

**CONSENT DECREE UNDER CPC, 1908**

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**ABSTRACT**

Decree means the formal expression of a judgment that, to the extent that the court pronounces it, specifies the rights of the parties in relation to all or some of the issues in dispute in the action and can be provisional or definitive. It is understood to include the dismissal of a lawsuit and the resolution of a problem under Section 144,

- (a) a decision that is appealed as an appeal against an order, or
- (b) any order of termination by non-compliance. "

A consent decree is an agreement or arrangement that resolves a dispute between two parties without admitting guilt (in criminal proceedings) or responsibility (in civil proceedings), and is primarily related to this type of dispute resolution. The plaintiff and the defendant ask the court to finalize their settlement, and the court oversees the implementation of the decree in monetary transactions or restructured interactions between the parties, an antitrust decree, a mandatory ruling, or a consent decree. Courts often use consent decrees to ensure that companies and companies also comply with regulatory laws in areas such as an antitrust law, employment discrimination and environmental legislation.

Negotiation is the first step in implementing a consent decree. A lawsuit is filed, and the parties reach an agreement prior to adjudication of the contested issues; a lawsuit is filed, and the parties reach an agreement after the court has ruled on some issues; or the parties settle their dispute prior to filing a lawsuit, and they simultaneously file a lawsuit and request that the court agree to the entry of judgement. This agreement will be turned into a judicial decree by the court.

**LEGAL PROCESS OF CONSENT DECREE**

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the parties reach an agreement after the court has ruled on some issues; or the parties settle their dispute prior to filing a lawsuit, and they simultaneously file a lawsuit and request that the court agree to the entry of judgement. This agreement will be turned into a judicial decree by the court. In many circumstances, judges are prompted to sign the documents given at the time of the request for entry of a consent decree.

However, in other circumstances, such as criminal cases, the judge must make certain evaluations before the agreement may be entered as a consent decree.

The typical consent decree does not have self-executing provisions. When the parties turn their agreements from paper to reality, they create a consent decree. The judge who signed the decree may or may not be involved in its execution. Only if a party complains to the court that an opponent has failed to perform as agreed may the judge intervene to aid in enforcement. In this situation, the offender would be sentenced to prison for contempt.

Decrees made by consent are more binding than decrees made in *invitum*, or against an unwilling person, which can be modified by the same court and overturned by higher courts. Except by permission, the decree issued by consent cannot be changed. A court may overturn a decree if it was acquired by fraud or granted by mistake. Errors in the law or inferences drawn from the facts may render it fully void.<sup>2</sup>

A consent decree usually eliminates the need for proof in court because the defendant has agreed to the order by definition. As a result, using a consent decree does not imply a punishment or an acknowledgment of guilt.

Because all parties agreed to it, consent decrees are legally binding. That implies the decree may only be challenged if one party committed fraud, there was a mutual misunderstanding, or the court lacked jurisdiction over the issue.

After everyone has signed the consent decree, the plan is put in place, usually with the help of an independent monitor who has been approved by a federal judge. The monitor assesses progress by asking frequent updates to ensure that the decreed party is following through on its promises.<sup>3</sup>

These orders can be issued against government entities or enterprises (big and small) that break a law or regulatory code.

A court order might be started in one of two ways:

<sup>2</sup><https://www.scconline.com/blog/post/tag/consent-decree/decree>.

<sup>3</sup><https://www.legalserviceindia.com/legal/article-311-compromise-decree-a-detailed-overview.html>

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- The parties reach an agreement and appear in court to get a consent decree.
- The decree is presented by a government organisation, such as a federal agency, as an alternative to a trial.<sup>4</sup>

## ADVANTAGES AND DISADVANTAGES OF CONSENT DECREE

The nature of the world has permitted every aspect of this world to possess some advantageous and disadvantageous character, for and against the people and system, similarly Consent decree is also one of them so here are few advantages and disadvantages of it: -

