**LEGAL PROCEDURE TO FILE DIVORCE**

The following procedures have to be followed to obtain a divorce in India:

* **Grounds**

If you want a divorce irrespective of the consent of your partner, you should first ascertain the grounds on which you can file your divorce. Many of the grounds, such as cruelty, are subjective. It is advisable to consult an expert advocate about your particular case. Common grounds for Divorce are:

1. Adultery: Means any kind of sexual relationship of the petitioner's spouse outside their marriage
2. Cruelty: Means any kind of mental or physical injury caused by the spouse, that results in danger to life, limb or health of the petitioner
3. Desertion: Means a voluntary leaving behind, forsaking or disowning the petitioner by the spouse, without any reasonable cause
4. Conversion: Means a conversion by the spouse into another religion
5. Mental disorder: Means an incurable unsound mind, including insanity, of a nature where the petitioner cannot be reasonably expected to live with the spouse.
6. Leprosy: Means a virulent and incurable form of leprosy of the spouse
7. Venereal disease: Means the spouse suffers from a disease that can be contracted and transmitted by sexual contact.
8. Renunciation: Means the spouse gives up the family and worldly life by embracing any particular religious order
9. Not heard alive: Means the spouse is not known to be alive by those who are expected to naturally hear from him or her (such as close family)

* **Lawyer Notice**

The legal proceedings start when the ‘petitioner’ (the person who has filed for the divorce) sends a legal notice to the other, asking for divorce.

* **Divorce Petition**

Depending on the response of the other party, the petitioner files a divorce petition in the family court. Along with the divorce petition, evidence and relevant documents supporting the claim of the petitioner are also filed. The divorce petition should clearly state the name of both the parties, the facts leading to the divorce and also should set forth the grounds relied on for the divorce.

* **Court Notice**

Once the court receives the petition and the supporting papers, it issues a notice to the other spouse (called ‘respondent’), and asks the respondent to appear before the court.

* **Appearance of Respondent**

If the respondent wishes to appear before the court, the respondent submits a reply to the divorce petition, contesting the facts and grounds replied upon in the petition. If the respondent chooses not to appear before the court, or chooses not to contest the divorce, the court proceeds ex-parte (i.e. without the presence of the respondent).

* **Framing of Issues**

Once all written proceedings are complete and documents are filed, the court proceeds to frame the issues. Issues are the matters which are in dispute between the parties, and on the basis of which the court has to pass its judgement.

* **Commencement of Trial**

The trial starts, and the parties are called in to submit evidence in support of their claims. This trial is held over multiple hearings, and involves inspection of documents and examination of witnesses, if necessary. In an ex-parte case, the court considers the submissions and evidence provided by the petitioner, and decides the truthfulness of the petitioner's claims.

* **Decree**

After the trial is complete, the court considers the submissions and evidence presented before it by both the sides. It then pronounces its decision. This decision contains the brief facts of the case, the decision of the court and the basis of the decision. This entire process of getting a contested divorce takes 2 - 3 years or more to complete. During this time, if the parties agree to dissolve their marriage on mutual terms, the court may pass a divorce decree based on such terms.

In Suman Singh v Sanjay Singh[[1]](#footnote-0), the Supreme Court held that a petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such incidents.

In Balveer Singh v Harjeet Kaur[[2]](#footnote-1) it was held that if restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955is either decreed or dismissed, it will not take away the right of a party under Section 13-A of Hindu Marriage Act, 1955 for dissolution of marriage at any subsequent stage.

1. 2017 SCC OnLine SC 215, [↑](#footnote-ref-0)
2. AIR 2017 Utt 175 [↑](#footnote-ref-1)