International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Mutual Consent Divorce Under Hindu Marriage Act, 1955 and Varying Judicial Responses: Critical Study

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Abstract

Divorce by mutual consent under the Hindu Marriage Act, 1955 represents one of the clearest movements of Indian matrimonial law from a purely fault-oriented model towards a more autonomy-based and settlement-oriented model. Section 13B recognises that a marriage may fail not because one spouse is legally blameworthy, but because both parties accept that the marital relationship has ceased to have social, emotional and practical substance. Yet, the provision does not treat consent as a mere private contract. It subjects mutual consent divorce to statutory conditions, judicial satisfaction, a first motion, a second motion, a waiting period and inquiry into the truth and voluntariness of the averments. This paper critically studies the statutory scheme and the varying judicial responses to Section 13B, particularly on three issues: continuation and withdrawal of consent, waiver of the six-month cooling-off period, and the use of constitutional powers to dissolve dead marriages. The central argument is that Indian courts have gradually moved from procedural rigidity to purposive flexibility, but the law still needs clearer statutory standards to ensure that speed does not defeat fairness and that protection does not become unnecessary compulsion.

Keywords: Mutual consent divorce; Hindu Marriage Act, 1955; Section 13B; cooling-off period; withdrawal of consent; irretrievable breakdown of marriage; Article 142; Family Court; matrimonial settlement.

Introduction

The Hindu Marriage Act, 1955 was set in a period when marriage was considered a permanent sacramental bond. While divorce was allowed, it was done through one of the specified matrimonial wrongs. These included cruelty, desertion, conversion, mental disorder, and other fault-based grounds. The introduction of Section 13B by the Marriage Laws (Amendment) Act, 1976 was the first time something this socially and legally radical was done. The dissolution of marriage could now be done by the court upon a joint petition without the court having to ask one of the spouses to prove wrongdoing by the other spouse. This amendment cast aside the perception of divorce being a socially disruptive and adverse act and recognized that the separation of the spouses may be in the best interests of all the parties concerned and may also be achieved in the most dignified, autonomous, and amicable manner.[1]

[1]See J. Duncan M. Derrett, A Critique of Modern Hindu Law 279-88 (N.M. Tripathi 1970).

At the same time, divorce by mutual consent under the HMA was, and still is, not a completely private divorce. The spouses had to live apart for a minimum period of one year. The divorcing spouses had to agree that they could not live together and that they wanted to end their marriage. After the first motion was made, there had to be a second motion which had to be made not earlier than a period of six months and not later than eighteen months from the date when the first motion was made. The court had to hear the divorcing spouses and conduct such inquiry as it felt necessary and then pass the decree. The law created a paradox: while the law respected the divorcing spouses' decision, the law also required that the court must not act in a case where legal rights were waived, the divorcing spouses were not unduly pressured, and the divorcing spouses made an unfair settlement.[2]

This paradox has led to a large number of cases with inconsistent and uneven judgements. Some judicial responses consider the marriage vow to be sacred and demand continuing consent. Others acknowledge that the cooling-off period should not be used to extend a marriage that is essentially already over. Another set of decisions focuses on the Supreme Court's ability under Article 142 of the Constitution to grant complete justice by ending marriages that are completely and irrevocably broken down, even when the law does not provide for it. The result is a legal space where procedure, consent, equity, gender justice, and judicial discretion are in a constant state of interplay.[3]

The present paper undertakes a critical study of these varying judicial responses. It claims that the judiciary is right to soften rigid timelines when they serve no potential to reconcile opposing spouses, but in such cases, the same degree of flexibility should not be exercised without careful consideration of voluntariness, equitable financial settlement, child welfare, and bargaining inequality. In mutual consent divorce, a humane legal system should not allow the stronger spouse to imprison the other spouse in an empty marriage, nor should the legal system to allow the weaker spouse to be pushed into a settlement against their will.[4]

