



“No Fault divorce on the ground Irretrievable Breakdown of Marriage”.



Aims:

The aim of this project is to evaluate about the irretrievable breakdown of marriage.

Objective

The objective is to vouch for a better, fair, easy and less time consuming divorce laws which could provide an amiable separation and would save the partners from fighting divorce cases for the next 10-20 years of their lives.

Activity:

- In this project we are going to see:-
- What is irretrievable breakdown of marriage?
- What is the law regarding to it in other countries?
- What are the advantages of this law in building a better society and how if it is properly implemented it could lead to less litigations in court
- We will also look into the existing divorce laws in India and the challenges that people face.



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Introduction about MWT:

MWT the full form is “**Men welfare Trust**”. So as the name suggest this is a organization which work for the welfare and issues faced by men and boys.

Aims:

The aim of “**Men Welfare Trust**” is to establish a society where the welfare , issues and rights of men and boys is also given equal importance and attention as that of women and girls.

Objectives:

1. They want to establish gender neutral laws as they believe “Crime has no gender”.
2. They want shared parenting to also be established as they believe both parents are equally important thus both have equal responsibilities towards the child.
3. They want strong punishment for false accusations as according to them false cases harm genuine cases as well as destroy the life of a innocent person
4. They spread awareness work on men issues on the national level. Like male suicide, men health issues , homelessness etc.

Activity:

- They run a suicide helpline for men in distress which is 8882498498.
- They also provide free counselling to men who are trapped in false cases
- And also provide emotional and mental support to men going through cases
- Recently they were the interveners in the marital rape PIL . As they wanted the law to be gender neutral and replace the word husband/ wife with spouse, have a strong misuse clause, and the complaint should be time bound within a period of time
- Previously they had also helped in getting the misuse clause in the “POSH” law.
- They had earlier worked hard to stop the IRBM law earlier when it was first proposed as when the division of the assets happened the wife could claim 50% of the inheritable property of the husband , irrespective of the duration of marriage, and children or not, her educational qualification , earning capabilities or her assets.



Laws related to irretrievable breakdown of marriage in Various countries:

Now lets take a look towards the no fault divorce laws of other countries and how the process of this divorce takes place their, the alimony laws, maintenance laws, division of assets and the child custody

1. Australia:

[Australia](#) adopted no-fault divorce in 1975 with the enactment of the [Family Law Act 1975](#). The only ground for divorce is irretrievable breakdown of marriage, evidenced by a twelve-month separation. However, a residual "fault" element remains in relation to [child custody](#) and [property settlement](#) issues.

Divorce application:

Either party to a marriage may apply to the Federal Circuit and Family Court of Australia for a divorce, or both parties may apply jointly. However, an application for divorce cannot be filed before the expiration of at least two years since the marriage had been entered into.

The application can be lodged online or using a hard copy form. A fee is payable. If the application is made by one spouse (called a "sole application"), the divorce documents must be served on the other spouse, at least 28 days before the court hearing if the spouse is in Australia or 42 days if overseas.

The spouse can challenge the application in a "response", claiming, for example, that the timeframes set out in the Act have not been satisfied, or that the applicant is not an Australian citizen or resident, etc. The response must also be served on the applicant and filed in court. If both spouses agree to divorce a "joint application" is filed, which does not need to be served and no response can be made.

An application for divorce can be made in Australia if either spouse:

- regards Australia as their home and intends to live indefinitely in Australia and is an Australian citizen or resident, or
- is an [Australian citizen](#) by birth or descent or is a naturalised Australian citizen (in which case a citizenship certificate will be required), or
- ordinarily lives in Australia and has done so for 12 months immediately before filing for divorce.



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Neither spouse can remarry before the divorce becomes final, which is usually one month and one day after the divorce is granted in court. Such a marriage would constitute [bigamy](#) and would be illegal and void.

If there are children of the marriage aged under 18, a court can only grant a divorce if it is satisfied that proper arrangements have been made for them. A child of the marriage includes:

- any child of either spouse, including a child born before the marriage or after separation,
- any child adopted by the spouses or either of them, or
- any child who was treated as a member of the family prior to the final separation; for example, a step-child or foster child.

A copy of the marriage certificate must be provided with the application. The same rules apply if the marriage was entered into overseas, except that if the marriage certificate is not in English, an English translation must be provided, with an affidavit from the translator.

After the divorce is finalised, each party can apply to the Federal Circuit and Family Court of Australia (or the Family Court of Western Australia for residents of that state) for a proof of divorce certificate.

No-fault divorce:

Australia has [no-fault divorce](#) with the only ground for divorce being a claim of an irretrievable breakdown of marriage, evidenced by a twelve-month [separation](#). Sometimes the couple may still be living together in the same home and be considered separated. If that is the case for any part of the twelve months before filing the application.

A sole applicant will need to file an affidavit providing evidence that there has been such separation. As well as an affidavit from an independent third party.

For a joint application both parties should file an affidavit, a third party affidavit is NOT needed in this case.

If the parties have [reconciled](#) for 3 months or more, then the 12-month qualification period has to start a new.

Though the Commonwealth had the power since federation in 1901 to make laws affecting divorce and related matters such as custody and maintenance, it did not enact uniform national laws until 1961, when the *Matrimonial Causes Act 1959* came into operation.

The Act continued the fault-based system operating under state authority. Under the Commonwealth law a spouse had to establish one of the 14 grounds for divorce set out in the Act, including adultery, desertion, cruelty, habitual drunkenness, imprisonment and insanity.



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In reality, the system was very expensive and humiliating for the spouses, necessitating appointment of barristers, often private detectives, collection of evidence, obtaining witness statements, photographs and hotel receipts, etc. Failure to prove a spouse's guilt or wrongdoing would result in a judge refusing to grant a divorce.

The *Matrimonial Causes Act 1959* was replaced by no-fault divorce system of the *Family Law Act 1975*.

Alimony

In Australia, do not have alimony then what is Alimony in Australia? While the concept of alimony does not exist, they have a very similar idea – that is, spousal maintenance.

Spousal maintenance is a payment from one person to their former partner for when they are financially struggling or finding it difficult to sufficiently provide for themselves from a financial standpoint following a divorce or separation.

A successful claim for spousal maintenance will result in the court making orders to the effect of:

1. One party to make regular periodic payments to their former partner

And sometimes additionally:

2. For specific items such as the home of the marriage to be sold and for the proceeds of the sale to be provided to the party receiving the spousal maintenance payments.

Child custody

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

Child Custody Laws in Australia:

Child custody law in Australia falls under the *Family Law Act 1975*. The Act clearly outlines that child custody considers what is in the best interests of the child, and that parents have responsibilities to their child, not rights. This means, as a parent, you are required to prioritise the interests of your child over your own. The Act is also gender neutral, meaning there is no presumption made about parenting roles.

Child custody is referred to by law as 'parental responsibility'. There is a statutory presumption that both parents will share equal parental responsibility in caring for the



child. This means both parents have a role in making decisions that impact the long-term situation for the child, such as where they will live, what school they attend, religious upbringing and major medical decisions. Shared responsibility will look different in each family situation, and time spent with each parent and the role each plays in the child's life are very personal, individual decisions.

The presumption of shared responsibility may be disregarded by the court if it is not in the best interests of the child.

Considerations of the Court When Determining Child Custody:

There are two main things the court considers when deciding who is awarded custody of a child:

- a child's right to benefit from both of their parents having meaningful involvement in their life; and
- the need to protect the child from being exposed to harm, abuse or neglect.

This means if domestic violence or any form of abuse or neglect are present, the court is most concerned with protecting the child, and will therefore be unlikely to consider shared custody in the child's best interests.

Once the main considerations are addressed, the court will consider a number of other factors to determine what is in the best interests of the child. These may include:

- views expressed by the child;
- the relationship the child has with each parent or guardian;
- the willingness of each parent to encourage and help facilitate the child's relationship with the other parent;
- the parents' ability to fulfil the child's needs.

A court may determine it is in the best interests of the child to remove parental responsibility from one or both parents, and it may also assign parental responsibility to another legal guardian.

Applying For Full Custody of a Child in Australia

The law presumes parental responsibility should be shared equally unless it is found this is not in the best interests of the child, and there are some cases where full custody is granted to one parent or guardian.

In some cases, a parent may wish to get full custody of a child because they disagree with their ex-partner or are unable to have an amicable relationship with them and are afraid they might lose custody altogether.



Firstly, it's important to understand that unless there are extraordinarily unusual circumstances, this is rarely how parenting arrangements work. If your case is heard by the court, the court will consider each parents behaviour toward the child and each other, so unless there is violence, abuse or similar present, in most cases both parents would be granted shared custody.

Secondly, shared custody does not equate to shared time spent with your child, so it is possible and quite common to have shared custody of a child who lives with one parent 100% of the time. For more information on time spent with children, see the frequently asked questions section below. The court generally does not consider it in the child's best interests to spend time with one parent only.

A Child Custody Case Study:

Rebuttal of presumption for shared parental responsibility:

A recent Family Court case provided a rebuttal to the presumption of shared parental responsibility. It was a mother and father whose relationship had broken down so far that they could not reach joint decisions relating to major long-term issues in respect of their children.

The court found that it was not in the children's best interests for the parents to share equal parental responsibility. In this case, sole parental responsibility was given to the father, who the children were to live with. The father was to notify the mother before making any major long-term decisions for the children, but it was his sole responsibility to make them.

Spousal Maintenance:

Spousal maintenance is a payment from one person to their former partner for when they are financially struggling or finding it difficult to sufficiently provide for themselves from a financial standpoint following a divorce or separation.

A successful claim for spousal maintenance will result in the court making orders to the effect of:

1. One party to make regular periodic payments to their former partner

And sometimes additionally:

2. For specific items such as the home of the marriage to be sold and for the proceeds of the sale to be provided to the party receiving the spousal maintenance payments.



Are There Any Eligibility Requirements For Spousal Maintenance?

The threshold or eligibility requirements for spousal maintenance are pretty low.

Firstly, the partner paying must have the financial means to support the partner receiving the payment.

The second requirement refers to the period in which an application for spousal maintenance must be awarded, which is different for divorced and separated de facto couples.

For divorce, spousal maintenance must be awarded within twelve months of the divorce.

For de-facto separation, this period is twenty-four months. However, an issue does arise in de facto separations where it is difficult to agree upon the precise date of separation. In such an instance, the Family Court will consider evidence presented by the parties such as photos, financial documents, witness statements and anything else relevant.

In What Situations Would The Court Approve An Application For Spousal Maintenance?

There are many situations in which the eligibility for spousal maintenance can be established. These situations and considerations include;

- The party may be too old or unhealthy to support themselves
- The financial position of each party
- Whether the payment can help the person receiving it re-establish themselves by pursuing further education, seeking employment or any training
- Whether the party receiving the payment has the mental capacity to provide for themselves or obtain employment financially
- The commitments of either party
- The responsibility of the party receiving the payment to support another person
- To maintain a reasonable standard of living that the receiver of the payment has been accustomed to
- Whether an order for spousal maintenance will cause financial hardship to the person paying
- To allow the person receiving the payment to continue their role as a parent, especially when young children are involved.
- Whether the party potentially paying the spousal maintenance is already paying or will be paying any child support in the future.



