equalized the coparcenary birthrights of daughters under **Section 6**, a glaring statutory gender discrimination remains intact in **Sections 8 vs. 15 of the Hindu Succession Act, 1956 (HSA)** governing **general intestate succession**.

5.1 Comparing Male Intestacy (Section 8) vs. Female Intestacy (Section 15)

- **When a Hindu Male dies intestate (Section 8 HSA):** His property-whether inherited or self-acquired-devolves equally upon his **Class I Heirs** (Mother, Widow, Sons, Daughters, etc.). Notice that **the male's own Mother is a Class I Heir**, standing on an equal footing with his wife and children, whereas **his wife's parents (his in-laws) are nowhere in the line of succession**.
- **When a Hindu Female dies intestate (Section 15(1) HSA):** Under Section 15(1), her general property-including her own self-acquired salary, savings, and home purchased with her independent earnings-devolves in the following rigid sequential hierarchy:
 - (a) Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
 - (b) Secondly, upon the heirs of the husband;
 - (c) Thirdly, upon the mother and father;
 - (d) Fourthly, upon the heirs of the father; and
 - (e) Lastly, upon the heirs of the mother.

5.2 The Injustice of *Omprakash v. Radhacharan* (2009)

Look closely at the clash between clauses (b) and (c) of Section 15(1): **If a self-made, financially independent Hindu woman (for example, a doctor, professor, or civil servant) dies intestate without leaving behind children or a surviving husband, her own aged Mother and Father in Clause (c) are completely excluded by her late husband's distant natal relatives in Clause (b)!**

In the tragic landmark case of *Omprakash & Ors. v. Radhacharan & Ors.* (2009 15 SCC 66), a young Hindu woman named Narayani Devi was driven out of her matrimonial home by her in-laws within three months of her marriage after her husband died of snakebite. Her in-laws never checked on her for forty-two years. Supported and educated entirely by her natal parents, Narayani Devi became a school teacher and accumulated substantial self-acquired provident fund savings and immovable properties before dying intestate and childless. When her aged mother claimed her daughter's hard-earned savings, her late husband's brothers (the very in-laws who had abandoned her forty-two years earlier) staked a claim under **Section 15(1)(b) HSA**. Constrained by the literal text of Section 15(1)-which draws a source-of-inheritance distinction in Section 15(2) *only* for *inherited* property and not for *self-acquired* property-the Supreme Court was forced to award the woman's entire life savings to her estranged brothers-in-law, leaving her biological mother empty-handed.

Although the validity of Section 15(1)(b) is currently under constitutional scrutiny before the Supreme Court (following observations in *Kamla Neti v. Special Land Acquisition Officer*, 2023, and the pending writ petitions challenging Section 15 HSA under Articles 14 and 15), its continued operation on the statute book treats a married woman's independent economic identity as permanently subsumed into her husband's clan.

6. Comparative Analysis: How Global Jurisdictions and the Uttarakhand UCC (2024) Address These Loopholes

To demonstrate how modern legal systems resolve these exact four dilemmas, the comparative table below evaluates **India's current central statutory framework** against the **United Kingdom, Singapore, Germany**, and the newly enacted **Uniform Civil Code of Uttarakhand Act, 2024**:

Legal Dimension / Loophole	Current Central Indian Law (HMA 1955 / SMA 1954 / HSA 1956)	United Kingdom (MCA 1973 & Divorce Act 2020)	Singapore (Women's Charter 1961, Sec. 112)	Germany (BGB §§ 1363–1568)	Uttarakhand UCC Act, 2024 (India's First State UCC)
1. Matrimonial Property Division	Strict Separation of Property (Sec. 27 HMA). Zero	Equitable Sharing (<i>White v. White</i> , [2000] UKHL 54). Under Sec. 25 MCA	Just & Equitable Division (Sec. 112 Women's Charter). Court	Community of Accrued Gains (<i>Zugewinnngemeinschaft</i> , § 1363 BGB). Separate ownership during marriage, but upon divorce, the	Retains Separation of Property. Does <i>not</i> introduce a Community of

