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**ANALYSIS OF COOLING PERIOD UNDER SECTION 13B OF THE
HINDU MARRIAGE ACT 1955: OBSERVANCE IN THE CASE OF
AMARDEEP SINGH V. HARVEEN KAUR**- Saloni Kaushik¹**Abstract**

Undoubtedly, marriage can be put forth as a holy matrimonial of two souls. Prior to the enactment of statutory legislations in the year 1955 and so forth, marriage under Hindu Law was considered to be a social arrangement which was indestructible and everlasting in nature. However, owing to human progress and advancements in society, this belief is no longer obligatory in nature. In the year 1976, the legislation introduced a matrimonial remedy, that was, divorce by mutual consent, under Section 13B of the Hindu Marriage Act. Therefore, Section 13B, puts forth an option before the parties to the marriage of obtaining a divorce founded on mutual consent rather than contestations. Now, sub-section (2) puts forth a stipulated time period known as the cooling-off period. This cooling-off period is provided to the parties as a chance to reconcile their differences and to reflect upon the decision so made. However, this paves way towards posing prudent questions, for instance, whether the cooling-off period is mandatory under Section 13B sub-section (2) or not? Further, does the provision in the legislation presents itself to be more of a hindrance than a relief to the kind of parties whose marriage has been broken down irretrievably? Subsequent to the aforementioned questions with regard to the nature of the provision, this research paper is centric around the landmark case of *Amardeep Singh v. Harveen Kaur* that beautifully dealt with the legal aspects and philosophy of the nature of the cooling-off period as stipulated under concept of divorce by mutual consent in the Act.

Keywords: Matrimonial Remedy, Divorce, Mutual Consent, Cooling-off Period.

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Research Aim & Objectives

This research paper centric around the case review of the legal case *Amardeep Singh v. Harveen Kauris* being written with aims and incentives as put forth.

1. To analyse the legalities pertaining to the aforementioned case with a special emphasis on Divorce by Mutual Consent under Section 13B of the Hindu Marriage Act 1955.
2. To deduce cardinal legal principles from the foundations of the case and analyse its existing parameters.
3. To briefly analyse and interpret Hon'ble Supreme Court's power to do complete justice in matrimonial matters under Article 142 of the Indian Constitution² with regard to the aforementioned case.

Research Methodology

The doctrinal method of study has been used by the author of this research project. In this research paper, the author has used secondary data sources, and has gone through various books & records. By assiduously analysing different aspects of the subject, the research provides information for this study mentioned above. The researcher made sure that she cleaned her mind of all the inclinations, biases, & perceptions before she conducted her research for this project considering such inclinations, prejudices and assumptions obstruct the flow and understanding of a research subject.

Facts of the Case

Pertaining to the facts of the case of *Amardeep Singh v. HarveenKaur*, the parties had legally married under the Hindu Marriage Act, 1955 on January 16, 1994 in the city of Delhi. Subsequently, out of the marriage, two children were born in the year of 1995 and 2003 respectively. However, owing to emanation of complications in the union of the parties, the husband and wife had been living separately since the year 2008. Consequently, the years so forth witnesses civil as well as criminal proceedings between the parties to the marriage. In the fullness of time, the parties to the dispute reached a mutual settlement to proceed further with the expedient of divorce by mutual consent under Section 13(B) of the Hindu Marriage Act, 1955 on April 28, 2017. The parties then filed before the Family Court of Delhi, the Tis Hazari Court on May 08, 2017. On the account of the aforementioned settlement, the appellant to the case, that was, Mr. Amardeep Singh was to put forth a permanent alimony of the amount of Rs.

² Article 142 (1), the Constitution of India.

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2.75 crores rupees before the respondent to the case, that was, Ms. HarveenKaur. As a part payment pertaining to the permanent alimony, the appellant handed over two cheques amounting to Rs. 50,00,000 rupees that was duly honoured. Further, the question with regard to the custody of the children of the parties was also settled wherein the children were to be raised under the custody of the appellant. But that as it may be, the parties further sought a waiver of the cooling period of six months under Section 13(B)(2) that commences from the date of filing of the petition for mutual divorce till the divorce is legally guaranteed to the parties to the dispute. Therefore, an appeal was made before the Hon'ble Supreme Court of India by the parties seeking a waiver of the cooling period of six months as put forth in the statute.