Statutory Framework of Section 13B

Section 13B describes a two-part process in which, in sub-section (1), both parties of a Hindu marriage can petition for a marriage dissolution based on three concurrent criteria: the parties have lived separately for a year, there is an inability for the parties to live together, and the parties have come to a mutual agreement to end the marriage. Living separately in this context does not have to be physically interpreted as not residing in the same place. Legally, it focuses on the absence of consortium and marital life. The parties are not mutually acting as husband and wife, even if they live together. However, the facts of the situation should be thoroughly understood.[5]

Sub-section (2) now specifies that both parties are to make a second application. It cannot be made generally before the expiry of six months from the date of the application and must be made within eighteen months of that date. The court will grant the decree, and, in the absence of the petition being withdrawn, the court will, after making inquiries and hearing the parties, be satisfied that the marriage was solemnized and the statements alleged are in fact true. The decree will take effect from the date of the decree, making the decree of dissolution of marriage take effect from the date of the decree, not the date of filing or the date of separation. The court must be satisfied that the divorce, dissolution,

[2]Hindu Marriage Act, No. 25 of 1955, sec. 13B, India Code (1955).
[3]See Flavia Agnes, Family Law: Volume I - Family Laws and Constitutional Claims 84-102 (Oxford Univ. Press 2011).
[4]See Bina Agarwal, Bargaining and Gender Relations: Within and Beyond the Household, 3 Feminist Econ. 1, 1-51 (1997).
[5]See Mulla, Principles of Hindu Law 928-37 (Satyajeet A. Desai ed., LexisNexis, 24th ed. 2021).

annulment, and separation make the provisions of Section 14, which bars the filing of a divorce petition within one year of the date of marriage, save in cases of exceptional hardship and/or exceptional depravity.[6]

The statutory scheme therefore performs three functions. Firstly, it provides a no-fault divorce option. Secondly, it requires judges to provide a framework within which parties can safely withdraw their agreements, while the judge ascertains that the marriage is not being dissolved on an impulsive decision. The Hindu Marriage Act, the Family Courts Act, and the procedural laws all mandate the court to consider reconciliation if there are any remaining signs of a marriage. Thus, the court must, as a legal and ethically sound judicial forum.[7]

However, problems can arise when there is no reconciliation in sight and the situation has progressed. For example, parties may have lived apart for years, reached divorce settlement agreements involving alimony and custody, removed allegations, and made the decision to move on. In situations like these, requiring the full waiting period would not protect the marriage and would just continue the emotional and legal exhaustion. The main legal question has focused on the extent to which Section 13B(2) has to be followed, and if the consent at the first motion can be revoked at the time of the decree.[8]

Continuing Consent and the Formalist Response

The Supreme Court of India was the first to establish the legal principles surrounding mutual consent divorces in the case of Sureshta Devi v. Om Prakash. The Supreme Court stated that consent must be mutual and therefore continuous over the entire process. The Supreme Court held that the act of filing a joint divorce petition should not be seen as the act which dissolves a marriage. The court further opined that the withdrawal of consent would result in the court denying the decree of divorce applied for as the mutuality of the consent would cease upon the withdrawal of consent. This case recognizes the second motion as a substantive rather than a mere technical step.[9]

The rationale advanced in Sureshta Devi is neither arbitrary nor difficult to accept. Marriage is a status relationship rather than a simple commercial agreement. It is possible that the party may have to the divorce may reach a settlement and feel that they have been financially ordained to do so. The case held that in that settlement the party's right to withdraw must be preserved in order to maintain the mutuality of the consent.[10]

This position was later reiterated in decisions such as Smruti Pahariya and Hitesh Bhatnagar. In Hitesh Bhatnagar, the Supreme Court opined that the passage of eighteen months did not mean that the consent in question could be treated as irrevocable. Non-withdrawal of consent within the outer period does not amount to deemed consent. The court placed emphasis on the need for actual and continuous consent in the case of a mutual consent divorce, as the mutual consent would cease to exist, and thus, the legal divorce would cease to exist. In these cases, we see the court's formalist and/or consent-protective

