**LEGAL PROCESS FOR DIVORCE UNDER MUTUAL CONSENT**

The following is the procedure to file for a Divorce under mutual consent :

1. **Petition to file for divorce**

Firstly, a joint petition for dissolution of marriage for a decree of divorce is to be presented to the family court by both the spouses on the ground stating that they have not been able to live together and have mutually agreed to dissolve the marriage or they have been living separately for a period of one year or more.

This petition will, then, be signed by both the parties.

1. **Appearing before Court and inspection of the petition**

Both the parties will have to appear before the family court after the filing of the petition. The parties would present their respective counsels/lawyers. The court would critically observe the petition along with all the documents presented in the court.

The court may even attempt to bring reconciliation between the spouses, however, if this is not possible, the matter proceeds for further follow-ups.

1. **Passing orders for a recording of statements on oath**

After the petition is scrutinized by the court and it satisfies, it may order the party's statements to be recorded on oath.

1. **First Motion is passed and a period of 6 months is given before the Second Motion**

Once the statements are recorded, an order on the first motion is passed by the court. After this, a six months period is given to both the parties to a divorce, before they can file the second motion.

The maximum period to file for a second motion is 18 months from the date of presentation of the divorce petition in the family court.

1. **Second Motion and the Final Hearing of petition**

Once the parties have decided to go further with the proceedings and appear for the second motion, they can proceed with the final hearings. This includes parties appearing and recording of statements before the Family Court.

In a recent landmark case of Amardeep Singh v. Harveen Kaur[[1]](#footnote-0), the Supreme Court made a notable observation by holding that 6 months waiting/ cooling –off period as contemplated under Section 13B(2) of the Act is not mandatory. The Supreme Court held that the period of interregnum or cooling off period of 6-18 months provided under Section 13B(2) of the Hindu Marriage Act, 1955 is not mandatory but a directory provision and can be waived off under certain circumstances.

Therefore, the parties who have genuinely settled their differences including alimony, custody of the child or any other pending issues between the parties, this six months it can be waived off. Even if the court is of the opinion that the waiting period will only extend their sufferings, the six months can be waived off in this case also.

1. **Decree of Divorce:**

In a mutual divorce, both parties must have given consent and there shall not be any differences left in the matters related to contentions regarding alimony, custody of a child, maintenance, property, etc.

Thus, there needs to be complete agreement between the spouses for the final decision on the dissolution of marriage.

If the court is satisfied after hearing the parties that the allegations in the petition are true and that there cannot be any possibility of reconciliation and cohabitation, it can pass a decree of divorce declaring the marriage to be dissolved.

In the case of Sureshta Devi vs. Om Prakash[[2]](#footnote-1), the Apex Court ruled that mutual consent is a sine qua non for passing a decree of divorce and the said consent must be valid and subsisting until the time a final decree of divorce is passed.

In the case of Rajiv Chhikara vs. Sandhya Mathur[[3]](#footnote-2) the Division Bench of Delhi High Court opined that in the case the [arties had been living separately since 2009 and their relationship was beyond repair. Hence in such circumstance one spouse insists of retaining the matrimonial bond then the same would be like putting the spouse under intense situation of mental cruelty.

1. (2017) 8 SCC. 746. [↑](#footnote-ref-0)
2. (1991) 2 SCC 25 [↑](#footnote-ref-1)
3. 2017 (161) DRJ 80 (DB) [↑](#footnote-ref-2)