### Advantages of consent decree: -

- Save money on legal fees: Consent decrees eliminate the need for a court trial, saving both the parties and the courts money on legal fees.
- Save time by avoiding protracted litigation: The parties and the courts save time by avoiding the need for a court trial, and the courts clear their dockets more rapidly.
- Ability to acquire trial-like outcomes: The parties can obtain trial-like results, especially when a change is necessary to settle the issue.
- Parties avoid the uncertainty of a trial: Consent decrees eliminate the need for a trial and its unpredictable conclusion, as well as the need for proof, and any guilt is assumed (because no one is accused by the consent decree).
- The remedial plan is at the jurisdiction of the parties: Consent decrees provide both parties more leeway in determining how to resolve their differences. This is advantageous because "the remedy is determined by the parties, not the court," and "the presumption is that the solution is better suited to the parties' requirements."
- More compliance and authority: When agreements are reached via consent rather than coercion, both parties are more willing to follow through. Furthermore, failing to act under the consent decree appears to be more of a "law" breach than failing to act under a contract because the consent decree "binds" rather than "obligates" the parties.
- The practise of giving a return to court for a consent decree precedence in the court queue adds to its authority.
- Consistent judicial inspection and interpretation: Courts have the power to ensure that consent decrees are upheld indefinitely.

<sup>4</sup><https://www.lapdonline.org/928>

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*Disadvantages of Consent Decree: -*

- Some say that "consent decrees frequently endure for much too long." Although consent decrees are a solution to a specific problem, the circumstances surrounding the problem or the problem itself may change.
- The consent decree, on the other hand, is not as straightforward to amend or adapt, and hence may become insufficient.
- Ambition: For those aiming to achieve a more broad, non-case-specific change, consent decrees can be a viable option. Consent decrees are therefore employed "as an instrument of enforcement that is less expensive, and often more far-reaching, than adjudication," particularly in antitrust and public-sector matters.
- Complexity: Assent decrees can be difficult to change, either before or after they are enacted: "Except by consent, the decree issued by consent cannot be changed. A bill to put it aside will only be considered if the permission was gained by fraud or supplied by mistake".
- Ambiguity: The consent decree's source of authority, the function of judges, and the parameters for a consent decree are all ambiguous. Some argue that "when a consent decree is issued, neither judges, attorneys, nor parties know exactly what they give or obtain," which "may bear testament to the harmful repercussions of the ambiguity that surrounds consent decrees."<sup>5</sup>

**CONSENT DECREE AND ITS CHALLENGES**

A civil suit's conclusion results in a decree, and the party whose case is determined in their favour becomes the decree holder, while the party whose case is ruled against them becomes the Judgement Debtor. Every judgement is followed by a decree, which enshrines the rights of the parties to the lis and is based on the grounds provided in the judgement.

In a legal litigation, a decree is a formal expression that decides the interests of both parties in a decisive way with respect to any disputed topic. A decree, in particular, is a formal representation of adjudication through which the court resolves the rights of parties in a conflict or a dispute.

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<sup>5</sup><http://mja.gov.in/Site/Upload/GR>Title/pdf>

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A civil litigation might be determined on the basis of a contest, a compromise, or admission. A civil litigation is sometimes settled without any argument on the basis of an admission stated in the written declaration itself.

The following is the text of Order XII Rule 6<sup>6</sup>:

- (1) Where admissions of fact have been made in the pleadings or otherwise, whether orally or in writing, the court may make such Order or give such judgement as it thinks fit, having regard to such admissions, at any stage of the suit, either on the application of a party or on its own motion and without waiting for the resolution of any other question between the parties.
- (2) A decree shall be written up in line with a judgement pronounced under sub-rule (1), and the decree shall bear the date on which the judgement was pronounced.

The text of Order XII Rule 6 of the Code of Civil Procedure<sup>7</sup> makes it plain that the Court might make a decision based on admissions on the pleadings or on other grounds. The term "otherwise" in the abovementioned rule plainly suggests that the Court may rely on its decision on a party's assertions made not only in the pleadings, but also outside of them. These admissions might be made either explicitly or inferentially.<sup>8</sup>

A judgement based on admission can be rendered by the court at any moment, since there may be cases when a judgement is rendered based on admissions made by the defendant in the written statement or in a subsequent statement made in court. The defendant's admission of the facts mentioned in the plaint might be related to anything - from the most frequent recognition of family settlement; a Testament or Will; or contract; or anything else that is legal. Because it is based on the consent/admission of the party to the lis, such a judgement on admission is frequently referred to as a Consent Decree. The order not only saves the court time by avoiding prolonged litigation, but it also aids in the maintenance of peace and harmony between the parties.<sup>9</sup>

<sup>6</sup><https://delhidistrictcourts.nic.in/apr/2224.htm>

<sup>7</sup><https://www.livelaw.in/order-xii-rule-6-cpc>

<sup>8</sup><https://indiankanoon.org/doc/57662388/>

<sup>9</sup><https://blog.ipleaders.in/civil-procedure-code-1908-law-notes/consent/decree>.

