

Mutual consent divorce in India

Divorce is a process of legal dissolution of a marriage by a court or a competent body. Although there might be an endless number of reasons why a husband and a wife cannot continue to stay married and live together, the court has certain basic criteria to look for before ordering a decree of divorce.

One of the processes of getting Divorce is by mutual consent under section 13 B of the Hindu Marriage Act, 1955, Section 28 of the Special Marriage Act, 1954 and Section 10A of the Divorce Act, 1869.

A **mutual consent divorce** could be applied when both the husband and the wife agree with each other that they cannot stay married together anymore and mutually agree for a peaceful separation on amicable terms. When one of them is not interested in getting a divorce but the other person is willing to get a divorce, the willing spouse can file for a divorce and it's called a **contested divorce**.

In several ways, applying for a mutual consent divorce saves a lot of time and money since both parties agree with their terms and conditions.

The court looks for certain conditions when a mutual consent divorce is applied:

- When the husband and the wife are living separately for a period of one year or more.
- When they can't live together anymore
- Both have agreed upon getting a divorce

Where to file a divorce petition

- In a court where the couple lived together as husband and wife before deciding to separate
- In a court where the marriage was solemnized
- In a court where the wife is living at present

How to apply for a mutual consent divorce

1. **Filing Joint Petition** – Since both parties have agreed upon their divorce, they have to file a joint petition under the above-mentioned grounds in the court. Both of them should be present at the court and sign the petition to apply for divorce.
2. **Inspection of the petition** – both parties will be called upon to present their documents to be verified by the court. The parties would present their lawyers and the court will attempt for any reconciliation possible between the couple.

3. **Recording oath statements/Passing first motion** – when no reconciliation is attained between the couple, the court will scrutinize the petition. Once the court is satisfied, the couple will be ordered to record their oath statements, formal evidence of why they want to apply for a divorce. Order of first motion will be passed by the court once these oath statements are recorded.
4. **Second motion and final hearing** – the couple should appear before the court after six months from the date when the first motion was passed. This period also called the cooling-off period, should not exceed more than 18 months from the date of filing the petition. If the couple didn't appear for the second motion or if the time exceeds, the court will dismiss the divorce petition.
5. **Decree of divorce** – the final order will be passed by the court and grant a decree of divorce by mutual consent. This can be attained only when the court is satisfied that the Parties have mutually agreed on the alimony, child custody and maintenance, properties, finances, etc.

Documents checklist

While filing for the divorce petition, the couple is expected to submit a few documents as given below. The court will verify everything during the proceedings.

1. Marriage certificate
2. Address proof of husband and wife
3. Marriage photographs – 4 nos.
4. Income tax statements for the last 3 years
5. Details of profession and income of both husband and wife
6. Details of properties/assets owned by both husband and wife
7. Evidence of living separately for more than a year
8. Evidence showing failed attempts of reconciliation
9. Birth and family details of both parties
10. Certain documents relating to facts and circumstances of a particular case

Is the Cooling-off period necessary?

If the couple is already living separately and the extended time gap is only making them suffer more, these six months could be waived off. The Supreme Court has held that the minimum cooling period of six months for granting the decree of divorce under the Hindu Marriage Act, 1954 can be waived by a trial court if there was no possibility of cohabitation between an estranged couple.

Can the cooling period be waived off?

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the conditions are satisfied, the waiver of the waiting period for the second motion will be at the discretion of the concerned Court.

What's the average time for getting a mutual consent divorce?

The average time for a mutual consent divorce would be somewhere between six months to two years depending upon the nature of the case. Mutual consent divorce takes the least amount of time compared to other divorce procedures.

What's the cost involved?

It might take anywhere from 25 – 60 thousand rupees depending upon the nature of the case.

When a husband/wife can file for divorce?

The husband/wife should wait for at least one year after getting married before filing for divorce. If the couple had been living separately for more than a year or they couldn't live together at all due to certain circumstances, they can apply for divorce.

Can a husband/wife remarry?

A husband or wife can remarry after three months from the date of their decree of divorce is granted. Remarrying before getting a divorce is punishable with 7 years of imprisonment.

Can a husband/wife withdraw a divorce petition?

If the husband or the wife is not willing to proceed with the divorce they can withdraw by applying to the court. When the other party is still willing to proceed with the divorce, it becomes a contested divorce.

Can mutual consent divorce be obtained via notary?

No. A mutual consent divorce can be granted only by the family court.

Is it necessary for both parties to appear before the court to get a divorce?

Yes. Being a mutual consent divorce both parties must be present during the first and the second motion. Only in rare cases, when one or both of them cannot appear before the court, camera proceedings might be allowed which depends on the total discretion of the court.

Does divorce law differ among religions?

Yes. Divorce for Hindus, Sikhs, Jains and Buddhists are covered by Hindu Marriage Act, 1955. Divorce for Christians come under Indian divorce Act, 1869. Muslims come under Personal laws of divorce and Dissolution of Marriage Act, 1939 and the Muslim Women (Protection of Rights on Divorce) Act, 1986. Divorce for the Parsis is governed by the Parsi Marriage and Divorce Act, 1936. Also, for the parties who have registered their marriage under Special Marriage Act, 1954, divorce will be governed by the same Act.