

4th IILM MOOT COURT COMPETITION

**IILM LAW SCHOOL,
IILM UNIVERSITY, GURUGRAM
~MOOT PROPOSITION~**



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1. The Union of Bhavdesh (UoB) is a secular country that achieved independence in 1947. For over four decades, Bhavdesh has been a nation inclusive to all religions after the 42nd Amendment to the Bhavdesh Constitution in 1976. The then Prime Minister of this Union of States, Smt. Mandira Faini enacted such an amendment adding the words, ‘Socialist,’ ‘Secular,’ and ‘Integrity’ to its Preamble. Accordingly, the Union of Bhavdesh is seen as a democratic, secular, socialist republic whose fundamental quality is in its diversity. Likewise, UoB boasts a rich past, with trading routes tracing back to ancient civilizations.
2. As a result, individuals from a wide range of religious and cultural backgrounds settled at UoB. Secularism was thus incorporated into the preamble of the country's Constitution upon its independence from colonial rule, not just as a conventional division of religion and state but also as a means for the state to safeguard religious diversity, plurality, and tolerance. Secularism's inclusion in the Preamble of the Union of Bhavdesh's Constitution guaranteed that the state would strongly foster intercultural harmony while also remaining impartial in religious affairs. Because of its dedication to secularism, UoB has developed into a thriving cosmopolitan community that promotes respect and understanding amongst diverse religious and cultural groups.
3. To uphold such concepts, the Secular Marriage Act, 1954 (SMA) [Pari Materia to the Special Marriage Act, 1954 under the laws of India] was introduced acting as a vital aspect of Bhavdesh's law giving everyone, irrespective of caste, religion, or ethnicity, the choice of a secular, civil marriage. The SMA applies to everyone, regardless of religious background, upholding secular values. This secular framework guarantees that selecting a spouse should not be influenced by a person's faith.

4. Marriages in UoB were regulated by a number of religious personal laws prior to the passage of this law, each with its own set of regulations, traditions, and limitations. The Act, hence, provided an alternative, guaranteeing that people can marry whoever they desire without being restricted by customary religious or community-specific rules.
5. The Act permitted spouses to benefit from the same legal privileges, including inheritance and property rights, without facing prejudice because of the way in which their marriage was formally solemnized. By allowing interfaith and inter-caste marriages, the SMA promoted a more cohesive and integrated society by assisting in the dismantling of long-standing caste and religious divisions. It guaranteed that people be free from social constraints and conventional conventions, allowing them to select their spouses based on respect and love for one another.
6. In 2024, the Union of Bhavdesb amended the Secular Marriage Act, 1954 (**ANNEXURE-A**), adding the notion of "**Irretrievable Breakdown of Marriage**" through the suggestions made by the Law Commission, keeping in mind the diversity of Bhavdesb, as a legitimate reason for divorce in response to changing social norms and the importance of individual rights. The goal of the amendment is to lessen the emotional and legal burdens associated with prolonged marital strife by offering a reasonable and compassionate option for couples wishing to end their unions due to an irrevocable breakdown.
7. In response to evolving societal norms and the growing importance of personal freedoms, the Parliament of Bhavdesb passed a bill amending the **Bhavya Marriage Act, 1955 (ANNEXURE-A)**, which governs all citizens following Bhavdesbism [Pari Materia to the definition of "Hindu" prescribed under the Hindu Marriage Act, 1955 u/s

2 of the act, r/w Art.25(2) of the Constitution of India]. This amendment introduced **"Irretrievable Breakdown of Marriage"** as a valid ground for divorce.

8. In the state of Neelanchal under the Union of Bhavdes, a case was brought before the Parivar Court of Parigram. Shivam Shukla and Jasmine Cruze got married on 1st January, 2018 under the provisions of Secular Marriage Act, 1954. Over the course of six years, Shivam Shukla and Jasmine Cruze's relationship was severely strained by their long-distance marriage. The physical distance and absence of daily interaction led to feelings of increasing loneliness and emotional disconnection. Though communication was common, it frequently could not take the place of the intimacy and togetherness that would have come from being physically together.
9. The fact that both had demanding schedules; Jasmine focused on her job in the city of Parigram, while Shivam worked long hours overseas. As time went on, it became increasingly difficult for them to stay connected, and tensions and misunderstandings would occasionally surface between the couple.
10. The absence of a regular routine and everyday support also made it difficult for the couple to make decisions and deal with personal issues when they were not together. There were times when one of them felt neglected or unsupported in the absence of the other, leading to moments of doubt about their ability to sustain a long-distance marriage.
11. The absence of a companion to share personal achievements frequently undermined the happiness derived from those accomplishments. Despite their best attempts to stay in touch and their shared love, the difficulties of a long-distance marriage started to seriously harm their relationship and emotional health.

