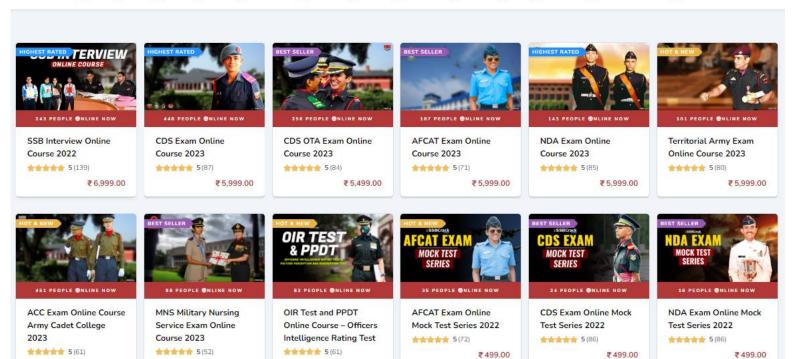


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Supreme Court Rules It Can Directly Grant Divorce To Couples

Why In The News?

- A 5 Judge Constitution Bench Of The SC Led By Justice S K Kaul Ruled It Can Exercise Its Plenary Power To Do "Complete Justice" Under Article 142(1) Of The Constitution To 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. It Can Waive The
 Mandatory Six-Month Waiting Period For Divorce Under The Hindu Marriage
 Act (HMA), 1955. (Shilpa Sailesh Vs Varun Sreenivasan Case)

♦ The Indian **EXPRESS**

Supreme Court rules it can directly grant divorce to couples under Article 142: How this works

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.

Current Procedure For Divorce - Hindu Marriage Act

- Section 13B Of The HMA Provides For "Divorce By Mutual Consent".
- Both Parties To The Marriage Must Together File A Petition To The District Court.
- "On The Ground That They Have Been Living Separately For A Period Of One Year Or More, That They Have Not Been Able To Live Together, And That They Have Mutually Agreed That The Marriage Should Be Dissolved".
- Under Section 13B(2) Of The Act, The Parties Must Move A Second Motion Before The Court "Not Earlier Than Six Months After The Date Of The Presentation Of The [First] Petition...and Not Later Than Eighteen Months After The Said Date, If The Petition Is Not Withdrawn In The Meantime".
- The Mandatory Six-Month Wait Is Intended To Give The Parties Time To
 Withdraw Their Plea. The Process Of Obtaining A Decree Of Divorce Is Often

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Time-consuming And Lengthy Owing To Many Similar Cases Pending Before Family Courts.

 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".



What Is Article 142 Of The Constitution?

Article 142 Of The Constitution Of India Provides A Special And Extraordinary
 Power To The Supreme Court To Pass An Order Or Decree To Do Complete
 Justice To The Litigants Who Have Traversed Through A Multitude Of
 Proceedings Tainted With Palpable Illegality Or Injustice.

What Does The Term "Irretrievable Breakdown" Means:

- The First And Most "Obvious" Condition Is That The Court Should Be Fully
 Convinced And Satisfied That The Marriage Is "Totally Unworkable, Emotionally
 Dead And Beyond Salvation, Therefore, Dissolution Of Marriage Is The Right
 Solution And The Only Way Forward".
- The Court Laid Down The Following Factors:
- The Period Of Time That The Parties Had Cohabited After Marriage;
- When The Parties Had Last Cohabited;
- Nature Of Allegations Made By The Parties Against Each Other And Their Family Members;
- Orders Passed In The Legal Proceedings From Time To Time;
- Cumulative Impact On The Personal Relationship;

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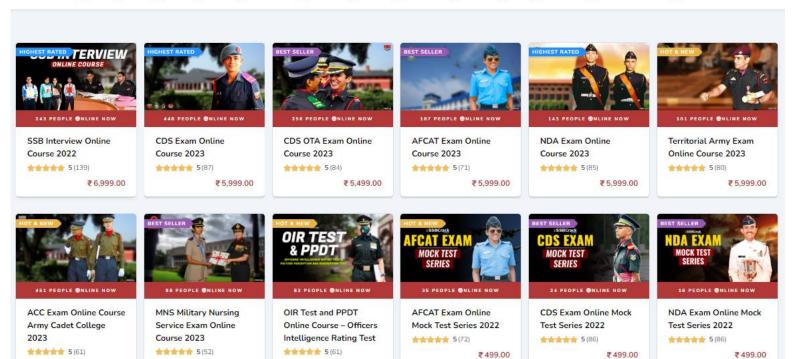
- Whether, And How Many Attempts Were Made To Settle The Disputes By A Court Or Through Mediation, And When The Last Attempt Was Made.
- The Court Also Noted That The Period Of Separation Should Be Sufficiently Long, And "Anything Above Six Years Or More Will Be A Relevant Factor".
- It Emphasised The Need To Evaluate The Factors According To The **Economic** And Social Status Of The Parties, Including Their Educational Qualifications; Whether They Have Any Children; Their Age; And Whether The Spouse And Children Are Dependents.





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