[6]Hindu Marriage Act, No. 25 of 1955, sec. 13B(2), India Code (1955).
[7]Hindu Marriage Act, No. 25 of 1955, sec. 23(2), India Code (1955); Family Courts Act, No. 66 of 1984, sec. 9, India Code (1984).
[8]See Kusum, Family Law Lectures: Family Law I 196-205 (LexisNexis, 4th ed. 2015).
[9] Sureshta Devi v. Om Prakash, (1991) 2 SCC 25 (India).
[10]See Mayne's Treatise on Hindu Law and Usage 829-35 (Vijender Kumar ed., Bharat Law House, 17th ed. 2014).

response: the marriage may be broken, and there may be no formal legal consent, but the court may not create consent where the marriage is broken.[11]

There is a lot of pressure in matrimony to come to coercive settlements and these coercive pressures may be family and social pressure, pressure from the stigma of legal proceedings, economic dependence, or the threat of criminal or civil proceedings. A spouse may sign a settlement to relax immediate pressure, and subsequently may feel that the settlement is grossly inequitable. The continuing consent doctrine is a protection to these arrangements. The continuing consent doctrine can have the opposite effect as well, in that it can encourage withdrawal of consent strategically. A party may use the settlement, be it money or other settlement benefit, and then strategically withdraw consent. The law must balance these competing concerns of a genuine change of mind, without causing a breakdown in the requirement of free consent.[12]

Article 142 and the Pre-Amardeep Hesitation

Before the modern waiver jurisprudence became settled, the Supreme Court showed caution in using extraordinary constitutional powers to bypass statutory procedure. In Anil Kumar Jain v. Maya Jain, the Court drew a distinction between the power of ordinary civil courts or Family Courts and the Supreme Court's power under Article 142.[13] The decision made clear that lower courts could not grant divorce by mutual consent without compliance with Section 13B, while the Supreme Court in rare cases could use Article 142 to do complete justice. Similarly, Manish Goel stressed that even broad constitutional powers should not ordinarily be exercised in disregard of substantive statutory provisions.[14]

This cautious approach served an institutional purpose. Matrimonial law is a legislative field, and courts cannot simply rewrite conditions enacted by Parliament. If every statutory timeline were treated as dispensable on sympathy, the certainty of the statute would be weakened. Moreover, Family Courts derive their powers from statute and cannot assume the Supreme Court's plenary jurisdiction. The early hesitation therefore preserved separation of powers and prevented routine bypassing of the HMA.[15]

Yet this approach also created hardship. Many couples approached the Supreme Court merely to avoid waiting periods or procedural delays. This meant that relief depended partly on access to the highest court, a factor that is economically and geographically unequal. The law needed a principled middle path: Family Courts should not ignore the statute, but they should also not enforce waiting periods when the statutory purpose has disappeared. That middle path emerged most clearly in Amardeep Singh.[16]

Amardeep Singh and the Purposive Waiver of the Cooling-Off Period

In Amardeep Singh v. Harveen Kaur, the Supreme Court addressed whether the six-month period under Section 13B(2) was mandatory or directory.[17] The Court held that the object of the cooling-off period is to prevent hurried decisions where reconciliation is possible. It is not meant to perpetuate a purposeless

[11]Smruti Pahariya v. Sanjay Pahariya, (2009) 13 SCC 338 (India); Hitesh Bhatnagar v. Deepa Bhatnagar, (2011) 5 SCC 234 (India).
[12]See Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India 139-64 (Oxford Univ. Press 1999); Archana Parashar, Gender Inequality and Religious Personal Laws in India, 14 Brown J. World Aff. 103, 103-12 (2008).
[13]Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 (India).
[14]Manish Goel v. Rohini Goel, (2010) 4 SCC 393 (India).
[15]See M.P. Jain, Indian Constitutional Law 2152-58 (M.P. Singh ed., LexisNexis, 8th ed. 2018).
[16]See Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 Law & Soc'y Rev. 95, 97-104 (1974).
[17]Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746 (India).

marriage or prolong agony where there is no chance of reunion. The Court therefore held that Section 13B(2) is directory, not mandatory, and that courts may waive the waiting period in appropriate cases.[18] The Court indicated relevant factors for waiver: the statutory period of separation and waiting should substantially have passed; efforts at mediation and reconciliation should have failed; parties should have genuinely settled issues such as alimony, child custody and other disputes; and further waiting should only prolong agony. These conditions were designed to prevent mechanical waiver. The court must be satisfied that the decision is mature, voluntary and final. The focus shifted from literal compliance to legislative purpose.

