

A BRIEF OUTLINE ON FILING A DIVORCE PETITION IN INDIA

Hindu marriage is viewed as an obligation of constant nature but what would happen when this lifetime obligation turns acrid as well insufferable, the wedded people have no other option yet to get their marriage to dissolve. Divorce is the last disintegration of a marriage. Most definitely, the obligation of marriage was viewed as an unbreakable, perpetual bond, and the disintegration of the same was for the most part not viewed as appropriate. Many of the authoritative work on Hindu law states that husband and wife ought to consistently treat each other in such a way, that no event may emerge for them to isolate from one another. Regardless of this changeless nature of Hindu marriage, Hindu Dharma Sastras affirm the disintegration of marriage under certain uncommon conditions. In-country like ours we take a special interest in protecting a marriage rather than actively participating in their breakdown. Getting a divorce in India is not a piece of cake rather it is a "catch 22", and thus before proceeding further there are several grounds that need to be looked into and proved.



In such a scenario there can be chances where one individual might need to get the marriage dissolved but other one wants to get the things resolved, such contradictions need to be taken under the watchful eye of the Court and for having Judge to choose whether the request for Divorce being made by the parties is fair. Thus, where both the parties can't show up at a conclusion to at least one key issue to convincingly end their marriage and hence contest or dispute over the same is known as "contested divorce".

On the other hand, when the couple concedes to all issues required to definitively and viably end their marriage, leaving nothing of outcome that is contested or uncertain and give consent to break down their marriage agreeably is known as "Divorce by mutual consent". Now let us look into both these types of divorce more elaborately.



Divorce by Mutual Consent

There are different acts for marriage registration, and similarly for divorce as well, the law has different provisions as per the marriage acts Section 13B of the Hindu Marriage Act 1955, Section 28 of the Special Marriage Act, 1954, Section 10A of the Divorce Act, 1869, Section 32B for Parsi Marriage Act 1936 and under the sections of Christian and Muslim Marriage Act provides for divorce by mutual consent. Mutual consent as the word clearly states that both the parties agree for peaceful separation.

When can a petition for mutual divorce be filed?

Under the given conditions, a Divorce by Mutual consent can be filed

1. Minimum one year from the date of marriage
2. Husband and wife have been living independently for a time of one year or more.
3. They are unable to live together
4. The couple has commonly concurred that the marriage has completely abrogated. Henceforth marriage ought to be disintegrated.

According to the Indian Legal framework, divorce procedure begins by filing the divorce petition

Following are the list of documents required for filing a divorce petition

- Marriage Certificate
- Address Proof of Husband and Wife.
- Photographs of Marriage.
- Income tax Statement.
- Details of profession and Income for example Salary slips, appointment letter, etc.
- Details of Property and Asset owned by the parties

- Information about the family background of both husband and wife
- Evidence of a couple staying separate for a year or more
- Evidence proving failed attempts of reconciliation
- Other documents too may be needed, depending on the requirements, facts, and circumstances of the case.

Where can you file a divorce petition?

A divorce petition can be filed in the court where -:

1. Couple seeking divorce last lived.
2. The marriage was solemnized.
3. The wife is residing as of present.

Steps involved In Mutual Consent divorce

- *First Motion involves the joint filing of the divorce petition.*

Right off the bat, a joint request for dissolution of marriage for a pronouncement of separation is to be introduced to the family court by the couple on the ground expressing that they cannot live together any further and have commonly consented to break down the marriage or they have been living independently for a time of one year or more. Both the parties have to sign the said petition.

- *Husband & wife to appear before the court to record statements after filing of the petition.*

Both parties should show up in the family court after the filing of the petition. The parties would introduce their legal counsellors who have taken up their matter on their behalf.

- *The Court examines petition, documents, tries reconciliation, and records statements*

The court may endeavour to bring Reconciliation between the couples, if this is impossible to achieve then the Court continues for additional subsequent follow-up. After the petition is scrutinized by the court and is satisfied, the court orders the other party's statements to be recorded on oath.

- *The Court passes the order on First Motion for Divorce*

Once the statements are recorded in the Court, the court passes an order on the First motion for divorce.

- *Cooling-off period of six months given to the couple by the court to rethink their decision of getting divorced.*

Since in our country marriage is considered a sacred bond so the last opportunity known as a cooling period is given to the parties to rethink their decision and explore possibilities of settlement and cohabitation.

NOTE - The Hon'ble Supreme Court in the Case of Amardeep Singh vs Harveen Kaur (2017 (8) SCC 746) held that the minimum 6 months cooling down period can be waived off in the case of mutual divorce. To waive off the statutory waiting period of 6 months under Section 13B (2), the court will take the following condition into considerations before waiving off the cooling period and hence the same needs to be satisfied that

"The statutory period of six months specified in Section 13B (2), in addition to the statutory period of one year under Section 13B (1) of separation of parties is already over before the first motion itself; Efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

The parties have genuinely settled their differences including alimony, custody of the child or any other pending issues between the parties; "

In such circumstances, a waiver application to waive off the period of 6 months can be filed as early as one week after the first motion giving reasons for the waiver. The Court may exercise its discretion over the waiver of such a period.

