



RESEARCH QUESTION

"How does mutual consent divorce work in India under Section 13B of the Hindu Marriage Act and Section 28 of the Special Marriage Act, what are the timelines and cooling-off period, and when can the Supreme Court waive the six-month waiting period?"

How Mutual Consent Divorce Works Under Section 13B of the Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954: Timelines, Waiting Periods, and the Supreme Court's Waiver Powers

TL;DR

Under Section 13B of the Hindu Marriage Act, 1955 (HMA) and Section 28 of the Special Marriage Act, 1954 (SMA), a mutual consent divorce requires a joint petition showing at least one year of separate living, followed by a mandatory six-to-eighteen-month cooling-off period before the final decree can be passed. The Supreme Court in *Amardeep Singh v. Harveen Kaur* (2017) established that this six-month waiting period is directory rather than mandatory, allowing family courts to waive it if the marriage is irretrievably broken, mediation has failed, and alimony/custody issues are settled. Additionally, the Supreme Court can invoke its extraordinary constitutional powers under Article 142 to waive wait times and dissolve dead marriages immediately to do complete justice.

VERIFIED CASES	STATUTES	LATEST RULING
25	2	2025
19 High Courts • 6 SC		High Court of Andhra Pradesh

CONTENTS

I. Detailed Analysis	3
II. Statutory Provisions	6
III.	7

Prepared by Vitark AI · Strictly confidential · Verify citations before use

I. Detailed Analysis

KEY PRINCIPLES ESTABLISHED

01 One year of separate living is a non-waivable jurisdictional requirement

The statutory period of living separately for a minimum of one year under Section 13B(1) of the HMA or Section 28(1) of the SMA is an absolute jurisdictional prerequisite to filing the petition, and its waiver is legally impermissible as it constitutes the foundation of the cause of action, as held in *Dattatray Salvi v. Charu Dattatray Salvi* (2017).

02 Mutual consent must be continuous and subsist until the final decree

For a court to pass a decree of mutual consent divorce, free and voluntary consent from both spouses must exist at both the time of filing and when the final motion is heard; a unilateral withdrawal of consent by one party at any point before the decree is passed strips the court of its jurisdiction under Section 13B, as established in *Sureshta Devi v. Om Prakash* (1991).

03 Waiver guidelines apply equally to the Special Marriage Act

The judicial discretion to waive the statutory six-month cooling-off period is not restricted to Hindu marriages but applies in equal measure to petitions filed under Section 28 of the Special Marriage Act, 1954, because both statutes are in pari materia and the procedural safeguards serve identical social objectives, as affirmed in *Loveson Melwin v. Norina James* (2024).

04 The six-month waiting period is directory and can be waived by lower courts

The statutory cooling-off period of six months under Section 13B(2) is directory rather than mandatory, meaning that family courts and High Courts possess the discretion to waive it if the parties have genuinely settled all ancillary issues and further delay would only cause them undue agony, as demonstrated in *Dr. Ambrish Kumar Mishra v. Swastika* (2023).

05 The Supreme Court holds exclusive power to dissolve irretrievably broken marriages

While ordinary civil courts and High Courts cannot grant a mutual consent divorce if a party unilaterally withdraws consent during the proceedings, the Supreme Court alone can invoke its extraordinary power under Article 142 of the Constitution to bypass statutory timelines and dissolve a dead marriage to do complete justice, as clarified in *Anil Kumar Jain v. Maya Jain* (2009).

HOW THE COURTS HAVE APPLIED THIS

SUPREME COURT POSITION

The Supreme Court has consistently held that the cooling-off period is meant to prevent hasty decisions but should not be used to prolong a purposeless, dead marriage. Where reconciliation has failed and the parties have lived apart for years, the Court has routinely waived the statutory interregnum to enable fresh rehabilitation.

HIGH COURT VARIATIONS

Historically, some High Courts took a rigid approach, holding that the statutory six-month period was mandatory and could not be waived by any court other than the Supreme Court (*Pooja Deswal v. Sagar Deswal* (2014)). However, subsequent decisions have aligned with the directory interpretation, permitting trial and appellate courts to grant waivers when the parties have reached mediated settlements (*Johnny Sebastian v. Jossy @ Saramma K.J.* (2023)).

RECENT EVOLUTION

Courts have increasingly set aside rigid trial court orders that mechanically rejected waiver applications, directing immediate dissolution where the parties have been separated for years and have entered into comprehensive alimony agreements (*Shambhavi Singh v. Rishi Singh* (2020)). Furthermore, recent judgments have integrated the *Amardeep Singh* criteria with broader principles of matrimonial rehabilitation to expedite proceedings (*Priya Gupta v. Harshvardhan Gupta* (2023)).

UNSETTLED AREAS OR CAVEATS

Limits on Article 142 when one spouse is willing to reconcile

Even when a marriage has factually broken down, if one spouse genuinely refuses to consent and expresses a desire to preserve the marriage for the sake of their children, the Supreme Court may decline to exercise its extraordinary power under Article 142 to dissolve the marriage (*Hitesh Bhatnagar v. Deepa Bhatnagar* (2011)).