Amardeep Singh was a turning point because it empowered Family Courts to act with humane flexibility. It recognised that the six-month period is a means, not an end. If time has already performed its function and the marriage is beyond repair, the law should not convert the waiting period into punishment. This is especially important in cases where parties have been litigating for years, have no minor children, have settled financial claims and are seeking only formal closure.[19]

At the same time, the decision also created new interpretive questions. Were the factors listed in Amardeep Singh strict conditions or illustrative guides? Could waiver be granted if the parties had not completed eighteen months of separation in total? Could the first motion and waiver application be considered together? Different Family Courts and High Courts began to read the decision with varying degrees of strictness. This uncertainty was addressed in Amit Kumar.

Amit Kumar and the Anti-Mechanical Reading of Precedent

In Amit Kumar v. Suman Beniwal, the Supreme Court clarified that Amardeep Singh must not be read like a statute.[20] The Family Court and High Court had treated the conditions in Amardeep Singh as mandatory prerequisites, especially the idea that one and a half years must have elapsed before the first motion. The Supreme Court corrected this approach and held that the factors in Amardeep Singh are illustrative and not exhaustive.[21] A precedent lays down a principle; it should not be applied with pedantic rigidity when the facts demand a purposive approach.

The importance of Amit Kumar lies in its sensitivity to lived reality. The Court accepted that the waiting period exists to save marriages where saving is possible, but where there is no possibility of reconciliation, delay serves no meaningful legal purpose. The decision therefore prevents a second form of rigidity: after courts had escaped the rigidity of the statute through Amardeep Singh, they risked creating a new rigidity by turning Amardeep factors into inflexible commands. Amit Kumar restored discretion to its proper place.

This does not mean that waiver is automatic. The Court still requires satisfaction regarding voluntariness, settlement and absence of reconciliation. Family Courts must hold inquiry; they must not treat the joint petition as conclusive. But they are also not expected to mechanically count months if the broader statutory purpose is already fulfilled. The decision is especially relevant for young parties, short marriages, long separations after brief cohabitation, and cases where delay would affect remarriage, employment, migration or emotional rehabilitation.[22]

[18]Id.
[19]See Paras Diwan & Peeyushi Diwan, Law of Marriage and Divorce 364-70 (Universal Law Publ'g, 5th ed. 2008).
[20]Amit Kumar v. Suman Beniwal, 2021 SCC OnLine SC 1270 (India).
[21]Id.
[22]Code of Civil Procedure, 1908, Order XXXII-A; Hindu Marriage Act, No. 25 of 1955, sec. 23(2), India Code (1955); Family Courts Act, No. 66 of 1984, sec. 9, India Code (1984).

Reconciliation, Mediation and the Role of the Family Court

The Family Court has a sensitive position concerning divorce by mutual consent. The Court should promote attempts at reconciliation, but cannot compel such attempts as a moral preference. Provisions such as Section 23(2) of the HMA, Section 9 of the Family Courts Act and Order XXXII-A of the Code of Civil Procedure demonstrate that matrimonial courts have a duty to promote settlement and reconciliation. However, this reconciliation must be practical. A court cannot claim that marriage has been successfully preserved just because a divorce has been postponed.[23]

The best interpretation to give to the statutes is that reconciliation efforts have to be practical, short, and considerate. It is the duty of the judge and/or counselor to determine if the conflict is of a more temporary nature, if the parties are under a certain degree of family pressure, if there is a certain degree of domestic violence or economic coercion, and to what extent the minor children will be impacted by the decision. If the possibility for marital reconciliation is genuine, the 'cooling off' period has meaning. If there is a history of mediation with no positive outcome and the parties have taken steps to live a separate and reorganized life, then further postponement is nothing more than the court taking a formalistic approach.

