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RECENT JUDICIAL TRENDS ON FOREIGN MARRIAGES IN INDIA: A CRITICAL EXAMINATION

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Abstract

Globalization has fundamentally transformed the dynamics of marital relationships; millions of Indians reside abroad, and marriages between individuals from diverse nations are increasingly common. This scenario has compelled Indian courts to grapple with complex questions of private international law, particularly regarding the validity of foreign marriages and the recognition of foreign divorce decrees. This article provides a detailed analysis of the evolving judicial perspective in India concerning foreign matrimonial matters. It traces the legal trajectory from the seminal Narasimha Rao case (1991) to recent landmark judgments by the Supreme Court and various High Courts. The discussion encompasses several facets: the legal framework (including the Foreign Marriage Act, 1969, the Code of Civil Procedure, and personal laws); the evolution of principles regarding jurisdiction and legal comity; practical challenges associated with "limping marriages" (marriages recognized in one jurisdiction but not another) and "forum shopping" (selecting a court based on strategic advantage); constitutional dimensions involving Article 142; and policy recommendations proposed by the Law Commission. The article argues that while Indian courts have largely adopted a principled stance safeguarding the sanctity of personal laws and the interests of the vulnerable spouse—particularly women—uncertainties and difficulties persist due to the absence of a clear, systematic legal framework to address conflicts of laws. This situation underscores the urgent need for comprehensive legislative reform. Thus, this study presents a critical analysis of foreign marriages in India.

Key words: *foreign marriages, limping marriages, forum shopping*

1. Introduction: The Globalized Matrimonial Landscape

Marriage is considered the foundation of the social order and holds immense legal, cultural, and emotional significance. In today's era, as people frequently move between countries for education, employment, and settlement, marriages often take on an international dimension. An Indian citizen might marry a foreign national in a third country, or a couple married in India according to Hindu rites might later acquire citizenship in a Western nation and seek a divorce there. Such situations give rise to complex legal questions:

Which country's courts have jurisdiction?

Which laws apply to the validity and dissolution of the marriage?

Must Indian courts recognize foreign judgments? India—with over 30 million of its people residing across 180 countries—frequently encounters such issues. The Supreme Court has acknowledged that cross-border matrimonial disputes "pose a challenge for many nations today, as the world becomes increasingly interconnected and spouses often reside in different countries."¹

The Indian legal system, characterized by distinct personal laws for different religions, presents specific features that complicate the resolution of such disputes. Unlike many Western nations that enforce a Uniform Civil Code, India has separate matrimonial laws for Hindus, Muslims, Christians, Parsis, and other communities. While respecting cultural diversity, this plurality creates further complexities when foreign legal systems intersect with Indian personal laws.

In the Indian context, the term "foreign marriages" encompasses a variety of scenarios: (i) marriages between Indian citizens solemnized in India, where the couple subsequently settles abroad; (ii) marriages between Indian citizens solemnized abroad; (iii) marriages between an Indian citizen and a foreign national solemnized abroad; and (iv) marriages involving foreign nationals solemnized in India. Each category presents distinct challenges related to jurisdiction and legal matters.

This article aims to provide an in-depth and critical review of recent judicial trends, analysing key rulings, the evolution of legal principles, and the interplay between statutory provisions and judicial innovation. It argues that while the judiciary has developed a largely coherent legal understanding regarding personal law and the protection of gender justice, the absence of a

¹ This observation by Justice Surya Kant underscores the need for legal clarity in this domain.

comprehensive legal framework for private international law remains a significant gap that requires the immediate attention of Parliament.

2. The Foreign Marriage Act, 1969: Scope and Application

The Foreign Marriage Act, 1969 (FMA) constitutes the primary legislative instrument governing marriages of Indian citizens outside India. Enacted on August 31, 1969, its preamble states its purpose as "to make provision relating to marriages of citizens of India outside India." The Act applies to marriages in which at least one party is an Indian citizen and the ceremony takes place in a foreign territory.

Under the FMA, marriages may be solemnized before a Marriage Officer, typically a diplomatic or consular official appointed by the Central Government. The Act prescribes substantive conditions for validity, including minimum age requirements, prohibition of relationships within specified degrees, and free consent of both parties. It also provides for registration of marriages performed under other legal systems, and addresses the certification and evidentiary value of marriage documents.