Statutory disparities across different personal laws

While the Hindu Marriage Act and Special Marriage Act share similar timelines, other personal laws (such as the Indian Divorce Act, 1869) historically lacked matching provisions for mutual consent or irretrievable breakdown, highlighting the systemic lack of uniformity in Indian matrimonial law (*Jordan Diengdeh v. S.S. Chopra* (1985)).

II. Statutory Provisions 2 PROVISIONS

SECTION 13B, HINDU MARRIAGE ACT, 1955 — DIVORCE BY MUTUAL CONSENT

Allows couples married under Hindu law to jointly petition for divorce after living separately for at least one year and mutually agreeing to dissolve the marriage, subject to a six-to-eighteen-month waiting period.

"(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together... on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree." *Cited in:* M. Venkata Pulla Rao v. Maddala Udaya Lakshmi, P. Lydia Jenifar v. S. Rajadurai, Umesh Thakur v. Shivali Mehta, Surjeet Singh v. Ghama Thakur, Bivin John v. Minnu Joseph, S. Sanjeev v. Janani K., Johny Sebastian v. Jossy @ Saramma K.J., Pooja Deswal v. Sagar Deswal, Chandra Shekar Malhotra v. Smt. Nishu Manchanda

SECTION 28, SPECIAL MARRIAGE ACT, 1954 — DIVORCE BY MUTUAL CONSENT

Enables couples to obtain a divorce by mutual consent under the Special Marriage Act after a minimum of one year of separate living, following a six-to-eighteen-month cooling-off period.

"(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree." *Cited in:* Sureshta Devi v. Om Prakash, Johny Sebastian v. Jossy @ Saramma K.J.

III. Cases Discussed

25 CASES · SUMMARY TABLE

#	CASE TITLE	COURT	YEAR	KEY HOLDING
01	<i>Smt. Poonam Arora v. Amit Arora</i> UPHC012378192023	ALLAHABAD HIGH COURT	2023	Remands waiver application to determine if marriage has irretrievably broken down.
02	<i>Amardeep Singh v. Harveen Kaur</i> ESCR010006882017	SUPREME COURT OF INDIA	2017	Declares statutory six-month cooling-off period under Section 13B(2) is directory, not mandatory.
03	<i>Johny Sebastian v. Jossy @ Saramma K.J.</i> KLHC010497282022	HIGH COURT OF KERALA	2023	Waives cooling-off period under Special Marriage Act for parties living apart for years.
04	<i>Dr. Ambrish Kumar Mishra v. Swastika</i> UPHC012316132023	ALLAHABAD HIGH COURT	2023	Directs family court to decide waiver application expeditiously using Supreme Court guidelines.
05	<i>Sureshta Devi v. Om Prakash</i> ESCR010000191991	SUPREME COURT OF INDIA	1991	Holds mutual consent must continue and exist at the time of the decree.
06	<i>Pooja Deswal v. Sagar Deswal</i> PHHC010076182014	HIGH COURT OF PUNJAB AND HARYANA	2014	Denies waiver, holding statutory six-month waiting period under Section 13B(2) is mandatory.
07	<i>Arun Gupta v. Rita Gupta</i> PHHC010080742007	HIGH COURT OF PUNJAB AND HARYANA	2007	Waives cooling-off period where continuation of sterile marriage would harm remarriage prospects.
08	<i>Jordan Diengdeh v. S.S. Chopra</i> ESCR010002571985	SUPREME COURT OF INDIA	1985	Notes lack of mutual consent provisions under the Christian Indian Divorce Act.
09	<i>Umesh Thakur v. Shivali Mehta</i> HPHC010064542022	HIGH COURT OF HIMACHAL PRADESH	2023	Converts revision petition to mutual divorce and waives the six-month cooling-off period.
10	<i>M. Venkata Pulla Rao v. Maddala Udaya Lakshmi</i> APHC010235812013	HIGH COURT OF ANDHRA PRADESH	2025	Dissolves marriage and waives waiting period following a mediated permanent alimony settlement.
11	<i>Dattatray Salvi v. Charu Dattatray Salvi</i> HCBM010299682015	BOMBAY HIGH COURT	2017	Reverses consent decree where mandatory one-year separation requirement was not met.
12	<i>Swati Ramakant Patil v. Ramakant Ratan Patil</i> HCBM030142712015	BOMBAY HIGH COURT	2015	Denies waiver of six-month waiting period citing lack of extraordinary hardship.
13	<i>Surjeet Singh v. Ghama Thakur</i> HPHC010280982021	HIGH COURT OF HIMACHAL PRADESH	2021	Cites Supreme Court precedent to waive cooling-off period when reconciliation is impossible.