One of the major issues with mutual consent divorce is that it tends to happen alongside several other legal issues. Things like maintenance claims, domestic violence applications, criminal complaints, custody disputes, the return of stridhan, property transfers, and permanent alimony could all be part of a single settlement. In cases like this, the court has to determine if the weaker party understands what legal claims they will be giving up. Even with a lawyer present, the imbalance in negotiating power can persist. To grant the decree, a judge must use simple terms and ask straightforward questions, see that settlement terms are disclosed, and ensure compliance of the settlement when he or she can.

Shilpa Sailesh and Constitutional Dissolution of Dead Marriages

The Constitution Bench decision in Shilpa Sailesh v. Varun Sreenivasan gave a wider constitutional frame to matrimonial dissolution.[24] The Court held that the Supreme Court, in exercise of Article 142, may dissolve a marriage by mutual consent without being bound by the procedural requirement of a second motion, and may also quash or dispose of connected proceedings in appropriate settlement cases.[25] The Court further held that it may dissolve a marriage on the ground of complete and irretrievable breakdown even where one spouse opposes the prayer, provided the facts establish that the marriage has totally failed and continuation of the legal tie is unjust.

This is not the same as saying that irretrievable breakdown has become a statutory ground available before every Family Court. It remains a ground that the Supreme Court may use under Article 142 to do complete justice. The Court was careful to state that such divorce is not a matter of right. The power must be used with great care and caution. Relevant factors include the length of cohabitation, last cohabitation, nature of allegations, pending proceedings, attempts at settlement or mediation, period of separation, economic and social status, children, dependency, alimony and other protective arrangements.

[23]Rajnesh v. Neha, (2021) 2 SCC 324 (India); Protection of Women from Domestic Violence Act, No. 43 of 2005, secs. 12, 18-23, India Code (2005).
[24]Shilpa Sailesh v. Varun Sreenivasan, (2023) 14 SCC 231 (India).
[25]Id.

Shilpa Sailesh is important for mutual consent divorce because it recognises that matrimonial justice cannot be reduced to formal categories. Some marriages are dead but not mutually resolvable because one party refuses consent. Some are mutually resolvable but procedurally delayed. Some involve multiple civil and criminal proceedings that cannot be practically settled unless the Supreme Court brings finality. Article 142 works as a constitutional safety valve in such cases.[26] However, it also highlights the limits of current statutory law. If ordinary courts cannot grant relief in comparable situations, litigants with less access to the Supreme Court may remain trapped in procedural inequality.

The Court's earlier use of Article 142 in cases such as R. Srinivas Kumar had already shown willingness to dissolve marriages that were emotionally dead and beyond repair.[27] Shilpa Sailesh consolidated this line while adding safeguards. The critical point is that the Constitution Bench did not celebrate easy divorce; it recognised hard cases where continued legal marriage becomes a source of injustice rather than protection.

Law Commission Perspective and the Breakdown Theory

The debate on mutual consent divorce is connected with the broader theory of irretrievable breakdown of marriage. The Law Commission's 71st Report recommended recognition of irretrievable breakdown as a ground of divorce.[28] The 217th Report repeated that the HMA and Special Marriage Act did not expressly provide such a ground and recommended statutory incorporation with safeguards, including examination of financial arrangements for the parties and children.[29] These recommendations reflect a basic truth: mutual consent divorce helps where both parties cooperate, but it cannot fully address dead marriages where one party refuses consent for reasons unrelated to reconciliation.

