



Chandrawat  
& Partners



# Family and Personal Law



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# INTRODUCTION

India is a country rich in culture and religion. Major religions professed by people in India are namely Hinduism, Islam and Christianity; each religion has its law which governs the family domain. Family law encompasses a broad spectrum of rules governing family matters such as marriage, divorce, maintenance, succession, adoption etc.

Religious texts followed by the people of that religion are the basis of Family Laws in India. Personal laws are codified as law by the legislation to provide legal recognition to interpersonal relationships. The codification helps in the enforcement of individual rights and duties.



- **Some major family laws in India are:-**

## **The Hindu Marriage Act, 1955.**

This Act applies to any person who is a Hindu by religion in any form, Virashaiva, Lingayat, a follower of the Brahmo, Prarthana or Arya Samaj, Buddhist, Sikh or any person who is not Muslim, Christian, Parsi or Jew by religion. It aims to amend and codify the law relating to marriage, separation and divorce to bring uniform law for all the sections of Hindu.

## **The Parsi Marriage and Divorce Act, 1936.**

This law came from the 19th-century legal tradition and Zoroastrian scriptures. This Act applies to Parsi Zoroastrians(Parsi) and governs Parsi marriage and divorce.

## **The Indian Christian Marriage Act, 1872**

This Act consolidates and amends the law relating to the solemnization of the marriages of Indian Christians. It extends to India except for Travancore-Cochin and Manipur.

## **The Muslim Personal Law (Shariat) Application Act, 1937.**

The Act applies to all Indian Muslims and deals with marriage, succession and inheritance. It makes Shariat an applicable law for Muslims.

## **The Special Marriage Act, 1954.**

The implementation of the Special Marriage Act of 1954 is to ensure that the country's secular identity remains intact. It is an act under which any Indian national can get married irrespective of religion and caste.



# MARRIAGE REGISTRATION

In Indian society, marriage is considered a sacred union of two individuals for the protection and maintenance of society. The State controls nearly all aspects of human life, and marriage is no exception. In India, there is no single legal framework governing the marriage institution. Existing matrimonial law in India is vibrant and diverse in accord with the heterogeneous population of the country.

Marriage gets legal sanctity after registration. A marriage certificate is the only legal declaration that confirms two eligible adult Indian citizens are married. All government establishments, banks, and private organizations accept a marriage certificate as a shred of legitimate evidence. The Supreme Court of India compulsorily stipulated marriage certificates for all married couples.

The procedure to obtain a marriage certificate:-

## **Steps for online registration for a marriage certificate**

1. Open the official government website of the home state of the applicant.
2. Browse the website and find the form for marriage registration on the site.
3. Fill in the asked personal details of both parties of the marriage.
4. Submit the filled form.

Once the form is submitted, the marriage registrar will summon the applicant for a particular date and time. It is compulsory to present at the marriage registrar's office on time with all the documents. Also, two witnesses from each side should be present at the time of the marriage at the office of the marriage registrar.

## **Steps for offline registration for a marriage registration**

One has to visit the sub-registrar's office, which has the jurisdiction under which the marriage got solemnized. The wedding can get solemnized at the marriage registrar's office having jurisdiction (one of the partners resides for more than six months).



# REQUIRED DOCUMENTS

The documents required for marriage registration in India may vary a shred in different states. However, most of it remains the same. At the time of submission to the marriage registrar, all the documents should have the signature of the gazette officer.

The standard documents for all states are:

An application form signed by both parties, i.e., the husband and the wife. A birth proof document. Residential-proof of both parties. In case the marriage took place in any religious place, a certificate from the institution certifying the marriage solemnization. Rs 100 if the marriage got registered under the Hindu Marriage Act, 1955 and Rs 150 if the marriage got registered under the Special Marriage Act, 1954, to be submitted to the district cashier. The receipt of the payment is to be attached to the application form.

Two passport-size photos of both parties, i.e., the husband and the wife. And one marriage photo in case it is already solemnized. The invitation card for the wedding if it is a solemnized marriage. Both parties have to declare that they are neither related to nor fall into any degree of prohibited relationship, mentioned under the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954.


In case any of the parties is a divorcee, an attested copy of the divorce decree should be attached to the application form. In case any of the parties is a widow or widower, the spouse's death certificate has to be attached to the application form.

An affidavit should be attached to the application form that states the place of marriage, date of marriage, time of marriage, marital status and nationality of both parties.

Two witnesses from both sides are required to be present in the sub-registrar office at the time of the meeting. In case the marriage is solemnized, two witnesses who attended the wedding need to be present in the sub-registrar office at the time of the meeting.

