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1. WHAT IS DIVORCE?

Divorce or the dissolution of marriage is the final termination of a marital union, canceling the legal duties and responsibilities of marriage and dissolving the bonds of matrimony between the parties.

2. WHY DIVORCE IS REQUIRED?

Everyone has to make compromises in married life, but ultimately despite the compromises and sacrifices one must have a bond with one's partner. This bond is companionship, and mutual understanding, but some time situation goes so worse and it is difficult to live together as consequence the divorce is required. Following reasons are there which leads to divorce such as :

- A. Ego problem,
- B. Lack of mutual understanding,
- C. Blaming each other
- D. There are some other reasons which required the divorce:
- E. Adultery
- F. Cruelty
- G. Desertion
- H. Conversion to another religion
- I. Unsoundness of mind or mental disorder
- J. Virulent and Incurable form of leprosy
- K. Venereal disease
- L. Renounce the World
- M. Not heard for a period of seven years or more

3. HOW DIVORCE IS OBTAINED?

A. DIVORCE BY MUTUAL CONSENT

Divorce by Mutual Consent under Section 13 B of Hindu Marriage Act 1955 can be obtained by following:

- a) Petition must be presented by both the parties to marriage;
- b) That the parties have been staying separately for more than one year;
- c) The parties have not been able to live together;
- d) The parties plead that they have mutually agreed that their marriage should be dissolved;
- e) Petition is presented not earlier than one year from the date of marriage.

B. CONTESTED DIVORCE AND UNCONTESTED DIVORCE

A contested divorce is one in which the parties agree on the terms such as property division, custody, visitation, or child support. An uncontested divorce is one in which the parties don't agree and may have a judge or jury decide one or more of the terms.

4. PROCEDURE

- A. The divorce provision in Hindu law provided that once the application for dissolution of marriage by mutual consent is presented before the competent court, either of the applicants could withdraw the consent within 18 months.
- B. To begin the divorce process a document called "Original Petition for Divorce" is filed under the District court or the Family court before the District Judge known as "Letter of Complaint."
- C. Both documents are requests that the court grant a divorce and list any relief the party filing for divorce feels they are due. The original petition will identify the parties to the divorce and any children they may have.
- D. The party filing for divorce will have to state a reason for divorce as part of the petition or letter.
- E. The person filing for the divorce will be named the "petitioner" by the courts while the other party to the divorce is referred to as the "respondent" or, in some states, the "defendant."

F. The original petition or letter of complaint is then served on the respondent. Once the respondent has been served he/she has thirty days to hire an attorney and respond to the original petition for divorce.

G. It is at this time that either party may ask for restraining orders, protective orders or temporary orders pertaining to child support and alimony.

5. LIMITATION

As such no specific period is there for filing a divorce petition, it depends from case to case but to file a divorce petition by mutual consent under section 13B the time limit will be 6 to 18 months from the marriage and any cases filled before it would be not entertained by the court.

6. JURISDICTION

For the purpose of jurisdiction for filing divorce petition, there are three place for conferring Territorial Jurisdiction

- A. Where the Marriage took place,
- B. Place where the respondent resides,
- C. Where the parties last resided together.

7. PENAL CLAUSES

- A. Dowry death (Section 304 B): Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.
- B. Cruelty (498A): Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

8. MAINTENANCE

If any person having sufficient means neglects or refuses to maintain -
His wife, his legitimate or illegitimate minor child, his legitimate or illegitimate

child who has attained majority, his father or mother, unable to maintain himself or herself.

9. PROCEDURE

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

The monthly allowance shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

10. CAN ONE GET DIVORCE IN INDIA VIA ONLINE? CAN FILE DIVORCE PETITION WITHOUT COMING TO INDIA? CAN THE PETITION TO GET DIVORCE IN INDIA BE FILED ANYWHERE IN INDIA?

You cannot get divorce in India via online, but you can file divorce petition without coming to India. You can file Divorce petition from the place of residence of the respondent, or the place of marriage or the place where the couple last lived together. But the wife can file wherever she resides after separation. The husband can also file the divorce petition from his place of residence at the time of filing, under certain conditions.