Legal Dimension / Loophole	Current Central Indian Law (HMA 1955 / SMA 1954 / HSA 1956)	United Kingdom (MCA 1973 & Divorce Act 2020)	Singapore (Women's Charter 1961, Sec. 112)	Germany (BGB §§ 1363–1568)	Uttarakhand UCC Act, 2024 (India's First State UCC)
on Divorce	right to equitable division of post-marital assets registered in one spouse's name; limited to maintenance.	1973, starting point is a 50:50 equal division of marital assets; homemaker contribution equals breadwinner contribution.	divides all "matrimonial assets" acquired during marriage, explicitly weighting non-financial childcare & homemaking .	net surplus wealth gained during marriage is split 50:50 in cash.	Marital Property regime; relies on maintenance and alimony provisions (Sec. 32–33).
2. Irretrievable Breakdown of Marriage (IBM)	Not a Statutory Ground. Available only via Supreme Court's extraordinary power under Art. 142 (<i>Shilpa Satesh</i> ,	Pure No-Fault IBM (Divorce, Dissolution and Separation Act, 2020). Either or both spouses file a simple statement of breakdown; fault grounds &	Unified Ground of IBM (Sec. 95 Women's Charter) proven via facts including 3-year separation with consent or 4-year separation	Pure IBM (§ 1565 BGB). Presumed conclusively after 1 year of separation (if both consent) or 3 years of separation (even if one spouse opposes).	Retains Fault + Mutual Consent. Does <i>not</i> codify unilateral No-Fault Irretrievable Breakdown of Marriage for district trial courts.

Legal Dimension / Loophole	Current Central Indian Law (HMA 1955 / SMA 1954 / HSA 1956)	United Kingdom (MCA 1973 & Divorce Act 2020)	Singapore (Women's Charter 1961, Sec. 112)	Germany (BGB §§ 1363–1568)	Uttarakhand UCC Act, 2024 (India's First State UCC)
	2023); trial/High courts cannot grant it.	contestation abolished.	without consent.		
3. Restitution of Conjugal Rights (RCR)	Retained across all personal laws (Sec. 9 HMA / Sec. 22 SMA). Routinely misused to counter maintenance petitions.	Abolished in 1970 (Matrimonial Proceedings and Property Act, 1970, Sec. 20) as an archaic breach of personal liberty.	Abolished. Does not exist in the Singapore Women's Charter; state cannot compel cohabitation.	No Enforceable Execution (§ 1353 BGB & § 888(3) ZPO). Any decree for restoration of marital life is legally barred from enforcement.	Retained in Section 21 of the Uttarakhand UCC, 2024 (despite the 2018 Law Commission recommendation to abolish it).
4. Intestate Succession (Male vs. Female)	Asymmetric (Sec. 8 vs. Sec. 15 HSA 1956). Female's self-acquired	100% Gender-Neutral (Administration of Estates Act, 1925). Identical	100% Gender-Neutral (Intestate Succession Act, 1967,	100% Gender-Neutral (Ordnungssystem, §§ 1924–1931 BGB). Lineage follows generational orders identically	Corrected & Gender-Neutral (Sec. 51 Uttarakhand UCC, 2024). Eliminates

Legal Dimension / Loophole	Current Central Indian Law (HMA 1955 / SMA 1954 / HSA 1956)	United Kingdom (MCA 1973 & Divorce Act 2020)	Singapore (Women's Charter 1961, Sec. 112)	Germany (BGB §§ 1363–1568)	Uttarakhand UCC Act, 2024 (India's First State UCC)
Symmetry)	property goes to husband's heirs ahead of her own parents if she dies childless.	hierarchy of intestate heirs regardless of the deceased's sex.	Sec. 7). Parents inherit equally regardless of whether the deceased child is male or female.	for men and women.	the Sec. 8 vs. Sec. 15 HSA disparity; places both parents in Class-1 heirs equally for men and women.

7. A Four-Point Legislative Blueprint for Reforming Indian Family Law

As the comparative matrix above reveals, even the recently enacted **Uniform Civil Code of Uttarakhand Act, 2024**-while commendably abolishing the gender disparity in intestate succession (Section 51) and standardizing marriage registration-missed the historic opportunity to introduce a **Matrimonial Property Regime**, abolish **Restitution of Conjugal Rights (retained in Section 21)**, or codify **Irretrievable Breakdown of Marriage**.

To transform Indian Family Law from a patchwork of colonial fault litigation into a constitutionally compliant edifice of *Substantive Nyaya*, Parliament should enact the following four targeted statutory reforms:

7.1 Enacting a "Community of Accrued Marital Gains" (*Section 27A HMA & Section 38A SMA*)

Adapting the German *Zugewinnngemeinschaft* (§ 1363 BGB) and Section 112 of the Singapore Women's Charter, Indian matrimonial statutes should be amended to introduce an **Equitable Matrimonial Property Regime**:

- **Clear Ring-Fencing of Pre-Marital & Inherited Wealth:** All property owned by either spouse *prior* to the marriage, as well as any individual inheritance, ancestral coparcenary share, or personal *Stridhan* gift received during the marriage, shall remain 100% the **Separate Property** of that individual spouse.

