



SC Allows Divorce on Irretrievable Breakdown

For Prelims: Article 142(1) of the Constitution, Hindu Marriage Act (HMA), 1955, SC judgements on divorce.

For Mains: Legal challenges faced by people seeking a divorce in India, the significance of Article 142(1) in divorce cases, Supreme Court and Law Commission on Irretrievable breakdown on marriage, Marriage equality in India – challenges faced by women.

Why in News?

Recently, the [Supreme Court \(SC\)](#) ruled that under its power to do ‘**complete justice**’ granted via [Article 142](#), it can **dissolve a marriage on the ground that it had broken down irretrievably**, without referring the parties to a family court where they must wait 6-18 months for a decree of divorce by mutual consent.

What is SC’s Ruling?

▪ **Ruling:**

- In the case of ***Shilpa Sailesh vs. Varun Sreenivasan (2023)***, the SC has ruled that **it has the power to dissolve a marriage** if it is **irretrievably broken down**.
- The court can **waive the mandatory six-month waiting period** for divorce under the [Hindu Marriage Act \(HMA\), 1955](#), and allow the dissolution of the marriage on grounds of an irretrievable breakdown **even if one of the parties was not willing**.

▪ **Conditions:**

Larger public, personal interest

'IRRETRIEVABLE BREAKDOWN OF MARRIAGE'

"Court should be fully convinced... the marriage is totally unworkable, emotionally dead and beyond salvation and, thus, dissolution of marriage is... the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established."

FACTORS TO ESTABLISH BREAKDOWN

- 1 Time the parties lived together after marriage
- 2 When the parties last cohabited
- 3 Allegations made by parties against each other, their families
- 4 Orders passed in legal proceedings
- 5 Attempts made to settle disputes by court intervention, mediation
- 6 The separation period should be above six years



▪ Significance of the Ruling:

- The process of obtaining a **decree of divorce is often time-consuming and lengthy** owing to a large number of similar cases pending before family courts.
 - The ruling allows parties to **bypass the waiting period and approach the Supreme Court directly for a divorce** on grounds of irretrievable breakdown.
- As per SC, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage.
 - Dissolving such a marriage, even if one of the parties agree, would provide a **speedy solution for parties who are unable to live together** and have mutually agreed that the marriage should be dissolved.
- The judgment is significant as **irretrievable breakdown of marriage is not yet a ground for divorce** under the **Hindu Marriage Act (HMA) 1955**.
 - Till date, there is still **no codified law for irretrievable breakdown of marriage**. Though, the HMA 1955 recognizes a few grounds for dissolution of marriage in Section 13.

▪ Implication of the Judgement:

- The recent SC judgement **does not imply** that people can rush straight to the SC for a quick divorce.
 - The **grant of divorce by the SC on the ground of irretrievable breakdown of marriage is "not a matter of right, rather a discretion** which needs to be exercised with great care and caution".
- The SC also clarified that a **party cannot file a writ petition under Article 32 (or Article 226)** of the Constitution of India and **seek relief of dissolution of marriage** on the ground of irretrievable breakdown of marriage directly from it.

▪ Need to Shift away from Fault Theory:

- The 5-judge bench **highlighted the need of the SC to move away from "fault theory" and "accusatorial principle of divorce"** under Section 13 (1) of HMA 1955, which prescribes divorce on grounds where one of the spouses can be held guilty of certain misdeeds such as cruelty, adultery or desertion.
- **The HMA 1955** and the **Special Marriage Act 1954** are **premised on the 'fault' or**

'matrimonial offence' theory for the purpose of divorce.

- It allows the **innocent party to obtain a divorce if the other party has committed a matrimonial offence.**
- Under HMA 1955, there are **7 fault grounds** for divorce: **adultery, cruelty, desertion, conversion, insanity, leprosy, venereal disease, and sanyasa.**
 - There are 4 grounds on which the wife can sue alone: **rape, sodomy, bestiality, non-resumption of cohabitation after maintenance order, and decree for maintenance.**
- The innocent party must prove that they are blameless for the divorce to be granted under this theory.

Note:

- The [Law Commission of India](#), in its reports in 1978 and 2009 recommended **adding irretrievable breakdown as an additional ground of divorce.**
 - The Law Commission in its 71st report (1978), dealt with the concept of irretrievable breakdown of marriage.
- The Report also mentions that as far back as 1920, **New Zealand was the first of the Commonwealth countries** to introduce the provision that a **three-year or more separation agreement** was grounds for filing a petition in the courts for divorce.
 - It has become a classic enunciation of the breakdown principle in matrimonial law.