11. HOW MANY TIMES HAVE TO ATTEND THE COURT HEARING IF ANY ONE FILED FOR DIVORCE IN INDIA?

Minimum of two times. But depending on the place of filing, it is possible to reduce to just one.

12. SHOULD BOTH THE SPOUSES ATTEND THE COURT HEARING FOR DIVORCE IN INDIA?

If it is for divorce by mutual consent, both of them should attend. But depending on the place of filing, it is possible to avoid the appearance of at least one spouse.

13. HOW LONG AFTER MARRIAGE CAN A PERSON SEEK DIVORCE UNDER HINDU LAW?

Under Section 14 of the Hindu Marriage Act, 1955, no petition for divorce can be filed within one year of the marriage. But in case the petitioner's case is of exceptional hardship High Court is empowered to grant leave to file the case before the expiry of one year.

14. HOW MUCH TIME IT WILL TAKE TO GET DIVORCE IN INDIA?

If it is a divorce by mutual consent of the spouses, Six months from the date of filing. But depending on the place of filing, we can reduce it to just two months. It is possible to get divorce before six months;

15. HOW MUCH TIME IT WILL TAKE TO GET DIVORCE IN INDIA IF ONE OF THE SPOUSES IS NOT WILLING FOR DIVORCE?

Time varies from six months to 2 years.

16. WHAT IS THE TIME FOR SEPARATION FOR FILING DIVORCE IN INDIA?

No prescribed time for separation except under certain conditions. It could vary from six months to 1 year.

17. WHAT IS THE LAW FOR DIVISION OF PROPERTIES BETWEEN THE DIVORCING COUPLES IN INDIA?

There is no such law. The general law is that the property belongs to the person in whose name it stands.

18. WHAT IS THE AMOUNT OF MONEY TO BE PAID FOR MAINTENANCE OF WIFE AND CHILDREN DURING DIVORCE IN INDIA?

It depends on the facts and circumstances of each and every case.

19. WHEN THE DIVORCED PERSONS CAN REMARRY?

With regard to the re-marriage after divorce, Section 15 of the Hindu Marriage Act, 1955, provides that after a decree of divorce has been granted, in case there is no right of appeal against the decree or if there is a right, the time has expired without an appeal having been presented or if the appeal filed has been dismissed, it shall be lawful for either party to marry again. The period of

appeal as provided under Section 28 of the Hindu Marriage Act is 30 days from the date of the decree or order.

20. WHAT ARE DIFFERENT GROUNDS FOR DIVORCE IN INDIA?

In India divorce is granted mainly on 5 different grounds. Adultery, Desertion, Cruelty, Impotency and Chronic Diseases Leprosy; venereal disease etc). Mental cruelty can certainly be pleaded to claim divorce from the other spouse even if there is no physical cruelty. The cruelty however should be of such a nature that it causes reasonable apprehension in the mind of the spouse claiming divorce, that it would be harmful and injurious for him /her to live with the other spouse. The following are the grounds for divorce in India mentioned under the Hindu Marriage Act, 1955.

A. ADULTERY

The act of indulging in any kind of sexual relationship including intercourse outside marriage is termed as adultery. Adultery is counted as a criminal offence and substantial proofs are required to establish it. An amendment to the law in 1976 states that one single act of adultery is enough for the petitioner to get a divorce.

B. CRUELTY

A spouse can file a divorce case when he/she is subjected to any kind of mental and physical injury that causes danger to life, limb and health. The intangible acts of cruelty through mental torture are not judged upon one single act but series of incidents. Certain instances like the food being denied, continuous ill treatment and abuses to acquire dowry, perverse sexual act and such are included under cruelty.

C. Desertion

If one of the spouses voluntarily abandons his/her partner for at least a period of two years, the abandoned spouse can file a divorce case on the ground of desertion.

D. CONVERSION

Incase either of the two converts himself/herself into another religion, the other spouse may file a divorce case based on this ground.

E. MENTAL DISORDER

Mental disorder can become a ground for filing a divorce if the spouse of the petitioner suffers from incurable mental disorder and insanity and therefore cannot be expected from the couple to stay together.