A recurring interpretive question concerns the relationship between the FMA and the Special Marriage Act, 1954 (SMA). The SMA permits marriage between any two individuals, irrespective of religion, provided the ceremony is performed in India and certain procedural formalities are observed. The Kerala High Court, in a recent ruling, clarified that marriages performed abroad, where one party is an Indian citizen, fall exclusively within the domain of the FMA and cannot be registered under the SMA. This distinction carries practical consequences regarding procedural requirements, evidentiary standards, and the recognition of such marriages in India².

3. The Foundational Precedent: Narasimha Rao and Its Enduring Legacy

Any examination of recent trends must commence with the Supreme Court's landmark decision in *Y. Narasimha Rao v. Y. Venkata Lakshmi* (1991) 3 SCC 451. This case has served as the bedrock of Indian jurisprudence on foreign matrimonial decrees for over three decades, and its principles continue to be invoked and affirmed in contemporary rulings³.

² The Foreign Marriage Act, 1969 (FMA)

³ *Y. Narasimha Rao v. Y. Venkata Lakshmi* (1991) 3 SCC 451

The factual context involved a Hindu couple married under the HMA. The husband obtained a divorce decree from a court in the United States on grounds that were not available under the HMA. The wife challenged the recognition of this decree in India. The Supreme Court held that a foreign divorce decree would be recognized only if two cumulative conditions were satisfied: first, the foreign court must have possessed jurisdiction in accordance with the matrimonial law under which the parties were married; and second, the grounds upon which the relief was granted must be consistent with that very matrimonial law.

3 The Code of Civil Procedure, 1908: Recognition of Foreign Judgments

Sections 13 and 14 of the Code of Civil Procedure, 1908 (CPC) provide the statutory foundation for recognizing foreign judgments in India. Section 13 declares that a foreign judgment is conclusive as to any matter directly adjudicated upon, subject to specific exceptions: where the court lacked jurisdiction, where the judgment was not pronounced on the merits, where it was founded on a breach of Indian law, where it was obtained by fraud, or where it sustains a claim founded on a breach of Indian law⁴. Section 14 establishes a presumption that a foreign judgment is valid unless proved otherwise⁵.

However, the application of these provisions to matrimonial decrees has been significantly shaped by judicial interpretation. Courts have read into Section 13 an additional requirement—that the foreign court must have applied the same substantive law that governs the marriage under Indian personal law. This reading, crystallized in the Narasimha Rao decision, has fundamentally influenced the recognition of foreign divorces.

4. Personal Laws: The Substantive Matrimonial Regime

For Hindus (including Buddhists, Jains, and Sikhs), the Hindu Marriage Act, 1955 (HMA) governs marriage and divorce. The HMA enumerates specific fault-based grounds for divorce, including adultery, cruelty, desertion, conversion, mental disorder, and venereal disease. Notably, "irretrievable breakdown of marriage" does not appear among these grounds, although the Supreme Court has, in certain cases, exercised its constitutional power to dissolve marriages on this basis⁶.

For other communities, separate personal laws apply: Muslim personal law (largely

⁴ Section 13 of the Code of Civil Procedure, 1908

⁵ Section 14 of the Code of Civil Procedure, 1908

⁶ Section 2 of Hindu Marriage Act 1955

uncodified), the Indian Christian Marriage Act, 1872, and the Parsi Marriage and Divorce Act, 1936. The FMA, as a secular statute, applies irrespective of the parties' religion, but the substantive law governing dissolution—when sought in India—depends on the personal law applicable to the marriage. This fragmented framework often leads to divergent outcomes in cross-border disputes, depending on the parties' religious affiliation⁷.

5. The Concept of Limping Marriages

One of the most problematic consequences of the Narasimha Rao doctrine is the emergence of "limping marriages"—unions that are validly dissolved in one jurisdiction but continue to be recognized as subsisting in another. When a foreign court grants a divorce on grounds unrecognized in India, the parties are effectively divorced abroad but remain married in India. This limping status creates legal uncertainty affecting property rights, inheritance, remarriage eligibility, and even criminal liability for bigamy.

The classic scenario involves an NRI couple, married in India under the HMA, who later relocate to a Western country where "irretrievable breakdown" is a standard ground for divorce. Upon marital discord, one spouse—often the husband—obtains a divorce abroad on that ground. The other spouse, left in India, may be unaware of the proceedings or may contest jurisdiction. Even if the foreign court grants the divorce, Indian courts refuse to recognize it, leaving the parties in a legal twilight zone.