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- The earning capacity of both individuals
- Whether the party receiving the spousal maintenance is cohabitating with another person and the financial situation around their living arrangement
- Any superannuation fund or scheme either party has in place
- The court may also take into consideration anything else

This is not a comprehensive list by any means, and there are many more situations in which spousal maintenance orders may be granted. To determine whether you may be eligible, please discuss this matter with a family law professional.

2.Canada:

In [Canada](#) before 1968, the only [grounds for divorce](#) were adultery or cruelty. However, in 1968, the [Divorce Act](#) was amended to permit divorce for other reasons, including physical and mental cruelty and separation for at least three years. The Divorce Act was amended in 1986 to reduce the separation period to one year, with no requirement to prove "fault" by either spouse. The fault grounds for divorce are also available.

1968 Act:

In 1968, Parliament passed its first *Divorce Act*, which established a uniform divorce law across Canada. In addition to bringing about uniformity, the 1968 *Act*:

- placed both spouses on an equal footing in pursuing a divorce and specified that the grounds included:
 - adultery,
 - conviction of a [sexual offence](#),
 - [bigamy](#),
 - mental or physical cruelty, or
 - a permanent breakdown of the marriage, arising from a separation of three years' duration because of imprisonment of the other spouse, addiction, disappearing in circumstances where it is not known where the spouse may have gone, inability or refusal to consummate a marriage, or living separate and apart during that time and
- declared that "the domicile of a married woman shall be determined as if she were unmarried, and, if she is a minor, as if she had attained her majority", with one year's residence in the province where the divorce order was sought, and provided that foreign divorces would be recognized as long as the foreign jurisdiction had similar rules with respect to the wife's domicile.



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- provided that, where proceedings were initiated in separate provinces by each of the spouses, the one that commenced first would normally be the one that would be allowed to proceed.
- If both such proceedings were initiated on the same day, they would both be removed to the [Divorce Division of the Exchequer Court](#).
- provided that judgment would be in the form of a [decree nisi](#), which would only become [absolute](#) three months later, after the court was satisfied that all rights of appeal had been exhausted.

1986 Act:

In 1986, Parliament replaced the *Act*, which simplified the law of divorce further. It brought forth several significant changes:

- An application for divorce could be initiated by either spouse or both of them jointly.
- Breakdown of the marriage was specified as the sole ground for divorce, as evidenced by the spouses living separate and apart for the one year prior to the divorce proceedings (and being so at the date of their commencement), or by having committed adultery, or physical or mental cruelty, at any time since the celebration of the marriage.
- Domicile was no longer required, and a court had jurisdiction where one of the spouses had been resident in the province for at least one year prior to the commencement of the proceedings.
- The Divorce Division of the Exchequer Court became part of the [Federal Court of Canada – Trial Division](#).
- The divorce became effective 31 days after the judgment granting it was rendered, provided that it is not under appeal
- Foreign divorces are recognized for all purposes of determining the marital status of any person in Canada, provided that:
 - for those granted after July 1, 1968, they were granted in circumstances that conformed to the Canadian rules relating to domicile that existed at the time;
 - for those granted on or after the new *Act* came into force, they were granted in circumstances that conformed to the Canadian rules relating to residence immediately before the commencement of such proceedings; but
 - the rules of law relating to the recognition of divorces (otherwise than under the *Act*) remain in effect.



Alimony:



Alimony in Canada is commonly known as Spousal support is otherwise known a payment made by one spouse to his former partner. It is available to both persons in a marriage or in a common-law relationship.

However, unmarried persons can only seek an order for the payment of spousal support in certain circumstances.

The purpose of spousal support is multi-fold: it recognizes economic advantages or disadvantages to the spouse resulting from the marriage or its breakdown, it apportions between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses, it relieves any economic hardship of the spouse arising from the breakdown of the marriage and promotes the economic self-sufficiency of each spouse within a reasonable period of time.

Unlike [child support](#), [there is no automatic right to spousal support](#). Whether it is paid, and if so, how much support will be paid, depends upon the circumstances. Usually, a party who is self-sufficient or is capable of becoming self-sufficient at the end of a relationship will not usually be entitled to receive spousal support.

In general, the court will take into consideration a variety of factors, including the following

1. **Length of marriage:** the longer the marriage, the greater the likelihood is that an application for spousal support will be successful.
2. **Relative difference in income:** the greater the difference in income between the parties is at the end of a marriage, the greater the likelihood that an order will follow, awarding spousal support.
3. **Economic disadvantage:** The more one spouse has lost as result of the marriage, such as job skills, job opportunities or employability, the greater



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the likelihood of an order for spousal support. Likewise, the more one party's earning capacity is reduced because of family obligations (ie. the obligation to rear the children while the spouse works outside the home), the greater the likelihood of an order for spousal support.

After the applicant proves that they are entitled to receive support, the next question is, how much should she get? As a general rule, sum of spousal [support is calculated](#) with a view to the disposable income of the paying party and the actual needs of the recipient.

Just because a party receives an order for spousal support of, say \$2000 per month, does not mean that the party will continue to receive this sum during her lifetime. Various factors to determine the length of time for which support payments should be made.

For persons in long-term relationships, spousal support might be paid permanently. For example, imagine a scenario in which an age 60 female housekeeper raised a family of 5 while her husband worked as a dentist- she may have little ability to start earning income, and in particular, to support herself as her pre-divorce level. She may be entitled to spousal support for the remainder of her life. In contrast, for people in shorter relationships, particularly where the recipient is either working outside the home or capable of working outside the home, support may only be payable for a short, fixed length of time.

There are various ways that an order or [separation agreement for spousal support](#) can deal with the issue of time, including lump-sum payments, division of assets, review dates and escalated payments. You can discuss each of these options with your counsel.

[Spousal support](#) can be changed. The receiving party may want to change an order or agreement for spousal support if their spousal support payments are going to end but their financial situation has not improved, their financial situation has worsened and they need more support than they did before or something unexpected has happened, like an illness or an accident that causes them to need support. Conversely, the paying party may want to change the sum of spousal support in an order or agreement if their financial situation unexpectedly worsens, the recipient finds work or gets better-paying work/the recipient's financial situation unexpectedly improves.

Dividing property and debts after a separation or divorce:

In some provinces and territories, if you wait too long to make a claim after your separation or divorce, you may lose your right to your share of the property.

Your property may include:



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- joint or separate bank accounts
- Registered Retirement Savings Plans (RRSPs)
- Tax-Free Savings Accounts (TFSA's)
- your home and its contents
- investments
- Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) credits
- employer-sponsored pensions
- cars
- pets
- insurance plans

Your debts may include:

- a mortgage
- a personal loan or line of credit
- credit card debt
- a car loan

Federal, provincial and territorial laws determine how you must divide property during separation and divorce. What laws apply to you depends on:

- what province or territory you live in
- whether you're married or in a common-law relationship

Dividing property in a common-law relationship:

Usually, property stays with the person who bought it. If you helped buy and take care of property owned by your former partner, you may have a right to part of it. If your common-law partner doesn't agree, you may have to go to court.

Dividing property in a marriage:

Usually, you divide equally the value of any property you bought during a marriage. You also divide equally any increase in the value of property you brought into the marriage. There are some exceptions.

You and your spouse may agree to a different way of dividing property.

The courts may decide to divide your property unevenly. For example, the spouse with the larger share of family property may owe the other spouse some money.

Maintenance:



Spousal Support is money paid by one spouse to the other after they separate or divorce. It is sometimes called alimony or maintenance. Many factors may affect whether a married or common-law spouse is entitled to spousal support and how much support they should receive.

- **Child custody**

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

Child custody is the legal authority to make decisions on behalf of a child whose parents are not in an intact relationship.

In some situations, the decision of child custody can be amicably decided by parents at the time of separation. If this is the case, then it is important that the couple ensure their agreements are properly documented in a legally binding separation agreement.

In many cases, the parents agree on joint custody. However, there are times where a parent may want sole custody of children. For example, where a parent has never been involved in a child's life, is unable to parent, or where a parent must leave the country permanently. In these cases, it may make sense for one parent to have sole custody. The many different types of custody are explained in greater detail further down this page.

If an amicable agreement is not possible then deciding who will get custody and what type it will be, gets determined by the courts. This decision is never made lightly and divorce law sets out some basic principles for a judge to follow when making this important decision.

When determining child custody in Canada a judge will consider items such as:

- First and foremost the best interest of the children.
- The parent-child relationship and bonding.
- Parenting abilities of each individual.
- Each parent's mental, physical and emotional health.
- The typical schedule of both parents and children.
- Available support systems of each parent (for example, help and involvement of grandparents or other close relatives).
- Sibling issues. Generally, brothers and sisters will be kept together, but under some circumstances, it may be necessary to consider separating them.
- Care arrangements before the separation. Who was the primary caregiver?
- The child's wishes. The Office of the Children's Lawyer is often appointed by the court to help in determining the child's wishes. Once a child turns 12 years



of age, his or her wishes to live with one parent or another are usually respected by the courts.

When determining child custody the past behaviour of a parent will not be taken into consideration by the courts, unless their behaviour reflects directly on the individual's ability to act as a parent.

Understanding Child Custody:

Many people are confused as to what exactly child custody means as it is also frequently used to indicate a child's "residence".

"Custody" means decision-making ability.

If you have custody of your children, then you are legally entitled to make all the important decisions regarding your children's lives. These are decisions about education, religion, medical treatment, etc. For example, while parents may have "joint custody" (joint decision-making ability) the children may actually reside primarily with one parent most of the time and a child's residence is determinative of who will be the Payer or Recipient, of child support.

Types of Child Custody in Canada:

- **Sole Custody (or Full Custody)** – If a parent has sole (also known as full) custody of a child, that parent is responsible for making all decisions affecting the child. The other parent is entitled to request and be provided with information relating to matters affecting the wellbeing of the child. This can include access to information from the child's doctor, dentist, and teachers.
- **Joint Custody** – If parents have joint custody of a child, they are both responsible for making decisions on behalf of that child. This is also known as joint legal custody. If there is disagreement on an issue, the parents may consider mediation or a parenting co-ordinator given the authority to decide the issue. Courts will normally only award this type of custody to parents who are able to cooperate on parenting matters. While parents may have joint custody, the residency / access arrangements for the children may vary widely.
- **Shared Custody** – This is when both parents have joint custody of the children, and both parents spend at least 40% of the time with their children. This is also known as joint physical custody.
- **Split Custody** – This is when one parent has custody of some of the children, and the other parent has custody of the remaining children. Courts try to never split up younger children from their siblings. However, older siblings often choose to live with different parents.



If your custody case goes to court, there are any number of relevant factors that a court can consider in making a custody determination.

In high conflict or abusive situations, sole custody may be ordered to reduce the opportunity for further conflict or abusive interactions between the parents.

However, if the parents are able to communicate effectively with respect to matters affecting a child, joint custody may be appropriate.

If a court is asked to decide the issue of custody, these are some of the considerations that will inform the court's decision as to what type of custody is in the child's best interests which is the paramount consideration.