F. LEPROSY

In case of a 'virulent and incurable' form of leprosy, a petition can be filed by the other spouse based on this ground.

G. VENEREAL DISEASE

If one of the spouses is suffering from a serious disease that is easily communicable, a divorce can be filed by the other spouse. The sexually transmitted diseases like AIDS are accounted to be venereal diseases.

Renunciation - A spouse is entitled to file for a divorce if the other renounces all worldly affairs by embracing a religious order.

H. NOT HEARD ALIVE

If a person is not seen or heard alive by those who are expected to be 'naturally heard' of the person for a continuous period of seven years, the person is presumed to be dead. The other spouse should need to file a divorce if he/she is interested in remarriage.

I. NO RESUMPTION OF CO-HABITATION

It becomes a ground for divorce if the couple fails to resume their co-habitation after the court has passed a decree of separation.

21. IF ONE OF THE SPOUSE IS NOT AT ALL READY TO GIVE THE DIVORCE AT ANY COST, THEN HOW MUCH MAXIMUM TIME IT CAN TAKE TO GET THE DECREE FOR DIVORCE?

If one of the spouse is not ready to give divorce at any cost, then also other spouse can file a petition for divorce before the court. However, a divorce can only be granted under certain prescribed circumstances under Hindu Law which are described in Section 13 of the Hindu Marriage Act. These grounds include cruelty; desertion; voluntary sexual inter-course with another person; the other spouse being of unsound mind; conversion of religion by the other spouse; Leprosy; venereal disease; a spouse having renounced the world or being missing for a period of more than 7 years. The period of time for seeking a divorce decree can really not be specified, because it depends upon a number

of circumstances. However, still a general estimate which can be given in an average litigation of such a nature is around 2 to 3 years before the District Court.

22. IF DURING THE PERIOD OF SIX MONTHS AFTER THE FILING OF PETITION FOR DIVORCE BY MUTUAL CONSENT, ANYONE OF THE PARTIES WITHDRAWS THE CONSENT, THEN WHAT OPTIONS THE OTHER PARTY IS LEFT WITH IN ORDER TO CONTINUE TO GET THE DECREE FOR DIVORCE? HOW CAN ONE WITHDRAW THE CONSENT?

Under Section 13-B of the Hindu Marriage Act of 1950, the parties can seek divorce by mutual consent by filing a petition before the court. After the filing of the petition and recording the statement of both the parties, the court generally adjourns the matter for a period of 6 months where after the party has to again approach the court for making a second motion confirming the mutual consent earlier given in the petitioner filed by them. It is only after this second motion is made that a decree of the divorce is granted by the court. During this period of 6 months when the petition is pending, any of the spouse is fully entitled to withdraw the mutual consent.

In such an eventuality no divorce decree can be granted by the court. The consent can be withdrawn during this period of 6 months by either of the spouse, by filing an application before the court stating that he/she does not wish to seek divorce by mutual consent. The court is bound under such circumstances not to grant a decree of divorce. There is no option available to the other party to such circumstances except to file a normal petition for divorce under the provisions of the Section 13 of the Hindu Marriage Act, 1950. In such a situation divorce can be granted only on certain specified grounds as mentioned in the said provision. These grounds include cruelty; desertion; voluntary sexual inter-course with another person; the other spouse being of unsound mind; conversion of religion by the other spouse; Leprosy; venereal disease; a spouse having renounced the world or being missing for a period of more than 7 years.

23. WHAT IS THE RIGHT OF HUSBAND ON THE CHILD AT THE SEPARATION?

After divorce/separation, the husband can move an application for the custody of a child under Guardian & wards Act and if the parties are Hindu then under

Hindu Minority & Guardianship Act. The husband also has a right to claim the right of meeting the child and to take the child during holidays till the disposal of the petition for custody. The parties can ask for the above said interim relief from the Court.