#	CASE TITLE	COURT	YEAR	KEY HOLDING
14	<i>Loveson Melwin v. Norina James</i> RJHC010463162024	HIGH COURT OF RAJASTHAN	2024	Extends directory nature of cooling-off period to the Special Marriage Act.
15	<i>S. Sanjeev v. Janani K.</i> KLHC010492952019	HIGH COURT OF KERALA	2022	Waives cooling-off period after parties reach comprehensive settlement in appellate mediation.
16	<i>Hitesh Bhatnagar v. Deepa Bhatnagar</i> ESCR010006342011	SUPREME COURT OF INDIA	2011	Confirms consent can be unilaterally withdrawn at any time before the final decree.
17	<i>Manjiri v. Bhushan Raut</i> HCBM040121602022	BOMBAY HIGH COURT	2022	Overrules family court to waive waiting period for educated couple with irreconcilable differences.
18	<i>P. Lydia Jenifar v. S. Rajadurai</i> HCMD010002962017	MADRAS HIGH COURT	2017	Grants mutual divorce and waives cooling-off period where separation lasted since 2013.
19	<i>Chandra Shekar Malhotra v. Smt. Nishu Manchanda</i> UKHC010086192016	HIGH COURT OF UTTARAKHAND	2016	Rules High Court lacks power to waive statutory period, reserving it for Supreme Court.
20	<i>Rajneesh Kumar v. Deepika Kumari</i> HPHC010439532023	HIGH COURT OF HIMACHAL PRADESH	2024	Directs family court to waive waiting period following an amicable alimony settlement.
21	<i>Shambhavi Singh v. Rishi Singh</i> UPHC010002012020	ALLAHABAD HIGH COURT	2020	Waives six-month waiting period and remits for final order under *Amardeep Singh*.
22	<i>Bivin John v. Minnu Joseph</i> KLHC010358912022	HIGH COURT OF KERALA	2023	Grants mutual consent divorce and waives waiting period upon mediated global settlement.
23	<i>Priya Gupta v. Harshvardhan Gupta</i> UPHC011433952023	ALLAHABAD HIGH COURT	2023	Sets aside order denying waiver of cooling-off period where reconciliation is impossible.
24	<i>Jaipur Development Authority v. Mahesh Sharma & Anr.</i> ESCR010000722010	SUPREME COURT OF INDIA	2010	Holds no court can grant divorce on consent outside Section 13B.
25	<i>Anil Kumar Jain v. Maya Jain</i> ESCR010003172009	SUPREME COURT OF INDIA	2009	Rules Supreme Court can waive wait period and dissolve marriage under Article 142.

IV. Case Details 25 CASE FILES

01 Smt. Poonam Arora v. Amit Arora

ALLAHABAD HIGH COURT • 2023-11-28 • A227/11368/2023

This petition concerned a request to waive the mandatory six-month 'cooling-off' period for divorce by mutual consent under Section 13-B of the Hindu Marriage Act. The Family Court had previously rejected the parties' joint application for a waiver. The High Court, citing the Supreme Court's ruling in *Amardeep Singh v. Harveen Kaur*, held that the trial court failed to exercise its discretion properly to determine if the marriage had irretrievably broken down and if reconciliation efforts had been exhausted. The High Court set aside the lower court's order and remanded the matter back to the Family Court, directing it to reconsider the waiver application in light of the guidelines established in the *Amardeep Singh* precedent within one month.

HELD The Allahabad High Court held that the trial court failed to exercise its discretion properly and was bound to be guided by the guidelines established in *Amardeep Singh v. Harveen Kaur* to evaluate whether the six-month cooling-off period should be waived to prevent prolonged agony.

"The concept of a "cooling-off period of six months" for grant of divorce in a petition for mutual divorce filed by both the parties is incorporated under section 13B(2) of the Hindu Marriage Act, 1955."

ALLAHABAD HIGH COURT • 2023

SOURCE UPHC012378192023

02 Amardeep Singh v. Harveen Kaur

SUPREME COURT OF INDIA • 2017-09-12 • 2017 INSC 896

This case addressed whether the six-month statutory 'cooling-off' period prescribed by Section 13B(2) of the Hindu Marriage Act, 1955, for divorce by mutual consent is mandatory or directory. The Supreme Court held that the provision is directory, allowing courts to waive the waiting period in exceptional circumstances. To exercise this discretion, the court must be satisfied that the parties have been separated for the required period, all reconciliation efforts have failed, disputes regarding alimony and child custody have been settled, and that further delay would only cause undue agony. This interpretation aims to prevent the forced continuation of irretrievably broken marriages.

HELD The Supreme Court held that the six-month waiting period mentioned in Section 13B(2) is not mandatory but directory, enabling courts to exercise guided discretion to waive it when cohabitation is impossible and options for alternative rehabilitation are available.

"Since the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

SUPREME COURT OF INDIA • 2017

SOURCE ESCR010006882017

03 Johny Sebastian v. Jossy @ Saramma K.J.

HIGH COURT OF KERALA • 2023-01-25 • MAT.APPEAL/518/2022

The appellant filed an appeal challenging the dismissal of his divorce petition under the Special Marriage Act. During the pendency of the appeal, the parties reached a mutual settlement and filed a joint application seeking a decree of divorce by mutual consent, while also requesting a waiver of the statutory six-month waiting period prescribed under Section 28 of the Act. Relying on the principles laid down by the Supreme Court, the Court held that the cooling-off period is directory rather than mandatory. Observing that the parties had been living apart for several years and had genuinely settled their disputes, the Court granted the waiver and passed a decree of divorce by mutual consent.

HELD The Kerala High Court held that the statutory waiting period in mutual consent petitions is directory rather than mandatory, and can be waived by the court if the separation period is already over, reconciliation efforts have failed, and disputes are genuinely settled.