- **Equitable Sharing of Post-Marital Acquisitions:** However, all movable and immovable capital assets, real estate, and financial investments acquired *out of the earnings of either spouse during the subsistence of the marriage* shall be classified as **Matrimonial Property**. Upon divorce, the homemaker's non-financial contribution (childcare, eldercare, and domestic management) shall be statutorily presumed equal in value to the breadwinner's financial contribution, entitling both spouses to a **presumptive 50:50 equitable share in the net accrued marital wealth** (subject to judicial variation for short-duration marriages or dissipation of assets).

7.2 Codifying "Irretrievable Breakdown of Marriage" with Mandatory Financial Safeguards (*Section 13C HMA & Section 28A SMA*)

To democratize the relief currently monopolized by the Supreme Court under Article 142 (*Shilpa Sailesh*), Parliament should revive and enact the core architecture of the **Marriage Laws (Amendment) Bill, 2013** by inserting **Section 13C into the Hindu Marriage Act** and **Section 28A into the Special Marriage Act**:

- Either spouse may petition the **District Family Court** for dissolution of marriage on the ground that the marriage has broken down irretrievably, proven by the fact that the parties have lived apart continuously for a period of **three years or more** immediately preceding the presentation of the petition.
- **The Crucial Protective Proviso (Preventing Destitution of Women & Children):** To address the legitimate concern of women's rights groups that errant husbands might abandon wives and obtain unilateral no-fault divorces without providing financial security, Section 13C must incorporate a mandatory **Financial Hardship Veto**: *No decree of divorce on the ground of Irretrievable Breakdown shall be passed by the Family Court unless and until the petitioner has fully discharged all equitable matrimonial property division orders, child educational trusts, and permanent alimony settlements to the satisfaction of the Court.*

7.3 Complete Repeal of Restitution of Conjugal Rights (*Repeal of Sec. 9 HMA, Sec. 22 SMA, Sec. 32 IDA, Sec. 36 PMDA*)

In alignment with the UK's 1970 repeal, the 21st Law Commission of India's 2018 Consultation Paper, and the constitutional guarantee of bodily and decisional autonomy in *K.S. Puttaswamy*, Parliament (or the Supreme Court in *Ojaswa Pathak*) should **unconditionally repeal Restitution of Conjugal Rights across all personal laws**. Where couples genuinely desire reconciliation, **pre-litigation and court-annexed Mediation under Section 9 of the Family Courts Act, 1984 and the Mediation Act, 2023** provides a humane, non-coercive forum without placing a judicial weapon of economic blackmail in the hands of a litigating spouse.

7.4 Replacing Sections 8 to 16 of the Hindu Succession Act, 1956 with a Unified Gender-Neutral Schedule

To permanently cure the injustice of *Omprakash v. Radhacharan*, Parliament should repeal the bifurcated male-versus-female succession rules in Sections 8 and 15 of the Hindu Succession Act, 1956, and replace them with a **Single, Unified, Gender-Neutral Intestate Succession Schedule**

(mirroring Section 51 of the Uttarakhand UCC, 2024 and the Indian Succession Act's gender-neutral framework):

- Regardless of whether the deceased Hindu dying intestate is male or female, their self-acquired and general property shall devolve first upon their **Spouse, Children, and Biological/Adoptive Parents**, ensuring that a childless woman's aged parents are never ousted by her late husband's collateral relatives.

8. Conclusion

A family law system that praises the homemaker as the spiritual pillar of the household while stripping her of all ownership rights in the family's economic assets upon divorce-and handing her life savings to her estranged in-laws ahead of her own mother upon death-suffers from a profound moral and constitutional contradiction. Similarly, a legal system that forces incompatible adults to manufacture criminal accusations of cruelty merely to exit an unworkable marriage, while reserving the dignified exit of "Irretrievable Breakdown" exclusively for those who can knock on the doors of the Supreme Court under Article 142, confuses procedural endurance with justice. True reform of Indian Family Law-whether achieved through piecemeal statutory amendments to personal laws or through a future pan-India Uniform Civil Code-cannot stop at formal uniformity of ceremony and registration. It must enter the economic and personal reality of the matrimonial home: recognizing marriage as an equal economic partnership through community of accrued property, abolishing the state-coerced indignity of restitution of conjugal rights, equalizing parental succession under the Hindu Succession Act, and granting every citizen accessible, financially safeguarded dignity in both marriage and dissolution.

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