Divorce, Maintenance and Custody in India: A Calm, Practical Guide to Family Law

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Figure 1. Family proceedings put the welfare of children and the dignity of each person first.

Few legal matters are as personal as the end of a marriage. Questions about money, a home and, above all, children arrive at a time when people are least able to deal with them calmly. Indian family law has more structure than many people expect. There are clear routes to divorce, enforceable rights to maintenance, quick protection against abuse, and a firm rule that children's welfare comes first. Knowing how these pieces fit together makes the process more bearable and helps you avoid mistakes that are hard to

undo.

Which law applies to your marriage

India has no single divorce code. The Hindu Marriage Act, 1955 (HMA) covers Hindus, Buddhists, Jains and Sikhs. The Special Marriage Act, 1954 (SMA) covers civil and interfaith marriages solemnised or registered under it. Muslim, Christian and Parsi marriages follow their own laws, such as the Dissolution of Muslim Marriages Act, 1939, the Indian Divorce Act, 1869 and the Parsi Marriage and Divorce Act, 1936, and their grounds and procedures differ. This guide focuses on the HMA and SMA, and on remedies that apply whatever your religion.

Divorce by mutual consent

When both spouses accept that the marriage is over, mutual consent is usually the quickest and least bruising route. Under section 13B of the HMA, both spouses file a joint petition stating three things: they have been living separately for one year or more, they have not been able to live together, and they have mutually agreed that the marriage should be dissolved.[1] Section 28 of the SMA follows the same pattern for civil marriages.[2]

The two motions and the six-month period

1. **First motion.** Both spouses present the joint petition, usually with a written settlement covering alimony, return of jewellery and belongings, child custody and visitation, and withdrawal of any other pending cases.
2. **Second motion.** The spouses jointly move the court again, not earlier than six months and not later than eighteen months after the petition was presented. If neither has withdrawn consent, the court makes any inquiry it thinks fit and grants a decree of divorce.

The gap is a pause for reflection. Either spouse may withdraw consent before the decree, leaving the other with only the contested route.

When the waiting period can be waived

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In *Amardeep Singh vs. Harveen Kaur* (2017), the Supreme Court held that the six-month period in section 13B(2) is directory, not mandatory. The court hearing the case may waive it after considering whether:[?]

- the one-year separation and the six-month period together have already passed before the first motion (in practice, at least eighteen months apart);
- all efforts at mediation and reconciliation have failed, with no realistic prospect of success;
- the spouses have genuinely settled their differences, including alimony and child custody; and
- waiting longer would only prolong their distress.

The waiver application can be filed one week after the first motion, giving reasons.

The Supreme Court's power under Article 142

In *Shilpa Sailesh vs. Varun Sreenivasan* (2023), a five-judge Constitution Bench held that the Supreme Court, using its power under Article 142 of the Constitution to do "complete justice", may dissolve a marriage by mutual consent without the waiting period. It may also grant divorce on the ground of irretrievable breakdown, even where one spouse objects.[3] The Court stressed that this is a discretionary power, used with restraint and only where the marriage is beyond repair. Relevant factors include how long the couple lived together, when they last lived together, the nature of the allegations, attempts at settlement, and the length of separation. Irretrievable breakdown is still not a statutory ground that a family court can apply on its own.

Contested divorce: the grounds in outline

If one spouse does not agree, the other must prove a recognised ground. Under section 13(1) of the HMA, these include adultery, cruelty (physical or mental), desertion for a continuous period of at least two years, conversion to another religion, serious and incurable mental disorder, communicable venereal disease, renunciation of the world, and not being heard of as alive for seven years.[4] Divorce is also available where cohabitation has not resumed for a year after a decree of judicial separation or restitution of conjugal rights, and a wife has additional grounds under section 13(2). Ordinarily, no

petition may be filed within one year of marriage except in cases of exceptional hardship.

Contested cases turn on evidence and can take years. Meanwhile, a spouse without sufficient income may claim maintenance and litigation costs under section 24 of the HMA, and the court may award permanent alimony under section 25.

Maintenance: support that does not depend on religion

Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced section 125 of the Code of Criminal Procedure from 1 July 2024, lets a Magistrate of the first class order a person with sufficient means to pay a monthly allowance to:[5]

- a wife unable to maintain herself (including a divorced wife who has not remarried);
- a child, legitimate or illegitimate, unable to maintain itself;
- an adult child who cannot maintain itself because of a physical or mental abnormality or injury; and
- a father or mother unable to maintain themselves.