“Since the period mentioned in Section 13B(2) of the Hindu Marriage Act is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

HIGH COURT OF KERALA • 2023

SOURCE KLHC010497282022

04 Dr. Ambrish Kumar Mishra v. Swastika

ALLAHABAD HIGH COURT • 2023-11-21 • A227/10863/2023

This petition was filed to expedite proceedings for a divorce by mutual consent under Section 13B of the Hindu Marriage Act. The parties sought a waiver of the statutory six-month cooling-off period, arguing that reconciliation was impossible. Citing the Supreme Court's ruling in *Amardeep Singh v. Harveen Kaur*, the High Court held that courts have the discretion to waive this period if the marriage has irretrievably broken down and other statutory requirements are met. The Court disposed of the petition by directing the Family Court to decide the waiver application expeditiously, within a period of six weeks, in accordance with the established legal principles.

HELD The Allahabad High Court held that the trial court was bound by law to decide the waiver application in light of *Amardeep Singh v. Harveen Kaur*, which allows the court to waive the wait period if it is satisfied that the parties have been separated for more than the statutory period and reconciliation is impossible.

“The Court must be satisfied that the parties were living separately for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony.”

ALLAHABAD HIGH COURT • 2023

SOURCE UPHC012316132023

05 Sureshta Devi v. Om Prakash

SUPREME COURT OF INDIA • 1991-02-07 • 1991 INSC 28

This case addressed whether a party to a divorce petition filed by mutual consent under Section 13-B of the Hindu Marriage Act, 1955, can unilaterally withdraw their consent before the court passes a decree. The Supreme Court of India held that mutual consent is a mandatory requirement that must persist until the moment the divorce decree is granted. The court reasoned that the six-to-eighteen-month waiting period provided in the statute is intended to give parties an opportunity for reflection and potential reconciliation. Consequently, if one party withdraws their consent during this period, the court loses the jurisdiction to grant a divorce by mutual consent.

HELD The Supreme Court held that mutual consent is a positive and ongoing requirement that must continue up to the time the divorce decree is passed, and a spouse can unilaterally withdraw their consent during the waiting period.

“If there is no mutual consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise; the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.”

SUPREME COURT OF INDIA • 1991

SOURCE ESCR010000191991

06 Pooja Deswal v. Sagar Deswal

HIGH COURT OF PUNJAB AND HARYANA • 2014-06-09 • CR/4081/2014

This case addressed whether a court has the authority to waive or condone the mandatory six-month statutory waiting period prescribed under Section 13-B(2) of the Hindu Marriage Act, 1955, for a divorce by mutual consent. The petitioner sought to challenge a trial court order that refused to waive this period, arguing that the parties had been living separately for over two years. The High Court of Punjab and Haryana held that the statutory waiting period is mandatory and cannot be waived by the court. Emphasizing that legislative provisions must be interpreted based on their plain meaning, the Court noted that it lacks the specific power to override these requirements, distinguishing its jurisdiction from the inherent powers exercised by the Supreme Court of India under Article 142 of the Constitution.

HELD The Punjab and Haryana High Court held that the statutory waiting period under Section 13B(2) is a mandatory requirement that cannot be waived on the grounds of mere convenience of the parties, as the legislature did not vest ordinary courts with such powers.

“Essentially the liberalized process has to operate within the framework of the provisions which provide for such remedy. It can hardly be permissible that the statutory provisions should be moulded to suit the facts of each case and that too only on the ground of convenience of parties.”

HIGH COURT OF PUNJAB AND HARYANA • 2014

SOURCE PHHC010076182014

07 Arun Gupta v. Rita Gupta

HIGH COURT OF PUNJAB AND HARYANA • 2007-12-12 • CR/5896/2007

The petitioners, a husband and wife, sought a revision of a lower court order that denied their request to waive the statutory six-month waiting period required under Section 13-B of the Hindu Marriage Act for divorce by mutual consent. The petitioners argued that given their prolonged civil and criminal litigation and the fact that there was no possibility of reconciliation, the waiting period should be waived to finalize their divorce. Relying on various precedents where courts had waived the waiting period in cases where the marriage had irretrievably broken down, the Court allowed the revision, granted the waiver, and dissolved the marriage.

HELD The Punjab and Haryana High Court held that the continuation of a sterile marriage where there is no possibility of reconciliation has a deleterious effect on the parties, and the trial court could have waived the statutory six-month period to allow them to settle independently.

“Keeping in view the age of the parties, the continuation of a sterile marriage would have deleterious effect on the prospects of re-marriage of the parties – Thus it was a case, where the trial Court could have waived off the period of six months so as to enable the parties to settle independently.”

HIGH COURT OF PUNJAB AND HARYANA • 2007

SOURCE PHHC010080742007

08 Jordan Diengdeh v. S.S. Chopra

SUPREME COURT OF INDIA • 1985-05-10 • 1985 INSC 138

This case involved a dispute between a wife belonging to the Khasi tribe and her husband, who were married under the Indian Christian Marriage Act, 1872. The wife sought a declaration of nullity of marriage based on the husband's alleged impotence, but the lower courts rejected this and instead granted a decree for judicial separation on the grounds of cruelty. The Supreme Court observed that the marriage had irretrievably broken down, yet the parties remained bound because the Indian Divorce Act, unlike other personal laws in India, does not recognize mutual consent or irretrievable breakdown as grounds for divorce. The Court highlighted the urgent need for a Uniform Civil Code to address these disparities and provide relief to couples in such situations.

