

# Intricacies of the Overseas Marriages in Contemporary India

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**Abstract:** Indian is a home to different ethnic and religious identities. Same rule cannot be applied to everyone. This is also a proven and tested fact that positive form of certainty, usages must have to be established as customs for smooth running and progress of a healthy society. Marriage is also such an important practice of society for peace and growth of human society. Even though all religions have their own ceremonial ways to celebrate marriages in their cultures, but there are certain fundamental rights those are common for all individuals irrespective to any religion. Though women are equally essential party to the marriage but due to patriarchal setup their role in society is reduced in to weaker section that requires certain level of protection and encouragement. Especially with NRI marriages, peril, and threat to women life also rises. This paper will discuss the various laws to regulate matrimonial alliances in India and also highlights the suggestive precautionary measures provided by government of India for regulation of NRI marriages.

**Keywords;** Overseas, Constitution, NRI Marriages

## I. INTRODUCTION

Marriages are a sacrament for Indians whether they live in India or overseas. In India, marriage laws are governed by individual religious beliefs. No comparison can be drawn between individual religious ceremonies but one condition is common among all forms of marriages and that is emotional and physical security. The Indian legal system provides some commonly accepted guidelines for the solemnization of marriages in India through family laws. The Constitution of India also guarantees the right to marry as a fundamental right under Article 21, 'right to life. For valid marriage under Indian law bride and groom need to attain a certain age, must not be within prohibited degrees and capable to make a conscious decision to marry. Over time matrimonial alliances underwent various changes from legal perspective vis-à-vis socially. It is also seen as an easy opportunity to get settled abroad. The craze for a foreign land is not new to any Indian both male and female. Everyone wants to get settled abroad but there are only limited ways to that either job or education otherwise it is too expensive for any Indian to live abroad. As the need arises so comes the solutions for the same, to fulfill the desire to go abroad matrimonial alliance is the easiest way for anyone. Even though marriage is a

sacrament in India it is reduced to a shortcut for foreign settlement.

This paper will discuss the different matrimonial laws based on their respective religious beliefs in India and laws regulating NRI marriages. This paper will further discuss the role of new overseas marriages guidelines and their impact on matrimonial alliances in Indian society.

### **Matrimonial laws in India:**

- The laws of marriage in India are diverse and religion-specific. The formation of most of the Indian matrimonial laws can be attributed to colonial reign. Due to diverse cultural and religious beliefs and practices, it was difficult to understand the social structure of the society, so personal laws were made on certain practices and needs of the society. Indian society is patriarchal and biased toward the rights and freedom of women at any stage of life. Child marriage, sati pratha, no right to property, and ostracizing widows were some of the common practices of Indian society. Various social reforms and movements were initiated to eradicate the evil practices and to bring women at parity with men in matrimonial matters. Some of the matrimonial laws had been modified and legislated by the Parliament, in addition to

certain religious practices those continue to exist as per religious commands. Following laws were codified by the parliament:

- Hindu Marriage Act, 1955.
- Muslim marriage is considered a contract under Muslim law.
- Christian Marriage Act 1872 and the Divorce Act 1869.
- Parsi Marriage and Divorce Act 1936.
- Special Marriage Act 1954 is open for all people irrespective of their respective religion and in case of divorce; it will also be governed by the same Act.
- Foreign Marriage Act, 1969.

## II. RELIGION-BASED MARRIAGE LAWS IN INDIA

Hindu Marriage: The Hindu Marriage Act, 1955 provides law related to the marriage of two Hindus and provisions for dissolution of the same. Although marriage is considered a sacrament among Hindus yet certain conditions are added under this law to grant equal protection to both the parties and especially to women due to their weaker position in society.

The Hindu Marriage Act, 1955 becomes applicable where the bride and groom are either Hindus, Buddhists, Sikhs, or Jains. Monogamy is to strictly adhere and violation of same is a punishable offense. After completion of religious ceremonies, the couple needs to get registered with concerned authorities or sub-registrar.

Muslim Marriage- Muslim marriage is contractual by nature based on Shariat. Various mutual agreements regarding the matrimonial rights of both parties are to be decided first. In Muslim law, comparatively much importance is given to the consent of the bride and Shariat law itself provides the ground for dissolution of marriage in case of violation of agreed marriage conditions.