Issues of the Case

The case of *Amardeep Singh v. HarveenKaur* was centric around two issues mainly.

1. Whether the cooling-off period as put forth under Section 13B (2) of the Hindu Marriage Act 1955 compulsory or could it be relaxed in certain circumstances?

Section 13B (2) puts forth that the parties to the marriage who have mutually decided to dissolve the marriage, that is, Divorce by mutual consent, and have presented a decree of divorce before the District Court are required to comply with the completion of the cooling-off period, that ranges from 6 months to 18 months wherein provision provides that, "*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*"³The issue raised herein was regarding the nature of the cooling-off period, especially with regard to the marriages that have broken down irretrievably and were no longer purposeful. The issue was raised regarding the aforementioned circumstances, where the completion of the cooling-off period, treated as compulsory, would only prolong agony of the parties to the marriage where the impossibility of reconciliation is evident.

2. Whether the Hon'ble Supreme Court can exercise its extraordinary power under Article 142 to waive the statutory period as put forth under Section 13B of the Hindu Marriage Act 1955?

A cardinal issue was raised pertaining to the competency of the Hon'ble Supreme Court in issuing directions that in nature may be contrary and in contravention of the existing legislations. The aforementioned case involved the question regarding the exercise of the discretionary and extraordinary powers of the Hon'ble Supreme Court under Article 142 of the

³ Section 13B (2) of the Hindu Marriage Act 1955.

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Constitution in waiving the stipulated cooling period of six months in order to ensure delivery of complete justice.

Arguments on Behalf of the Appellant

The Appellant to the case had contended before the Hon'ble Supreme Court that the six-month cooling-off period put forth in Section 13B (2) should be waived off owing to the reasoning that the stipulated time period is merely discretionary in nature and can be waived off in certain circumstances, for instance, if their marriage has broken down irretrievably and if there's no scope of reconciliation. The appellant also put forth the conditions laid down in Section 13B (1)⁴ as given, "*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.*", the parties are eligible to file petition for divorce by mutual consent. The appellant relied upon the case of *Nikhil Kumar v. Rupali Kumar*⁵ wherein it was held that the stipulated cooling-off period could be waived off given the conditions provided in Section 13B (1) are complied with, further, the marriage as also broken down irretrievably. Further, the counsel, appearing on behalf of the appellant argued that by the virtue of Article 142⁶, the Supreme Court had the competent authority to waive off the cooling-off period as provided by the statute.

Argument on Behalf of the Respondent

As the proceedings advanced, the Hon'ble Supreme Court had asked the counsel, appearing on behalf of the respondent, to prove the standpoint with regard to the discretionary nature of Section 13B (2). However, the counsel was unable to do so. Consequently, senior counsel, Mr. V.K. Vishwanathan was appointed as Amicus to assist the Hon'ble Supreme Court along with S/ShriAbhishekKaushik, VrindaBhandari and MukundaRao Angara, Advocates who ably assisted the learned counsel throughout. The learned Amicus submitted before the Hon'ble Court that the stipulated cooling period could be waived by the Court in case wherein the proceedings were pending and the facts were exceptional in nature. The learned counsel provided that the discretion to waive the cooling period is such a discretion that is guided in nature giving consideration of interest of justice giving there is no scope of the reconciliation of the parties, wherein the parties have been living separately for a considerably longer period or has been contesting before the Court for a longer period.

The Court while dealing with such a case needs to consider questions put forth as such.

⁴ Section 13B (1), the Hindu Marriage Act 1955.

⁵ *Nikhil Kumar v. Rupali Kumar* (2016) 13 SCC 383.

⁶ Article 142, the Constitution of India.

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- “How long the parties have been married?
- How long the parties have been living separately?
- For how long has the litigation been pending?
- If there are any other proceedings between the parties?
- If the parties to the dispute have attended conciliation or mediation?
- Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?”⁷

Therefore, in order to waive the cooling period, the Hon’ble Court must take aforementioned questions into consideration. It must be satisfied that the parties had been living separately for more the stipulated period put forth in the statute, the mediation or the conciliation have been attempted and subsequently been failed. Moreover, the Court must be satisfied that there is no scope of reunion of the parties and the stipulated waiting period would only aggravate the situation.