HELD The Supreme Court compared statutory provisions and observed that while the Hindu Marriage Act and Special Marriage Act provide for mutual consent divorce, other personal laws lacked uniform grounds, highlighting the need for a Uniform Civil Code.

“Section 13-B further provides that a petition for dissolution of marriage by a decree of divorce may be presented to the court by both the parties to the marriage together on the ground that they have been living separately for a period of one year or more...”

SUPREME COURT OF INDIA • 1985

SOURCE ESCR010002571985

09 Umesh Thakur v. Shivali Mehta

HIGH COURT OF HIMACHAL PRADESH • 2023-05-09 • CR.R/127/2022

This case involved a criminal revision petition filed by a husband challenging a trial court order that awarded interim maintenance to his wife under Section 125 of the Cr.PC. During the proceedings, the High Court facilitated a reconciliation attempt. The parties reached a mutual settlement to dissolve their marriage by way of consent, with the husband agreeing to pay a total of 8 lakh rupees as permanent alimony, along with existing maintenance amounts. In light of this compromise, the High Court set aside the trial court's interim maintenance order and granted the parties' request to waive the statutory six-month cooling-off period for their divorce petition.

HELD The Himachal Pradesh High Court held that when parties have been living separately and litigating for several years with no possibility of reconciliation, the statutory waiting period of six months can be waived to advance the interest of justice.

“Since both the parties are living separately for the last many years and they have been litigating with each other, statutory period of six months as envisaged under Section 13B of the Act for grant of divorce by way of mutual consent, can be waived...”

HIGH COURT OF HIMACHAL PRADESH • 2023

SOURCE HPHC010064542022

10 M. Venkata Pulla Rao v. Maddala Udaya Lakshmi

HIGH COURT OF ANDHRA PRADESH • 2025-02-19 • CMA/1017/2013

The parties, married in 2004, sought to resolve a long-standing matrimonial dispute that included multiple litigations and a pending criminal appeal. During the pendency of the appeal against an order denying divorce, the parties reached a settlement through mediation, agreeing to dissolve their marriage by mutual consent. The High Court recorded the terms of the mediated settlement, which included a financial settlement of permanent alimony and an agreement by the respondent to withdraw pending claims. Exercising its discretion to waive the statutory waiting period under the Hindu Marriage Act, the Court allowed the appeal, set aside the lower court's dismissal of the divorce petition, and granted a decree of divorce by mutual consent.

HELD The Andhra Pradesh High Court held that procedural requirements must give way to a larger public and personal interest in ending litigation and agony when a marriage has irretrievably broken down and the parties have lived separately for more than nine years.

“The procedure should give way to a larger public and personal interest of the parties in ending the litigation(s), and the pain and sorrow effected, by passing a formal decree of divorce, as de facto the marriage had ended much earlier.”

HIGH COURT OF ANDHRA PRADESH • 2025

SOURCE APHC010235812013

11 Dattatray Salvi v. Charu Dattatray Salvi

BOMBAY HIGH COURT • 2017-01-30 • FCA/169/2015

This case involved a petition for divorce filed by a wife on the grounds of cruelty under the Hindu Marriage Act. The Family Court, however, granted a decree of divorce by mutual consent under Section 13B of the Act, despite the lack of a joint petition, no evidence of the parties living separately for the mandatory one-year period, and the absence of a required six-month cooling-off period. The appellant-husband challenged this decree, noting that the Family Court had exceeded its jurisdiction by converting the contested petition into a mutual consent divorce without following statutory requirements. The High Court set aside the Family Court's decree, ruling that the lower court committed a material irregularity. The court emphasized that it lacks the extraordinary powers held by the Supreme Court to bypass statutory divorce procedures, confirming that the Family Court must adhere strictly to the legal requirements for mutual consent divorce.

HELD The Bombay High Court held that the statutory requirement of living separately for one year under Section 13B(1) is an absolute prerequisite to filing, and its waiver is legally impermissible.

“The period of one year 'living separately' is sine qua non to the filing of the petition under section 13B and as such, its waiver would be impermissible as per any settled canons of interpretation.”

BOMBAY HIGH COURT • 2017

SOURCE HCBM010299682015

12 Swati Ramakant Patil v. Ramakant Ratan Patil

BOMBAY HIGH COURT • 2015-05-07 • WP/4528/2015

The petitioners sought to waive the six-month statutory cooling-off period required under Section 13-B(2) of the Hindu Marriage Act, 1955, for a divorce by mutual consent. The petitioners had been living apart since shortly after their 2012 marriage and had attempted a customary divorce in 2014 before filing formal proceedings in 2015. They argued that given their long separation and the absence of any hope for reconciliation, the mandatory waiting period should be waived to prevent further hardship. The High Court observed that previous decisions regarding the waiver of the statutory period have been inconsistent, with some courts exercising inherent powers in exceptional cases while others strictly adhered to the statutory mandate. Ultimately, the court declined the request for a waiver, maintaining that the court lacks the jurisdiction to bypass the six-month requirement.