In lawful Muslim marriage i.e., a Nikah all the conditions of a valid contract are to be fulfilled between the parties without any undue pressure. Offer to be made by groom and acceptance to be conveyed clearly. In a matrimonial contract,

consideration is known as 'Mahr' which is like a token of respect also and must be paid at the time of marriage to the bride. Ceremonies needed to be performed by religious heads 'Qazi'. Present qazi at the ceremony and the other two relatives need to sign 'nikhanama' as witnesses.

Christian Marriage: The Indian Christian Marriage Act, 1872 regulates Christian marriages in India. The divorce proceedings of such marriages can be instituted under The Indian Divorce Act, 1869. Like in Hindu law monogamy has to be followed and the age of 18 and 21 years respectively for the bride and groom to enter into a marriage. Both the parties must not be in close relation those are forbidden to marry. Marriage is to be performed in church by the clergyman of the church and the same has to be registered thereafter.

Parsi Marriage: Parsi community though very small but hold very unique identity in Indian culture. The Parsi Marriage and Divorce Act of 1936 lay down the rules for marriage among Parsis. Conditions for marriage under Parsi law are almost the same as the basics requirements of Hindu law except for the religious ceremony part. The eligible bride and groom enter into a matrimonial alliance in the presence of witnesses and a certificate of same have to be issued by the registrar.

Almost all form of matrimonial laws in India makes it compulsory to get the marriage registered and bring it into public knowledge. Section 8 of the Hindu Marriage Act 1955 provides provision for the registration of marriage but not compulsorily. The reason for this leniency by law is the illiteracy and unawareness among the larger population in India. Government still encourages the get marriage registered to avoid any future complications.

Special marriage Act, 1954: This act is made to overcome the religious and other social barriers between the two consenting people to marry each other. Not unlike other Hindu laws, it brings marriage under the civil contract laws. The most important part of this Act is that it applies to all Indian living in India as well as abroad irrespective of their religion and caste. This Act does not require any ceremonial rituals, parties have to file a 30 days notice with the Marriage registrar of their district

where any one of them lived for at least 30 days. If no objection is received by the registrar in this period of 30 days then the marriage registrar proceeds with the marriage procedure done in the presence of three witnesses and issues the certificate of valid marriage to the parties.

The government has made utmost efforts to regulate marriages to bring more transparency and certainty to a happy and prosperous society. But over time concept of marriage also underwent some major changes. Earlier due to a closed society set-up people used to get married in their society and caste. Even people going abroad for studies are coming back and getting married in India only. Nowadays this mental setup has changed and now people are more open to intercultural and inter-religion marriages. Sometimes they are finding a partner in a foreign land during studies and jobs and decided to get married over there only. In all such situations, a complex situation of applicability of law arises. As all Indian laws apply to Indians only and not to the native of other countries.

The Foreign Marriage Act, 1969: Foreign Marriage Act is not stand-alone piece of legislation it is supported by Special Marriage Act and other existing laws. Previously this subject is dealt under private international laws which were obscure, changeable, and uncertain. This Act basically lays down rules and conditions before the parties enter into matrimonial alliance. This piece of legislation provides an option to citizens to choose between religious-based marriage and commonly applied laws of civil marriage applicable in India. The availability of such option plays an important role in the freedom and choice of marriage guaranteed under constitutional law. This legislation also aims to reduce any kind of confusion that may arise due to multiplicity of matrimonial laws due to different religious and cultural practices especially related to family affairs, succession, divorce, etc. This Act itself does not provide any provision related to matrimonial disputes and reliefs, in such circumstances Special Marriage Act comes to aid and guide both the parties. The point of concern here is, that it fails to clarify questions such as whether, if a remedy is granted under the Special

Marriage Act, the rights granted to the husband or wife under regular marital laws are enforceable in marriages solemnized outside India under the Foreign Marriage Act.

In India, it is the foundation of the act of foreign marriage. Marriages solemnized under this statute must have either an Indian or a foreigner as one of the parties. The parties can be both Indians who are marrying outside of India, or one of the parties can be a non-resident of India (NRI).

The marriage might be solemnized and registered in India or any other country where the foreigner resides or is a citizen in this circumstance. Another scenario is when both spouses are Indian citizens or non-residents of India, and their marriage is solemnized under a foreign law.