What is HMA 1955?

- **About:**
 - The Hindu Marriage Act 1955 (HMA) is an act of the Parliament of India that codifies and amends the law relating to marriage among Hindus and others.
 - It **applies to Hindus, Buddhists, Jains, Sikhs and anyone who is not a Muslim, Christian, Parsi, or Jew by religion.**
- **Current Procedure for Divorce under the HMA:**
 - Section 13B of the HMA provides for **"divorce by mutual consent"** under which both parties to the marriage **must together file a petition to the district court.**
 - This will be done on the grounds that they have been living separately for a period of one year or more, **that they have not been able to live together** and have mutually agreed that the marriage should be dissolved.
 - The parties must **move a second motion** before the court **at least 6 months after the date of the presentation** of the first petition and **not later than 18 months** after the said date (provided, the petition is not withdrawn in the meantime).
 - The mandatory six-month wait is intended to give the parties time to **withdraw their plea.**
 - **A petition for divorce by mutual consent** can be **moved only after a year** of the marriage.
 - However, section 14 of the HMA allows a divorce petition sooner in case of **"exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent"**.
 - A waiver of the six-month waiting period under Section 13 B (2) can be sought in an exemption application filed before the [family court.](#)

What are the Other Judgements Related to Divorce?

- **Amit Kumar vs Suman Beniwal (2021):** The SC said, "Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be **meaningless to prolong the agony of the parties to the marriage.**"
- **Bhagwat Pitambar Borse vs. Anusayabai Bhagwat Borse (2018):** The Bombay HC held that desertion by the wife for more than seven years without any reasonable cause and without any

intention to return is a valid ground for divorce.

- In June 2016, a **two-judge bench referred to the larger bench of 5 judges** the matter regarding the **court's exercise of powers under Article 142 to grant a divorce without sending the parties to a family court.**
 - Citing conflicting views taken by different benches of the top court, it also sought clarity on the broad parameters for the exercise of powers under Article 142 to dissolve a marriage between the consenting parties.
 - The **smaller bench had in 2016 appointed senior advocates** Indira Jaising, Dushyant Dave, V Giri, and Meenakshi Arora as **amici curiae (friends of court)** to assist the Constitution bench.

What is Article 142 (1) of the Constitution?

- Subsection 1 of [Article 142](#) confers sweeping **power on the Supreme Court** to pass such decree or **make such order as is necessary for doing 'complete justice' in any cause or matter.**
- The decision to exercise the power under Article 142(1) must be **"based on considerations of fundamental general and specific public policy"**.
 - The fundamental general conditions of public policy refer to the **fundamental rights, secularism, federalism, and other basic features of the Constitution**; specific public policy was defined by the court to mean **"some express pre-eminent prohibition** in any substantive law, and **not stipulations and requirements** to a particular statutory scheme".

What is the Status of Marriage Equality in India?

- **Divorce Rate and Trends in India:**
 - A 2018 survey of 160,000 households revealed that **93% married Indians had 'an arranged marriage'**, as against the **global average of about 55%.**
 - India has a **low annual divorce rate of 1.1 per 1,000 people**, with only **13 out of every 1,000 marriages** resulting in divorce, and **men are usually the initiators.**
 - Prevailing **social norms discourage women from seeking a divorce**, and when they do, they face **legal hassles and socio-economic isolation**, especially if they are financially dependent on their spouses.
- **Women's Economic Dependency:**
 - Indian [women's low labor-force participation](#) rate translates to **high levels of financial dependency**, forcing them to **'adjust' to bad marriages.**
- **Women's Socio-Economic Challenges after Divorce:**
 - The dissolution of a marital union disproportionately affects women, who suffer from chronic strains of divorce, including **disproportionate losses in household income**, higher risk of **losing homeownership**, **lower chances of re-partnering**, and greater responsibilities of single parenting.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims:

Q. With reference to the Constitution of India, prohibitions or limitations or provisions contained in ordinary laws cannot act as prohibitions or limitations on the constitutional powers under Article 142. It could mean which one of the following? (2019)

(a) The decisions taken by the Election Commission of India while discharging its duties cannot be challenged in any court of law.

(b) The Supreme Court of India is not constrained in the exercise of its powers by laws made by the

Parliament.

(c) In the event of grave financial crisis in the country, the President of India can declare Financial Emergency without the counsel from the Cabinet.

(d) State Legislatures cannot make laws on certain matters without the concurrence of Union Legislature.

Ans: (b)

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