**Stepwise Process to Get Divorce in India**

A particular framework is designed to be followed for every legal process. And specifically, when it comes to the dissolution of marriage, a lot of obligations are to be met with. The contested divorce procedure in India differs from the uncontested one to a greater extent. The proceeding will be less hectic and financially draining in case of divorce with mutual consent in comparison to the contested divorce. Without beating around the bush anymore, let us start with the stepwise divorce procedure.

**Filing the Divorce Petition:-**

The foremost step is to initiate the process with a divorce petition. Things to consider while filing the divorce petition are:

**Mutual Consent Divorce:**

i. The application for mutual consented divorce will be filed Section 13B of the Hindu Marriage Act, 1955, or Section 32B of the Parsis Marriage or Divorce Act, 1936, Section 10A of the Indian Divorce Act, 1869, or Section 28 of the Special Marriage Act, 1954, depending upon the status of the parties.
ii. While filing a petition for mutual consent divorce, the couple must be separated for at least 1 year and in case of the Indian Divorce Act, the period of separation is 2 years.
iii. A settlement agreement outlining maintenance, property distribution, stridhan, child custody, etc. should be attached to the petition.
iv. After the first statement is recorded, the court gives a time of six months known as the “cooling-off” period. This period can be waived subject to certain conditions.
v. The second statement should be recorded within 18 months of the date of the filing of the petition.

**Contested Divorce:**

i. When only one party is willing to separate, he/she can initiate the process in the family court by drafting a divorce petition.
ii. A contested divorce can be filed under Section 13 of the Hindu Marriage Act, 1955 or Section 2 of the Dissolution of Muslim Marriage Act, 1939 or Section 10 of the Indian Divorce Act, 1869 or Section 32 of the Parsis Marriage and Divorce Act, 1936.
iii. The petition must be properly drafted with legal grounds mentioned and documents attached.
iv. There should be no condonation of the matrimonial offence.

**Documents Required to File a Divorce Petition in India**

There are certain necessary documents which one should be prepared with.

**1. In case of mutual consent divorce**
i. Age, identity proof and address of the petitioners (both husband and wife in case of divorce with mutual consent).
ii. 2 passport size photographs.
iii. Proof of marriage like a Marriage certificate or marriage photographs.
iv. Settlement agreement
v. Proof that the couple has been separated for the time stipulated in the concerned Acts.
vi. Vakalatnama and other affidavits are also submitted along with the petition.

**2. In case of contested divorce**
i. Identity documents of the petitioner;
ii. Proof of marriage like a Marriage certificate or marriage photographs.
iii. Documents, if any, to substantiate the ground of divorce taken by the petitioner.
iv. Income tax statements (both husband and wife in case of divorce with mutual consent).
v. Profession and remuneration details of the petitioner (both husband and wife in case of divorce with mutual consent).
vi. Property and assets owned by the petitioner (both husband and wife in case of divorce with mutual consent).
vii. Vakalatnama and other affidavits are also submitted along with the petition.

**Service of Summon**

During a contested divorce, a summon is sent to the other spouse to inform him/her regarding the divorce petition. The respondent on the receipt of the summon can appear either in person or through counsel on the date set out in the summon. The summon delivered to the other party is available with the date on which he/she has to appear in court in response to the divorce petition. In case, the other spouse doesn’t appear in court on the date of hearing, the petitioner is going to enjoy the opportunity of ex-parte. As per this ex-parte hearing opportunity, the divorce decree will be granted to the petitioner by putting the process to end.

**Response**

The respondent after appearance gets time to file a reply to the petition of divorce. The respondent in reply has to counter the claims leveled by the petitioner and tell his/her side of the story to the court.

**Replication**

After the respondent files the reply, the petitioner can file a replication which in layman terms is a reply to the reply filed by the respondent. In the replication, the petitioner counters all the claims leveled by the respondent.

**Trial**

All the accusations and evidence will be addressed in the court during married couples. During the trial, both the parties will present their points and evidence with witnesses with the help of their respective divorce lawyers. Thorough evidencing and cross-examination are done to explore every facet of the case.

**Interim Order(s)**

An interim order is an additional step in the divorce process which is mostly asked for. The dissolution of marriage in India is not an easy process that one can expect to end immediately. This may end in a 6 month period or can take 3-4 years or even more. So in between that period, issues like physical custody of the child or financial crisis may occur for which interim orders are generated by the court for the applicant or the respondent.

**Majorly, an application for interim orders is filed for:**

i. Maintenance or financial support till the time of final orders.
ii. Custody of the child until the final order.

**Argument**

The most crucial step for a divorce lawyer is the argument stage. The lawyers of both parties are going to argue in the court after evidence to prove their client’s point. Various disputes (child custody, alimony, visitation rights, distribution of assets, property) will also be addressed at this stage.

**Final Orders**

After going through all these steps and convinced with the arguments and evidence, the court will grant the divorce decree. In case, any of the parties is not satisfied with the court’s decision, it can be challenged in the higher court.

**AFFIDAVIT: UNDER SECTION 2 OF THE DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939**

**BEFORE THE HON'BLE DISTRICT COURT,**

Affidavit in Divorce O.P. No of 20

Petitioner:

Vs.

Respondent:

AFFIDAVIT

I, ,W/o , D/o ,

aged years, now residing in , do

hereby solemnly affirm and state as follows:—

1. I say that, I am the deponent abovenamed and I am well acquainted with
the facts and circumstances of the case. I am competent to swear to this
affidavit.

