



RESEARCH ARTICLE

LAW RELATING TO MARRIAGE AND DIVORCE: A CRITICAL STUDY ON NRI MARRIAGES IN INDIA

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ABSTRACT

Non-Resident Indian (NRI) marriages have increased significantly due to globalization, migration, and the growing Indian diaspora across the world. While such marriages often promise better economic opportunities and cross-cultural experiences, they have also led to a rising number of legal and social challenges, particularly for spouses residing in India. The legal framework governing marriage and divorce in the context of NRI marriages raises complex issues relating to jurisdiction, recognition of foreign judgments, enforcement of maintenance, and protection of the rights of spouses, especially women. This study critically examines the laws relating to marriage and divorce in India with specific reference to NRI marriages. It analyses the applicability of personal laws, statutory provisions, and judicial interpretations that regulate matrimonial disputes involving Non-Resident Indians. The research highlights common problems faced in such marriages, including abandonment, ex-parte divorce decrees from foreign courts, bigamy, and difficulties in securing maintenance or child custody. The study further explores how conflicts of law and lack of uniform international legal mechanisms complicate the resolution of these disputes. Additionally, the paper reviews the role of Indian courts, government initiatives, and legislative measures aimed at protecting spouses in NRI marriages. Special attention is given to the need for stronger legal safeguards, effective enforcement mechanisms, and international cooperation to address cross-border matrimonial disputes. The research also evaluates recent policy discussions and recommendations for reform in order to ensure justice and legal certainty for affected individuals. The study concludes that while India has taken steps to address the issues arising from NRI marriages, significant gaps remain in the legal system. Strengthening legal procedures, improving coordination with foreign jurisdictions, and creating comprehensive legislation specifically addressing NRI matrimonial disputes are essential to protect the right and interests of spouses involved in such marriages.

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INTRODUCTION

Mignon says that, "a successful marriage requires falling in love many times, always with the same person". Marriage is one of the most important social institutions in India and is deeply rooted in cultural, religious, and legal traditions. With the increasing globalization and migration of Indians to many regions of the world,¹ marriages between residents of India and Non-Resident Indians (NRIs) have become increasingly common. These marriages are often perceived as attractive because they promise better financial prospects, international exposure, and improved social status. However, the growth of NRI marriages has also resulted in numerous legal and social issues. In many cases, spouses, particularly

women residing in India, face abandonment, fraud, domestic violence, or unilateral divorce proceedings initiated abroad. The cross-border nature of such marriages creates complex legal challenges regarding jurisdiction, recognition of foreign judgments, enforcement of maintenance orders, and custody of children. In India, matrimonial relations are governed by various personal laws such as the Hindu Marriage Act,² Muslim Personal Law,³ Christian Marriage Act,⁴ and Special Marriage Act.⁵ When one of the spouses resides abroad, the interaction between Indian personal laws and foreign legal systems creates conflicts of law. Courts are often required to determine whether foreign divorce decrees are valid in India and whether the rights of the spouse residing in India have

²Act 25 of 1955 passed on 18-05-1955

³Act 26 of 1937 passed on 07-10-1937

⁴Act 15 of 1872 passed on 18-07-1872

⁵Act 43 of 1954 passed on 09-10-1954

¹Sai Ramani Garimella&Stellina Jolly (2017) Private International Law South Asian States' Practice, (ed.) Springer, Singapore, P.136

been adequately protected. Generally, foreign courts are taking cognizance in private disputes and cases are decided by applying principles of *lex domicilii* (habitual residence), *lex loci celebrationis* (place of marriage) and *lex loci contractus* (place of contract).⁶ This research paper examines the legal framework governing NRI marriages and the laws relating to divorce and matrimonial disputes involving Non-Resident Indians. The study analyzes statutory provisions, judicial decisions, and policy initiatives aimed at addressing issues faced in such marriages. It also identifies the gaps in the current legal system and proposes reforms for better protection of spouses involved in cross-border marriages. A Non-Resident Indian (NRI) generally refers to an Indian citizen who resides outside India for employment, business, education, or other purposes. An NRI marriage typically refers to a matrimonial alliance where one of the spouses is residing abroad.