The Supreme Court in Naveen Kohli also recommended legislative consideration of irretrievable breakdown as a ground of divorce.[30] The need for legislation persists. At present, the Supreme Court may grant relief under Article 142, but Family Courts cannot generally dissolve a Hindu marriage solely on irretrievable breakdown unless a statutory ground is made out. This creates a structural gap. A marriage may be dead in fact, but still alive in law because cruelty, desertion or another statutory ground is difficult to prove.

A carefully drafted breakdown ground could reduce misuse of fault allegations. It could allow courts to focus on whether the relationship is truly beyond repair and whether adequate financial and child-related safeguards exist. Such a reform would also support mutual consent jurisprudence by reducing pressure on parties to use Section 13B as the only dignified exit. However, the reform must be cautious. Without safeguards, breakdown theory may harm economically vulnerable spouses, especially women who sacrificed employment or property opportunities within marriage.[31]

Critical Analysis of Varying Judicial Responses

The three values present in the sectional negotiation under the K. R. Vishwanatha Rao Committee (co-

[26]India Const. art. 142.
[27]R. Srinivas Kumar v. R. Shametha, (2019) 9 SCC 409 (India).
[28]Law Commission of India, Report No. 71, The Hindu Marriage Act, 1955—Irretrievable Breakdown of Marriage as a Ground of Divorce (1978).
[29]Law Commission of India, Report No. 217, Irretrievable Breakdown of Marriage—Another Ground for Divorce (2009).
[30]Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558 (India).
[31]See Law Commission of India, Report No. 217, Irretrievable Breakdown of Marriage - Another Ground for Divorce 18-23 (2009); Flavia Agnes, Family Law: Volume I - Family Laws and Constitutional Claims 124-37 (Oxford Univ. Press 2011).

nsent, protection, finality) offer a lens through which to view the Sureshta Devi, Amardeep Singh, and Amit Kumar cases. Sureshta Devi placed greater emphasis on the value of consent, insisting that the statutory requirement of separation exists until the court issues a divorce decree. Amardeep Singh placed a greater emphasis on protection, arguing that a separation period should only be imposed if it stands a realistic prospect of facilitating reconciliation. Amit Kumar placed greater emphasis on finality, arguing that flexible finality should be the judicial approach to avoid the statutory shackles. Taking a more substantial approach to the value of finality, Shilpa Sailesh purposively placed the value of justice above the value of finality, arguing that the judicial approach to the cases should be to allow the courts to achieve justice in cases of settlement, or in cases where a settlement is reached, complete justice should be afforded in case of a complete breakdown of a settlement.

These cases do not necessarily contradict each other. Instead, they focus on different concerns. Failing to consider the Sureshta Devi case ends in divorce by coercion. Failing to consider the Amardeep Singh case ends in unnecessary and purposeless delay. Failing to consider the Amit Kumar case results in an unreasoned and mechanical refusal of waiver. The overreliance on Article 142 to avoid the purposeless delay ends in uncertainty and unequal treatment. The most reasonable approach to these challenges is not uniformity, but the exercise of discretionary judgment.

The most significant of these challenges is the disparity of bargaining power in isolation. Mutual consent divorces, on the surface, appear to be interspousal consent. However, there exist significant power disparities. One way a spouse can have interspousal agreement is through alimony or even interspousal agreement to make support payments. This can also happen if the spouse is threatened with a civil action. Conversely, a spouse may withdraw consent to the settlement after successfully evening the bargaining power, utilizing the rule in the spouse's favor to thinly veil consent. Courts should take a proactive approach in mitigating these risks. Courts should insist on separate instructions, verified support obligations,[32]

There are also Child Welfare considerations. Parents can arrive at a mutual settlement. However, the court is not bound by convenience if the arrangement is detrimental to the child. Factors like Maintenance, Education, and Visitation, Relocation, and Emotional Safety, among others, need separate assessments. The same applies to settlement where the court is asked to withdraw and/or quash the proceedings. The court needs to ensure that serious allegations are being suppressed through undue pressure. Quashing of linked proceedings is allowed in such situations by Shilpa Sailesh, but the power must be exercised considering the nature of allegations and the fairness of the settlement.[33]

The non-uniform application of Family Courts is another important issue. Some courts waive the cooling-off period once the settlement is approved, while others are very strict about the timeframes. Some courts ask for separate applications just to waive the period, while others consider that along with the first motion. Some courts do a genuine interaction with the parties, while others have a very routine set of questions. This adversely impacts predictability. Since family law impacts the individual the most, the uncertainty itself is very stressful. Having some clear law or High Court directives on Waiver could cut out a lot of unnecessary litigation.