# DIVORCE FILING

Divorce, also known as dissolution of marriage, is the process of ending a marriage or marital relationship. It is the last disintegration of a marriage. It implies the reorganization or cancellation of legal responsibilities and obligations of marriage, therefore severing the bonds of matrimony between a married couple under the rule of law. The Divorce rule in India is connected to religion and governed by their laws. The process of filing for divorce remains the same.



Where both parties cannot show up at a conclusion to at least one key issue to convincingly end their marriage and hence contest or dispute over the same is known as a contested divorce. On the other hand, when the couple concedes to all issues required to definitively and viably end their marriage, leaving nothing of outcome that is contested or uncertain and giving consent to break down their marriage is known as divorce by mutual consent.

## Steps Involved in Divorce by Mutual Consent

- The First Motion involves the joint filing of the divorce petition duly signed by the couple.
- Husband and wife are to appear before the court to record statements after filing the petition.
- The court examines the petition and documents, tries reconciliation and records statements.
- The court passes the order on First Motion for Divorce.
- The court gives a cooling-off period of six months for the couple to rethink their decision to get a divorce.
- Within 18 months of the First Motion, file the Second Motion.
- Final Decree of divorce by mutual consent passed by the court.



### Steps for Filing for Contested Divorce:

- The petition has to file along with the relevant documents supporting the allegations mentioned in the petition.
- The court hears the opening contention from the divorce lawyer regarding the petition and the grounds on which the contested divorce is being looked at.
- Once the court is satisfied, a formal notice/summon with a copy of the petition is served upon the respondent.
- The respondent shows up face to face, along with a lawyer and files a reply to the Divorce petition. If the respondent fails to appear on the given date, the court may continue to deliver its decision after hearing the petitioner.
- After the respondent appears and files the reply, the court continues with further proceedings, where the court may suggest the process of mediation to settle their dispute before getting a divorce.
- If the mediation fails, the court proceeds further with the issue of framing and getting the evidence recorded of both spouses.
- Examination and cross-examination of the Petitioner, along with the supporting witnesses, takes place first, and the same process is followed for the respondent. 8. Once the abovementioned procedure completes, the lawyers of both sides proceed towards the final arguments. After hearing the final arguments, the court delivers its final divorce decree.





# MAINTENANCE CLAIM

The dictionary meaning of the term maintenance is support or sustenance. The term maintenance is undefined in the marriage laws of any of the religious communities. But the entitlement of claiming maintenance is unequivocally based on the assumption that the claimant doesn't have sufficient means to support herself. The maintenance generally covers the expenses for necessities or essentials for the substance of life.

It is not merely a right for the survival of the claimant. The family court considers the standard of life enjoyed by the couple during the subsistence of marriage while fixing the amount of maintenance. Maintenance can be awarded during the proceedings (i.e., maintenance pendente lite) or at the conclusion (i.e., permanent maintenance).

The right to claim maintenance is available to wives, children and parents. Under some personal laws, even husbands (those unable to maintain themselves) are also entitled to claim maintenance. An application to claim maintenance is submitted in the district court before the Magistrate either under personal law or under section 125 of the Code of Criminal Procedure, 1973.



# ADOPTION



Adoption is the process through which the adopted child becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities attached to a biological child. Sometimes, a couple may not be able to conceive naturally due to medical reasons, or someone may not be willing to marry someone but have a family of their own. In such cases, adoption may seem the best solution.

It also allows helpless children to start a new life. Since adoption is a legal affiliation of a child, it forms the subject matter of personal law. Muslims, Christians and Parsis have no adoption laws and have to approach the court under the Guardians and Wards Act of 1890. Muslims, Christians and Parsis can take a child under the said Act for foster care only. Once a child under foster care becomes major, he can break free from all his connections. Besides, such a child does not have the legal right of inheritance.

Foreigners, who want to adopt Indian children, have to approach the court under the Guardians and Wards Act of 1890. When the court has permitted to take the child out of the country, the adoption takes place according to foreign law, i.e., the law applicable to the guardian. The three distinct legal systems prevalent in India are Hindu Law, Muslim Law and the Guardians and Wards Act of 1890.

# HOW WE CAN HELP ?

Our team helps the organizations to make sure that they are invested in the right skills, sustainably capitalized and have the means to deliver on their purpose.

Our professionals provide workable and innovative solutions, audit and assurance, tax support and consulting services to government and public service providers. Our team have advised organizations through advance ideologies that have been used by private sectors to build strong foundations.

We help public sector to use the same principles to build strategies for improving the competitiveness in the economy with employing less resources without disrupting the previous deep-rooted environment.

Our professionals have expertise in tackling issues related to persistent issues faced every day across a range of areas in the public domain, including digital government, education, international development, local government, public finance, defence and security.





## SERVING CLIENTS WORLDWIDE



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