

ONE-SIDED DIVORCE IN INDIA

Author: Pradeep Nawani, Advocate and Founder of Pradeep Nawani & Associates, Delhi.

INTRODUCTION

Dissolution of marriage or divorce refers to the end or breakage of the institution of marriage between two adults. Section 13 of the Hindu Marriage Act, 1955 governs divorce for Hindus, Sikhs, Jains and Buddhists in India. Divorce cases are filed mostly on the below mentioned grounds in India.

- (a) Insanity
- (b) Adultery
- (c) Cruelty
- (d) Desertion
- (e) Conversion
- (f) Venereal Disease
- (g) Renunciation
- (h) Presumption of Death



DEFINITION AND TYPES OF CRUELTY

There are mainly two types of cruelty, mental cruelty and physical cruelty.

Mental Cruelty- It refers to the mental health of the spouse which is affected by the constant cruelty meted out to him/her by the other spouse. We will often witness that it is easy to know or determine if the spouse is suffering from physical cruelty but if one is suffering from mental cruelty, then it is very hard to figure it out at the first sight. One has to be constantly involved with the married partners in order to know the amount and kind of mental cruelty that is happening.

Physical Cruelty- If the spouse is having bodily injuries or there is apprehension of threat to life, limb and health of any one of the spouse then it is referred to as physical cruelty.

ONE-SIDED DIVORCE

It often crosses the mind of a layman (who does not belong to the legal industry), whether a husband can also file one-sided divorce against the wife on the ground of cruelty? The answer to the same is, Yes. A husband can also initiate the proceedings of divorce against his spouse on the ground of cruelty. The husband can also end the marriage because of the conduct of his wife. Cruelty is the gender- neutral provision among the other grounds of divorce. A husband can ask for a divorce if his wife is asking for having a nuclear family. If there is sterilization of the husband or abortion on part of the wife without obtaining the consent or knowledge of the other spouse. If the wife does not want to have children after marriage. If the wife is living separate from the husband and hence the matrimonial bond seems beyond repair. If the wife is threatening husband or his family members to incriminate them in criminal cases like 498A IPC or Dowry Prohibition Act,1961 or Protection of Women from Domestic Violence Act, 1961.

PROCEDURE FOR THE FILING OF ONE- SIDED DIVORCE

1. **Drafting**- A party seeking divorce may approach to a legal consultant, who drafts a petition based upon the facts and circumstances explained and narrated. The petition has to be accompanied by relevant documents supporting the allegations as made in the petition.
2. **Filing of the divorce petition**- After the drafting of the petition, it may be filed before the Family Court along with supporting affidavit, Marriage Proof (like wedding invitation card, Joint Marriage Photograph of the parties pertaining to the Marriage or Marriage Registration Certificate and Copy of the Photo Id proof of the Petitioner).
3. **Scrutinizing**- The legal maintainability of the petition will once be checked by the concerned court where the petition has been filed and after that the notice will be sent to the party against whom the petition has been filed.
4. **Written Statement**-The respondent after receiving the notice from the Court of law is supposed to answer the petition which is filed by the petitioner by either accepting the said allegations or denying the same. Hence, the respondent would also mention his/her defence in reply to the petition.

5. **Replication by the petitioner/Rejoinder**-The rejoinder is supposed to be filed by the petitioner to the Written Statement/Reply, which will include the counter of the allegations which are made out by the respondent in his/her written statement or reply. Consequent to the filing of the rejoinder, pleadings will be closed.
6. **Issues Framing**- The Court will now frame the issues on the basis of the pleadings which are received from the concerned parties.
7. **Evidences- Evidence of the Petitioner**-The petitioner who is the aggrieved party, submits his/her evidence which is in the form of an affidavit, subject himself/herself for the cross- examination means for the questions to be asked by the respondent's advocate. In this stage petitioner is at liberty to call any witness to support his case and respondent will also be at liberty to cross-examine the said witness.

Evidence of the Respondent- After closing of the petitioner evidences, the respondent may submit his/her evidence by way of an affidavit and will subject himself or his witnesses for cross examination or questions by the petitioner's advocate. This stage is considered to be the most vital, because it actually decides the fate of the case.

8. **Concluding Arguments**- After submission of evidences from both the sides, the counsel for the petitioner and respondents will finally present their last arguments before the Court of law along with the supporting case laws settled by Hon'ble Supreme Court of India or Hon'ble High Courts. After listening the final arguments from both the sides, Family Court will now fix the date for the pronouncement of Judgement.
9. **Judgment**- The final verdict of the Court will depend upon the facts, pleadings and the evidences which are produced before the Court of law.

JUDGMENTS ON ONE-SIDED DIVORCE OR REGARDING CRUELTY WHICH ARE PRONOUNCED BY THE HON'BLE SUPREME COURT OF INDIA

“Mayadevi vs Jagdish Prasad” - The Hon'ble Apex Court of India has held that if any spouse faces mental cruelty then they have the right of divorce on this very ground. In this particular case, the husband filed divorce case against his wife after facing mental cruelty. The husband further alleged that his spouse denied to provide him food and rather blamed the

husband for all this. Therefore, the Court held that a man is also entitled to seek divorce from his wife, if he is constantly facing cruelty from his wife.

“Dastane vs Dastane”- The Court determined in this case that if the wife is giving constant threats of suicide and abuses her husband verbally, then it will be considered a sufficient ground to seek divorce among other things. In this case the divorce was granted on the basis of mental cruelty.

“Shailendra Kumar Chandra vs Smt. Bharti Chandra”- The Hon’ble High Court of Chattisgarh has held that if the wife is insisting that her spouse must leave his parents in order to have a nuclear family, and if the wife is imposing false dowry accusations upon her husband, then it will amount to mental cruelty.

CONCLUSION

We have observed that the husband also has the right to file divorce on the grounds of cruelty. A soft side will also be presumed on part of the husband, because we have witnessed since generations, that when it comes to marriage the innocence has been presumed to be mostly on part of the wife. On the other hand, the husband has to go through so much torture and pain because not every case is the same. In a marital relationship, which is itself a very complex bond of constant ups and downs, the wife as well as the husband can both be equally at fault hence it is very cruel to presume innocence only on part of the wife and ignore the mistakes of the woman in a marital relationship.