

# Mutual Consent

Divorce by mutual consent provides a civil exit strategy for couples under the Hindu Marriage Act (HMA) and the Special Marriage Act (SMA), who agree that their marriage has irretrievably broken down. To qualify, couples must have been living separately for at least one year. This approach underscores the legal system's recognition of personal autonomy in making such a profound life decision.

## Cooling-off Period: A Pause for Reflection

Central to mutual consent divorce is the "cooling-off period," a statutory six-month interval intended as a time for reflection and possible reconciliation. Originally mandatory, this period has evolved in judicial interpretation to be more discretionary. Courts now consider the specifics of each case, recognizing instances where the marriage is clearly beyond repair, thereby potentially waiving this waiting period to prevent unnecessary emotional strain and legal prolongation.

statutory period, initially rigid at six months, is designed to offer couples a final reflection window to reconsider their decision to part ways, with the potential for reconciliation. Over time, recognizing that some relationships are conclusively irreparable, the courts have granted waivers of this period, emphasising the unnecessary emotional and financial costs of prolonging the inevitable.

This judicial flexibility is crucial as it acknowledges the complexities of human relationships and the nuanced realities of marital breakdowns. By permitting the waiver of the cooling-off period in clear cases of irretrievable breakdown, the law effectively balances the importance of marriage as an institution with the pragmatic needs of those involved.

## The Critical Role of Ongoing Consent

Consent is the cornerstone of this divorce process. It is required not just at the filing stage but throughout the entire proceeding.

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The evolution of the "cooling-off period" in mutual consent divorces under Indian law exemplifies judicial adaptability to social realities and individual circumstances. This

Any party can withdraw their consent unilaterally at any time before the final decree. This provision protects individuals against coerced decisions, ensuring that both

parties genuinely wish to dissolve the marriage. Withdrawals must be legitimate, with courts scrutinising motives to prevent misuse of this right.

### Judicial Wisdom and Flexibility

The interpretation of these provisions highlights the judiciary's careful balance between upholding the sanctity of marriage and addressing the realities of distressed relationships. Each case is adjudicated on its unique facts, allowing the law to adapt and serve the best interests of the parties involved, thus reflecting a pragmatic and empathetic legal approach to personal crises.

### Shilpa Sailesh vs Varun Sreenivasan

In the case of Shilpa Sailesh vs Varun Sreenivasan, the Supreme Court was called upon to determine whether it can invoke its special powers under Article 142 of the Constitution of India to waive the mandatory cooling-off period prescribed in Section 13-B of the Hindu Marriage Act, 1955, for divorces sought through mutual consent.

The Constitution Bench of the Supreme Court, comprising Justices Sanjay Kishan Kaul, Sanjiv Khanna, AS Oka, Vikram Nath, and JK Maheshwari, referenced the landmark case of Amardeep Singh v. Harveen Kaur (2017), which held that this waiting period can be waived by Family Courts under exceptional circumstances. Building on this, the Bench adjudicated that the Supreme Court itself could exercise its powers under Article 142 to directly waive this period, provided that the substantive conditions for mutual consent are met and the court is convinced by the circumstances and settlements between the parties.

