

## **SC Can Give Divorce On `Irretrievable Breakdown` Of Marriage Supreme Court Removes 6-Month Waiting Period For Divorce**

*On May 1, a constitution bench of five judges led by Justice S K Kaul ruled that it could use its extraordinary discretion under Article 142 of the Constitution to grant couples stuck in sour marriages a divorce by mutual consent on the ground of 'irretrievable breakdown of marriage', doing "complete justice" to them and sparing them the "misery" of having to wait six to 18 months for a local court to declare the annulment final under the Hindu Marriage Act, 1955. In addition, the top court ruled that disputing parties cannot file a writ petition under Article 32 of the Constitution immediately asking for the dissolution of their marriage on the grounds of irretrievable collapse. Indian citizens have the right, under Article 32, to petition the Supreme Court for a constitutional remedy if their fundamental rights have been violated.*

### **What Exactly was the Case About?**

*The Supreme Court was debating a number of issues, including what might be the general guidelines for the use of Article 142's dissolution powers to end a marriage between willing parties without referring them to a family court or requiring them to wait the minimum amount of time required by Section 13-B of the Hindu Marriage Act (HMA). A division bench in a transfer petition forwarded the issue to a five-judge bench almost five years ago. The parties requested a divorce under Article 142 in the original case, Shilpa Sailesh vs. Varun Sreenivasan, which was filed in 2014. The parties claimed that their marriage had irretrievably broken down.*

### **What is Article 142?**

*Article 142(1) confers authority upon the Supreme Court to issue a decree or order that is essential for providing complete justice in any case or matter, and such decree or order can be implemented throughout India. Although the authority granted by Article 142 is broad, the SC has clarified its boundaries through its rulings. The parties in the current case initially filed for divorce in 2014 in accordance with Article 142. The SC stated that it can only deviate from procedural rules and substantive legislation already in place when using the authority granted by Article 142(1) "based on fundamental general and particular public policy considerations" when granting the parties divorce. According to the court, "some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme" is what is meant by specific public policy. The fundamental general conditions of public policy are the Constitution's fundamental rights, secularism, federalism, and other tenets of the republic.*

## **What is Subsection (2) of Section 13-B?**

*Subsection (2) of Section 13-B of the Hindu Marriage Act, which addresses divorce by mutual consent, states that if the petition is not withdrawn in the interim, the parties must file a second motion with the court within six months and no later than 18 months after the first motion has been granted.*

## **Factors for “Irretrievable breakdown”**

*In order to satisfy the court, it is imperative to establish that the marriage is completely unviable, devoid of emotional attachment, and cannot be salvaged, making dissolution of the marriage the appropriate and sole solution.*

*The court established the following criteria:*

*the length of time that the parties lived together after getting married;*

*when the parties' most recent habitation;*

*the specifics of the claims brought by the parties against one another and their relatives;*

*orders made from time to time during legal processes;*

*the cumulative effect on the relationship;*

*whether, how many, and when attempts were made to have the conflicts resolved in court or through mediation.*

*The court added that the separation period needed to be lengthy enough, adding that "anything above six years or more will be a relevant factor." It stressed the need of weighing the elements in light of the parties' economic and social standing, including their educational backgrounds, whether or not they have children, their ages, and whether or not their spouse and children are dependents.*

## **The Way Forward**

*The decision from May 1 won't solve this issue. To do this, the rules governing marriage must be completely revised, and the judiciary's ability must be much increased (these issues are not just related to divorces). According to the judgement, the Court would immediately dissolve the marriage if it is crystal evident that it cannot be saved. Above all else, it should be viewed as a deed of charity. It is crucial to keep in mind that the Supreme Court goes above and beyond*

*other courts, perhaps even more so, to see if the couple can get along again. In some cases, the court may even exert some pressure on an unwilling party to reconsider the marriage. As a result, the issue of granting a divorce only arises when it is crystal evident that there is no other way to resolve the situation. Another crucial point is that the current petition does not permit people to immediately approach the Supreme Court to request a divorce. In reality, the ruling makes it clear that petitioners cannot apply for a divorce directly to the supreme court. In any case, because a Supreme Court petition can take up to a year to be heard, going through the family courts may still be preferable for people who want to have a divorce by mutual consent. If anything, this should start a discussion about practical issues surrounding divorce proceedings in the present period, where parties are frequently from various regions of the country and where divorce proceedings are frequently used as a means of final cruelty by one of the parties. Making unhappy spouses cohabitately simply fuels their resentment. The results can occasionally be disastrous.*