It is important to note that the type of custody is not synonymous with the residence of a child, although typically a child will live primarily with the parent with sole custody. If the parents share joint custody, the child can either live primarily with one parent or have a shared residence with both parents (ie. 50/50, 60/40).

Deciding on Child Custody without Going to Court:

Going to trial over custody can be expensive and stressful for both you and your children. Below are some options that parents have to help them reach agreements on parenting arrangements and child custody, without having to go to court.

- **Family Mediator**- A mediator is generally a person with a legal or social work background. They will have special training in helping people to resolve disputes. A mediator works with both parents to help you to discuss and decide on the best arrangements for your children.
- **Lawyers** -You and your spouse can retain separate lawyers to help you understand your legal rights and obligations and negotiate an out of court parenting agreement. Another option is to participate in the Collaborative Law process. In this approach a team of Collaborative Family Lawyers which may include Divorce Coaches, Child Specialists, and Financial Specialists guide you through the process.
- **Therapist** – Parents can meet with family therapists, counselors, child psychologists, social workers, or any other professionals, who specialize in the effects of separation and divorce on children. The parents can use the knowledge and guidance of these professionals to help them negotiate an agreement.
- **Parent-Education Sessions**- In Canada, many courts will host parent-education sessions. These sessions will present different options for settling issues about separation and divorce and also discuss the impact it has on children.

If at all possible it is always best to try and avoid going to court over your children. However, in some situations, this is the only option. In this case, a judge will hear



both parents' arguments and then make a ruling based on what they believe is in the best interest of the children.

3.China:

China has allowed no-fault divorce since the adoption of the [New Marriage Law](#) in 1950. No-fault divorce has become much more common since the 1980s. The current marriage law provides that divorce shall always be granted if sought by both husband and wife. Divorce is also granted if one party can present evidence of incompatibility, such as separation for at least two years.

Divorce may be granted either by court or by a marriage registration office. The latter can only do so when both parties have reached an agreement on child custody and property settlement.

Cooling period

There is a cooling period of 30 days between the spouse in 2021 was started for divorce applications in China.

Alimony

Under China's current Marriage Law amended and enacted in 2001, its post-divorce financial relief system comprises three disparate component parts. The principal part and the one analogous to the American concept of "alimony" or "spousal support" is the "post-divorce financial assistance system," as authorized under Article 42. The other two parts, "economic compensation at divorce" and "divorce damage claims system," as authorized under Article 40 and Article 46, respectively, complement the principal part

And alimony and maintenance depends on the duration of marriage

The parent who will not be granted by the **Chinese Court** with the **custody of the children** will have to pay the **child support**.

Alimony should be paid by the parent until the child reaches the age of 18, but if the child is 16 years old and he or she is either working, either in the military, the parent is no longer obliged to pay the child support.

The sum of money that will constitute the alimony will be decided in the Court, taking into account the income of the parent who will have to pay it. The sum of money spent monthly by the parent who has the custody will also be taken into account by the Court and he or she should be able to present the proof on how the money is spent (rent, food, clothing, education), to provide a financial basis when asking for alimony.



Child custody:

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

Types of child custody in China:

According to the situation in which the divorce takes place, the parents may choose from the following types of **child custody**:

- joint custody,
- shared custody,
- split custody.

Chinese custody principles:

According to the **Chinese Marriage Law**, even after the **divorce**, regardless of who is the parent who has received the custody, both parents will still have the “right and the duty” to educate the children.

If at the moment of the divorce, the child is an infant (under the age of 2), the custody will be given to the mother, because in this stage of life the mother is the primary caregiver. If the infant is older than 2 years old and the parents dispute over the custody, the Chinese authorities will give the custody to the parent who represents better the **interests of the child**. There is a series of variables upon which this decision is taken, and our **lawyers in China** can present an overview of this particular process.

Here is what you need to know about **child custody in China**, a few facts that are important in any case:

1. The parent who won't be granted with the custody of the child will have to pay the expenses related to daily care and education of the child and the sum of money will be established by both parents.
2. The **child support** is determined on the income of the parents and it usually represents **20-30% of the annual income**.
3. The obligation to pay the child support is suspended when the child reaches the age of 18.
4. Also, the parents should reach an agreement on the visit schedule. In the situations when the parents can't agree upon a matter, the **Chinese court** will take the decision, judging by the child's best interest.



Marital asset division:

If a property is marital property, it will be divided equally between the spouses on a 50/50 basis in the event of a divorce.

The following property acquired by the spouses during their marriage constitutes marital property:

- salaries and wages as well as bonuses and other remuneration received from services rendered;
- proceeds obtained from production, business operation, and investment;
- proceeds arising from intellectual property rights;
- property acquired from inheritance or given as a gift, except the property that belongs to only one spouse as provided in a will or gift contract; and
- Other property that shall be jointly owned by the spouses.

Under Chinese law, marital property is called ‘community property’, because it is jointly owned by the spouses.

Several of the aforementioned properties should be understood as follows:

1. The term “proceeds arising from intellectual property rights”

It means the property income that has already been obtained or is certain to be obtained during the marriage.

2. The term “other property that shall be jointly owned by the spouses”

It means the following property acquired during the marriage:

- The return on the investment of one party’s separate property;
- Housing subsidies or housing provident funds that both parties have actually obtained or should obtain;
- The basic pension or bankruptcy resettlement compensation that both parties have actually obtained or should obtain;
- Proceeds from the separate property of a spouse after marriage, excluding fruits and unearned increment, shall be determined as community property;
- The house was rented before marriage and purchased after marriage with the marital property by one party and registered under one party’s name.

The above content is based on Article 1062 of the Civil Code of the People’s Republic of China, and Articles 24-27, the Supreme People’s Court’s Interpretation (I) on the Application of the ‘Marriage and Family’ Book of the Civil Code of the People’s Republic of China.

4. United Kingdom:

No-fault divorce changes explained

A summary of the key characteristics of no-fault divorce:

- Divorce can be granted without one person blaming the other. This is the most important element of no-fault divorces: the removal of blame. Couples will be able to get a divorce based solely on the fact that the marriage has broken down, without needing to 'cite' one of the 5 reasons for divorce that they otherwise would have needed to, including adultery, unreasonable behaviour, desertion, or longer-term separation.
- Couples will be able to apply for a joint divorce. Under the no-fault divorce system, both parties will be able to make the application together.
- There will be a minimum of 20 weeks between making the application and the conditional order. This has been introduced to counter concerns that the no-fault system will make divorce a quicker and easier option for couples rather than trying to save their marriage. It is hoped this built-in delay will encourage couples to reflect and work through their differences before committing to divorce.
- It will no longer be possible to contest a divorce. Historically, under the faults-based system, one person submitted a divorce petition citing particulars of their spouse's 'behaviour' (such as adultery) as the reason for the divorce, who could in turn contest this. Under the no-fault system, this option is removed.

The process broadly follows existing divorce practices, and is outlined below:

1. One party, or both parties, will give notice that the marriage has broken down irretrievably
2. After 20 weeks, the applicant (or couple applicants) who gave notice confirm they wish to proceed with the divorce
3. The court can then make a Conditional Order
4. Following a further 6 weeks, the court can make the Final Order.

As stated above, in theory it could take 26 weeks, although in practice, this is likely to be quite a bit longer accounting for processing time and administration as well as any negotiations the couple may have regarding how they plan to split.



Child custody:

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

In UK Child Custody Law determines who should be responsible for the care of a child, after a separation or divorce.

It might not always be referred to as custody – sometimes it's also known as residency, This indicates where a child will be spending most of their time.

In most cases, parents prefer to have joint custody. This means both parents will have an equal share of time with the child, as well as participating in decisions that might affect them.

But if they can't decide on their living arrangement, then it will be at the discretion of the court to decide what's best for the child.

The reality is that most bitter disputes will end at family court – but it's good to remember that:

- Most child custody cases end with agreed or joint residency
- Maintenance payments from the non-resident parent are considered carefully
- Each parent is individually assessed in disputed cases so a considered decision can be made over child custody

Child Maintenance Decided?

Every case is different, which means each case will be decided on its own merits. If your case goes to family court then it'll depend on your child custody agreement.

If you're sharing custody, then it might be that an individual ruling is needed. If one parent takes the main residency, then the other parent will be required to pay child maintenance.

Basically, you'll need to pay child maintenance if you meet the following criteria:

- You are the child's biological or adoptive parent
- You don't live with the child as part of their family
- You are the child's legal parent

You can also ask the Child Maintenance Service for a ruling on the amount of child maintenance that will be paid. It's worth noting that in any calculation you'll need to provide information on:



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- how much the paying parent earns
- how many children the paying parent is or will be paying maintenance for
- how many nights a week the child spends with the paying parent
- if any other children live with the paying parent

You should also know that if the parent who has is on certain benefits, then the other parent will receive a maximum of £7 per week.

To give you an idea of the general costs, the default child maintenance payment per week is:-

- £38 for 1 child
- £51 for 2 children
- £61 for 3+ children.

However, it'll depend on your individual circumstances, the other parent's situation, and whether your child has any additional needs or costs to be catered for.

For example, if you earn more than £3,000 per week, then you'll need to go to court to receive a ruling on the amount of maintenance you'll be required to pay.

The same goes if you live outside of the UK. Or, if you need need to pay for additional costs associated with a disability or for your child's education.

Alimony :

Alimony is called maintenance or spousal maintenance in England & Wales. It's one of the divorce financial orders a court can make. It is mainly designed to bridge the gap between the reasonable expenditure needs of a spouse and their income where the income of the other spouse is higher.

Maintenance:

Spousal maintenance is an amount awarded by the Courts to be paid by the spouse with the higher income to the spouse with the lower income when a couple divorces. It is only awarded if one party cannot support themselves without payments from the other. It can be awarded for a specified term or for life in some cases. Where the couple have pensions, it often ends on retirement.

The recipient will lose their right to receive the maintenance if they re-marry, however it does not end automatically if they simply cohabit.



On occasions, the amount of spousal support that has been awarded can be varied some years later by way of Court Order if the circumstances warrant it.

How does spousal support work?

Spousal maintenance is usually paid on a regular, normally monthly, basis or it can be capitalised so it is paid as a single lump sum. This lump sum approach leads to each spouse becoming financially independent of the other and unable to make future financial applications against each other. This is known as a 'clean break'.

How is spousal maintenance calculated?

Maintenance for a spouse depends on the recipient's needs, own income and ability to earn income. There are no set formulas, and the amount payable depends on the payer's net income and their own needs, amongst other factors.

Different types of spousal maintenance:

Lifetime spousal maintenance order:

A lifetime order may be appropriate after a long marriage where there is a large disparity in the income/earning capacity of the parties or where there are young children, and there is no realistic prospect of the recipient returning to work for the foreseeable future.

Fixed term spousal maintenance order:

A fixed term order is made for a specific number of years and may be either extendable or non-extendable. It tends to be used after a shorter marriage, particularly if the children are older or there are no children. Term maintenance may be paid up until a specific future event, such as the recipient being able to draw down on a pension or completing a period of re-training.