HELD The Bombay High Court held that under statutory provisions, the consent of the parties must subsist until the final decree, and only the Supreme Court under Article 142 of the Constitution can bypass the statutory waiting period to grant complete relief.

“In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act.”

BOMBAY HIGH COURT • 2015

SOURCE HCBM030142712015

13 Surjeet Singh v. Ghama Thakur

HIGH COURT OF HIMACHAL PRADESH • 2021-09-30 • CMPM0/220/2021

The petitioner sought to set aside an order by the Family Court, Kullu, which had dismissed a joint application by a married couple to waive the six-month statutory cooling-off period required for a divorce by mutual consent. The petitioner argued that the marriage had broken down irretrievably and that the parties had been living separately for two years. The High Court of Himachal Pradesh allowed the petition, noting that the couple had reached a settlement regarding alimony and that there was no possibility of reconciliation. Citing Supreme Court precedents on the discretionary nature of the cooling-off period, the Court held that forcing the parties to wait would only prolong their mental agony when no chance of reunion exists.

HELD The Himachal Pradesh High Court held that the six-month statutory cooling-off period under Section 13B(2) of the Act is directory and can be waived where there is no possibility of rapprochement and the marriage has broken beyond repair.

“Since both the parties are living separately for the last many years and they have been litigating with each other, statutory period of six months as envisaged under Section 13B of the Act for grant of divorce by way of mutual consent, can be waived...”

HIGH COURT OF HIMACHAL PRADESH • 2021

SOURCE HPHC010280982021

14 Loveson Melwin v. Norina James

HIGH COURT OF RAJASTHAN • 2024-07-02 • CW/10222/2024

This case involved a petition for divorce by mutual consent under the Special Marriage Act, 1954. The Family Court had initially refused to waive the statutory six-month cooling-off period, arguing that the relevant provision was specific to the Hindu Marriage Act. The Rajasthan High Court, however, determined that the cooling-off requirement under the Special Marriage Act is directory rather than mandatory, aligning it with the principles established for the Hindu Marriage Act. Finding that the marriage had irretrievably broken down with no chance of reconciliation, the High Court set aside the Family Court's order and waived the six-month waiting period, directing the lower court to proceed with the divorce immediately.

HELD The Rajasthan High Court held that Section 13B(2) of the HMA and Section 28(2) of the SMA are completely akin, and the principles allowing for waiver apply equally to mutual consent divorces under the Special Marriage Act.

“The provisions of Section 13-B(2) of the Act of 1955 and that of Section 28(2) of the Act of 1954 are totally akin and the ratio as laid down in Amardeep Singh Vs. Harveen Kaur; (2017) 8 SCC 746, would clear apply to the present matter too.”

HIGH COURT OF RAJASTHAN • 2024

SOURCE RJHC010463162024

15 S. Sanjeev v. Janani K.

HIGH COURT OF KERALA • 2022-09-01 • MAT.APPEAL/709/2019

This case involved cross-appeals filed by a husband and wife against judgments from the Family Court, Palakkad. During the appellate process, the parties were referred to mediation and reached a comprehensive settlement to end their marriage by mutual consent under Section 13B of the Hindu Marriage Act, 1955. The parties jointly requested a waiver of the statutory six-month cooling-off period. Relying on the Supreme Court's ruling in *Amardeep Singh v. Harveen Kaur*, the High Court of Kerala found that the cooling-off period was discretionary, not mandatory. Satisfied that reconciliation efforts had failed and the marriage had irretrievably broken down, the court granted the divorce and waived the waiting period.

HELD The Kerala High Court held that the six-month cooling-off period is directory and discretionary rather than mandatory, waiving it upon being satisfied that the marriage had irretrievably broken down.

"We are convinced that the petitioner and respondent voluntarily had decided to part with. It is seen that their marriage is irretrievably broken down and all efforts for reconciliation failed. Taking all the facts and circumstances stated above, and law laid down by the Apex Court in *Amardeep Singh* (supra), we waive the statutory cooling period of six months."

HIGH COURT OF KERALA • 2022

SOURCE KLHC010492952019

16 Hitesh Bhatnagar v. Deepa Bhatnagar

SUPREME COURT OF INDIA • 2011-04-18 • 2011 INSC 306

This case addressed whether a party can withdraw consent for a divorce by mutual consent after the eighteen-month period stipulated in the Hindu Marriage Act, 1955, and whether a court can grant such a divorce despite a withdrawal. The Supreme Court of India held that mutual consent must subsist until the passing of the divorce decree; therefore, a party may withdraw consent at any time before the final decree, regardless of the eighteen-month timeframe. The court further clarified that the eighteen-month period is a procedural guideline for timely disposal rather than a limitation on the right to withdraw consent. Finally, the Court refused to exercise its extraordinary power under Article 142 to dissolve the marriage on grounds of irretrievable breakdown, prioritizing the possibility of reconciliation.

HELD The Supreme Court held that the consent given at the time of filing a joint petition for mutual divorce must subsist up to the stage of the final decree, and a party is legally entitled to withdraw consent before that decree is passed.

"Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed..."

