Divorce on “irretrievable breakdown of marriage”

Why in news?

The Supreme Court used its extraordinary powers under Article 142 of the Constitution to grant divorce in a case of “irretrievable breakdown of marriage”.

What does the Hindu marriage law specify?

- The Hindu Marriage Act, 1955 lays down the law for divorce.
- It applies to Hindus, Buddhists, Jains, and Sikhs.
- Under Section 13 of the Act, the grounds for divorce include:
    i. voluntary sexual intercourse with any person other than his or her spouse
    ii. cruelty
    iii. desertion for a continuous period of not less than 2 years immediately preceding the presentation of the petition
    iv. ceasing to be a Hindu by conversion to another religion
    v. being “incurably of unsound mind”
- In addition to this, Section 13B provides for “divorce by mutual consent”.
- Section 27 of The Special Marriage Act, 1954 provides the grounds for grant of divorce in the case of marriages solemnised under that Act.
- However, neither of the two Acts provides for “irretrievable breakdown of marriage” as a ground for divorce.

What is the court’s observation?

- “Irretrievable breakdown of marriage” refers to a marriage that is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably.
- In a recent case, divorce was granted on this ground, after examining various judicial pronouncements.
- Such powers are exercised in rare cases, in view of the absence of legislation in this behalf.
- In the present case, the court said that it believed that the continuity of the marriage was fruitless.
- It also observed that continuance of it would cause further emotional trauma and disturbance to both the parties.
- Thus, the sooner this comes to an end, the better it would be, for both the

parties.

What does Article 142 provide for?

- Article 142 provides a unique power to the Supreme Court, to do “complete justice” between the parties involved.
- This means that at times when law or statute may not provide a remedy, the Court can extend itself to settle a dispute in a manner that would befit the facts of the case.
- It is with this objective that the court finds it appropriate to grant divorce in a case of “irretrievable breakdown of marriage”.
- The Law Commission of India has also twice recommended that this be included as a new ground for granting divorce to Hindus under Hindu Marriage and the Special Marriage Acts.
- There is, thus, recognition of the futility of a completely failed marriage being continued only on paper.

Source: Indian Express

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