The remedy is secular: in *Mohd. Abdul Samad vs. State of Telangana* (2024), the Supreme Court confirmed that a Muslim woman may also use it. Key features:

- **Interim maintenance.** The Magistrate may order interim maintenance and the costs of the proceeding while the case is pending. Such applications should, as far as possible, be decided within sixty days of notice being served on the other party.
- **From when.** An allowance runs from the date of the order or, if the court directs, from the date of the application.
- **Enforcement.** For each breach, the Magistrate can issue a warrant to recover arrears and can order imprisonment of up to one month (or until payment, if sooner). Recovery must be sought within one year of the amount falling due.
- **Limits.** A wife is not entitled if she is living in adultery, refuses without sufficient reason to live with her husband, or lives separately by mutual consent. A husband's second marriage, or his keeping a mistress, counts as a just ground for her refusal to live with him.

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The Rajnesh vs. Neha disclosure affidavit

Maintenance cases were long slowed by disputes over what each party actually earned and owned. In *Rajnesh vs. Neha* (4 November 2020), the Supreme Court required both parties in **all** maintenance proceedings, whether before a Family Court, District Court or Magistrate, to file an Affidavit of Disclosure of Assets and Liabilities in a standard format.[6] The applicant files it with the application. The respondent must file a reply with the affidavit within four weeks at most, and courts may not grant more than two opportunities to do so. If delay is wilful, the court may strike off the respondent's defence, or decide the matter on the applicant's affidavit and the record.

The judgment also directed that maintenance be awarded from the date of the application. Where a person claims under more than one law (for example, the HMA, the domestic violence law and section 144 BNSS), the applicant must disclose earlier proceedings and orders, and the court will take the earlier award into account when fixing the later one. Honest, well-documented financial disclosure is now the heart of any maintenance claim.

Route	Where filed	What it offers
Section 144 BNSS	Magistrate / Family Court	Monthly allowance and interim maintenance for wife, children and parents
Sections 24 and 25 HMA	Court hearing the matrimonial case	Maintenance and litigation costs during the case; permanent alimony at decree
Section 20, PWDVA 2005	Magistrate	Monetary relief for losses and expenses caused by domestic violence, including maintenance

Protection and residence under the domestic violence law

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is a civil remedy for any woman who is, or has been, in a domestic relationship with the respondent, whether through marriage, a relationship in the nature of marriage, or a joint family.[7] It covers physical, sexual, verbal, emotional and economic abuse, and dowry harassment.

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She, a Protection Officer or someone on her behalf may apply to the Magistrate. The first hearing should ordinarily be within three days, and the Magistrate should try to decide the case within sixty days of it. Reliefs include:

- **Protection orders (section 18):** restraining further violence, contact, entry to her workplace, or the operation of shared bank accounts and assets.
- **Right to reside (section 17):** every woman in a domestic relationship has the right to live in the shared household, whether or not she has any title to it, and cannot be evicted except by due process of law.
- **Residence orders (section 19):** restraining dispossession, directing the respondent to leave, stopping sale of the household, or requiring alternative accommodation or rent. A woman cannot be ordered to leave the household under this provision.
- **Monetary relief, custody and compensation (sections 20 to 22),** with interim and ex parte orders available in urgent cases (section 23).

In *Satish Chander Ahuja vs. Sneha Ahuja* (2020), a three-judge Bench of the Supreme Court held that a shared household can include a home owned by the husband's relatives where the woman lived in a domestic relationship.

Where there is cruelty by a husband or his relatives, criminal law may also apply: section 85 of the Bharatiya Nyaya Sanhita, 2023 corresponds to the former section 498A of the Indian Penal Code. If anyone is in immediate danger, call **112**.

Children: the welfare principle

Custody is not about which parent "wins". For Hindu children, section 13 of the Hindu Minority and Guardianship Act, 1956 states that the welfare of the minor is the paramount consideration in appointing or declaring a guardian.[8] Section 6 names the father, and after him the mother, as natural guardian. However, the Supreme Court in *Githa Hariharan vs. Reserve Bank of India* (1999) read "after" to include situations where the father is absent or uninvolved, and custody of a child under five is ordinarily with the mother.