6. The Gujarat High Court (2025) Ruling: A Strong Affirmation

The Gujarat High Court's 2025 judgment dramatically illustrates this predicament. An Indian-origin couple, married in Ahmedabad under the HMA in 2008, later migrated to Australia and acquired Australian citizenship. When the marriage soured, the husband filed for divorce in Australia on the ground of irretrievable breakdown. The wife objected, arguing that the Australian court lacked jurisdiction because the HMA did not permit dissolution on that ground. Nonetheless, the Australian court granted the divorce.

The wife then filed a suit for restitution of conjugal rights in the Ahmedabad Family Court. The Family Court dismissed the suit, holding that since both parties were Australian citizens, the Australian divorce decree was valid and binding. On appeal, the Gujarat High Court

⁷ Ibid

overturned this decision, holding that a Hindu marriage solemnized under the HMA can be dissolved exclusively under its provisions, and that foreign law is entirely inapplicable, regardless of any subsequent change in the parties' citizenship or domicile.

The Division Bench, comprising Justices A.Y. Kogje and N.S. Sanjya Gowda, declared that the application of foreign law to dissolve a marriage performed under the HMA is "impermissible." The court emphasized that the parties' citizenship bears "absolutely no relevance" to the governing law; what matters is that the marriage was Hindu and was solemnized in accordance with the HMA. The court further castigated the practice of forum shopping, observing that permitting parties to circumvent Indian personal law by acquiring foreign citizenship would lead to "certain anomalous results."⁸

This ruling powerfully reinforces the Narasimha Rao principles and stands as a bulwark against the erosion of personal law by foreign legal systems. It also signals that Indian courts will not countenance attempts to manipulate jurisdictional rules to obtain favorable outcomes abroad.

7. Article 142 and Judicial Intervention on Irretrievable Breakdown

While lower courts cannot grant divorce on the ground of irretrievable breakdown—since the HMA does not recognize it—the Supreme Court has, in recent years, employed its plenary power under Article 142 of the Constitution to dissolve marriages on this very basis. Article 142 empowers the Supreme Court to pass any decree or order necessary for doing complete justice in any cause pending before it.

In Shilpa Sailesh v. Varun Sreenivasan⁹, a Constitution Bench confirmed that the Supreme Court may, in exercise of Article 142, grant divorce on the ground of irretrievable breakdown even when one party opposes it, without requiring the parties to observe the cooling-off period prescribed under Section 13-B of the HMA. The Court, however, clarified that this power is discretionary, not a matter of right, and should be exercised cautiously, only when the marriage is beyond repair and all attempts at reconciliation have failed.

⁸ <https://www.verdictum.in/court-updates/high-courts/gujarat-high-court/abc-v-xyz-2025-gujhc-49833-db-foreign-law-hindu-marriage-dissolution-1590230>

⁹ AIR 2023

Subsequently, in Kavitha v. State¹⁰ the Supreme Court again invoked Article 142 to dissolve a defunct marriage, emphasizing that where cohabitation has completely ceased and there is no prospect of reconciliation, continuing the marital bond would serve no purpose other than perpetuating hardship.

This judicial innovation, while salutary in providing relief to parties trapped in dead marriages, creates a paradoxical asymmetry: the Supreme Court can grant such relief, but High Courts and Family Courts—which handle the vast majority of matrimonial litigation—lack similar authority. This disparity underscores the pressing need for legislative amendment to introduce irretrievable breakdown as a statutory ground for divorce under the HMA, thereby aligning Indian law with global trends and eliminating the need for extraordinary constitutional intervention.

8. Competing Jurisdictions and the Problem of Parallel Proceedings

In cross-border matrimonial disputes, both the country of domicile and the country of residence may assert jurisdiction, leading to parallel proceedings and conflicting judgments. Indian courts have adopted a flexible approach, often guided by the Narasimha Rao framework, to determine whether to entertain proceedings when a foreign judgment already exists or is pending.

Where a foreign decree has been obtained, Indian courts examine whether the jurisdictional and substantive conditions of Narasimha Rao are satisfied. If not, they treat the foreign decree as a nullity and proceed to adjudicate the matrimonial dispute afresh under Indian personal law. This approach, while respecting Indian legal sovereignty, can lead to a multiplicity of proceedings and undermine the finality of foreign judgments.

Domicile vs. Residence: An Unresolved Debate

India's approach to jurisdiction in matrimonial matters has been criticized for its reliance on residence-based jurisdiction coupled with the application of personal law. Unlike common law countries that often prioritize domicile as the primary connecting factor, Indian courts frequently assert jurisdiction based on the parties' residence in India, even if they have acquired foreign domicile. This stance can lead to friction with foreign courts that may regard domicile as the governing criterion.