24. EXPLAIN ME THE PROCEDURE OF FILING PETITION OF DIVORCE?

According to the Indian divorce laws there are mainly two ways to obtain you divorce, the mutual divorce and the contested divorce. In case of a mutual divorce, you can have a talk with your estranged spouse to come to a settlement. If you are seeking a contested divorce, you can file your divorce on the grounds that are specified under the particular Indian marriage act that you are entitled to. There are separate divorce laws for Hindus, Christians, Parsis and Muslims. Sikhs, Jains and Buddhists are governed by the Hindu Marriage Act, 1955 for filing for divorce in India. Laws are even laid down for Inter-cast marriages under the Special Marriage Act, 1956. Your lawyer will draft a divorce petition based on the grounds for filing a divorce in India as mentioned in the Indian divorce laws. You will be expected to provide your lawyer every necessary details and documents that would enable him/her to file the case in the relevant court.

25. IF THE SPOUSE CONSENTS FOR REMARRIAGE, IS IT LEGAL WITHOUT GETTING DIVORCE IN COURT IN INDIA?

Remarriage without getting divorce is a punishable offence with seven years imprisonment if the wife prefers the complaint at any point of time even if she had consented for the remarriage initially.

26. EXPLAIN THE MUTUAL DIVORCE PROCEDURE?

Getting a divorce through mutual consent should always be preferred over the contested divorce as the procedure of getting a mutual divorce is simpler in comparison to that of the other. For a mutual divorce procedure in India, you can come to an agreement with your spouse where you may resolve all kinds of disputes regarding maintenance, custody of children and such. Under Section 13B of the Hindu Marriage Act, a husband and wife can file a mutual divorce only when they have lived apart for at least a year. The couple must jointly mention about their inability to continue the marital relationship due to some unavoidable circumstances. Both the sides must voluntarily agree to dissolve the marriage.

The filing of a mutual divorce by both the husband and the wife is termed as 'the first motion'. A couple can file for a second motion after a gap of six months. The six months time span is provided to the couple so that they get the time to reconsider their marriage. A divorce decree can be passed before the completion of the six months term if all the mandatory requirements for the divorce are sufficed. If the divorce file is not withdrawn within eighteen months the court passes a divorce decree. In case one of the sides withdraws his/her petition the court initiates to make an enquiry. If the concerned side disagrees to give the consent, the court holds no right to pass the divorce judgment.

27. CAN GET DIVORCE IN INDIA WITHIN ONE YEAR OF MARRIAGE?

It is possible under certain conditions.

28. WHAT IS CONSIDERED AS STRIDHAN?

Stridhan is, generally speaking, what a woman can claim as her own property within a marital household. It may include her jewelry - gifted either by her family or by her in-laws, gifts presented to her during the wedding or later, and the dowry articles given by her family.

Whatever is given to the wife at the time of marriage and even after the marriage by either side is a part of stridhan. It also includes the articles which she has purchased from her earnings after the marriage.

29. WHAT IS ONE-TIME ALIMONY?

Instead of giving regular maintenance, it may be possible to make a onetime settlement in which the person gives a lump sum amount to the wife said to be Alimony. Alimony will be given to the wife after mutual Divorce or during this procedure.

30. WHAT ARE THE PLACES WHERE ONE CAN FILE DIVORCE PETITION UNDER HINDU MARRIAGE ACT, 1955?

Divorce Petition under Hindu Marriage Act, 1955 can be filed before the district court within the local limits of whose ordinary original civil jurisdiction :

- A. The marriage was solemnized, or
- B. The respondent, at the time of the presentation of the petition, resides, or
- C. The parties to the marriage last resided together, or
- D. In case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

E. The petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside India, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

31. WHAT ARE THE DOCUMENTS REQUIRED FOR THE PURPOSE OF MUTUAL CONSENT DIVORCE?

Documents Required: Address proof of Husband, Address proof of Wife, Marriage Certificate and Four passport photographs of marriage of both husband and Wife

32. WHAT DOES JUDICIAL SEPARATION MEANS?

It is a relief, which is available to either of the spouse. The party which seeks judicial separation has to take one of the grounds mentioned under section 13 of Hindu Marriage Act. Once, a relief is granted, parties are allowed to live separately for one year. If matrimonial ties are not restored then aggrieved party has a right to go to the Court. Thus, judicial separation becomes a separate ground and another ground for Divorce.