Nominal spousal maintenance order:



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One further category of spousal maintenance in the UK is a nominal order. This is where an order is made for a nominal amount to be paid (frequently £1 per year) solely in order to keep the recipient's claim open as a safety net.

Some family Judges are of the view that these types of orders should routinely be made where the recipient is the main carer of the children to allow that person to concentrate on looking after the children and/or to cover a situation where there is a dramatic change in circumstances which would affect the welfare of the children. It is common for nominal orders to be made for a limited term that ties in with the children reaching a certain age or ceasing full time education.

How much maintenance should a person pay:

Any maintenance award depends on the payer's resources and ability to pay as well as the recipient's reasonable needs.

Contrary to popular belief, there is no automatic right to an equal share of income. A former spouse cannot, therefore, expect a maintenance order which provides for equality of income.

The approach taken by the court is a complex balancing exercise in trying to achieve fairness. They will consider both parties' reasonable needs and try to achieve an order that meets those needs. The parties' previous lifestyle is a factor to be taken into consideration, but the reality is that both parties will be expected to cut back in a situation where the needs of two households are to be met by what was previously only one.

Consideration will be given by the court as to how much of the recipient's reasonable needs can be met by their own resources. These will include not only any earned income but also child support, tax credits and child benefit and any other income, whether from investments/capital, which could be used to generate an income.

A thorny issue is always earning capacity as opposed to actual earnings. It is expected that the recipient will make all reasonable efforts to maximise their income,



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whether that be by way of increasing their working hours, undertaking training in order to improve their earning capacity or other means.

A court is not going to expect a mother with young children to work a 40-hour week. They will, however, expect a mother with school age children to be working hours that fit in with child care, particularly if the father is also able to deal with some of that care during the working week.

The goal is to try to provide support to the recipient in order to allow them to achieve financial independence sooner rather than later.

5. United States:

Today, every state plus the [District of Columbia](#) permits no-fault divorce, though requirements for obtaining a no-fault divorce vary.^[27] [California](#) was the first U.S. state to enact a no-fault divorce law. Its law was signed by Governor [Ronald Reagan](#), a divorced and remarried former movie actor, and came into effect in 1970. [New York](#) was the last state to enact a no-fault divorce law; that law was passed in 2010.

Before no-fault divorce was available, spouses seeking divorce would often allege false grounds for divorce. Removing the incentive to perjure was one motivation for the no-fault movement.

[Wisconsin](#), [Oregon](#), [Washington](#), [Nevada](#), [Nebraska](#), [Montana](#), [Missouri](#), [Minnesota](#), [Michigan](#), [Kentucky](#), [Kansas](#), [Illinois](#), [Iowa](#), [Indiana](#), [Hawaii](#), [Florida](#), [Colorado](#) and [California](#), a person seeking a divorce is not permitted to allege a fault-based ground (e.g. adultery, abandonment or cruelty).

Alimony:

Alimony is intended to mitigate the unfavourable economic consequences of divorce by giving a steady income to a non-wage-earning or lower-wage-earning spouse.

Part of the argument is that an ex-spouse may have opted to forego a profession in order to support the family. Thus requires time to obtain employment skills in order to support them.

Another goal could be to assist a spouse in maintaining their current standard of life despite changes in income, income tax, bonuses, taxable income, tax returns, and other factors.



How Does Alimony Work in US:

Alimony payments are usually made on a regular basis, with a certain sum paid every month. A judge may order one spouse to pay the other a lump amount for maintenance, either in cash or through a property transfer (which is different from the ordinary procedure of splitting the couple's assets).

Lump-sum Alimony awards are irreversible. However, unless the original court ruling (or agreement) clearly stated that alimony payments are “nonmodifiable,” you can normally seek the court to change or stop them. You must, however, persuade the judge that reducing or terminating maintenance is appropriate due to a major change in circumstances, such as a paying spouse’s retirement or a supported spouse’s new high-earning employment.

Periodic alimony is automatically terminated in certain circumstances, such as when the supported spouse remarries or when either spouse dies. Other conditions, such as when the supported spouse begins living with a partner. May either end alimony or justify a reduction in payments, depending on your state’s laws.

When you file for divorce (or answer to your spouse’s petition), you’ll usually include a request for spousal support in your first paperwork. If you and your spouse can’t agree on the matter at any stage during the procedure. You’ll need to submit a formal motion (request) requesting a court to decide for you. The court will set a date for a hearing at which both parties can submit their arguments and evidence. The judge will issue an order after evaluating the arguments and facts.

If alimony was not requested during the divorce and was not addressed in the final divorce ruling, neither spouse has the right to seek the court for it thereafter.

Types of alimony:

Alimony or maintenance payments are not intended to be punitive; rather, they acknowledge that one spouse may have more means and talents than the other in order to support himself or herself in the future. Alimony is a type of remuneration that helps to level the playing field. When it comes to alimony, the length of a marriage is crucial. Short, moderate, and long-term marriages can all be characterized.

1. Temporary alimony:

This is an award of alimony during the divorce proceeding, also known as alimony *pendent lite*. This award is automatically terminated upon the entry of the formal divorce decree. May be replaced by one of the other types of alimony.



2. Bridge-the-gap alimony:

This is transitional alimony. It is intended to help a spouse go from being married to being single by allocating the funds necessary to pay foreseeable, identifiable bills associated with re-starting a life without a spouse.

3. Rehabilitative alimony:

There are times when a spouse will need to enroll in various Alimony in Florida educational programs or receive particular vocational skill training in order to find work that will allow them to become self-sufficient. When a court awards rehabilitative alimony to one of the parties, the ruling must include a detailed plan. For example, a person who enjoys dealing with horses may decide to pursue a profession as a farrier. The plan will contain the projected length of the program, associated fees, mandatory apprenticeship time, and the time before the spouse expects to achieve self-sufficiency. If circumstances change or the receiving spouse deviates considerably from the plan. The spouse receiving or paying alimony may seek a revision of the decree.

4. Durational alimony:

This is frequently given in the case of a brief or moderately long-term marriage. When the other types of alimony do not meet the circumstances of the divorcing couple, this option is possible. It is paid out in a specified amount over a given period of time, not to exceed the duration of the marriage. As a result, if the couple getting divorced was married for two (2) years. The durational alimony judgment will be limited to two (2) years. If there is a major change in circumstances, either spouse may request for a modification of the award. But the amendment will only affect the amount of the award, not the length of time.

5. Permanent alimony

This prize is usually given in a moderate and long-term manner. Jeana Vogel – It's Time for Alimony to Change marriages and will only be available in exceptional circumstances for a short-term marriage. A spouse who is unable to meet the level set by the marriage in terms of requirements of life. General needs may be eligible for permanent alimony.

This is a highly subjective test because the court will consider the couple's life during the marriage to determine what is reasonable. A person with a large staff and a lot of luxury may be granted enough to live comfortably after the divorce. A party may amend permanent alimony in the future if there is a major change in circumstances or if the alimony-receiving spouse joins into a relationship with someone who is not related to him or her by blood or affinity.

How the Amount of Alimony is Determined:

Unlike child support, which is governed by strict monetary limits in most jurisdictions, courts have extensive discretion in deciding whether to award spousal support and, if so, how much and for how long. Many states' spousal support rules are based on the Uniform Marriage and Divorce Act. This suggests that courts examine the following elements when deciding on alimony awards:

- The age, physical condition, emotional state, and financial condition of the former spouses;
- The length of time the recipient would need for education or training to become self-sufficient;
- The couple's standard of living during the marriage;
- The length of the marriage; and
- The ability of the payer spouse to support the recipient and still support himself or herself.

Alimony and Support Orders:

Although awards are difficult to predict, it is even more difficult to predict whether the paying spouse will comply with a support order. Child support enforcement, on the other hand, has the "teeth" of a wage garnishment, liens, and other enforcement tools. The recipient, on the other hand, could take the matter to court in a contempt process to force payment. Because alimony can be awarded through a court order. A former spouse who is entitled to alimony has access to the same enforcement tools as any other court order.

How Long Alimony Must Be Paid?

Alimony is frequently referred to as "rehabilitative," meaning that it is only for as long as the receiving spouse needs to undergo training and become self-sufficient. The payments must continue until the court orders otherwise if the divorce judgment does not include a spousal support cut-off date.

If the person remarries, most prizes come to an end. The court may order that additional support is from the payer's estate. Or life insurance earnings if the receiver spouse is unable to find gainful employment owing to age or health reasons.

What Is Florida Permanent Alimony?

Permanent alimony in Florida is a type of financial support that is provided to an ex-spouse on a regular basis for an extended amount of time. The goal of Florida's perpetual alimony statute isn't to split future earnings. It is instead to meet the demands of a former spouse, which were set throughout the marriage. *Mallard v. Mallard* is an example of this. Only when the evidence reveals that the ex-spouse will never be able to support themselves is perpetual alimony appropriate. Furthermore,



permanent alimony is usually only granted when a long-term marriage has ended in divorce.

In Florida, permanent alimony is suitable when one of the parties to the marriage is unable to meet their wants and necessities after the divorce. The style of living during the marriage determines the wants and necessities of that party. As a result, in a Florida alimony dispute, each party's employment history, income, and expenses will be important issues.

Alimony can be paid in a flat sum, on a regular basis, or both. Although adultery is not a factor in determining whether or not a divorce should be granted. The court may take it into account when assessing alimony.

How Long Does a Marriage Have to Last for Florida Permanent Alimony?

After a long-term marriage, an award of perpetual alimony is usually made. A long-term marriage is a rebuttable presumption of at least seventeen (17) years. This is the assumed number, but depending on the circumstances, the court may find it inappropriate. The length of a marriage is as the time between the date of the marriage. The filing of a dissolution of marriage proceeding (divorce).

If the elements listed in Florida Statute 61.08 are taken into account, and an award is determined to be appropriate based on clear and persuasive evidence, a permanent alimony award can be made after a [marriage](#) of moderate duration. Between seven (7) and seventeen (17) years is the rebuttable presumption of a moderately long marriage. Short-term marriages (less than seven years) are also eligible for perpetual alimony, but the recipient must demonstrate extraordinary circumstances. That no other kind of alimony would be fair or reasonable under the circumstances

Child custody:

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

Child custody, conservatorship and guardianship describe the legal and practical relationship between a [parent](#) and the parent's child, such as the right of the parent to make decisions for the child, and the parent's duty to care for the child.

Custody issues typically arise in proceedings involving dissolution of marriage, as well as in paternity, annulment, and other legal proceedings in which children are involved. In most jurisdictions the issue of with which parent the child will reside is determined in accordance the best interests of the child standard.^[1] In rare cases custody may be awarded to somebody other than a parent, but only after the fundamental right afforded to biological parent's has been overcome or where the third party has an established role that is in the manner of a parent.^[2] When a child's

parents are not married it is necessary to establish [paternity](#) before issues of child custody or support may be determined by a court.

Family law proceedings that involve issues of residence and contact often generate the most acrimonious disputes. In extreme cases, one parent may accuse the other of trying to "turn" the child(ren) against him or her, allege some form of emotional, physical, or even sexual abuse by the other parent, the "residential" parent may disrupt the other parent's contact or communication with the child(ren), or a parent may remove the child from the jurisdiction in violation of court orders, so as to frustrate the other parent's contact with the children.