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As previously indicated, a consent decree can be based on anything, recognising any legal right between the parties, and the court may issue a decree based on such an admission or understanding. In some situations, a consent order issued by a court of competent jurisdiction deciding the rights of the parties based on admissions or declarations may need registration.

## RECENT DEVELOPMENTS

*Delhi High Court while addressing the case of Deepshree Singh vs Rishi Pratap Singh (2021 SCC OnLine Del 2348),<sup>10</sup> addressed the consenst decree as:*

A consent decree is a contract with the stamp of approval from the courts. The word 'Lawful Compromise or Consent Decree' refers to an agreement or compromise that is not illegal by its provisions or on its face.

A 'consent decree' is more than just a contract; it combines aspects of command and contract. If the consideration or goal of the agreement is prohibited by law, or is of such a type that if granted, would undermine the provision of any legislation, or is fraudulent, or the court views it as immoral or contrary to public policy, as defined by Section 23 of the Contract Act<sup>11</sup>, it would be unlawful.

After a delay of nearly two thousand three hundred and thirty-one days, the High Court decided that the current appeal had been preferred. Because the appellant voluntarily declined to appear in court, she was tried ex parte. As a result, the time restriction for bringing this appeal begins on the date of the contested judgement and order, not on the date of alleged knowledge of the judgement and decision.

## CONSENT DECREE IN DIVORCE

A divorce consent decree is a settlement agreement produced at the conclusion of a marital dispute in which the parties agree on all remaining problems, such as alimony and child support. The divorce consent order also specifies how the parties will divide

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<sup>10</sup><https://www.scconline.com/DocumentLink/9tQl6F86>

<sup>11</sup><https://www.mondaq.com/india/contracts-and-commercial-law/447438/section-23-of-indian-contract-act-lawful-considerations-and-objects>

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their assets, including the marital house, and who would be accountable for certain debts.

The divorce consent decree also lays out all of the restrictions that the parties must adhere to when it comes to the children. This includes a visiting schedule for both parties, as well as the costs of the child's education and welfare that each parent is accountable for.<sup>12</sup>

### **CONSENT DECREE AND COMPROMISE DECREE: THIN LINE**

The difference between a consent decree and a compromise decree is that a consent decree or a judgement on admission is issued under the provisions of order 12 rule 6,<sup>13</sup> whereas a compromise decree is issued under the provisions of order 23 rule 3 of the Code of Civil Procedure, 1908<sup>14</sup>. Both have the same force and are as valid as any other contested decree, but the major difference between the two is that a consent decree or a judgement on admission is issued under the provisions of order 12 rule 6, whereas a compromise decree is issued under in terms of efficacy or force, the law does not distinguish between a consent decree, a compromise decree, and a decree issued after a fight.

The only difference between a consent decree or a decree on a consent on the one hand and a decree after contest on the other is that in the former case, the suit is decided and a decree is issued on the basis of a compromise or consent, whereas in the latter case, the suit is decided and a decree issued after the court has recorded its findings based on the evidence. There is a formal adjudication by the court in both cases, definitively determining the parties' rights in respect of the subject matter under issue. The decree in the first case is equally effective as the decree in the second case.

The other difference between a consent decree or a compromise decree and a decree after contest is that in the former case, the suit is decided and a decree is issued based on a compromise or consent, whereas in the latter case, it is issued after the court has

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<sup>12</sup><https://superiorcourt.maricopa.gov/media/2274/.pdf>

<sup>13</sup><https://www.writinglaw.com/order-12-rule-6-cpc/>

<sup>14</sup><https://www.scconline.com/blog/post/2020/05/07/bar-under-order-23-rule-3a-cpc-to-challenge-compromise-decree-extends-to-strangers-as-well/>

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recorded its findings based on the evidence. In both circumstances, the court renders a decision decisively defining the parties' rights in relation to the disputed topic. The decree in the first example is just as valid as the decree in the second.

## **CONSENT DECREE INVOLVING REAL LIFE EXAMPLE IN CONTEXT OF MOVIE BUSINESS: UNITED STATES**

The case of the movie company Paramount Pictures in 1948 is perhaps one of the most famous examples of a consent decree established following a judicial judgement. Around this period, the Federal Trade Commission began examining film studios for possible legal infractions. The federal government eventually sued Paramount Pictures as the lead plaintiff in a lawsuit against film studios such as Warner Bros., 20th Century Fox, and MGM that were accused of operating as an oligopoly with complete control over how pictures were distributed and viewed.

