



Supreme Court: Straight Jacket formula cannot be applied for granting the divorce on the ground of Irretrievable Breakdown of Marriage under Article 142 of the Constitution of India.



CIVIL

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PUBLISHED 16 October 2023

In a recent judgement^[1], the Hon'ble Supreme Court of India held that the straight jacket formula cannot be applied to granting the divorce by exercising its discretion under Article 142 for dissolving the Marriage between the parties by accepting the formula of Irretrievable Breakdown of Marriage ("IrBM").

The question before the Hon'ble Court was, *"Should the irretrievable breakdown of marriage necessarily result in the dissolution of marriage in exercise of powers under Article 142 of the Constitution of India, when such is not a ground for divorce under the Hindu Marriage Act 1955?"*

Whilst deciding an Appeal, the Hon'ble Court stated that the Hon'ble Supreme Court can depart from the procedure as well as the substantive laws and exercise its discretion under Article 142 for dissolving the marriage between the parties by balancing out the equities between the conflicting claims of the parties. However, such discretion should be exercised with great care and caution. The Hon'ble Court noted that the discretionary power could be exercised to dissolve the marriage on the ground of IrBM to do *"complete justice"* though one of the spouses opposes the prayer for dissolution of marriage.

The Hon'ble Court was hearing an Appeal filed by the 89 years old Husband against his 82 years old wife. The Hon'ble Court observed that the wife throughout her life has maintained the sacred relationship since 1963 and has taken care of her three children all these years. Despite the fact that the appellant-husband had exhibited total hostility towards them. The wife showed her willingness and readiness to take care of her husband and did not wish to leave him alone at an advanced stage of his life. Further, the wife pleaded that she does not want to die with the stigma of being a *"divorcee"* woman.

The Hon'ble Court further noted that there is an increasing trend of filing divorce proceedings in the courts of law. However, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life net between the husband and the wife in Indian society. It is governed not only by the letters of law but by social norms as well. Therefore, it is not desirable to accept the formula of IrBM as a straight-jacket formula for the grant of divorce under Article 142 of the Constitution of India.

The Hon'ble Court whilst dismissing the Appeal ordered that dissolving the marriage between parties on the ground that the marriage has irretrievably broken down under Article 142 would not do *"complete justice"* to the parties, rather it would be doing injustice to the wife.

Earlier,^[2] the Hon'ble Supreme Court had discussed the principle of doing *"complete justice"* by invoking the power under Article 142 of the Constitution of India and dissolving the marriage on the ground of irretrievable breakdown of marriage. The detailed article on earlier Judgement can be [read here](#)^[3].

^[1] Dr. Nirmal Singh Panesar vs. Mrs. Paramjit Kaur Panesar @ Ajinder Kaur Panesar, Civil Appeal No.2045 of 2011

^[2] Shilpa Sailesh vs. Varun Sreenivasan (Transfer Petition (civil) No. 1118 of 2014)

^[3] <https://www.indialaw.in/blog/civil/grant-of-divorce-no-right-but-discretion-supreme-court/>