

Divorce Laws in Law

Boy meets girl... girl meets boy... they both fall in love... the family agrees to get them married and they live happily ever after... forever loving each other... for the next seven lifetimes.

That's the story of majority of marriages in India, I don't have the complete statistics, but I would venture a guess of about 80 percent. That's a whopping number considering our population of over 1.3 billion and counting.

What happened here? Why isn't there any inbuilt detector for discontent in a marriage and an exit plan, or are you stuck for a minimum of a long lifetime tallying 25 to 40 years, or worse still, for seven lifetimes keeping in mind the religious scriptures.

I shudder with fear at the thought.

Imagine being chained in an unhappy marriage, especially where the spouse doesn't think twice before using you as a punching bag, and the pet names he gives you are synonyms of 'whore, harlot and tramp'--and that's on a good day. I was in that position once, but I am glad that I had the guts to walk away with nothing apart from around 12 dollars in my bank account and the clothes on my back, but with dreams worth billions in my mind and most of all--my life intact.

Ironic, I should write about this. When I got married about a decade-and-a-half ago on 3rd December, we too made a promise of being together for seven lifetimes. But here I am sharing all my experiences about divorce, close to the date of my marriage, which seems like many lifetimes ago.

But really, I am not going to go into the story of my divorce, which is a story of courage-under-fire, positivity, humour, triumph, faith in humanity and most of all 'Hope'. You can read all about that in my new book ['Ex-Files: The story of my divorce'](#).

The truth of the matter is that divorce is a common occurrence in an economically evolved India. People are not willing to put-up with all the unhappiness and sorrow that bad marriages entail. They are learning to look beyond the concept of being chained down for seven lifetimes to a spouse who you can't even stand for seven seconds. Look

at the unofficial statistics that are available: there are about 60 divorce matters on board in the Bandar Family court where I practise, and the building has seven floors, so that's about 420 matters in a day, though a number of them are ongoing. Still, those are staggering numbers compared to a decade ago where there were only 25 matters on board daily. But hey, who's counting?

Surely not us Indians, because we are so busy denying the existence of divorce, the voices ranging from 'No! it doesn't exist in India, actually we are all very adjusting, look at my dad and mom they have been married for over 40 years,' and so on and on go the reasons for pretending that divorce is not like the emperor's new clothes. Wake Up India and smell the petition--divorce exists in India and is here to stay and it is not an evil Western conspiracy defiling Indian values and the so-called pure supremacist Indian culture.

The reasons for divorce surfacing its hydra head in India may be many but we'll talk about that another time. What's important is that it's here to stay and we better learn how to deal with it and believe me, being an ostrich is not the efficient way.

So get organised with your 'Divorce Kit' in case the petition comes knocking at your door.

The first step really is accepting that yes it's happening and it's not going to go away merely by wishing it away. Just confront the truth that the marriage is over and look at effective ways to take the next step.

Check your finances, because believe me, whatever anyone might say, divorce is an expensive proposition even if you aren't getting the hotshot law firm. An ideal amount to put away for a half-decent lawyer would be about Rs 35,000-50,000 a month in a city like Mumbai.

Next up on your checklist should be friends who will support you unconditionally and unquestioningly. The battle for divorce in India is long and emotionally strenuous, and you need all the emotional armour that you can gather and I've found friends to be better than relatives who have an agenda.

Then get your job sorted, whether for money, or emotional sanity, or a bit of both, as you can't just be sitting and plotting your days around the next divorce date, so go ahead use your brain cells more effectively and forget all about the next court date while you immerse yourself in work.

Also, get a good lawyer who matches your temperament especially since divorce can be a lengthy battle (mine lasted for 10 years!) in court so rather than grabbing the next celeb lawyer get someone who can also become your friend and is extremely astute.

Next up, join a support group as no one can empathise better than someone in the same predicament. (You can join [360 degrees back to life](#) a support group started by me about a decade ago.)

Once you've got all these covered don't forget to pray, pray and pray some more.

And then you are all set to set off to navigate successfully in the precarious, prickly territory of divorce, which really is not the Emperor's New Clothes but more like the mandatory bridal lehenga designed by Manish Malhotra for every Bollywood babe.

Till next time, hug yourself, love from me and keep smiling.

Divorce Laws in India

Hindu Marriage Act-

Section 2 ^[1] of the Hindu Marriage Act, 1955 says:

1. This Act applies -
 - a. to any person who is a Hindu by religion in any of its forms or developments, including Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
 - b. to any person who is a Buddhist, Jain or Sikh by religion; and
 - c. to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

This section therefore applies to Hindus by religion in any of its forms and Hindus within the extended meaning i.e. Buddhist, Jaina or Sikh and, in fact, applies to all such persons domiciled in the country who are not Muslims, Christians, Parsi or Jew, unless it is proved that such persons are

not governed by the Act under any custom or usage. The Act applies to Hindus outside the territory of India only if such a Hindu is domiciled in the territory of India.^[2]

Under the Hindu Marriage Act you can file for divorce under Section 13(1) in The Hindu Marriage Act, 1955

13.Divorce.-

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) is living in adultery; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition; or

(iv) has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) had, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) 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 it, had that party been alive; or

(viii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party; or

(ix) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

Divorce by Mutual Consent

Section 13B in The Hindu Marriage Act, 1955

This is a simple way of coming out of the marriage and dissolve it legally. The terms and conditions can also be worked out effectively between the parties.