Courts and legal professionals within the U.S. may use terms such as "parenting time" instead of custody and visitation. The goal of the newer, alternative terminology is to eliminate the distinction between custodial and noncustodial parents, and to better focus on the best interests of the children by crafting schedules that meet the developmental needs of the children.

For example, small children may need shorter, more frequent time with parents, whereas older children and teenagers can tolerate and may demand less frequent shifts, but longer blocks of time with each parent

Recent changes:

Illinois Does Not Refer To Child Custody As Custody Anymore

The Illinois Marriage and [Dissolution of Marriage](#) Act eliminated the word "custody" from the Act back in 2016. This may seem confusing, and it is, but we will guide you through the new concepts of:

1. [Parenting Time](#) - the time in which each parent will spend with the child or children.
2. [Parenting Responsibility](#) - the decision-making responsibilities that each parent has over their children decision making is broken down into healthcare decisions for the child, educational decisions for the child, and religious and extracurricular activities of the child.

Illinois Looks to the Best Interests of the Child in Making Child Custody Determinations

In Illinois the courts will look to the [best interests of the child](#) in making "child custody" (as noted child custody does not exist in the Illinois Marriage and Dissolution of Marriage Act) determinations. Many people believe that the mother



automatically by default will gain custody of the child or children but that is simply not true.

[The Judge](#) will look at the totality of all the facts and circumstances and weigh many factors to determine what is in the child's best interest.



Decision Making vs. Parenting Time:

Legal custody now [decision making](#) involves making important decisions about the child's upbringing such as religious choices, educational choices, medical decisions, extracurricular activities.

Parenting time can be defined under the old term physical custody.

The Illinois Court will look to the child's best interest when determining allocation of decision-making responsibilities, here are the following factors the court will balance:

1. The child's wishes



2. The child's needs
3. The parent's wishes
4. Previous agreements concerning decision-making are considered
5. Each parent's prior involvement in decision making pertaining to the child or children
6. The physical and [mental health](#) of all the parties involved
7. The child or children's acclimation of their new living situation home school community
8. Both parent's ability to come to reasonable agreements to make decisions pertaining to their child or children
9. The ability of both parents to make decisions and work together for their child or children
10. The physical distances between the [parent's homes](#) and its effect on their ability to cooperate.
11. Whether or not one parent put the child's health welfare or safety in danger.
12. Any Abuse of the child
13. Any acts or threats of physical violence from parent to child or children.
14. Whether [one of the parents is a sex offender](#), the nature of the sexual offense the degree of the charges or convictions involved, and any subsequent treatment pertaining to the treatment of the parent's propensity to commit sexual offenses against minors or otherwise.
15. Any other relevant factors that the court decides.

The Illinois Best Interest Factors for purposes of allocating parenting time, the court will balance the following factors always looking to the child's best interest:

1. Each parent's wishes seeking parenting time.
2. [The child's wishes](#)
3. The amount that each parent spent in executing caretaking responsibilities pertaining to the child in the 24 months before the filing of any petition for



allocation of parental responsibilities, or if the child is two-years of age or younger, since the child was born

4. Any course of conduct or prior agreements between the parents [pertaining to the caretaking functions](#) with respect to the child.
5. The interrelationship and interaction of the child with his or her siblings and parents and with anyone else who may substantially impact the child's best interests.
6. The adjustment the child is making to his or her community school and home life.
7. The mental and physical health of all the parties
8. The needs of the child
9. The [distance apart](#) from which the parents live from one another, the difficulty and cost of travel and transportation of the child, each parent and child's daily schedule and the willingness of each parent to cooperate in the travel arrangement of the child.
10. Whether a restriction on parenting time is proper.
11. Physical violence or threat of physical violence by the parent to the child or another member of the child's residence.
12. Each parent's willingness to place the needs of the child ahead of the parent's needs.
13. The ability of each parent to foster and encourage a close and continuing relationship between the other parent and child.
14. The abuse against the child or other member of the child's residence
15. Whether a parent is a convicted sex offender and if so the nature of the offense and what treatment if any has the sex offender parent participated in.
16. The parent's military family-care plan that a parent is required to complete before deployment if a parent is a member of the US military who is being actively deployed.
17. Any other factor this court finds to be relevant



Joint Custody:

In Illinois [joint custody](#) is where both parents share both the decision making and the parenting time 50% & 50% between each parent. Joint custody in Illinois presumes that each parent can agree effectively communicate and work together to co-parent and raise their children.

[If one parent objects to joint custody](#) because they do not think it is possible to effectively work with the other parent that parent can point out to the judge that joint custody will not work because the parents cannot work together. The court will award the parent who is willing to work with the other parent more parenting time.

Sole Custody in Illinois:

Sole custody in Illinois is possible but it rarely happens. Illinois courts are reluctant to grant sole custody unless there is abuse or neglect of the child that has or put the child's health safety or welfare in jeopardy. If after a court hearing an Illinois judge finds by a preponderance of all of the evidence that a parent acted in a way that seriously endangered the child's physical health mental health or [safety](#) or conduct that significantly impaired the child's emotional development that court shall enter an Order to protect the child. If the judge finds that a parent has engaged in this conduct the judge will do one of two things:

1. Supervised parenting time, this is the step right before sole custody
2. Reducing or eliminating parenting time or both parenting time and decision-making responsibilities.

Supervised parenting time is where one parent is supervised by a relative or a close friend that both parents know and trust that can accommodate the parenting time. [Guardian ad litem is appointed](#) to investigate what is going on in the case, guardian ad litem owes a duty to the child to act in the child's best interests and must advocate for the child.

If a person that both parents know such as [a relative or friend](#) of the parents cannot help supervise the child visitations, the supervised parent must hire a parenting supervisor. Because the parenting supervisor is paid, they can testify to the behavior of the parent.

Supervision of the parent will not stop until the supervised parent accomplished some feat such as requiring the parent to complete drug or alcohol abuse treatment or requiring a parent to complete a treatment program for abuse, or any other reason for which the parenting time was limited in the first place.

Supervised parents either step up to the plate and change or disappear out of the child's life. If the supervised parent disappears out of the child's life, the other parent will gain sole custody by default. Once a parent has an extended absence away from the children it would not be in the child's best interest to reintroduce the parent back into the child's life.

Married Parents Rights:

In Illinois married parents have both decision making and parenting time of the child or children that are born of the marriage while the parents continue to be married.

Non-Married Parents Rights:

Under Illinois law for unmarried parents the mother has sole decision making and parenting time of the child or children, until the father comes forward and [establishes paternity](#) or the court determines paternity, or the father petitions the court for any form of custody.

Maintenance:

A judge can make one spouse pay the other spouse money on an ongoing basis after a divorce. This is called "[maintenance](#)." It used to be called "spousal support" or "alimony."

The purpose of maintenance is to help the ex-spouse support themselves. However, the judge is not required to order maintenance. People who are able to work are generally expected to find a job and support themselves.
The laws for maintenance are the same for men and women.

How does a judge decide whether to order maintenance?

The judge will consider the following things when deciding on maintenance:

- Income and property
- Needs
- Earning potential, now and in the future
- Time spent doing household duties



- Time and money needed to get a job, or the training and education to get a job
- Lifestyle during the marriage
- Length of marriage
- Age
- Physical and emotional conditions
- Any agreements between the spouses

The judge will not make their decision based on how well either spouse has behaved during the marriage.

How much maintenance does a spouse get?

Judges usually use this formula to decide how much maintenance to give to a spouse:

1. Multiply the payor's net yearly income by 0.333.
2. Multiply the payee's net yearly income by 0.25.
3. Subtract 2) from 1).

The result is the yearly amount the [payor](#) must pay the [payee](#).

However, there is a limit on the amount of maintenance the payee can get. Here is how the limit works:

1. Add the amount of maintenance from above to the payee's net yearly income. Write this number down.
2. Now add both spouse's [net income](#) together, and multiply by 0.4. Write this number down.

If 1) is higher than 2) after this calculation, reduce the amount of maintenance so that 1) is not higher than 2). This is the amount of annual maintenance they will receive.

Example

Here is an example of how the formula works. Assume payor's net yearly income is \$50,000, and payee's net yearly income is \$25,000. Now follow the first three steps:

1. \$50,000 (payor's net income) X 0.333 = \$16,650
2. \$25,000 (payee's net income) X 0.25 = \$6,250
3. \$16,650 (from step 1) - \$6,250 (from step 2) = \$10,400

Now we follow the second two steps to check to see if this amount will be limited:

1. \$10,400 (the amount of maintenance) + \$25,000 (payee's income) = \$35,900
2. \$50,000 (payor's income) + \$25,000 (payee's income) = \$75,000. \$75,000 X 0.4 = \$30,000

Here, 1) is \$5,900 more than 2). (\$35,900 - 30,000). So we have to subtract \$5,900 from the maintenance calculation above. \$10,400 (from 3 above) - \$5,900 = \$4,500. So the judge will order the payor to pay the payee \$4,500 per year.

How long does maintenance last?

The length of maintenance depends on the length of the marriage. Use the chart below to find out how long your maintenance will probably last:



Length of marriage (in years)	Length of maintenance
Less than 5	Length of marriage X 0.20
5-6	Length of marriage X 0.24
6-7	Length of marriage X 0.28
7-8	Length of marriage X 0.32
8-9	Length of marriage X 0.36
9-10	Length of marriage X 0.40
10-11	Length of marriage X 0.44
11-12	Length of marriage X 0.48
12-13	Length of marriage X 0.52
13-14	Length of marriage X 0.56
14-15	Length of marriage X 0.60
15-16	Length of marriage X 0.64
16-17	Length of marriage X 0.68
17-18	Length of marriage X 0.72
18-19	Length of marriage X 0.76
19-20	Length of marriage X 0.80
20+	Length of marriage or indefinitely

6. Spain:

In [Spain](#), this type of divorce is legally known as *divorcio incausado* or *divorcio unilateral* and colloquially as *divorcio exprés*. No-fault divorce was introduced in Spain in 2005 as part of the reform of Spain's divorce law of 1981.

Alimony:

Alimony in Spain is a financial payment made by one of the spouses to the other following [divorce](#). Alimony payments to ex-spouses are far less likely to be awarded than awards in favour of children.

The basic rule is that alimony should only be awarded where one of the spouses is clearly disadvantaged economically as a result of the divorce. It would typically be awarded where one of the spouses owns a company or is a professional with a



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reasonably large income and the other spouse has foregone a career to raise the children.

Factors that are relevant to the award of compensation are the ages of the spouses, their health, and the professional status of the spouse requesting the award as well as their possibilities in general with regard to finding work, the duration of the marriage and the means of income of both spouses with regard to their necessities.

It would seem that key to an award of alimony is evidence that one of the spouses has foregone the possibility of a career in order to dedicate that time to looking after the children. In a Supreme Court case decided in 2011, the court found that no alimony payment was due to the ex-wife as she had been able to develop her career without interruption during almost 23 years of marriage.

The court stated that it was not proven that her lower professional qualification, which was the cause of the difference in the ex-spouse's salary, was a direct consequence of the marriage.