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Under section 17 of the Guardians and Wards Act, 1890, which applies across communities, the court considers the child's age, sex and religion, the character and capacity of the proposed guardian, the wishes of a deceased parent, and existing or past relationships. If the child is old enough to form an intelligent preference, the court may consider it.[9] During matrimonial proceedings, section 26 of the HMA allows interim orders on custody, maintenance and education.

Courts generally try to preserve the child's bond with both parents, pairing custody with one parent with structured visitation for the other, and they look unfavourably on a parent who uses a child as leverage.

Mediation in the family courts

The Family Courts Act, 1984 requires family courts to make efforts, in the first instance, to help the parties settle, and section 23(2) of the HMA places a similar duty on matrimonial courts. Cases are therefore often referred to mediation, which is confidential and lets the spouses settle alimony, custody and visitation themselves rather than have terms imposed. A mediated settlement frequently becomes the basis of a mutual consent petition, and as *Amardeep Singh* shows, genuine settlement efforts are central to any request to waive the waiting period.

Succession, briefly

For Hindus, the Hindu Succession Act, 1956 governs inheritance. Since the 2005 amendment, daughters are coparceners by birth in joint family property with the same rights as sons; the Supreme Court confirmed in *Vineeta Sharma vs. Rakesh Sharma* (2020) that this does not depend on whether the father was alive in 2005. A divorced spouse ceases to be an heir, but children's rights are unaffected. Christians and Parsis are mainly governed by the Indian Succession Act, 1925, and Muslims by their personal law. After a marriage breaks down, it is wise to review your will and your nominations.

How Vakil Dial can help

Family disputes call for clear advice and careful handling. Vakil Dial's Family Law division helps you do both. Our team can review your situation and documents, such as a draft settlement, a maintenance claim or a notice you have received, and explain your

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options in plain language. Where you need representation, we connect you with a verified professional from our privately managed network of independent legal professionals, whose credentials, including Bar Council enrolment, our operations team checks. We can help prepare and file petitions, disclosure affidavits and applications, and guide you through mediation and each court stage, while you follow progress in "My Conversations".

To begin, send a confidential enquiry through our Free Legal Advice page. Sending an enquiry is free and does not commit you to any paid service. If a paid service would help, we explain it first. For general explanations of concepts and procedure, you can also turn to MAATRA, Vakil Dial's intelligent legal-information persona.

This is general legal information, not legal advice; every matter depends on its facts.

Conflicts of interest

This guide is published by Vakil Dial, which offers the services it describes.

Notes

1. Amardeep Singh vs. Harveen Kaur, Civil Appeal No. 11158 of 2017, Supreme Court of India, 12 September 2017, (2017) 8 SCC 746 https://indiankanoon.org/doc/79830357/
2. Special Marriage Act, 1954, section 28 (Indian Kanoon) https://indiankanoon.org/doc/1301592/
3. Supreme Court Observer, "SC's Power to Directly Grant Divorce: Judgement in Plain English" (Shilpa Sailesh vs. Varun Sreenivasan, 1 May 2023) https://www.scobserver.in/reports/divorce-under-article-142-judgement-in-plain-english/
4. Hindu Marriage Act, 1955, section 13 (Indian Kanoon) https://indiankanoon.org/doc/1284729/
5. Bharatiya Nagarik Suraksha Sanhita, 2023, section 144 (Indian Kanoon) https://indiankanoon.org/doc/82660350/
6. Rajnesh vs. Neha, Supreme Court of India, 4 November 2020 (judgment copy hosted on a district court portal) https://cdnbbsr.s3waas.gov.in/s3ec04e0126439e08ddfbdf4faa952dc91/uploads/2024/07/2024072220.pdf
7. Protection of Women from Domestic Violence Act, 2005 (Indian Kanoon) https://indiankanoon.org/doc/542601/
8. Hindu Minority and Guardianship Act, 1956 (Government of Gujarat) https://gujhealth.gujarat.gov.in/images/pdf/Act/hindu-minority-and-guardianship-act1.pdf

Vakil Dial Team (2026). Divorce, Maintenance and Custody in India: A Calm, Practical Guide to Family Law. Vakil Dial Journals & Research. https://vakildial.com/research/publications/divorce-maintenance-and-custody-in-india-a-calm-practical-guide-to-family-law

9. Guardians and Wards Act, 1890, section 17 (Indian Kanoon)
https://indiankanoon.org/doc/1939695/

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