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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Presentation Of The [First] Petition...and Not Later Than Eighteen Months After The Said Date, If The Petition Is Not Withdrawn In The Meantime”.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**

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;

- 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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