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Article 142 and the Supreme Court's Extraordinary Power: A Matrimonial Dissolution Raises Old Questions

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Article 142 and the Supreme Court's Extraordinary Power: A Matrimonial Dissolution Raises Old Questions

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WHY IN NEWS

On **April 14, 2026**, the Supreme Court invoked its **extraordinary powers under Article 142** of the Constitution to directly dissolve a marriage, bypassing the usual procedural requirements under the Hindu Marriage Act and the Family Courts Act. The ruling — notable for highlighting how Article 142 can remedy procedural abuse in matrimonial litigation — renews debate about the constitutional contours of this unique power.

WHAT IS ARTICLE 142?

UPSC RELEVANCE

*“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, and any decree so passed or order so made shall be enforceable throughout the territory of India...”*

Article 142(2) empowers the Court to investigate or punish contempt of itself, summon witnesses, or discover documents.

Why Article 142 is Unique

Most constitutional courts worldwide are limited to interpreting and applying existing law. Article 142 uniquely empowers the Supreme Court of India to do “complete justice” — which may mean going *beyond statutory law*, filling legislative gaps, or issuing orders that would technically be outside its adjudicatory jurisdiction.

The drafters consciously chose this — the **Constituent Assembly debates (May 27, 1949)** show that Dr B.R. Ambedkar defended this provision as necessary for a young democracy with incomplete legal frameworks.

ARTICLE 142 IN MATRIMONIAL CASES — DOCTRINAL EVOLUTION

The Six-Month Waiting Period Problem

Under the **Hindu Marriage Act, 1955 (Section 13B)** — which governs divorce by mutual consent — parties must:

- ❶ First file a joint petition
- ❷ **Wait 6 months (cooling-off period)** before filing a second motion confirming the decision
- ❸ File the second motion within 18 months

This cooling-off period can be distressing where the marriage has irrevocably broken down and both parties consent.

Shilpa Sailesh v. Varun Sreenivasan (2023)

In **Shilpa Sailesh v. Varun Sreenivasan (2023) 14 SCC 401**, a 5-judge Constitution Bench held:

- **Yes, Article 142 can be used** to grant divorce on the ground of “irretrievable breakdown of marriage” — even though this is not a ground under the Hindu Marriage Act
- The Court can **waive the 6-month cooling-off period** under Section 13B of the Hindu Marriage Act
- **The Court laid down guidelines** for when Article 142 should be exercised in matrimonial matters

The April 14, 2026 Ruling — In Context

The Court’s April 14 judgment applies the *Shilpa Sailesh* framework to a case where the marriage had been broken for over a decade, with multiple rounds of litigation spanning family courts, high courts, and the SC. Using Article 142, the Court:

- ❶ Dissolved the marriage directly — avoiding sending the matter back to family court
- ❷ Settled property division
- ❸ Fixed alimony terms
- ❹ Quashed criminal proceedings arising from the matrimonial dispute

THE “IRRETRIEVABLE BREAKDOWN” DOCTRINE

“Irretrievable breakdown” is **not a statutory ground for divorce** in any Indian personal law. The Law Commission of India has **recommended its inclusion four times**:

- 71st Report (1978)
- 217th Report (2009)
- 221st Report (2009)

- Periodic reiterations in other reports

The recommendation has not been enacted by Parliament. In the absence of legislative action, the Supreme Court has used Article 142 to fill the gap — but has stressed (in *Shilpa Sailesh*) that:

- This is an **exceptional remedy**, not a routine ground
- High Courts and lower courts **cannot** dissolve marriages on irretrievable breakdown — only the Supreme Court can, using Article 142
- Factors considered: length of separation, nature of allegations, attempts at reconciliation, children’s welfare

OTHER LANDMARK ARTICLE 142 USES

Article 142 has been used across widely varying situations:

CASE	YEAR	USE
Union Carbide v. UoI	1991	Bhopal gas tragedy settlement — ordered \$470 million compensation
Vishaka v. State of Rajasthan	1997	Sexual harassment guidelines in absence of legislation — precursor to Sexual Harassment of Women at Workplace Act 2013
M.C. Mehta v. UoI (Delhi pollution)	Various	Shut down polluting industries in Delhi NCR
Naz Foundation (reference)	2018	Navtej Singh Johar — reading down Section 377 IPC
Supreme Court Advocates-on-Record v. UoI	2015	Set up collegium for judicial appointments pending NJAC matter
Babri Masjid / Ayodhya	2019	Use of Article 142 to grant alternate land to Sunni Waqf Board
Shilpa Sailesh	2023	Divorce by irretrievable breakdown under Article 142
Central Vista	2021	Environmental clearance conditions

THE DEBATE — JUDICIAL OVERREACH OR COMPLETE JUSTICE?