Objective of Alimony Awards:

Furthermore, the court said, the objective of any award is to remove this disadvantage and not 'to guarantee maintenance for life, preserve the lifestyle to which the spouse had become accustomed or to equalise the wealth of the couple, because the award is not concerned with parity or absolute equality between the parties'.

In this particular case, the Court concluded that the right to receive an alimony payment did not arise given that it is incorrect to consider established the need for compensation due to the mere existence of a situation of economic disparity as a result of the difference in salaries.

In the hearings, the appellant emphasized that the marriage had not acted as a restraint on the career of his ex-wife who became no longer 'dependent' after finding employment and obtaining a qualification in Labour Relations.

In this sense, the decision of the court was that it did not consider it logical to state that the wife is 'the one who has left the marriage more economically disadvantaged with respect to the situation beforehand'.

Calculating Alimony Awards:

In terms of the amount awarded, it is difficult to be precise but the awards to date would tend to vary between 15% and 40% of the salary of the spouse with the higher income. Payment is normally made by bank transfer and is adjusted each year according to the inflation rate (IPC).



The award may be made for life or for a period of years after which payments will cease. Should the economic situation of either or both of the spouses change however, then the award may be changed by an application to the court.

Supreme Court: Factors to determine if alimony justified:

According to the Supreme Court, Article 97 requires that, for alimony to be payable, the divorce or separation must produce an economic imbalance as between the spouses which then gives rise the right to a compensatory or alimony payment. To determine whether a disequilibrium has been caused, a number of factors previously discussed by the Supreme Court must be taken into account.

The purpose of Article 97, recalled the Court, was to ensure that any prejudicial impact which might arise from cohabitation should not impact solely on one of the spouses. To determine if this has happened, it is necessary to consider what has happened throughout the marriage such as dedication to the family on the part of one spouse, supporting the activities of the other spouse, the economic regimen specified in the marriage and even the spouses circumstances before they were married.

In the present case, the marriage did not prevent the wife from working and indeed she continued to do so. Nor did the marriage deprive her of career possibilities, which would suggest that she has the requisite qualifications and aptitude to lead an independent lifestyle from an economic point of view. Nor was it proved that the difference in income between the two spouses was directly caused by any sacrifice made by the wife during the marriage as a result of a greater dedication to the child and specifically as a result of her care of their child, now of legal age and financially independent with a job, nor that the increase in the husband's income was a result of any such dedication.

What happens to the family home following a divorce in Spain?

In the absence of children or any express agreement between the spouses, the home shall be retained by the original owner. If the property is jointly owned then typically the property is sold and the proceeds shared or one spouse pays the other to take the entire property.

Where there are children and custody has been awarded to one parent only then use and enjoyment of the family home will be awarded to that parent until such time as the children become emancipated.

The order relates to use and enjoyment and not ownership. When appropriate the home may be sold and the proceeds shared.



Who is responsible for the mortgage and household bills after a divorce? Responsibility for payment of any household bills usually belongs to the spouse who has use of the property though the contrary may be specified in any divorce agreement or 'convenio'.

With regard to a mortgage, as far as the financial institution is concerned, liability continues and so the owner of the property must continue to discharge the mortgage to avoid losing the property.

Where both of the spouses were jointly liable for the mortgage this therefore continues to be the case and the non-custodial spouse must continue to pay their portion of the mortgage though they do not personally use the property.

The need to pay for accommodation elsewhere while paying towards the mortgage of the marital home should be reflected when calculating the child maintenance or alimony liability.

Should the spouse who has retained the use and enjoyment of a jointly-owned property start cohabiting with a new partner, it will be open to the ex-spouse to request an order from the court adjusting the original agreement due to a substantial change in circumstances.

When is alimony awarded in Spain?

A Spanish court will make an award of maintenance or [alimony](#) from one to the benefit of the other only where an economic imbalance has been created as a result of the divorce.

Relevant factors include dedication past and future to the children, age of the spouses, duration of the marriage, education and likelihood to gain employment, assistance given to the other spouse in their professional activity and any other relevant factor.

So, for example, where a spouse has dedicated many years to raising the children, at the expense of pursuing a career while assisting the other spouse in their profession a divorce may well lead to an economic imbalance and alimony awarded – especially where there is little prospect of gaining new employment. Alimony may be awarded indefinitely or temporarily or as a lump sum.

How might a new relationship affect alimony and child maintenance?

Where a person receiving alimony payments remarries or lives with another person in a matrimonial relationship the cause that gave rise to the alimony ceases as does the



right to receive alimony payments. It is not necessary that there is cohabitation but that there is a sentimental relationship.

The fact that the custodial parent enters into a relationship with a person other than the non-custodial parent does not affect the responsibility that the non-custodial parent has towards the children.

What rights and responsibilities do unmarried spouses have?

A distinction should be made between those purely 'economic' matters and those which have to do with child custody and maintenance or visitation rights which impact on public order and are consequently handled differently.

Most regions recognize the ability of the couple to agree as to the economic impact of any future separation though some regions insist that the agreement be made in public and witnessed by a notary in order for them to have any effect.

In the absence of an agreement the courts tend to impute a desire to remain economically independent and that there should be no continuing economic liability as between the couple, once separated. General principles of law apply such that one should not be unjustly enriched at the expense of another which may impact on the distribution of common assets.

Regarding matters such as child custody, visitation rights, use of the shared home and payment of child maintenance the courts have tended to replicate the law applicable to married couples.

Such matters can be agreed by mutual accord and if not, a petition may be made to the court for an order 'de medidas paterno-filiales' such that the court make a direction in respect of those issues.

Child custody:

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

Key factors taken into account by the court

If the parents do not reach an agreement and they get to court, the latter should consider some aspects before taking a final decision, such as:

- - the requirements of the children;
- - the degree of closeness between the children and other relatives (aunts, grandparents etc);
- - siblings will not be split-up;
- - the ability of one of the parents to look after the children;

- - the existence (if it is the case) of any psychological issues or addictions of either of the two.

However, the reason why many times courts award the **custody** to the mother is due to the analysis done on each of the parents' dedication towards their children before the end of their marriage. **Our law firm in Spain** can guide you through the delicate procedures of **family law matters** and help you, when possible, reach an agreement that satisfies both parties.

Legal custody in Spain

When one of the parents is granted the **legal custody of the children**, the other one will be allowed to visit and communicate with them, while usually paying a monthly alimony. The non-custodial parent has also some duties and rights:

- - to respect visits she/he is allowed to pay and keep contact with the children;
- - to take care of the children's education, health care and safety;
- - to get involved in the decisions that are made for the future of the children;
- - to be informed about any relevant incidents and emergencies in the children's life.

The matter is taken to **court** when one or both of the parties are not complying with the conditions they have established in the **legal custody**.

Joint custody in Spain

In the case of a **joint custody**, both parents are given a **shared custody of their children**. They will both be involved in the decision making and maintenance of their children and the time spent with them will be equal; they can live with one parent for a while and then with the other, unless this is considered inappropriate for the children. The judge will need a report from the General Attorney's Office ("Ministerio Fiscal") before making any **joint custody** order and it should not be granted when there are proofs that show domestic violence has occurred.

Child maintenance:



Whether or not the parents of a child are married there is a legal responsibility to provide for the child before and after any divorce, separation or break-up between the parents.

Child maintenance covers such basic matters as accommodation, feeding, clothing and education.

A divorce agreement will contain details of any maintenance provision that is to be made by the parents. This is because even though both parents are equally responsible to provide for their children they may not both have the same resources.

In the absence of any such agreement a court will determine the responsibilities of each parent to provide for the children and to do so regard shall be had to the income of both parents as well as liabilities.

Failure to comply with child maintenance payments can result in fines as well as the embargo of income and possessions. A civil action for compliance should be filed in the court where the original order was made.

Should a parent be unable to comply with the decree of the court due to a substantial change in circumstances, they should request an order amending the agreement such that the amounts due to be paid may be lowered.

7. Germany:

Until 1976, divorce was only possible if one spouse had acted wrongly – a rule referred to as the *Schuldprinzip* ("principle of guilt"). In 1976, the law was changed to make no-fault divorces the standard. The law says that "A marriage may be dissolved by divorce if it has broken down. The marriage has broken down if the conjugal community of the spouses no longer exists and it cannot be expected that the spouses restore it."

Some provisions of the old, guilt-based system remain. In particular, the separation period required before a formal divorce can be shortened if "the continuation of the marriage would be an unreasonable hardship for the petitioner for reasons that lie in the person of the other spouse". While formally no guilt is required on the part of the spouse, in practice this rule is usually applied if the spouse acts irresponsibly, for example if they are violent or threaten their partner

Cooling period:

One of the legal requirements is the **completion of a year of separation**. According to section 1565 para. I of the German Civil Code you need to provide proof for the breakdown of your marriage. The year of separation indicates that your marriage has broken down and that there is no hope of reconciliation.



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After completion of a year of separation [you can file for divorce](#). In case of hardship it may be possible to file for divorce earlier, but keep in mind that you need to [prove your case of hardship](#). If your spouse contests your application for divorce, it may take even longer.

Child custody:

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

Joint Child Custody in Germany:

In principle, both parents are entitled to joint custody in the case of married couples. The situation is somewhat different for unmarried parents: Here the parents must either make declarations of custody, marry or joint parental custody must be transferred by the family court.

This is the case if such a transfer is not contrary to the best interests of the child. If joint custody is contrary to the best interests of the child, the mother often has sole custody.

Even if the two parents live separately, joint custody remains for the time being. If important decisions have to be made for the child in this context, this must always be done by mutual agreement.

Sole Child Custody in Germany:

If the marriage or partnership breaks down, parents are usually faced with how child custody is to be exercised in the future. Especially if the child is to have its centre of life with only one parent in the future, custody disputes can arise, which are often only decided after legal disputes.

The Youth Welfare Office (Jugendamt) is regularly involved, but its recommendations are not binding for the court. According to the will of the legislator, joint parental custody should, in principle, be exercised even after divorce or separation.

In the following situations, one parent may, in principle, have sole custody:

- Voluntary relinquishment of custody
- Death of the other parent
- Harmfulness of joint custody for the child's welfare



- The other parent is unknown or incapable of exercising parental care and duties arising therefrom.

Voluntary Relinquishment of Child Custody:

The simplest case without dispute is when one parent voluntarily relinquishes child custody. There can be many reasons for this, for example, that one parent feels this is best for their child or is overwhelmed with the new situation. One parent can then apply to the family court to transfer sole custody, to which the other parent agrees.

Withdrawal of Child Custody from One Parent

The situation is different if neither parent wishes to relinquish custody or both parents continue to insist on exercising custody. Here, too, one parent will apply to the family court for the transfer of sole custody. Unlike in the case of consent by the other parent, the court decides according to the child's best interests.

As a rule, sole parental custody is only granted to one parent if the exercise of joint custody is subject to considerable difficulties and joint custody is detrimental to the child's best interests. In doing so, the court first examines whether the termination of joint custody is in the child's best interests. In the second step, the court examines whether the transfer to the petitioner, in particular, is in the child's best interests.