33. WHAT IS THE PROCEDURE OF DIVORCE IN CONTESTED CASES?

In contested divorce case, the spouse who wants to initiate action has to take one of the ground of divorce mentioned under law. A Petition will be drafted which will be filed in the Court. Other spouse will be asked to make an appearance before the Matrimonial/Divorce Court and to answer reply to the Divorce Petition filed by the other spouse. Then the matter goes in for Trial. Parties have to lead evidence. One who files divorce petition will have to prove its case. After determination of all issues court can pass a divorce.

34. WHAT IS DIVORCE IN MUSLIM?

Under Muslim law the divorce may take place by the act of the parties themselves or by a decree of the court of law. However in whatever manner the divorce is effected it has not been regarded as a rule of life. In Islam, divorce is considered as an exception to the status of marriage. A divorce may be either by the act of the husband or by the act of the wife.

35. WHAT IS THE MODE OF DIVORCE IN MUSLIM?

A husband may divorce his wife by repudiating the marriage without giving any reason. Pronouncement of such words which signify his intention to disown the

wife is sufficient. Generally this done by talaaq. But he may also divorce by Ila, and Zihar which differ from talaaq only in form, not in substance. A wife cannot divorce her husband of her own accord. She can divorce the husband only when the husband has delegated such a right to her or under an agreement.

Under an agreement the wife may divorce her husband either by Khula or Mubarat. Before 1939, a Muslim wife had no right to seek divorce except on the ground of false charges of adultery, insanity or impotency of the husband. But the Dissolution of Muslim Marriages Act 1939 lays down several other grounds on the basis of which a Muslim wife may get her divorce decree passed by the order of the court.

There are two categories of divorce under the Muslim law:

- A. Extra judicial divorce, and
- B. Judicial divorce

36. WHETHER WOMAN MARRIED UNDER MUSLIM LAW SHALL BE ENTITLED TO OBTAIN A DECREE FOR DIVORCE?

A woman married under Muslim law shall be entitled to obtain a decree for divorce by filling a suit for the dissolution of her marriage on any one or more of the following grounds, namely:

- A. That the whereabouts of the husband have not been known for a period of four years: if the husband is missing for a period of four years the wife may file a petition for the dissolution of her marriage.
- B. That the husband has neglected or has failed to provide for her maintenance for a period of two years: it is a legal obligation of every husband to maintain his wife, and if he fails to do so, the wife may seek divorce on this ground.
- C. That the husband has been sentenced to imprisonment for a period of seven years or upwards: the wife's right of judicial divorce on this ground begins from the date on which the sentence becomes final.
- D. That the husband was impotent at the time of the marriage and continues to be so: for getting a decree of divorce on this ground, the wife has to prove that the husband was impotent at the time of the marriage and continues to be impotent till the filing of the suit.

37. WHO CAN FILE DIVORCE PETITION ON THE GROUNDS OF DIVORCE SPECIFIED UNDER THE SPECIAL MARRIAGE ACT, 1954?

The Special Marriage Act, 1954 has made provisions for the marriage and registration of any two persons, irrespective of their religion and nationality. And hence, in India, if two persons want to marry each other, they have the following choices: - If both profess the same religion, they can marry in accordance to the law governing their marriage as per their religion. Alternatively, if they want they can marry in accordance to the provisions of The Special Marriage Act, 1954. If both profess different religion, then the law varies, viz., under Hindu Marriage Act, only two Hindus can marry each other, whereas, as per Muslim Personal Law (Shariat) a Muslim Male can marry a Non-Muslim also, however, a Muslim Woman cannot marry a Non-Muslim, and hence, to cater to such situations, where two persons professing different religion wants to marry each other, The Special Marriage Act, 1954 has made provisions for their marriage.

Further, The Special Marriage Act, 1954 has also made provisions for the registration of marriages performed under any other forms. For all those marriages either performed under The Special Marriage Act, 1954 or registered under The Special Marriage Act, 1954, the grounds of Divorce specified under The Special Marriage Act, 1954 would be applicable.