Legal scholars have argued that India requires a modern, coherent conflict-of-laws statute that

¹⁰ 2025 INSC 978

clearly delineates jurisdictional rules, specifies applicable law, and establishes criteria for recognition of foreign judgments. Such a statute would reduce uncertainty, promote international comity, and provide predictability for parties in cross-border marriages.

The Law Commission Report (2024)

In response to these mounting concerns, the 22nd Law Commission of India submitted its Report No. 287, titled "Law on Matrimonial Issues Relating to Non-Resident Indians and Overseas Citizens of India," on February 15, 2024. The report made several key recommendations:

Compulsory Registration: All marriages between NRIs or OCIs and Indian citizens must be mandatorily registered in India. This is intended to prevent fraudulent marriages, false assurances, and misrepresentation, and to create a reliable record that can be used in subsequent legal proceedings.

1. **Comprehensive Central Legislation:** The report advocated for a dedicated central statute addressing matrimonial issues involving NRIs, covering divorce, maintenance, child custody, service of process, and enforcement of orders.
2. **Protection of Women's Rights:** The proposed legislation aims to provide stronger safeguards for Indian women married to NRIs, including mechanisms for serving summons and warrants on NRIs, and for enforcing maintenance orders across borders.
3. **Deterrence:** By creating clear legal obligations and penalties for non-compliance, the legislation would deter NRI spouses from harassing or abandoning their partners with impunity¹¹.

The NRI Marriage Bill, 2025

Building on the Law Commission's recommendations, the Government introduced the NRI Marriage Bill in the Rajya Sabha in November 2025. The Bill seeks to mandate registration of NRI marriages, establish procedures for service of summons on NRIs, and create a framework for enforcing maintenance and custody orders. While the Bill represents a significant step forward, its effectiveness will depend on robust implementation, including cooperation from foreign governments in enforcing Indian court orders. Bilateral and multilateral agreements on mutual legal assistance will be critical to realizing the Bill's objectives.

¹¹ The Law Commission Report (2024)

Recommendations for Legislative and Policy Reform

Based on the identified gaps and challenges, the following reforms are proposed:

1. **Enactment of a Private International Law Statute:** India should consider enacting a comprehensive statute that codifies conflict-of-laws rules for matrimonial matters, including jurisdictional tests, applicable law, and criteria for recognition of foreign judgments. Such a statute would provide certainty, reduce litigation, and align Indian law with international best practices.
2. **Amendment of the Hindu Marriage Act:** The HMA should be amended to include "irretrievable breakdown of marriage" as a statutory ground for divorce, subject to appropriate safeguards regarding maintenance, property, and child welfare. This would eliminate the need for Supreme Court intervention under Article 142 and bring Indian law in line with international norms.
3. **Implementation of the NRI Marriage Bill:** The Bill should be enacted expeditiously, with robust provisions for compulsory registration, service of process, maintenance enforcement, and protection orders. Bilateral and multilateral agreements should be pursued to facilitate cross-border enforcement.
4. **Strengthening of Institutional Mechanisms:** NRI cells and family courts should be adequately resourced and staffed to handle the growing caseload. Training programs for judges on private international law and cross-border family disputes should be institutionalized.
5. **International Cooperation:** India should actively participate in international efforts to harmonize family law, including consideration of accession to relevant Hague Conventions, where this is consistent with its constitutional commitments.

Conclusion

The recent judicial trends on foreign marriages in India reflect a careful balancing of competing imperatives: fidelity to personal law, protection of vulnerable spouses, prevention of procedural abuse, and recognition of international realities. The courts have, by and large, discharged this delicate task with discernment and sensitivity. Yet the landscape is far from perfect. The persistence of limping marriages, the asymmetry created by Article 142, the enforcement gap, and the absence of a coherent codified framework all point to the need for comprehensive legislative action. As Justice Surya Kant aptly observed, the transformation of marriage from a "site of inequality into a pious partnership grounded in dignity, mutual respect, and

constitutional values" must extend to the cross-border context. That transformation will require not only judicial wisdom but also legislative vision and international cooperation. The coming years will likely witness further judicial pronouncements and, hopefully, landmark legislative reforms that will bring Indian law into closer harmony with the globalized reality of modern marriage. Until then, the Narasimha Rao doctrine will continue to serve as the guiding star, illuminating the path through the complex and often murky waters of foreign matrimonial law.

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