According to established case law and the decision of the Federal Supreme Court of 15 June 2016 (XII ZB 419/15), weighty aspects of the best interests of the child that must be considered are not cumulative. Still, they can be more significant depending on the individual case:

- The suitability of the parents to raise the child,
- The child's attachment,
- The principles of support and continuity, and
- Respect for the will of the child

For the termination of joint parental custody, it must be considered whether there is a lack of basis in the relationship between the parents for cooperation in the child's best interests. Such a situation may exist if there is a sustained and profound conflict between the parents. Such a disruption at the level of communication between the parents must give rise to fears that the parents will not reach a joint decision. This will place a considerable burden on the child when the parents have joint custody. The burden does not have to exist, but it is sufficient if there is a well-founded fear of this. However, if the parents are in principle willing to cooperate, individual differences of opinion are insufficient.

A minimum degree of agreement in essential areas of parental care and a viable social relationship between the parents is necessary for the maintenance of joint child



custody. For the decision to terminate joint parental custody, the individual case circumstances must always be considered in an overall assessment.

Overall, the family court may withdraw custody partially or completely. If custody is only partially withdrawn, this may affect the care of the property, the right to determine the place of residence and the care of persons. However, it is important to know that there must be serious reasons for a parent to be deprived of custody or parts of custody.

Access Rights of the Other Parent with Sole Child Custody:

In most cases, the child lives most of the time with one of the two parents. At the same time, this does not mean that the other parent cannot see the child. Rather, both the child and the parent concerned have a statutory right of access, which also means a duty of contact for the parent. The purpose of the right of access is not to ensure that both parents have an equal share in the child's life. It is intended to serve the child's welfare and reasonable development of the child

Special Case in German Child Custody Law: Right to Determine Residence:

The right to determine the place of residence is a sub-area of the right of custody and is mentioned in the enumeration of [§ 1631 par. 1 BGB](#). According to this, the parents or the parent with sole custody are authorised to determine where the child is to stay. This includes provisions on the child's place of residence. Unless otherwise decided, both parents are in principle jointly entitled to the right to determine the child's place of residence. However, one parent may also apply for the sole right to determine the child's whereabouts according to [§ 1671 \(1\) BGB German Civil Code](#).

The parent who has the right of residence determines the child's permanent residence place and the child's habitual and actual place of residence. The right to determine the child's place of residence is usually awarded to the parent with whom the child lives. According to [§ 1687 \(1\) sentence 2 BGB](#), the parent with whom the child habitually resides with the other parent's consent or based on a court decision has the authority to make sole decisions in matters of everyday life. The distinction between everyday matters and matters of considerable importance is primarily based on the legal definition of [§ 1687.1 sentence 3 BGB](#) and thus on whether it is compatible with the child's best interests. (cf. Higher Regional Court of Braunschweig, order of 30.07.2020 – 2 UF 88/20). According to the provision, decisions in matters of daily life are generally those that occur frequently and do not have any effects on the child's development that are difficult to change. If, on the other hand, it is a matter of medical treatment on a larger scale, a change of school or similar significant decisions, these must be made jointly by both parents.



What Decisions Must be Made Jointly in the Event of Joint Custody:

In the event of a joint custody arrangement, both parents must agree on major decisions which affect the child. Such major decisions include: the religious upbringing and education of the child, the choice of school, the type of school and the medication used by the child. In the event that the child requires urgent medical assistance, where delay would be detrimental to the welfare of the child, a parent may make a decision without first obtaining the consent of the other. These cases are decided based on what is considered to be in the child's best interests. In other events, the everyday decisions of raising a child, the parent with custody does not need to consult the other parent.

As an illustration of what is included in everyday decisions and the borders to which this extends to we can use the example of a holiday. In general, a parent can take their child on holiday outside of the jurisdiction of Germany without first getting the permission of the other partner, but where there is a plausible risk that the child may be removed entirely from the jurisdiction the court can step in. In the event of one parent deciding to move to another country with the child the consent of the other parent is a requirement.

Maintenance

Spousal support during the year of separation ("Trennungsunterhalt")

In Germany a married couple can generally only file for divorce if the couple were separated for at least one year before ("Year of separation", "Trennungsjahr") the couple files for divorce.

During this "cooling off period" spouses are legally obliged to pay each other spousal support, again in relation to their own means and their own ability to work and to earn money.

If one spouse doesn't want the divorce, he is not able to stop it from happening. After three years of separation the marriage is generally considered to be "irretrievably broken."

The spouses are not automatically obligated to pay spousal support in the year of separation. Thus, the receiving spouse has to claim the spousal support from the other spouse.

Generally the spouse with the lower income is entitled to receive spousal support during the year of separation.

Sample Calculation:

Spouse A is having a net income of EUR 2.300 and spouse B is having a net



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income of EUR 2.100. Spouse B is entitled to get 3/7 of the difference of EUR 200 (2.300 – 2.100) = EUR 85, 71.

If spouse A is not willing to pay the spousal support, spouse B can take legal action to recover the money owed.

Spousal support after the divorce (“Nachehelicher Ehegattenunterhalt”)

After the divorce spouses may be obliged to pay post-marital spousal support to the other spouse.

Since this obligation is different from the obligation to pay spousal support during the year of separation, a new claim has to be made by the spouse in need.

However, after the divorce generally the principle of personal responsibility applies.

In the last years the courts in Germany became very strict to apply the principle of personal responsibility. Thus, each spouse is generally responsible for his own maintenance and cannot rely on the spousal payments for very long.

However, in many situations there is still a chance to get post-marital spousal support.

8. Sweden:

Swedish law does not include a showing-of-fault requirement for divorce. The couple can file for divorce together or one party can file alone. If one party does not wish to get divorced or if they have children under 16 living at home, there is a required contemplation period of 6 to 12 months. During this period, they stay married and the request must be confirmed after the waiting period for the divorce to go through

Process:

Divorce proceedings can be initiated by a joint application by the spouses, or by the application for a [summons](#) by one of the spouses. [Family counseling](#) is encouraged but not compulsory. If spouses agree to the divorce, no lawyers are needed. Any disputes arising will be resolved at the [District Court](#). In the main hearing, one legally qualified [judge](#) and three lay judges will preside. At the end of the dispute, each party will normally be expected to bear his or her own legal costs.



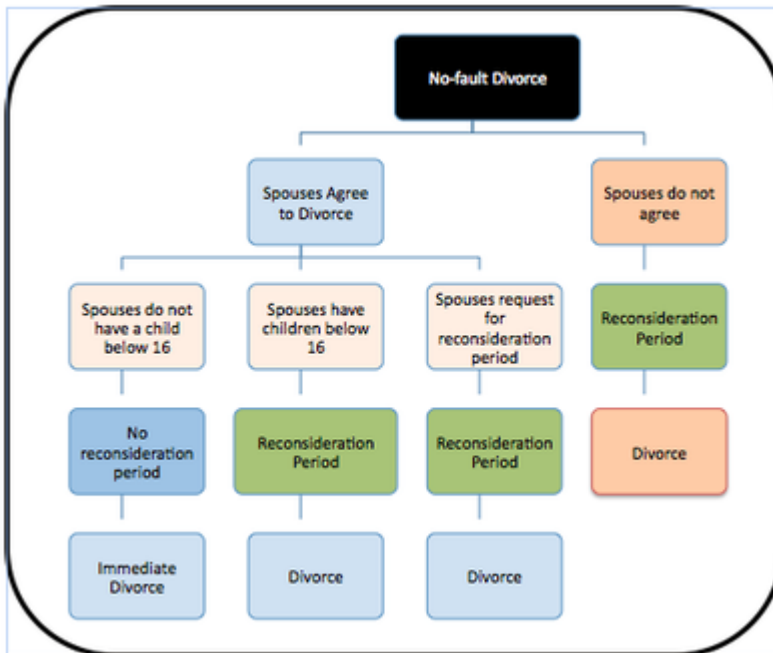
Applying for a divorce:

Generally, an application of divorce involves submitting the population registration certificates of both parties, together with the payment of an application fee of 450 [krona](#). Additionally, a standard form must be completed and filed to the District Court where one of the partners is domiciled. [Domicile](#) in this context means the place where one was registered for population purposes. Where neither of the partners is domiciled in Sweden, the application must be made to [Stockholm District Court](#). Complications usually arise where spouses of different nationalities are involved. In such instances, there are special rules that will dictate when a Swedish court is competent to deal with the applications for divorce.

When an application for divorce has been submitted, a [notice](#) from the District Court will be issued. This notice will state the date on which the time for reconsideration begins, the earliest and latest dates on which the parties can proceed with the application and the case number given by the district court

Proceeding with the application means that the parties have confirmed their intention to divorce. To do so, party or parties to the divorce must notify the district court. This notice can be drafted on an ordinary sheet of paper. On the paper, the case number must be quoted and the spouse or spouses must expressly state that they still want a divorce. New personal identity certificate for both parties must then be submitted. If neither of the parties proceeds with the application within a year from the start of the time for reconsideration, the case will be removed from the district court lists and the parties then remain married to each other.

Grounds for divorce:



Reconsideration Period:

Under marriage laws in Sweden, a divorce does not require any showing of fault or wrongdoing by either party as a ground for divorce. So long as the spouses agree to dissolve their marriage, they would be entitled to a divorce. This practice is commonly known as [no-fault divorce](#).

Reconsideration periods:

A [legal separation](#) period is not a preliminary requirement under Swedish law. However, both parties will go through a reconsideration period under two scenarios: firstly, if both parties request for a reconsideration period. Secondly, they have a child below the age of 16.

If one spouse does not consent to the divorce, a reconsideration of 6 months will follow before the divorce.

If the spouses have been living separately for two years, no reconsideration period is required and divorce can take place immediately.

Under special circumstances where marriage was entered into despite the fact that the spouses are related to each other, no reconsideration period is required before a divorce. Similarly, in an event of [bigamy](#), either party from the earlier marriage is entitled to an immediate divorce.

Pre- and post-nuptial agreements:

Pre- and post-nuptial agreements are legally binding in Sweden if they meet the requirements set out in law. The agreement must be in writing and signed by both spouses. The agreement must also be registered with the Swedish Tax Agency to be valid.

Foreign pre- and post-nuptial agreements are valid in Sweden if they meet the requirements set out in the Matrimonial Property Regulation ((EU) 2016/1103) and the Registered Partnerships Regulation ((EU) 2016/1104).

In a Supreme Court case (*NJA 1993 s 583*), the Court found that under very special circumstances an agreement can be adjusted by it, with reference to the Chapter, 12, section 3 of the Marriage Code. The case concerns adjustments to a pre-nuptial agreement, in which the Court stated that the possibility to adjust a pre-nuptial agreement must be applied restrictively.

A pre-nuptial agreement is an expression of the spouses' joint will and adjustments should only be made if the agreement treats one of the spouses unfairly to a great extent, if the unfair result is due to circumstances that already existed when the agreement was made.

In addition, adjustments should only be applied if a large amount of property, through the pre-nuptial agreement, has been excluded from the division of marital assets and this leads to a grossly uneven distribution of the spouses' joint possessions.