12. Due to career-oriented circumstances and geographical distance, the matrimonial union was untenable, leading both parties to consensually filing a petition for the dissolution of marriage on the grounds of "Irretrievable Breakdown of Marriage" in the Parivar Court of Parigram. Owing to the current amendments to the marriage laws in the State of Bhavdes, the Parivar Court of Parigram accepted the divorce petition and dissolved the marriage between Shivam and Jasmine .
13. Meanwhile, Devendra Kulkarni, a prominent Bhavdeshian party leader in the state of Bhavdes, vehemently opposed the recent amendments to the personal marriage laws. He argued that these amendments were a direct attack on the freedom of religion of his community.
14. Devendra Kulkarni filed a petition in the Supreme Court of Bhavdes challenging the constitutionality of the amendments. He contended that the amendments infringed upon the fundamental rights guaranteed under Article 25 of the Constitution of Bhavdes, attacking the general religious freedom.
15. The Supreme Court of Bhavdes admitted the petition and issued notices to the state government and other relevant parties. The court sought to examine whether the amendments to the marriage laws were in violation of the fundamental rights under Part III of the Constitution of Bhavdes.
16. Observing that the judgement given by the Parivar Court of Parigram in the matter of Shivam Shukla v. Jasmine Cruze and the petition filed by Devendra Kulkarni, are of the same nature, the court decided to consolidate both cases for a comprehensive hearing on the settlement of the legal issues.
17. The case garnered significant public attention, with various religious and social organizations expressing their support for Kulkarni's stance. The court scheduled a

series of hearings to deliberate on the constitutional validity of the amendments and their impact on the personal laws of the community.

18. The Supreme Court of Bhavdesh framed the following issues for consideration:

- i. **Whether the present case is maintainable in the Supreme Court?**
- ii. **Whether the inclusion of irretrievable breakdown of marriage as a ground for divorce under the Bhavya Marriage Act, 1955 violates Article 14 and 15 read with Article 25 of the Constitution?**
- iii. **Whether recognising irretrievable breakdown of marriage as a ground for divorce under the Secular Marriage Act, 1954, undermines the framework of existing divorce laws, particularly those under personal laws, and disrupts the principle of uniformity in matrimonial statutes?**
- iv. **Whether Irretrievable Breakdown of Marriage as ground for divorce conflicts with any other legislation or practices prevalent in the State?**

19. The Supreme Court also granted leave to both parties to articulate any other issue that may be relevant in the said case.

NOTE: The laws of UoB are pari materia to the laws of India.

The Bhavya Marriage Act, 1955 is pari materia to the Hindu Marriage Act, 1955.

The Secular Marriage Act, 1954 is pari materia to the Special Marriage Act, 1954.

The Parivar Courts Act, 1984 is pari materia to the Family Courts Act, 1984.

ANNEXURE- A

The Union of Bhavdesh Amendment, 2024

Amendments to Section 27 of the Secular Marriage Act, 1954,

And

Section 13 of the Bhavya Marriage Act, 1955.

27. Divorce.— (1B) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife party to a marriage on the ground that the marriage has irretrievably broken down, provided that the parties have lived separately for a continuous period of not less than six years immediately preceding the presentation of the petition, and there is no reasonable prospect of reconciliation.

[Explanation. —In this sub-section, the term "irretrievable breakdown of marriage" means a situation wherein both parties have lived apart for a significant duration, and all attempts at reconciliation have failed, rendering the continuation of the marital relationship untenable and purposeless.

Provided that no such petition for divorce shall be granted, unless the Court is satisfied-

- (i) that adequate financial arrangements have been made for the post-divorce maintenance and welfare of both parties and their children, if any, in alignment with the custody arrangements determined for the children.
- (ii) that the orders issued in prior legal proceedings have not facilitated any Improvement in the marital relationship between the parties.
- (iii) that attempts at dispute resolution through court intervention or mediation, as mandated by the Parivar Courts Act, 1984, have been unsuccessful.
- (iv) that the mandated cooling-off period of 6-18 months serves no constructive purpose, and its continuation would only prolong the emotional and mental distress of the parties involved.]

13. Divorce.— (1B) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the Parivar court either by the husband or the wife party to a marriage on the ground that the marriage has irretrievably broken down, provided that the parties have lived separately for a continuous period of not less than six years immediately preceding the presentation of the petition, and there is no reasonable prospect of reconciliation.

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