Judgment of the Case

Justice Adarsh Kumar Goel and Justice UdayUmeshLalit, on hearing the appeal, propounded that the cooling period of six months under Section 13(B)(2)⁸ was to be waived pertaining to the legal case at hand under Article 142 of the Constitution of India. The Court put forth that Article 142 of the Constitution of India empowers it to put a quietus and demise to such litigations wherein the marriage is emotionally dead and has been broken down irretrievably with no scope of reconciliation with an incentive of further agonising the parties to the dispute.^{9,10} The Court held that the provision with regard to divorce by mutual consent was added to the statute by the way of amendment in the year 1976. It was done so with the purpose of enabling the parties to dissolve their marriage that was broken irretrievably. The change was motivated by the belief that compulsory continuation of marriage status between reluctant couples served no purpose. The purpose of the cooling-off time was to prevent a hasty judgement given there was a chance that disputes might be resolved otherwise. The Court held that the stipulated cooling period was put forth in the statute with an incentive of allowing the parties to reconsider their decision in order to safeguard them against a hurried decision just in case the differences were reconcilable in nature. The Court also propounded that language alone

⁷HimanshuNagpalvsPalak AIR 2010 Ker 157.

⁸ The Hindu Marriage Act 1955.

⁹PriyankaKhanna v. AmitKhanna (2011) 15 SCC 612.

¹⁰Priyanka Singh v. Jayant Singh (2010) 15 SCC 390.

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is not always determinative in establishing whether a provision is required or optional.¹¹ The context, subject matter, and aim of the provision must all be considered by the Court. It is the responsibility of courts of justice to try to determine the legislature's true meaning by carefully examining the whole extent of the legislation under consideration. The Court held that the statutory period can be waived off given the statutory period of six months in addition to the period of one year under sub section (1) is already completed before filing of the first motion of the divorce petition, secondly, all steps towards saving the marriage have been taken including mediation and reconciliation and even after that, there is no chance of the differences being resolved, thirdly, the parties have made decision pertaining to alimony, custody of their child or any other such issue and lastly, if the stipulated period under the statute would only aggravate the situation between the parties to the marriage. Conclusively, the Court held that waiver application can be filed one week after the first motion giving reasons for the prayer for waiver, given all the aforementioned conditions are fulfilled.

Analysis of the Case

Having put forth the aforementioned deduction from the legal case of *Amardeep Singh v. HarveenKaur*, it is fundamental to comprehend the objective behind the amendment of the Hindu Marriage Act 1955. Traditional Hindu Law and its belief were centric around the proposition that marriage is a sacrament that cannot be dissolved by consent. Prior to the enactment of statutory legislations in the year 1955 and so forth, marriage under Hindu Law was considered to be a social arrangement which was indestructible and everlasting in nature. However, owing to human progress and advancements in society, this belief is no longer obligatory in nature. Consequently, the concept of divorce was incorporated in the Hindu Marriage Act 1955. Now, prior to the year 1976,¹²¹³ the parties to the marriage were given the option of filing a divorce petition and subsequently, contesting for the same. However, the amendment in the year 1976 introduced another alternative wherein the parties to the marriage could mutually decide to seek divorce as provided in sub-section 13B (1). Firstly, the marriage of the parties ought to be valid in nature and to be presented by both, the husband and the wife, before the District Court. This is known as the first motion or as the initial motion. Now, it is cardinal to note herein that Section 13B is both, retrospective as well as prospective in nature¹⁴,

¹¹Kailash v. Nanhku and Ors. (2005) 4 SCC 480.

¹² The Marriage Laws (Amendment) Act 1976.

¹³ Ruth Vanita, "Wedding of Two Souls: Same-Sex Marriage and Hindu Traditions", *Journal of Feminist Studies in Religion*, Vol. 20 No. 2 2004, pp. 119-135.

¹⁴Vijender Kumar and Vidhi Singh, "Divorce by Mutual Consent among Hindus: Law, Practice and Procedure", *Contemporary Law Review*, Vol. 1 No. I 2017, p.3.