[32]See Bina Agarwal, Bargaining and Gender Relations: Within and Beyond the Household, 3 Feminist Econ. 1, 17-26 (1997); Ratna Kapur & Brenda Cossman, Subversive Sites: Feminist Engagements with Law in India 103-28 (Sage 1996).
[33]Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42 (India); Hindu Marriage Act, No. 25 of 1955, sec. 26, India Code (1955).

Suggestions and Conclusion

First, Section 13B should be modified to clarify that the six-month period in sub-section (2) is not mandatory and may be relaxed by the Family Court for stated reasons. The statute should provide guiding principles and incorporate examples such as the length of separation, unsuccessful mediation, resolution of financial and child-related matters, voluntary acts, absence of external pressure, and whether further delay may promote reconciliation.

Secondly, a uniform procedure should be established for the relaxation of the waiting period. This would allow both parties to submit a joint request for relaxation of the waiting period after or together with the first motion, where the requisite grounds exist. The court should provide a concise and precise statement of reasons. A speaking order would assist in the exercise of the appellate power and would prevent the casual grant or denial of the request. Family Courts should be incentivized to decide requests for relaxation of the waiting period in a timely manner, as the absence of delay would achieve the objective of the waiver.

Finally, the process for verification of consent should be improved. Judges or counselors should communicate separately with each spouse, especially in cases of large financial settlements, instances of domestic violence, criminal cases, pregnancy, children, economic dependence, or a combination of the above. Financial settlements in such cases should be structured in a manner that would minimize litigative outcomes, similar to maintenance cases in Rajnesh v. Neha.

Fourthly, Parliament must review the statutory irretrievable breakdown of marriage with addition of certain protections. Without a ground for divorce, parties are driven to pleadings of artificial cruelty or to endless litigation. In Darshan Gupta, a lack of a statutory ground for divorce demonstrates judicial restraint. In other cases the Supreme Court has used Article 142 in cases of extreme and irretrievable breakdown of the administration of justice. A more legislative approach would be more democratic and more available than relying on extraordinary constitutional relief.

Fifth, the decree must clearly integrate the terms of settlement. Alimony, stridhan, custody, supervised parent-child visits, parenting time, education or other litigation related expenses, property transfers, and future litigation must each have their own clause that is specific and enforceable. If one is waiving the right to future maintenance or to future property settlements, then the court must ensure that the waiver is made knowingly, and is not grossly inequitable. Sections 24 to 26 of the HMA emphasize that financial matters and child custody matters are not ancillary to matrimonial relief.[34]

To conclude, with regard to the HMA, divorce of mutual consent is perhaps one of the few places in the Indian legal framework on family relations, where the balance is between gives-room-to-the-legal-autonomy and adherence-to-the-legal-custom. The judiciary has progressed from a model of protection of the legal autonomy of individuals to an informed and enlightened model. The case of Sureshta Devi is important, as mutual consent continues to exist, only as long as there is a willingness to consent. The cases of Amardeep Singh and Amit Kumar are equally important, as the law should not be used to justify a dead marriage only to fulfill the legal requirement of time. Shilpa Sailesh adds that constitutional justice may require dissolution of marriage when the legal bond has become oppressive, and the marriage is devoid of purpose. The goal is to make self-contained judicial philosophies of this nature, an ameliorated statute. The balance should make the law both non-permissive of care-free exit, and time non-restrictive. The law should be non-coercive, and not encroach on the rights of individuals.

[34]Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370 (India); Hindu Marriage Act, No. 25 of 1955, secs. 24-26, India Code (1955).