2. I say that, I and my husband, namely the respondent herein are both

Muslims and were married under the Muslim Law at ,

on ,20

3. I say that, the respondent was prosecuted and convicted and sentenced
to imprisonment for a period of seven years under section 376 of the

Indian Penal Code, 1860 in Sessions Case No by the District

and Sessions Court. Further, the appeal preferred by the respondent,

Criminal Appeal No , against the aforesaid conviction before the

Hon'ble High Court was dismissed. Since the respondent did not approach the Hon'ble Supreme Court against the said order of the Hon'ble High Court, the sentence mentioned above has become final.

I say that, in view of the aforesaid fact, I am entitled to a decree for dissolution of my marriage with the respondent.

It is therefore, in the interest of justice, equity and conscience that this Hon'ble Court may be pleased to issue appropriate orders for the dissolution of marriage.

Sd./ Deponent.

Verification

Verified at on this the day of ,20 , that the

contents of the above affidavit are true and correct to the best of my knowledge, belief and information and nothing material has been concealed therefrom.

Sd./ Deponent.

Solemnly affirmed and signed before me by the deponent, who is personally
known to me, on this the day of ,20

Sd./

Counsel for the deponent.

Note: Affidavit to be attested by the appropriate authority prescribed under law. Prayer may be avoided in affidavits and only facts may be given as far as possible and practical.

# Affidavit under Section 2 of Dissolution of Muslim marriage Act.

## Format of Affidavit to be filed with application for Dissolution of Muslim Marriage

Application for Dissolution of Muslim Marriage under Section 2 of Muslim Marriage Act should to be supported with affidavit from the Petitioner. The Grounds of Divorce should be clearly mentioned in the Application. Grounds for seeking divorce under Muslim Marriage Act is given below after the affidavit format.

Sample Format of Affidavit for Dissolution of Marriage under Muslim Marriage Act is given below:

**BEFORE THE HON'BLE \_\_\_\_\_\_\_\_\_\_\_ COURT AT \_\_\_\_\_\_\_
O.P. No \_\_ of 20\_\_**

Mrs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                **PETITIONER**

**VERSUS**

MR. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                **RESPONDENT**

**AFFIDAVIT**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Wife of \_\_\_\_\_\_\_\_\_\_\_\_\_, Daughter of \_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , aged\_\_\_\_\_\_ years, resident of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , do hereby solemnly affirm and state as follows:

1. I say that, I am the deponent above named and I am well acquainted with the facts and circumstances of the case. I am competent to swear to this affidavit.

2. I say that, I and my husband, namely the respondent herein are both Muslims and were married under the Muslim Law at \_\_\_\_\_\_\_\_\_, on\_\_\_\_\_\_20\_\_.

3. I say that, the respondent gone abroad for a job in the year\_\_\_\_\_\_\_\_. There was communication from him for first 6 months. Thereafter I have not received any communication. We have tried to trace him from \_\_\_\_\_\_\_\_\_\_ country, but not information is received yet.

4. That the that whereabouts of the Respondent is not been known for a period of five years.

5. I say that, in view of the aforesaid fact, I am entitled to a decree for dissolution of my marriage with the respondent.

6. It is therefore, in the interest of justice, equity and conscience that this Hon'ble Court may be pleased to issue appropriate orders for the dissolution of marriage.

**DEPONENT**

**VERIFICATION**
Verified at on this the \_\_\_\_\_ day of ,20\_\_ that the contents of the above affidavit are true and correct to the best of my knowledge, belief and information and nothing material has been concealed therefrom.

**DEPONENT**

Solemnly affirmed and signed before me by the deponent, who is personally known to me, on this the day of \_\_\_\_,20\_\_>

**COUNSEL FOR THE DEPONENT**

## Section 2 in the Dissolution of Muslim Marriages Act, 1939

**2. 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:

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from leprosy or virulent venereal disease;

(vii) 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.

Provided that the marriage has not been consummated

(viii) that the husband treats her with cruelty, that is to say

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;

(ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that-
(a) no decree shall be passed on ground (iii) until the sentence has become final

(b) 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 satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) 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.

# THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

**NO. 20 OF 2019 [31st July, 2019.]**

An Act to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:-

**CHAPTER I PRELIMINARY**

## Section 1 Short title, extent and commencement

1. (1) This Act may be called the Muslim Women (Protection of Rights on Marriage) Act, 2019. (2) It shall extend to the whole of India except the State of Jammu and Kashmir. (3) It shall be deemed to have come into force on the 19th day of September, 2018

## Section 2 Definitions

2. In this Act, unless the context otherwise requires,-

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000;

(b) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973, in the area where the married Muslim woman resides; and

(c) "talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

**CHAPTER II DECLARATION OF TALAQ TO BE VOID AND ILLEGAL**

## Section 3. Talaq to be void and illegal

Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

## Section 4. Punishment for pronouncing talaq

Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

**CHAPTER III PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN**

## Section 5. Subsistence allowance

Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.

## Section 6. Custody of minor children

Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.

## Section 7. Offence to be cognizable, compoundable, etc

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,- (a) an offence punishable under this Act shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom talaq is pronounced or any person related to her by blood or marriage; (b) an offence punishable under this Act shall be compoundable, at the instance of the married Muslim woman upon whom talaq is pronounced with the permission of the Magistrate, on such terms and conditions as he may determine; (c) no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

## Section 8. Repeal and savings

(1) The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019, shall be deemed to have been done or taken under the provisions of this Act.