- NRI marriages may take several forms:
- Marriage between an Indian resident and an NRI.
- Marriage between two NRIs solemnized in India.
- Marriage between an NRI and a foreign citizen under Indian law.

Such marriages may be performed under personal laws or under secular legislation like the Special Marriage Act. While these marriages are legally valid, disputes arising from them often involve multiple legal systems, which complicates their resolution.

Legal Framework Governing Marriage in India: Marriage in India is governed by different laws depending on the religion of the parties.⁷ The major statutes include:

Hindu Marriage Act, 1955: The Hindu Marriage Act governs marriages among Hindus, Buddhists, Jains, and Sikhs.⁸ It lays down the conditions for a valid marriage,⁹ rights and duties of spouses, and grounds for divorce.¹⁰ Under this Act, divorce may be granted on grounds such as cruelty, desertion, adultery, conversion, mental disorder, and mutual consent.¹¹ Many NRI marriages involving Hindus are performed under this statute.

Special Marriage Act, 1954: The Special Marriage Act provides a civil form of marriage that can be used by individuals of different religions or nationalities.¹² It is particularly relevant for NRI marriages because it allows marriages between Indian citizens and foreigners. The Act also provides for registration of marriages¹³ and establishes procedures for divorce¹⁴ and judicial separation.¹⁵

Foreign Marriage Act, 1969¹⁶: The Foreign Marriage Act governs marriages where at least one party is an Indian citizen

and the marriage is solemnized outside India. It provides a legal framework for registering such marriages through Indian diplomatic missions abroad. This research work is adopted qualitative methodology, relied on content analysis of citations of Supreme Court and several High Courts in India. This paper gives incites policy makers to amend and make adequate legal framework to regulate NRI marriages and divorce.

This Act ensures that marriages performed abroad can still be recognized under Indian law.

Laws Relating to Divorce in India: Divorce laws in India are primarily governed by personal laws and statutory provisions. The grounds for divorce may vary depending on the law applicable to the parties.

Common grounds for divorce include:¹⁷

- Adultery¹⁸
- Cruelty¹⁹
- Desertion
- Conversion²⁰
- Unsound Mind/Mental illness
- Vulnerability
- Renunciation
- Presumption of death
- Mutual Consent²¹

In the context of NRI marriages, divorce proceedings may be initiated either in India or in a foreign country.²² This creates legal complications regarding the recognition and enforcement of foreign divorce decrees.²³ *Srinivas Ramineni vs. State of Andhra Pradesh and Ors.*²⁴

Jurisdictional Issues in NRI Marriages: Jurisdiction is one of the most significant legal issues in NRI matrimonial disputes. Since one spouse may reside in India and the other abroad, determining which court has the authority to hear the case²⁵ becomes complicated.

Under Indian law, jurisdiction may depend on factors such as:

- Place where the marriage was solemnized²⁶
- Last place where the spouses lived together
- Current residence of the parties.

In many cases, the NRI spouse files for divorce in a foreign court without the knowledge or participation of the spouse

⁶Stellina Jolly &SaloniKhanderia (1921) Indian Private International Law, Hart Publishing, London, P.116

⁷Shoyaib Ahmad, Irretrievable Breakdown of Marriage in India: Legal Challenges, Judicial Reforms, and Societal Perspectives, Cambridge University Press, Version-1, (May, 2025)

⁸Section 2 (1) (b) of Hindu Marriage Act, 1955

⁹Section 5 of Hindu Marriage Act, 1955

¹⁰Section 13 of Hindu Marriage Act, 1955

¹¹ Section 13-B of Hindu Marriage Act, 1955

¹²Section 31 of Special Marriage Act, 1954

¹³ Section 15 of Special Marriage Act, 1954

¹⁴ Section 27 of Special Marriage Act, 1954

¹⁵ Section 23 of Special Marriage Act, 1954

¹⁶Act No.3 of 1969, passed on 31-08-1969

¹⁷ (Section 13 (1) of Hindu Marriage Act, 1955) & Shoyaib Ahmad, Irretrievable Breakdown of Marriage in India: Legal Challenges, Judicial Reforms, and Societal Perspectives, Cambridge University Press, Version-1, (May, 2025), P. (introduction notes)

