# Divorce under Article 142

## Why in news?

A five-judge Constitution Bench of the Supreme Court held that it can directly grant divorce to couples on irretrievable breakdown of marriage under Article 142 of the Constitution.

## What was the case and its judgement?

- Originally filed in the Supreme Court in 2014, the parties sought a divorce under Article 142.
- **Judgement -** The SC 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.
- It can grant divorce without referring the parties to a family court for divorce by mutual consent petitions.

## What is the current procedure for divorce under the Hindu Marriage Act?

- The Hindu Marriage Act, 1955 lays down the law for divorce which applies to Hindus, Buddhists, Jains, and Sikhs.
- **Divorce by mutual consent -** provided under Section 13B of the Act.
- **Filing -** 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 and have mutually agreed on divorce.
- The parties must move a second motion before the court between 6-18 months after the date of the presentation of the first petition.
- **Six month period -** The mandatory six-month wait is intended to give the parties time to withdraw their plea.
- **Condition for mutual divorce -** A petition for divorce by mutual consent can be moved only after a year of the marriage.
- In case of 'exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent', the petition can be moved earlier under Section 14 of HMA.
- A waiver of the six-month waiting period under Section 13B (2) can be sought in an exemption application filed before the family court.

## What is Article 142 of the Constitution?

• **Article 142** of the Constitution titled 'Enforcement of decrees and orders of the Supreme Court and orders as to discovery, etc.' has two clauses - Article 142 (1) and Article 142 (2).
• **Article 142(1)** reads the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing ***complete justice*** in any cause or matter pending before it.
• Any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament.
• Until provision in that behalf is so made by the Parliament, it shall be enforceable in such manner as the President may by order prescribe.

- **Scope and extent of Article 142 -** The SC has defined it through its judgments.
- **Prem Chand Garg (1962) case** - The order to do complete justice must be consistent with the fundamental rights and the substantive provisions of the relevant statutory laws.

## How does SC grant decree of divorce under Article 142?

- The decision to exercise the power under Article 142(1) to grant divorce should be based on considerations of fundamental general and specific public policy.
- **Fundamental general public policy -** Fundamental rights, secularism, federalism, and other basic features of the Constitution.
- **Specific public policy -** 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 are the factors laid down for the "Irretrievable breakdown" of marriage?

- The court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and dissolution of marriage is the only way forward.
- **Factors -** The court laid down the following factors to determine *irretrievable breakdown of marriage*:
    - 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 period of separation should be sufficiently long (more than 6 years is irrelevant for reconciliation).

## Why do we need direct decree of divorce under Article 142?

- The process of obtaining a decree of divorce is often time-consuming and lengthy.
- A large number of similar cases pending before family courts.

- It emphasised the need to evaluate the factors according to the economic and social status of the parties.
- It considers the dependents of the parties; whether they have any children; their age; and whether the spouse and children are dependents.

**References**


1. IE - SC can directly grant divorce to couples under Article 142
2. Live Law - Dissolving Marriage on grounds of 'Irretrievable Breakdown of Marriage'