In 1940, a consent decree was signed, allowing the matter to be temporarily dropped. However, the consent decree allowed the federal government to reopen the case if it decided that the studios had not taken reasonable attempts to comply with the judgement by November 1943.

The studios did not make any attempt to comply, and by 1942, they had devised their own "Unity Plan." This idea advocated allowing movie studios to book larger blocks of cinemas as long as those theatres were allowed to reject any films they did not wish to play. The government turned down this offer and, in line with the consent order, the case was revived in 1943.

In October 1945, the case went to trial. The government promptly challenged the trial court's judgement, which concluded in favour of the movie studios. In 1948, the matter was taken all the way to the United States Supreme Court. The Court subsequently announced a ruling that would go down in antitrust law and cinema history as a watershed moment.

The Court determined that the District Court's ruling was "deficient" and that it should be overturned. The Supreme Court sided with the government, concluding that the film studios were not promoting free commerce, and ordered that all of the identified studios close their cinema networks. This decision was made in response to the growth of television and the consequent decline in cinema ticket sales. These factors combined to generate such a collapse

in the film business that a picture could no longer be labelled a "blockbuster" until 1972, when *The Godfather* was released.<sup>15</sup>

## CONSENT DECREE VS OTHER SIMILAR AGREEMENTS

### *Consent Decree vs. Consent Agreement: What's the Difference?*

A consent decree is not the same as a consent agreement. In both circumstances, the parties reach an initial agreement, but the consent decree is then brought to a judge, whose judgement is final and legally binding. Contrary to popular belief, a consent agreement cannot be challenged in court.<sup>16</sup>

### *Mediation or Arbitration vs. Consent Agreements*

In most cases, when a mediation agreement is taken to court, it is identical to a consent decree agreement. The parties cooperate with a skilled mediator to try to resolve their disagreement via mediation. If they can come to an agreement and put it in writing, it can be submitted with the court right away. If there is a disagreement, the agreement can be codified as a contract that can be taken to court. An arbitrator hears the case and renders a decision in the arbitration procedure, which is a distinct private process. The arbitrator's judgement is final in non-binding arbitration, but depending on the text of the agreement, there may be some potential for appeal. If the arbitration is designated as binding, the arbitrator's ruling is legally binding.<sup>17</sup>

### *Confession of Judgment vs. Consent Judgment*

A confession of judgement clause in a business loan deal allows the lender to reclaim the full amount of a loan (plus interest) if they can persuade a court that the debt is past due. A consent judgement or consent decree are not the same thing.<sup>18</sup>

## CONCLUSION

A consent decree is a written agreement that resolves a dispute without requiring any of the parties to confess guilt or culpability. In the case that an employee sues an employer for

<sup>15</sup><https://www.mentalfloss.com/article/62427/15-things-you-didnt-know-about-godfather>

<sup>16</sup><https://www.thebalancesmb.com/what-is-a-consent-decree-how-does-it-work-4580322>

<sup>17</sup><https://www.findlaw.com/adr/mediation/mediation-vs-arbitration-vs-litigation-whats-the-difference.html>

<sup>18</sup><https://hscattorneys.com/2018/Consent/Judgment/Confession>.

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discrimination, a consent decree may be formed. When the employee agrees to obtain damages compensation, the consent decree is written to put an end to the dispute without the employer having to admit wrongdoing. Any of the following three scenarios can result in a consent decree: Before the case can be heard by a court, a lawsuit is filed, and the parties agree to settle the case.

A lawsuit is filed, the parties appear before the judge, and after the judge has decided on some of the case's grounds, a settlement is struck.

Before filing a lawsuit, the parties reach an agreement. Then they bring the case only so that the judge may record the settlement and bind the parties to its terms. The agreement subsequently becomes an official court order.

The judge will usually evaluate and sign the decree on the spot in civil proceedings. In criminal instances, however, the court may opt to conduct a more thorough investigation before signing the order.

If one party fails to uphold his half of the deal as stipulated in the decree, the other party may bring him into court on a contempt charge. If a consent decree was obtained by deception or has factual or procedural mistakes, the court may decide to "put it aside," or reject it as a valid settlement agreement.