Validity of a pre- or post-nuptial agreement does not, to date, require the parties to have had independent legal advice before entering into it. Nor does it require that full disclosure was made before the agreement was signed.

Matrimonial property regime:

A matrimonial property regime exists and is applied by operation of law, but the parties can agree on the regime that they want to be applied by written agreement.

Default regime:

The same rules apply to heterosexual marriages and same-sex marriages. As a general principle, each spouse owns his/her respective property and is responsible for his or her own debts. The spouses can also dispose of their own property even within the marriage, unless otherwise specified by law. There are exceptions to this in relation to the matrimonial home and real estate that is not the spouse's private (separate) property, that has become private (separate) through a marriage contract.

Unless specified, all property is each spouse's marital property.

Private (or separate) property can be created either through:

- A pre-nuptial or a post-nuptial agreement.
- A deed of gift from the donor, in which it is specified that the gift should be the separate property of the beneficiary.
- A will, in which it is specified that the inherited property should be the separate property of the beneficiary.

On divorce, all property that is marital property is, in principle, divided equally between the spouses. This is also the case if one of the spouses has died. The division then takes place between the widow/widower and the deceased's estate.

Private (or separate) property is kept by the owner (with some exceptions for the joint matrimonial home) after divorce.

Joint ownership of property can be open or concealed. Concealed joint ownership occurs if three criteria are met:

- The property is bought by one of the spouses for joint purposes.
- The spouse who is not the buyer contributes financially to the purchase in some way (for example, that the non-registered owner becomes responsible for a loan taken on purchasing the property).
- The buying spouse realises that the purpose of the contribution is joint ownership.

Child custody:

Custody of the child decided by existing law of the country there is no effect of the no fault divorce law on child custody.

The overarching principle in these matters is the principle of the best interests of the child. This is stated in chapter 6 section 2a of "Föräldrabalken" (The Parental Code) that the principle of the best interests of the child shall be decisive in all decisions regarding custody, residence and access.

When assessing what is the best interests for the child, special attention should be paid to the risk of the child or anyone in the family being abused or the child being illegally abducted or detained or otherwise harmed and the child's need for close and good contact with both parents.

The child's age and maturity will also be taken into account by the Court. The Court may also consider the child's will.

Is there a difference between custody, care and control and access in Sweden? Yes, custody and access are separate matters. Access can be granted whether a parent has custody rights or not. Some issues in relation to the child can only be decided by the parent/parents who has/have custody rights.



After a divorce, the principle rule is that a child's custody remains joint and a child's residence is alternated. If a parent wants a change in the custody or residence, they have to make a claim. There is no preference for a child to reside with the mother in Sweden.

After a divorce, the principle rule is that a child's custody remains joint. This means that decisions regarding the child are continuously made by both custodians jointly.

If the parents are unable to communicate regarding the child and are unable to exercise the custody jointly, that could be a ground for entrusting sole custody to one parent.

Both parents have the obligation to contribute to child maintenance. The parents shall be responsible for the maintenance of the child according to what is reasonable taking into account the child's needs and the parents' overall financial ability.

The parents shall between themselves bear the costs according to their ability. If the child resides with one of the parents, the other parent shall fulfil his/her maintenance obligation by paying maintenance allowance to the child.

When deciding the amount for child maintenance, the court will base its decision on what is reasonable taking into account the child's needs and the parents' overall financial ability. When determining a parent's maintenance obligation, the Court will take into account the child's own income, assets, as well as social benefits.

Maintenance:

There are two forms of maintenance - spouse maintenance and maintenance for children.

Maintenance for spouse:

The fundamental idea is that divorce effectively severs all forms of economic relations between spouses.

Each spouse is therefore individually responsible for his or her own financial support after divorce. Maintenance is seldom granted except in certain circumstances. It must be shown that the spouse is financially needy and that the marriage has resulted in the need for maintenance.

Maintenance is given when a spouse has difficulty in supporting himself or herself for a transitional period following the divorce. Such transitional maintenance provides the needy spouse with opportunities to seek gainful employment or retraining.

The sum is determined by considering the spouse's ability to pay, as well as several other factors.



Spousal maintenance is also granted in cases involving marriages of long duration where the spouse becomes financially needy following the separation. This form of maintenance extends over the transitional period and the exact duration is determined upon the relevant facts of each case.

Maintenance for children:

Maintenance for children is compulsory and the sum is to be determined either by an agreement or by a court decision. When assessing the sum, consideration is given to the financial ability of the spouse paying. If the spouse does not pay anything or gives below the stipulated sum, child support is provided by the [Swedish Social Insurance Agency](#). The spouse is then required to reimburse the agency for all or part of the sums paid for towards the child.

Treatment of marital assets:

As marriage law in Sweden is driven by the principles of individuality and gender equality, a marriage is often viewed as a partnership. Thus, they are encouraged to settle their differences out of court by first negotiating and dividing their assets privately.

Upon negotiation, if the couple is in agreement: They are to send the division of marital property agreement (original and two copies containing the signatures of two witnesses) and population registration certificates (no older than three months) to the district court where they were registered.

If the couple is in disagreement: They can apply to the district court for the appointment of a marital property administrator, who will then make a decision regarding what should be included in the division of marital property, how items should be valued and how they should be divided.

Generally, spouses are entitled to a 50-50 split of the property. The courts will award the matrimonial home to the needier spouse, after subtracting the value from the amount the spouse was previously entitled to receive.

If one of the spouses is not satisfied with the decision made by the administrator, he or she can appeal to the district court. The courts can override this equal-split rule if a 50-50 split will be unfair. Some factors that may influence the court's decision are the length of marriage and the economic standing of parties.



Property owned by spouses in marriage can be labelled as either [personal](#) or marital property. Upon divorce, only marital property will be divided between spouses

Present Divorce law in India.

At present India practice the fault divorce system wherein partners can only separate if there is fault in other partner like only if the other partner is abusive, cruel, adulterous or mutual consent divorce etc

Which result in people by force finding faults of the other spouse by the other spouse and many time when a partner refuses to go for mutual consent divorce the other partner generally the wife file exaggerated false cases , thus wasting the court time .

So in this situation no fault divorce gives a hope that it will make the divorce process easier. Smooth, effective and that people will be able to get out of non-compatible and loveless relationships easily and will lessen the burden of our courts which are at present burdened with cases.

At present divorces are filed under section 13. On section 13A a divorce can be contested and under section 13B it is mutual consent divorce is filed.

Under section 9 there is a provision of restitution of conjugal rites



Pros of No-Fault Divorce on the ground irretrievable breakdown of marriage:

No unnecessary legal battle and peaceful separation:

1. Clearly, no-fault divorce may reduce long, cutthroat court battles over who is to blame when marriages fail, resulting in lower legal fees and more time-efficient proceedings. After all, many people divorce for reasons having little to do with the traditional, codified grounds.
2. With no fault, since it is not required that one party be accused and found fault with, there is no reason to manufacture or fabricate evidence against a spouse.
3. The integrity of the court is left intact and divorces caused by simple incompatibility may be obtained in an honest and streamlined fashion.
4. Even if instances of adultery or abuse did occur, the option of filing for a no-fault divorce allows parties to avoid airing their dirty laundry in public. The parties' privacy is respected. Litigation focuses on the needs of the parties rather than fault.
5. Less time spent on accusations and less emphasis placed on the actions that led to the divorce keeps the parties moving forward and avoids extra aggravation of the parties' stress and emotional turmoil. Overly burdened court dockets may also be alleviated by no fault divorce by eliminating one of the many issues to resolve.

Spouse murder will reduce

Such law might also reduce the spouse murder as many people who are frustrated of their dead marriage start seeing their other partner as a thorn and a roadblock to their happiness and thus may take / plan things like murder of the spouse . laws like these can give a opening to people like these as a relieve from loveless, dead marriage as a easy exit thus they will not think of their ex partner as thorn and may part ways in a positive note.

Suicide will reduce

Many people take extreme steps like suicide cause many of them feel that there is no way out of this dead marriage, or partners who suffer from incompatibility issues .As it is a tedious job to find fault in the partner and prove them in court running for years to get divorce. Family problems is the top reason for people too commit suicide, thus they feel that there is no exist to this thus many times takes extreme steps like suicide also. This law could provide peaceful and easy exit from any such marriages.



Mental health improvement

It will have a positive impact on the mental health as people who are suffering from dead marriage or are having incompatibility or adjustment issues they generally have huge mental health problems too. In India a lot of people suffer from depression and family problems is the top reason for people too commit suicide, thus they feel that there is no exist to this thus many times takes extreme steps like suicide also. This law could provide peaceful and easy exit from any such marriages. Without running in the courts for years.

Disadvantage

Some people (real abuser) may take the advantage of the law and file for no fault divorce on ground irretrievable breakdown of marriage and may get away without any repercussion for their action (abuses) towards the other spouse.

Safeguard

For this there are some suggestions of safeguards to avoid such situations:-

- ◆ If a spouses has field any criminal or civil cases and if it is proved in court of law that same are not true or proved, the other party should get any benefit. There should be no alimony or maintenance to such partner.
- ◆ All the litigations between the two parties should be closed before awarding of any No fault Divorce degree on ground irretrievable breakdown of marriage , alimony or maintenance.

Suggestions for the no Fault Divorce on the ground Irretrievable Breakdown of Marriage:

Here are some of the suggestion which are given by “Men welfare Trust” for a better and fair law for both gender:-

- In the law the husband and wife word should be replaced by “spouse”.
- Any financial support order must be linked with “Duration of Marriage”.
- After file No fault Divorce on the group Irretrievable break down of marriage there should be 3 months cooling off period before degree.
- In the time of divorce any division of the assets should be on the property which is ‘acquired after marriage’.
- Maintenance should be time bound and alimony should be on the basis of the duration of marriage and children.
- All litigations should be closed before awarding maintenance and alimony



- In matter of child custody Shared parenting should be the norm and both parents should take 50-50 child responsibility by taking care of 50% of the child expanses.
- If any partner claim is financially not capable to take care of the child expenses then the physical main custody must be given to other person for a better future of the child.

Conclusions :

Thus we conclude that an easy and faster divorced life is better than a life stuck into a irretrievable Break down of marriage.

A person should have a right to divorce like they have a right to marriage or refuse to marry someone, keeping in mind the necessary safe guard so that no person should be punished for fault at his/her end have been proved.

1. Duration of Marriage should be Key to decide financial support.
2. Ability to earn should not be ignored, allow blanket financial support will encourage the laziness of spouses & take undue advantages of one's wrong doing.
3. Pre-nepotal agreement must be legalized along with marriage terms and condition if both parties agree for the same willingly before marriage.
4. Joint or shared Child custody should be Must; no child should be deprived to have accessses of their Biological parents.
5. After marriage along with accumulation of assets, debts also to be considered & must be shared by both spouse equally.
6. Before divorce degree any litigation between spouses if any must to closed, as the divorce seek on ground no fault.



7. Property owned by spouses in marriage must be labelled as either [personal](#) or marital property. Upon divorce, only marital property assets & debit will be considered to divide between spouses.



Law must respect the natural Justice: ***“A person should not be allowed to take advantage of his/her own wrong doing as basic of Justice System”.***