Arguments For Broad Article 142 Use

- 1 **Legislative inertia:** Parliament often fails to enact reforms despite Law Commission recommendations (e.g., irretrievable breakdown, criminal law reforms)

- ② **Constitutional design:** Ambedkar and the Constituent Assembly intended the power broadly — the phrase “complete justice” was deliberate
- ③ **Case-specific remedy:** Article 142 is exercised in specific disputes, not as general law-making
- ④ **Higher court discipline:** Only the Supreme Court has this power — preventing chaos in lower courts

Arguments Against

- ① **Separation of powers:** The Supreme Court should not make law where Parliament has deliberately chosen not to legislate
- ② **Democratic deficit:** Judicial legislation bypasses debate, scrutiny, and popular accountability
- ③ **Uncertainty:** “Complete justice” is subjective; different benches may reach different outcomes
- ④ **Rule of law:** Predictability of law is undermined if the apex court can set aside statutory requirements in the name of equity

Constitutional Constraints on Article 142

The Supreme Court itself has developed limits:

- ***Prem Chand Garg v. Excise Commissioner (1963)*:** Article 142 orders must not violate fundamental rights
- ***A.R. Antulay v. R.S. Nayak (1988)*:** Cannot be used to contravene the express provisions of any statute
- ***Supreme Court Bar Association v. UoI (1998)*:** Article 142 is **supplementary** to existing laws — not a substitute for them; cannot override “substantive law applicable to the case”

So even as Article 142 empowers the Court, it cannot override substantive statutory provisions or fundamental rights.

COMPARATIVE — SIMILAR POWERS IN OTHER JURISDICTIONS?

COUNTRY	CLOSEST ANALOGUE	SCOPE
USA (Supreme Court)	“All Writs Act, 1789”	Issue writs necessary in aid of jurisdiction — narrower than Article 142
UK (Supreme Court)	Inherent jurisdiction	Primarily procedural — cannot override statute
Canada	Section 24(1) Charter	Remedies for Charter violations — rights-specific
South Africa	Section 172 Constitution	Declaring invalidity and remedies — narrower
Australia	Section 75 Constitution	Original jurisdiction — not a “complete justice” provision
India	Article 142	Broadest in the world — general power for complete justice

India’s Article 142 is uniquely broad. The Indian Supreme Court’s activism is in substantial part enabled by this provision.

THE FAMILY LAW LANDSCAPE — WHY ARTICLE 142 ENDS UP FILLING GAPS

Multiple Personal Laws, Uneven Reform

COMMUNITY	KEY STATUTE	IRRETRIEVABLE BREAKDOWN AS GROUND?
Hindu (inc. Sikh, Jain, Buddhist)	Hindu Marriage Act, 1955	No (judicial gap-filling via Article 142)
Muslim	Muslim Personal Law Application Act 1937; Dissolution of Muslim Marriages Act 1939; Muslim Women (Protection of Rights on Marriage) Act 2019 (triple talaq)	Not explicitly; talaq and khula available
Christian	Indian Divorce Act, 1869 (amended 2001)	No (but grounds expanded in 2001 amendment)
Parsi	Parsi Marriage & Divorce Act, 1936	No
Special / Secular	Special Marriage Act, 1954	No

The Uniform Civil Code (UCC) debate — Article 44 of the Directive Principles — has periodic salience, but the political difficulty of harmonising personal laws is a key reason Parliament has been slow to reform matrimonial law.

UPSC RELEVANCE

PAPER	ANGLE
GS2 — Polity	Article 142 — scope, limits, leading cases; separation of powers; judicial activism
GS2 — Governance	Law Commission recommendations (71st, 217th, 221st); legislative inertia; UCC debate
GS2 — Social Justice	Personal laws; divorce law reform; protection of women in matrimonial disputes
GS4 — Ethics	Role of morality in judicial decision-making; judicial restraint vs activism
Prelims	Article 142 — complete justice; <i>Shilpa Sailesh v. Varun Sreenivasan (2023, 5-judge bench)</i> ; Hindu Marriage Act 1955 (Section 13B cooling-off: 6 months) ; <i>A.R. Antulay (1988)</i> ; <i>SCBA v. UoI (1998)</i>
Interview	“Is Article 142 the Constitution’s strength or a mark of Parliament’s failure? Should irretrievable breakdown be codified as a statutory ground?”

Clause 1: Supreme Court may do “complete justice” in any cause · Clause 2: Contempt, summoning witnesses, document discovery · No equivalent provision in state High Courts.

*5-judge Constitution Bench (Justices S.K. Kaul, Sanjiv Khanna, A.S. Oka, Vikram Nath, J.K. Maheshwari) · Article 142 can be used to grant divorce on **irretrievable breakdown** · Can waive 6-month cooling-off period under **Section 13B Hindu Marriage Act 1955** · Only SC can do this — not lower courts.*

*Cannot override fundamental rights (**Prem Chand Garg 1963**) · Cannot contradict express statute (**A.R. Antulay 1988**) · Supplementary, not substitutive (**SCBA v. UoI 1998**) · Must not override substantive statutory law.*

***71st (1978), 217th (2009), 221st (2009)** · All recommend statutory inclusion · Parliament has not enacted. *Union Carbide (1991, \$470M)* · *Vishaka guidelines (1997)* · *Ayodhya (2019, alternate land)* · *Navtej Johar (2018, Section 377)* · GS2: Polity.*

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