

# Procedures

## Separation

“Marriages in India are either covered by different personal laws or by the Special Marriage Act, 1954 in cases where parties wish to marry outside personal laws.” Since marriage is a legally recognized institution, there are several procedures that govern its registration as well as its dissolution.

## Background and objectives

Separation is a process by which a married couple lives apart while remaining legally married. A separation can either be by mutual consent, i.e. by signing a separation agreement or can be one that is ordered by the court in the form of a judicial separation.

A separation is distinct from a divorce and can be opted for either to live apart to work out differences or as a precursor to a divorce. Marital agreements have become prominent in recent times as they give parties greater certainty and autonomy in the marriage and related contingencies.



# Separation Agreement

A separation agreement helps parties settle the different terms, conditions and logistics of the separation. While statutes do not recognize separation agreements in India, they can be used in a court of law to determine the intentions of the parties. It is in the form of a binding contract between the parties and should include the following:



Details of parties such as name, age and address along with a brief statement of when the parties were married along with the composition of the family.



In case there are children, then matters of child custody, child support and terms of visitation must be mentioned



A maintenance clause should be included to determine the amount, if any, is to be paid by one party to the other



Details of personal and joint property and how they are to be divided or used must be mentioned.



Details of all debts and expenses should be laid out



In case either party is to be restricted from meeting the other, a protective clause to that effect can be added



The agreement should include signatures of both parties.

# Judicial Separation

When separation is ordered by a court of law, it is called a judicial separation. This usually takes place upon a petition being made by one of the parties. Depending on the applicable personal laws, a petition can be moved under the relevant section of the Act.

**The following need to be kept in mind when filing for judicial separation:**



The petition may be moved before the District/ Additional District Judge or the Family Court



The Court must have the required jurisdiction, i.e. one of the parties must be settled in the geographical jurisdiction of the court



A judicial separation petition has to be filed on certain grounds. These vary from statute to statute and can range from cruelty to unsoundness of mind to on adultery



Women have certain additional grounds available to file for judicial separation for example charges of rape or sodomy or a women being married before the age of 15.



The petition should necessarily carry details of when the marriage was solemnized, the family composition and current status of residence of the parties

# FAQ

**1) Does a separation agreement need to be registered?**

A) No. A separation agreement does not need mandatory registration under under Section 17 of the Indian Registration Act, 1908.

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# FAQ

## 2) What is the difference between divorce and judicial separation?

A) While a judicial separation is only an order mandating parties to live separately, a divorce brings the marriage to an end. . While a divorce is a two-step process where judicial separation may be ordered, Judicial separation is a single step process. Judicial separation and inability to work out differences thereafter can also be a ground for divorce.

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# FAQ

## 3) Can maintenance be claimed during the period of judicial separation?

A) Yes. Maintenance as well as child custody may be claimed during period of judicial separation.