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evident as, “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, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).” A further interpretation of Section 13B establishes fulfilment of three fundamental conditions by the parties to the marriage required for filing a petition for divorce as provided¹⁵, “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.” Analysing the primary condition, the phrase, “living separately” is interpreted as the non-performance of marital obligations wherein it is not pertaining to the physical place of living of the parties to the marriage. It is a prudent possibility wherein the husband and the wife may be living at different physical places yet performing the marital obligations or may be living under the same roof yet not as husband and wife. This interpretation of “living separately” was also observed in the case of *Sureshta Devi v. Om Prakash*.¹⁶ Further, the second condition puts forth that the parties to the marriage have not been able to live together which may be owing to any kind of marital discord or occurrence of unreconcilable differences. The third condition provided in Section 13B puts forth that they have mutually agreed that the marriage should be dissolved wherein “mutually agreed” is interpreted as mutual consent of the parties to the marriage, that is their consent is free and bona fide without fraud, coercion so on and so forth.¹⁷

With regard to the case of *Amardeep Singh v. HarveenKaur*, the parties to the marriage had complied with all the conditions as discussed above wherein the parties had been living separately for more than a period of one year, weren’t able to live together as they had been living separately for nine years before the filing of the petition and had mutually agreed to present the petition before the Court.

Now, sub-section 13B (2) provides that second motion of the petition can be filed only after the completion of the six -month period from the date of filing of the first motion of the divorce petition. This period is known as the cooling-off period wherein the minimum and maximum limits are six months and eighteen months respectively. Now, it would be prudent to pose a question as to why this cooling-off period was introduced? The statute had introduced this minimum stipulated period in order to give an opportunity to the parties to resolve the

¹⁵ Anil Malhotra and RanjitMalhotra, “Divorce Nullity and Related Matters under the Hindu Marriage Act 1955”, *International Survey of Family Law*, 2005, pp. 275-314

¹⁶ *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

¹⁷ *Mohan v. Jijiyabai* (1987) 1 HLR 709 (Ker).

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differences that were reconcilable in nature. ¹⁸To do so, the parties could attend the mediation and reconciliation sessions under Order XXXIIA Rule 3 CPC¹⁹, Section 23(2) of the Hindu Marriage Act 1955 ²⁰and Section 9 of the Family Courts Act²¹, if not attended already, as a step towards making every effort to save the marriage.

However, there may be cases wherein although the parties have made every effort yet they are unable to reconcile their differences and live together as husband and wife. Such a marriage is said to be irretrievably broken with no scope of reconciliation. In such cases the Courts shouldn't be restricted by one of a kind of an interpretation of the statute in providing a better alternative to the parties to the marriage. A mandatory reading of Section 13B (2) would treat the cooling-off period as compulsory even if it is evident that the marriage has been broken down irretrievably, further, causing more pain and agony to the parties of the marriage. Such a mandate is mere perpetuation of force serving no fruitful purpose to either of the parties. Therefore, Section 13B (2) should be read as discretionary depending upon the facts and circumstances of the case.²²

Undoubtedly, language should not be used as the only parameter for decision-making and interpretation as put forth in the judgment pertaining to the legal case of *Amardeep Singh v. HarveenKaur*. In other words, language is ought to be read with the context and subject-matter of the case at the same time keeping in mind that the very objective of the statutory provision is being fulfilled while applying the same. Therefore, in order to determine whether a statutory provision is mandatory or directory in nature, one has to take the context, the subject-matter and the object of the provision into consideration.²³ The Courts of Justice are entrusted with the responsibility of carefully understanding the entire ambit of the statute and the real intent behind the enactment of the legislation. Therefore, if a legislation's main objective is defeated while reading it as mandatory in nature, then adequate justice remains undispensed. On the other hand, it is equally possible that interpreting an enactment as discretionary in certain circumstances may also lead to the defeat of the very intent of the same.

¹⁸Kusum, DIVORCE BY MUTUAL CONSENT, Journal of the Indian Law Institute, Vol. 29 No. 1 1987, pp. 110-114.

¹⁹ "Order XXXIIA Rule 3 CPC- The provision of this Order shall apply to suits or proceedings relating to matters concerning the family."

²⁰ "Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties."

²¹ Pertaining to the duty of the Family Courts to take adequate steps with an incentive of settlement; Section 9, the Family Courts Act 1984.