SUPREME COURT OF INDIA • 2011

SOURCE ESCR010006342011

17 Manjiri v. Bhushan Raut

BOMBAY HIGH COURT • 2022-06-10 • WP/3146/2022

The petitioners sought a divorce by mutual consent and filed an application before the Family Court to waive the mandatory six-month cooling-off period prescribed by Section 13-B(2) of the Hindu Marriage Act. The Family Court rejected the request, fearing the couple was acting in haste. Upon review, the High Court held that the cooling-off period is directory rather than mandatory. Relying on Supreme Court precedents, the High Court concluded that since the parties were well-educated, had irreconcilable differences, and had failed in mediation, there was no purpose in prolonging the marriage. Consequently, the High Court set aside the lower court order and allowed the waiver of the statutory waiting period.

HELD The Bombay High Court held that the six-month wait period under Section 13B(2) was instituted to enable a rethink, but where no chance of reconciliation exists, courts must exercise discretion to waive the period to enable rehabilitation.

“Under the traditional Hindu Law, as it stood prior to the statutory law on the point, marriage is a sacrament and cannot be dissolved by consent. The Act enabled the court to dissolve marriage on statutory grounds. By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced.”

BOMBAY HIGH COURT • 2022

SOURCE HCBM040121602022

18 P. Lydia Jenifar v. S. Rajadurai

MADRAS HIGH COURT • 2017-09-20 • CMA(MD)/395/2017

The appellant sought a divorce from her husband on the grounds of cruelty and irretrievable breakdown of marriage. The trial court dismissed the petition, suggesting that the parties file a fresh petition for divorce by mutual consent. On appeal, the High Court noted that the respondent had not contested the divorce and had effectively been separated from the appellant since 2013. Citing the need to avoid unnecessary procedural delays and the legal principle that the statutory 'cooling-off' period can be waived when reconciliation is impossible, the High Court set aside the lower court's order and granted the divorce.

HELD The Madras High Court held that the statutory six-month cooling-off period under Section 13B(2) is directory and can be waived by family courts where the marriage is irretrievably broken and prolonged wait times only cause suffering.

“The judiciary is after all nothing more than a reflection of our Society, where marriage is seen as a sacred union, not a legal contract. Irretrievable marriage should come to an end at the earliest possible of time, like, the case on hand.”

MADRAS HIGH COURT • 2017

SOURCE HCMD010002962017

19 Chandra Shekar Malhotra v. Smt. Nishu Manchanda

HIGH COURT OF UTTARAKHAND • 2016-09-05 • WPMS/2431/2016

These petitions challenged Family Court orders that refused to waive the mandatory six-month statutory waiting period prescribed under Section 13(B) of the Hindu Marriage Act, 1955, for divorce by mutual consent. The petitioners argued that the requirement should be relaxed in cases where reconciliation is impossible. The court held that the six-month cooling-off period is a reasonable legislative safeguard designed to prevent impulsive decisions and provide time for potential reconciliation. Following Supreme Court precedents, the court ruled that neither Family Courts nor High Courts possess the power to waive this statutory waiting period. Only the Supreme Court, in exercise of its extraordinary powers under Article 142 of the Constitution, may grant such a waiver to do complete justice.

HELD The Uttarakhand High Court held that ordinary civil courts and High Courts cannot bypass the statutory periods prescribed under the Hindu Marriage Act, as the power to waive the waiting period to do complete justice resides solely with the Supreme Court under Article 142.

“In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act.”

HIGH COURT OF UTTARAKHAND • 2016

SOURCE UKHC010086192016

20 Rajneesh Kumar v. Deepika Kumari

HIGH COURT OF HIMACHAL PRADESH • 2024-08-08 • CR.R/634/2023

This revision petition challenged an order awarding interim maintenance to the respondent-wife. During the proceedings, the parties reached an amicable settlement, agreeing to file a joint petition for mutual divorce under Section 13-B of the Hindu Marriage Act. The husband agreed to pay a total of Rs. 9,00,000 as permanent alimony, inclusive of previously paid maintenance. The High Court of Himachal Pradesh accepted the settlement, noting that the marriage had irretrievably broken down. Relying on Supreme Court precedents, the Court directed the parties to file for divorce within a week and indicated that the Family Court should waive the statutory six-month 'cooling-off' period, as there was no possibility of reconciliation.

HELD The Himachal Pradesh High Court held that where litigations are highly acrimonious and relationships have completely broken down, it is in the interest of justice to waive the statutory waiting period.

“We also see from the trend of the litigations pending between the parties that the relationship between the couple has broken down in a very nasty manner and there is absolutely no possibility of a rapprochement between them...”

HIGH COURT OF HIMACHAL PRADESH • 2024

SOURCE HPHC010439532023

21 Shambhavi Singh v. Rishi Singh

ALLAHABAD HIGH COURT • 2020-01-10 • A227/127/2020

The parties filed a joint petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act. They sought a waiver of the statutory six-month cooling-off period, citing the Supreme Court's ruling in *Amardeep Singh v. Harveen Kaur*, which allows courts to waive this period under specific conditions if reconciliation efforts have failed and the parties have settled all issues. The Family Court had initially rejected the application for waiver.