According to Section 18 of the act, if a foreign marriage is not solemnized under this act, the parties are barred from claiming relief for the time being. It goes on to say that if the parties married in a foreign nation, they might seek relief under this clause. It backed it up with *Joyce Sumathi vs Robert Dickson Brodie* on 17 February 1982 high court of Andhra Pradesh held that the divorce petition filed u/s 27 of the Special Marriage Act read with its s18 is maintainable under this Act.

### III. COMPLEXITIES OF NRI MARRIAGES

NRI marriages, as they are widely understood, are between an Indian woman from India and an Indian man residing in another country, either as an Indian citizen (in which case he would be legally an NRI) or as a citizen of that other country (when he would legally be a PIO person of Indian origin).

Overseas marriages have grown at an alarming rate in the last two decades. The easy free luxurious lifestyle of the western world allures the youth of India and marriage seems to be the easiest way to settle in abroad. With the excitement of future, come along slew of issues that are part and parcel of overseas marriages. Ranging from emotional, physical, and even geographical difficulties arises on all spheres. For example, 'the language barrier', even though the English language is an international language but may not be an official language in many countries. Helplessness and failure to communicate gradually take a toll on the

mental health of a person. Similarly, with the change of place, there is a change in food too, though with globalization all kind of food is available all over the world. Access to ethnic food varies from place to place and this may initially lead to health issues for migrant. In the same way, there is a huge difference in lifestyle and cultural beliefs, and this big shift is sometimes become very difficult to cope with. India is a country with strong family system with huge family network. Individual usually grows up with many siblings and elders with constant support and attention. All of sudden moving out of such closely neat domestic setup may cause serious homesickness to the individuals. Even connecting back to family, friends, and relatives also become challenging due to time zone difference. All these factors trigger emotional insecurity and also pose threat to physical health. That can give rise to a bigger problem as medical facilities are very expensive and not evenly available to foreigners in some circumstances. One has to be well equipped and mentally prepared for all these changes and uncertainties. Especially for the women, these factors are in addition to matrimonial uncertainties. The bride may have been the subject to cruelty, or there may have been dowry demand abandonment by the husband. Below mentioned are some of the instances of harassments faced by the spouse in an overseas matrimonial alliance:

The girl has been abandoned by her in-laws or by her husband. She is either returned to her home country or her husband abandons her in India, promising to send her passport and visa but never returning her call. There have been cases where the girl arrives at the airport and her husband does not show up to pick her up, leaving her to live in an unknown country with no resources.

Her husband and in-laws physically and mentally harass her. The girl is tortured and ill-treated to the point where she either returns to her home or is forced to return.

It is discovered that the man has committed bigamy or is involved in an extramarital affair. In some cases, the bride discovers that the groom is already

married and living with his first wife. He had married because he felt pressured by his family.

There is an ongoing demand for dowry before and after marriage. The girl's parents are being held hostage and forced to pay a large sum of money and kind in exchange for their daughter's safety. The parents are compelled to pay such a sum because the in-laws have the potential to ruin their daughter's life, and she is at high risk at her husband's house in an unknown country.

There have been instances where the man and his family have lied or concealed material facts about their background, marital status, or financial situation.

There is also possibility that other party is lying about marital status, earnings, and property they own. Not every NRI is pure. People flee to other countries after committing fraud in India.

The girl is deported to another country and employed as housework. The girl is taken abroad and assigned to work as a maid from morning tonight.

The girl is asked to pay for her expenses while traveling and living in another country.

In some cases, the boy marries a foreign girl to obtain permanent residency in the country.

Due to other nations' jurisdiction, Indian law cannot interfere in such matters. In that foreign country, the divorce laws are more lenient. The husband takes advantage of such laws and obtains an ex-parte divorce decree, which means that the court issued a divorce decree without the presence of a third party. The reason being the case was dismissed in the other country, the Indian courts refuse to award maintenance to the wife.

If a criminal case is filed in India against the husband, but he fails to appear in court, the case will be dismissed.

Custody issues arise during the divorce process, and the husband is hesitant to relinquish custody of the child.