¹⁸ Joseph Shaine vs. Union of India: (2019) 3 SCC 39

¹⁹ V. Bhagat vs. D. Bhagat : 1994 AIR 710 : 1994 SCC (1) 337

²⁰ Sarala Mudgal and Others vs. Union of India:1995 (3) SCC 635

²¹ Shilpa Sailesh vs. Varun Sreenivasan (2023)14 SCC 231

²² (2021) 12SCC 376 : &Sai Ramani Garimella&Stellina Jolly (2017) Private International Law South Asian States' Practice, (ed.) Springer, Singapore, P.226

²³Sai Ramani Garimella&Stellina Jolly (2017) Private International Law South Asian States' Practice, (ed.) Springer, Singapore, P.83

²⁴2024 (3) ALT (Cr.) 204 (A.P.)

²⁵Sai Ramani Garimella&Stellina Jolly (2017) Private International Law South Asian States' Practice, (ed.) Springer, Singapore, P.69

²⁶Sai Ramani Garimella&Stellina Jolly (2017) Private International Law South Asian States' Practice, (ed.) Springer, Singapore, P.122

residing in India. Such cases often result in ex-parte divorce decrees.²⁷

Recognition of Foreign Divorce Decrees: One of the most controversial issues in NRI marriages is whether foreign divorce judgments are recognized in India. The Code of Civil Procedure provides that foreign judgments are recognized in India only²⁸ if they meet certain conditions, including:

- The judgment must be given by a competent court.
- The decision must be based on merits.
- The judgment must not violate Indian law or public policy.

If a foreign divorce decree does not meet these requirements, it may not be recognized in India. As a result, a person may be considered divorced in a foreign country but still legally married under Indian law. Section 13 (e) a foreign judgement shall not be conclusive if it has been obtained by fraud. Therefore, it is an exception to the rule of foreign judgement is conclusive proof, which can be challenged before the Indian courts, as per the section 13 (e) of C.P.C., in *Transcom DMCC vs. KPR Agrochem Limited and Ors.*,²⁹ to that extent the law in India is different from the law in other jurisdictions where foreign judgments given for default of appearance of defendants are also accepted as final and conclusive between the parties thereto.

Major Problems Faced in NRI Marriages

Abandonment of Spouse: One of the most common problems in NRI marriages is abandonment. In many cases, the NRI spouse leaves India shortly after marriage and fails to maintain contact or provide financial support.³⁰

The spouse residing in India may face social stigma, financial hardship, and legal difficulties in seeking remedies.

Ex-Parte Divorce: Some NRIs obtain divorce orders from foreign courts without informing their spouses. These ex-parte divorces create legal uncertainty because they may not be valid under Indian law.³¹ At the Central Government's request, the Law Commission of India in its 65th Report examined the decision of the Supreme Court in *Satya vs. Tejas Singh*³² and recommended separate and self-contained legislation on foreign divorces and legal separation. The Commission believed that such legislation should adopt a perspective of advancing substantial justice to both the parties.³³

Bigamy and Fraudulent Marriages: There have been cases where NRI spouses remarry abroad without obtaining a valid divorce from their first marriage in India. Such actions constitute bigamy under Indian law.

Difficulty in Obtaining Maintenance: Enforcing maintenance orders across international borders can be extremely difficult. Many spouses face challenges in recovering financial support from NRI partners living abroad. To compare with Indian courts, foreign courts are speedy in nature, due to which NRI spouses getting divorces without notice to another spouse.