HELD The Allahabad High Court held that the family court possessed the legal authority to waive the cooling-off period and erred in refusing to apply the parameters established in *Amardeep Singh v. Harveen Kaur*.

"The parties i.e. the husband and the the wife relying upon a judgement reported in (2017) 8 SCC 746, *Amardeep Singh vs. Harveen Kaur* filed an application before the Family Court praying that the six months cooling off period be waived off..."

ALLAHABAD HIGH COURT • 2020

SOURCE UPHC010002012020

22 Bivin John v. Minnu Joseph

HIGH COURT OF KERALA • 2023-02-07 • RPFC/221/2022

This case involves a series of connected matrimonial appeals and revision petitions between a husband and wife regarding divorce, restitution of conjugal rights, return of money and gold ornaments, and maintenance. During the appellate process, the parties were referred to mediation and reached a comprehensive settlement to resolve all outstanding disputes. Consequently, they filed a joint petition seeking a decree of divorce by mutual consent. The Court, relying on established legal principles regarding the waiver of the statutory cooling-off period, accepted the settlement, granted the divorce, and disposed of all pending appeals and revisions in terms of the mediated agreement.

HELD The Kerala High Court held that Section 13B(2) is directory rather than mandatory, enabling family courts to waive the waiting period if the parties have genuinely settled their differences and a prolonged interregnum would only cause agony.

"The Apex Court noticed that the object of Section 13B of the Act is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options."

HIGH COURT OF KERALA • 2023

SOURCE KLHC010358912022

23 Priya Gupta v. Harshvardhan Gupta

ALLAHABAD HIGH COURT • 2023-10-05 • A227/7150/2023

The petitioner sought to set aside a Family Court order that rejected a request to waive the six-month cooling-off period required under Section 13-B(2) of the Hindu Marriage Act. The parties had filed for divorce by mutual consent following a long period of separation and a signed settlement agreement covering alimony and the withdrawal of other litigation. The Court, citing Supreme Court precedents regarding the discretionary nature of the cooling-off period in cases of irreconcilable differences, held that the statutory waiting period could be waived when there is no possibility of reconciliation. Consequently, the Court set aside the lower court's order and directed the Family Court to expedite the divorce proceedings.

HELD The Allahabad High Court held that trial courts must evaluate mutual consent petitions on the basis of *Amardeep Singh* and *Shilpa Sailesh*, directing that the waiting period be waived where a comprehensive settlement has been arrived at.

“Thereafter, an application dated 26.5.2023... was filed... seeking an early date to be fixed in the matter by waiving the requirement of six months cooling period...”

ALLAHABAD HIGH COURT • 2023

SOURCE UPHC011433952023

24 Jaipur Development Authority v. Mahesh Sharma & Anr.

SUPREME COURT OF INDIA • 2010-09-21 • 2010 INSC 626

The case involved land already vested in the Government under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. Despite this, the Land Acquisition Officer initiated acquisition proceedings and awarded compensation and alternative land plots to unauthorized parties, including a temple priest who had abused his position as a trustee. The Supreme Court held that since the land was already government property, the entire acquisition process was a nullity and void ab initio. The Court condemned the actions of the officials involved for abusing their public trust and ruled that wrongful benefits previously granted to others did not create a legal right for the respondents to demand similar illegal concessions.

HELD The Supreme Court held that a Hindu marriage can be dissolved only on grounds enumerated under the statute, and courts cannot dissolve a marriage solely on the basis of consent unless the parties proceed strictly under Section 13B.

“A Hindu marriage can be dissolved only on any of the grounds plainly and clearly enumerated u/s 13 - The law does not permit the purchase of a decree of divorce for consideration, with or without the consent of the other side. - No court can assume jurisdiction to dissolve a Hindu marriage simply on the basis of the consent of the parties, de hors the grounds enumerated u/ s 13, unless the consenting parties proceed u/ s 13B”

SUPREME COURT OF INDIA • 2010

SOURCE ESCR010000722010

25 Anil Kumar Jain v. Maya Jain

SUPREME COURT OF INDIA • 2009-09-01 • 2009 INSC 1101

This case addressed whether a divorce decree by mutual consent under Section 13-B of the Hindu Marriage Act can be granted if one party withdraws their consent before the final decree. The Supreme Court affirmed that under the Act, mutual consent must subsist until the final decree is passed, and lower courts lack the authority to grant a divorce if consent is withdrawn. However, the Supreme Court held that it possesses extraordinary powers under Article 142 of the Constitution to dissolve a marriage that has irretrievably broken down, even when consent is retracted. Given that the parties lived separately for seven years and the wife had already accepted property settlement benefits, the Court invoked these powers to grant the divorce.

HELD The Supreme Court held that while ordinary civil courts and High Courts must give effect to the statutory rules of consent and wait times, the Supreme Court alone can invoke Article 142 to waive the waiting period and grant mutual divorce in special circumstances.

“In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act.”

SUPREME COURT OF INDIA • 2009

SOURCE ESCR010003172009

DISCLAIMER

This memorandum has been generated by Vitark AI on the basis of publicly available judgments and the question posed by the user. It is provided for research assistance only and does not constitute legal advice. All case citations, holdings, and quotations must be independently verified against the source judgment before being relied upon in any filing, opinion, or correspondence.