- **Second Motion to be filed within 18 months of First Motion.**

When a final decision has been made by the parties to continue with the further proceedings and appear for the second motion, they can advance towards the final hearing. In this procedure both the parties appear before the Family Court and get their statement recorded. This process is done within 18 months of filing the first motion petition.

- ***Final Decree of divorce by mutual consent passed by the court***

When both the parties have given consent for dissolution of marriage and no differences are left between them concerning the alimony, custody of the child, maintenance, property, etc and the court is contended subsequent to the hearing from both the parties that, the claims inside the petition are valid and there can't be any chance of compromise and living together,

an decree of Divorce proclaiming dissolution of wedding is passed by the Court. The divorce becomes ultimate once the decree of divorce has been passed by the court.

Now let's take a look at the contested divorce which is a little tricky to obtain

Contested Divorce

A contested divorce in India is a proper method of looking for separation from your companion who isn't ready to separate. Contested Divorce in India mirrors a circumstance wherein one mate has, at last, made up his/her mind to continue with Divorce. Critically reasons



for such kind of divorce are your own decision to come out of the marital relationship. Reason ought to be one which is inferable from your mate who's direct, activities, oversights, and inability to release expected sensible conduct have irritated you to such an extent that you resolve that living together is no more possible for you.

The below-mentioned grounds are available to the person who is filing the divorce:

- o Adultery
- o Cruelty
- o Desertion
- o Conversion
- o Mental disorder
- o Leprosy
- o Venereal disease
- o Renunciation:
- o Not heard alive:
- o No resumption of cohabitation
- o No restitution of conjugal rights

Steps and Procedure for Filing Contested Divorce In India

If you need a divorce independent of the assent of your partner, you should initially find out the grounds on which you can file your divorce. A significant number of the grounds, for example,

cruelty, are abstract. And hence it is advisable to consult a legal counsel before proceeding further about your case. To contest a divorce in Indian the below-mentioned procedure needs to be followed -

1. Once you have consulted a trustworthy lawyer, you need to describe all the facts and circumstances for seeking a divorce according to which your lawyer would prepare a divorce petition along with relevant documents that support the allegations mentioned in the petition.
2. After preparing a final draft of the divorce petition the Petitioner is required to sign the Petition, supporting Affidavits, Vakalatnama, and other relevant documents in the presence of an authorized Oath Commissioner/Notary.
3. In the wake of perceiving the court of suitable jurisdiction, the petition for the divorce is filed, which gets usually listed for hearing according to the workload of the court.
4. Once your petition is listed it needs to be admitted by the court. This means that the Judge will hear opening contentions from the Divorce Lawyer in regards to the claims made in the Petition and the grounds on which the Contested Divorce is being looked.
5. Once the judge is satisfied by the allegations made in your Petition, he/she will give a formal legal notice/summons along with a copy of the petition to be served upon the husband/wife as the case may be telling him/her that a divorce case has been filed by their spouse.
6. Once the Legal Notice/summons has been sent, the contrary side should show up face to face along with its Lawyer and file a reply to the Divorce Petition. The contrary party is required to compose his/her reply to such a petition clarifying their side. If the contrary party decides not to appear on the given date, the court may continue to give its decision after hearing the Petitioner's side.
7. When the opposite party appears and files the reply then the court continues with it further proceeding where at the initial stage, the court might suggest to the parties to divorce take up the process of mediation in order to settle their disputes before getting a divorce. Mediation is a process that involves a third

neutral party that helps in mediating communication between the spouses to arrive at a better solution.

8. If the mediation fails, the court would continue further with divorce proceedings, meanwhile if any application for maintenance is filed the court will decide it at first instance, to ensure the financial stability of the person who has filed such application.

9. The court will then be proceeded with the framing of issues and getting the evidence recorded of both the spouse, the evidence of petitioner is recorded first.

10. Examination and cross-examination of the Petitioner along with its supporting witness takes place first and the same process is followed for the Respondent.

11. Once the abovementioned procedure is followed for both the parties, the lawyers of both the parties proceeded towards their final arguments. Final or closing arguments are the primary deciding factors on which the court will decide the dissolution of marriage. After hearing the final argument, the court will fix a date to pronounce its order. On the date fixed by the Court, it gives out its final judgment and passes a divorce decree.

If by any means the judgment passed by the court is not acceptable to either one of the parties, they may file an appeal against the order in the Higher Court within 3 months from the date of passing of such order.

This is only a tip of the iceberg for filing a divorce and getting a decree, there are various legal complexities like maintenance, child custody, division of property, etc that needs to be dealt with before procuring a decree in case of a contested divorce. At last, I would just conclude saying that contested divorce is not an easy affair it takes a lot of time energy and effort to fight it out. This does not mean that you stay in an abusive relationship, but if there is a ray of hope to reconcile you should give it a try.



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