Child Custody Disputes: Child custody disputes in NRI marriages often involve international legal issues. Determining which country has jurisdiction and enforcing custody orders can be complex. These circumstances are most of the time in favour of male spouses, not with female spouse. When confronted with questions related to the custody and maintenance of children, the family court is required to base its decision on the best interest of the children.³⁴

Role of Indian Courts: Indian courts have played an important role in protecting the rights of spouses in NRI marriages. Courts have repeatedly emphasized that foreign divorce decrees obtained without proper jurisdiction or without giving the other spouse an opportunity to be heard may not be recognized in India. Courts have also issued directions to protect women who are abandoned after marrying NRIs. In some cases, courts have ordered the impounding of passports or issuance of arrest warrants against defaulting spouses. The judiciary has also emphasized the importance of ensuring that matrimonial disputes are resolved in a manner consistent with principles of natural justice and fairness.

Government Initiatives and Policy Measures

The Government of India has taken several steps to address the problems faced in NRI marriages.

NRI Cell: The Ministry of External Affairs has established special NRI cells to address complaints related to NRI marriages and provide assistance to affected individuals.

Legal Assistance Schemes: The government provides financial and legal assistance to Indian women deserted by NRI spouses to help them pursue legal remedies abroad.

Proposed Legislation: Several proposals have been made to introduce comprehensive legislation dealing specifically with NRI matrimonial disputes. Such laws would address issues such as registration of NRI marriages, prevention of fraud, and enforcement of maintenance orders.

Need for Legal Reforms

Despite existing laws and policies, many problems remain unresolved. There is a need for stronger legal measures to protect the rights of spouses in NRI marriages.

Some important reforms include:

- Mandatory registration of NRI marriages.
- International cooperation for enforcement of maintenance orders.
- Stronger penalties for abandonment and bigamy.

²⁷ 2025(2) BLJ 265: II (2025) DMC 612 SC: 2025 INSC 299: [2025] 3 SCR 377

²⁸ Section 13 of CPC

²⁹ High Court of Andhra Pradesh in Civil Revision Petition Nos. 1212 and 1206 of 2025, dt.13.02.2026

³⁰ AIR 2023 SC 903 : 2023 INSC 99 : (2023)11 SCC 209

³¹ *Satya vs. Teja Singh*, (1975) 1 SCC 120

³² AIR 1975 SC 105: 1975 CriLJ 52: 1974 INSC 190: (1975) 1 SCC 120 : [1975] 2 SCR 197

³³ Stellina Jolly & Saloni Khanderia (2021) *Indian Private International Law*, Hart Publishing, London, P.138

³⁴ Asha Bajpai, Symposium on Comparative Custody Law || Custody and Guardianship of Children in India, *Family Law Quarterly*, Vol. 39, Issue-2, (2005), PP.441-457, (P. 446)

- Creation of specialized legal mechanisms to handle cross-border matrimonial disputes.
- Greater awareness and legal support for affected individuals.

These reforms would help reduce exploitation and ensure justice for victims of fraudulent NRI marriages.

CONCLUSION

NRI marriages have become increasingly common in modern society due to globalization and migration. While such marriages can offer opportunities for cultural exchange and economic advancement, they also present unique legal challenges when disputes arise. The Indian legal system provides various laws governing marriage and divorce, including personal laws and statutory provisions. However, the cross-border nature of NRI marriages often leads to complications involving jurisdiction, recognition of foreign judgments, enforcement of maintenance, and child custody disputes. Indian courts and government authorities have taken several steps to address these issues, but significant gaps remain in the legal framework. Many spouses, particularly women continue to face abandonment, fraud, and difficulties in accessing justice. Therefore, there is a pressing need for comprehensive legislation specifically addressing NRI matrimonial disputes. Stronger legal safeguards, better coordination between countries, and improved enforcement mechanisms are essential to protect the rights and interests of individuals involved in such marriages. Ensuring justice in NRI matrimonial disputes is not only a legal necessity but also a social responsibility. By strengthening the legal framework and promoting international cooperation, India can provide better protection for spouses and uphold the principles of fairness, equality, and justice in cross-border marriages.

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