²² K. Thiruvengadam v. Nil AIR 2008 Mad 76.

²³Justice A.K. Patnaik (rev.) Justice G P Singh, PRINCIPLES OF STATUTORY INTERPRETATION, Vol. 1 9th ed. 2004; Kailash v. Nanhku and Ors. 15 (2005) 4 SCC 480

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Subsequently, it had been observed in cases that Courts were have conflicting views regarding the competency of authority of the Court to read the terms of provision as mandatory or discretionary. In the case of *Manish Goel v. RohiniGoel*²⁴, the two-judge bench had held that no court had the competent authority of issuing an order that was contrary in nature to law or a statutory provision. However, in later cases, for instance in the case of *Anjana Kishore v. Puneet Kishore*²⁵, the very same Court held that in the interests of justice a power to waive the cooling period could be exercised under Article 142. Similarly, in the case of *Rupa Ashok Hurra v. AshokaHurra*²⁶, the Apex Court held that it can waive off the stipulated period under Article 142 of the Constitution. Finally, an epilogue to such conflicting views was put by the landmark case of *Amardeep Singh v. HarveenKaur* wherein the Supreme Court put forth that the cooling off period was discretionary in nature and could be waived off. It stated that, “*The family court before which divorce proceedings are pending can waive this period in exceptional circumstances, if certain conditions are fulfilled, including that the parties have been separated for over 18 months, that all efforts for mediation and conciliation to reunite the parties have failed, that the parties have genuinely settled their differences including regarding alimony, child custody etc. and that the waiting period would only prolong their agony.*” In the case at hand, the Hon’ble Supreme Court established that by the virtue of Article 142 of the Constitution, it had the competent authority to waive off the cooling-off period. Article 142 empowers the Hon’ble Court to exercise its extraordinary powers wherein parties can be granted a decree of divorce if all alternatives of reconciliations have been exhausted and their marriage is irretrievably broken. Herein, the Supreme Court undertakes the role of the guardian of the Constitution with the competent authority to waive the cooling-off period and deliver complete justice.²⁷

Before the delivery of the judgement in the case of *Amardeep Singh v. HarveenKaur*, ambiguity surrounded the competency of High Courts and Family Court while dealing with exceptional matters owing to the reasoning, they didn’t have the extraordinary powers under Article 142. However, judges in the aforementioned case provided that, “*Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B (2), it can do so.*” However, the cooling-off period can be waived only when certain conditions are met as laid down in the

²⁴ *Manish Goel v. RohiniGoel* 2010 (2) SCR 414.

²⁵ *Anjana Kishore v. Puneet Kishore* (2002) 10 SCC 194.

²⁶ *Rupa Ashok Hurra v. AshokaHurra* (1996) 3 GLR 668.

²⁷ *VimiVinod Chopra v. VinodGulshan Chopra* (2013) 15 SCC 602.

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judgement.

Conclusion

Conclusively, the landmark judgement in the case of *Amardeep Singh v. HarveenKaur*, it was established that minimum period of six months, known as the cooling-off period as provided in Section 13B (2) could be waived off given if in addition to living separately for a year under Section 13B (1), the cooling-off period has already been over before the presentation of the initial motion, if all efforts for mediation and reconciliation under respective statutes have been unsuccessful, if the parties have already and genuinely settled issues regarding the custody of the child, alimony and other cardinal issues and if the cooling-off period would only be causing more pain to the parties of the marriage. Regarding the case of *Amardeep Singh v. HarveenKaur*, the parties to the marriage had exhausted all the alternatives. All cardinal steps towards saving the marriage had been taken including mediation and reconciliation and even after that, there was no chance of the differences being resolved. They had been living separately for nine years. The parties had even pre-decided pertaining to alimony, custody of their child or any other such issues. In such a case, treating the cooling-off period as mandatory would have aggravated the relations of the parties. The judgement so delivered in the case is indeed progressive and commendable in nature owing to the reasoning that it would further protect the fundamental rights of the parties with regard to their life and freedom under Part III of the Constitution. Forcefully perpetuating a broken family herein would have served no purpose to either of the parties or the children. Undoubtedly, protection of marriage institution is fundamental and very intent of the legislation, however, it shouldn't be exercised at the cost of causing agony and sufferings to the parties of the marriage.

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