You can also claim interim maintenance under Section 24.

24.Maintenance pendente lite and expenses of proceedings.-

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

There is also provision for custody of children and alimony.

Parsi Marriage and Divorce Act, 1936

Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Chief Justice" includes senior Judge;

(2) "Court" means a Court constituted under this Act;

(3) to "desert" together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;

(4) "grievous hurt" means-

(a) emasculation;

(b) permanent privation of the sight of either eye;

(c) permanent privation of the hearing of either ear;

(d) privation of any member or joint;

(e) destruction or permanent impairing of the powers of any member or joint;

(f) permanent disfiguration of the head or face; or

(g) any hurt which endangers life;

(5) "husband" means a Parsi husband;

(6) "marriage" means a marriage between Parsis whether contracted before or after the commencement of this Act;

(7) a "Parsi" means a Parsi Zoroastrian;

(8) "priest" means a Parsi priest and includes Dastur and Mobed; and

(9) "wife" means a Parsi wife.

Grounds for divorce

Any married person may sue for divorce on any one or more of the following grounds, namely:-

(a) that the marriage has not been consummated within one year after its solemnization owing to the willful refusal of the defendant to consummate it;

(b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage;

¹²(bb) that the defendant has been incurably of unsound mind for a -period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.

Explanation.-In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia,

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;]

(c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

(d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years after the plaintiff came to know of the fact;

¹²[(dd) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant:

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;]

(e) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution;

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution.

(f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code:

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period;

(g) that the defendant has deserted the plaintiff for at least ²[two years];

(h) that ¹⁷[***] an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had Marital intercourse for ¹⁶[one year] or more since such decree or order;

¹⁸[***]

(i) that the defendant has ceased to be a Parsi ¹²[by conversion to another religion]:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

Maintenance, child custody and alimony are also important provisions which are provided for by the relevant Law.

Foreign Marriage Act, 1969

Validity of foreign marriages of India.-

Subject to the other provisions contained in this Act, a marriage solemnized in the manner provided in this Act shall be good and valid in law.

Divorce, Maintenance, child custody and alimony are also important provisions which are provided for by the relevant Law.

Special Marriage Act, 1954

4. Conditions relating to solemnization of special marriages

Notwithstanding anything contained in any other law for the time being in force relating to solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely :-

(a) neither party has a spouse living;

⁹[(b) neither party-

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity or epilepsy;]

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

¹⁰[(d) the parties are not within the degrees of prohibited relationship :

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and]

¹¹[(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.]

¹²**[Explanation.-** In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family :

Provided that no such notification shall be issue in relation to the members of any tribe, community, group or family, unless the State Government is satisfied-

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by the family.]

Divorce, Maintenance, child custody and alimony are also important provisions which are provided for by the relevant Law.

Indian Christian Marriage Act, 1872

Marriages to be solemnized according to Act

Every marriage between persons, one or both of whom is ¹¹[or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Divorce, Maintenance, child custody and alimony are also important provisions which are provided for by the relevant Law.

Dissolution of Muslim Marriage Act 1939

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

Grounds for decree for dissolution of marriage –

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

1. that the whereabouts of the husband have not been known for a period of four years;
2. that the husband has neglected or has failed to provide for her maintenance for a period of two years;
3. that the husband has been sentenced to imprisonment for a period of seven years or upwards;
4. that the husband has failed to perform , without reasonable cause , his marital obligations for a period of three years;

5. that the husband has impotent at the time of the marriage and continues to be so;
6. that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
7. that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years., repudiated the marriage before attaining the age of eighteen years;

Provide that the marriage has not been consummated;

8. that the husband treats her with cruelty, that is to say.—
 1. habitually assaults her or makes her life miserable by cruelty of conduct does not amount to physical ill-treatment, or
 2. associates with women of evil repute or leads an infamous life, or
 3. attempts to force her to lead an immoral life, or
 4. disposes of her property or prevents her exercising her legal rights over it, or
 5. obstructs her in the observance of her religious profession or practice, or
 6. if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;
9. on any other ground which is recognised as valid for the dissolution of marriages under Muslim law;

Provide that—

1. no decree shall be passed on the ground (iii) until the sentence has become final;
2. a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfied the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and
3. before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Maintenance, child custody and alimony are also important provisions which are provided for by the relevant Law.

Besides these even provisions of The Protection of Women from Domestic Violence Act, 2005, Section 498 A of Indian Penal Code and other laws in Indian Penal Code and Civil Procedure Code play an important role for Divorce in India.