Eternal Alertness: The consequences of these marriages can be mitigated to some extent if the girl and her family remain aware of and attentive to the circumstances. When parents are entrusting their children with the greatest treasures of their lives,



carelessness can cost them dearly. Before proceeding with any marriage proposal certain things needed to be kept in mind. The first thing to remember does not to trust blindly middlemen or agents etc. For them, you are a business opportunity your well-being is not their interest. Do not make hasty decisions under pressure and never finalize things on phone calls or through e-mails. Do not fall for illegal shortcuts for any reason. Do not keep secrets in such matters publish them among near and dear ones. They can help you to collect relevant information. Never get agreed for marriage to a foreign country as it will take you out of the Indian jurisdiction and deprived you of other legal protections. Check and verify all antecedents and documents of the spouse. Such as visa status, ID proofs, marital status, financial status, properties claimed to be owned by them, family background, criminal antecedents, voter ID, tax returns, and bank account papers. Verify all records and documents with Indian Embassy in the foreign country, and also with the concerned employer, local Indian associations, friends, and relatives in the same country.

#### IV. NEW GUIDELINES ON OVERSEAS MARRIAGES, 2019

In April 2019, the Ministry of External Affairs issued guidelines for bringing awareness among the citizens who are interested in overseas marriages. This booklet is in aid to existing laws and regulations and in case of any conflict proper law needed to be referred. It is an effort made by present the government and NGOs to address the complex socio-legal problem in the most simplified manner. Many scholars and NGOs felt that this booklet is primarily pro-women and ignores the other side whereas problem can be both-sided. As per the Indian social setup, it is women who leave their home and go to another place, the lack of any support system in the faraway home will bring more hardship to them, so special attention is paid to their needs and social conditions. This booklet is a stepwise introduction to possibilities and remedies available to a person marrying overseas. In the case of *Neerja Sharaph vs. Jayant Saraph*, the court emphasized the importance of considering

legislative safeguards for women's interests and suggested that if a marriage is solemnized in India between an NRI and an Indian woman, it cannot be annulled by a foreign court. In the event of divorce, the husband should pay adequate alimony to the wife. The Indian court's decree should be made executable in foreign courts based on comity by entering into reciprocal agreements and notifying them under Section 44A of the Civil Procedure Code, which discusses the binding nature of foreign decrees, i.e., it is executable as if it were a domestic decree.

It is always suggested to make an effort for the registration of marriage. If the groom appears to be in a hurry, try to persuade him that it is only a matter of days. Proof of solemnization of marriage in the form of video recordings and photographs must always be kept safe. Question on validity and performance of marriage ceremonies can be raised anytime, for this reason, do not keep the marriage a secret or perform it in an adversarial manner. It is preferable to invite an increasing number of people so that they are aware of the marriage.

Another suggestion under these guidelines that everyone must appreciate to follow is to avoid having a marriage abroad because people aren't always well-versed in foreign laws. You can have your pre and post-marriage ceremonies in a foreign country if you are more excited to enjoy this special occasion there. Understand the other country's marriage laws as well as the rights one has in the event of divorce or domestic violence.

Open a bank account in your daughter's name only, which she can use in a foreign country in an emergency.

Keep a photocopy of the marriage certificate with you at all times. Get the affidavit from the spouse about his present marital status.

Maintain contact with relatives and friends living abroad, and encourage your daughter to do the same. Get yourself insured before going overseas and get health insurance too.

Do not give your passport or visa to anyone who is not authorized.

There is no full-proof plan for successful NRI marriage and the government cannot check every

individual's wear bouts. Self-awareness and vigilance and good communication can provide clarity for future possibilities. Women must get themselves well equipped with the laws of a foreign land and must keep the contact number for state authorities, helpline, and email id of the police of the visiting place. Many Indian Embassies always be kept handy with herself as that can provide immediate requirements of protection.

## V. CONCLUSION

The Foreign Marriage Act encompasses a marriage between an Indian and a foreign citizen, as well as two Indians marrying abroad. The Foreign Marriage Act, unlike the Hindu Marriage Act, is unconcerned with religion. It focuses on the legal aspects of the marriage institution. Its characteristics are derived from the Hindu Marriage Act as well as the Special Marriage Act.

A marriage, which is typically regarded as a family and religious occasion, has its legal ramifications that are often overlooked. The Foreign Marriage Act, on the other hand, emphasizes the legal implications of the institution of marriage.

Courts in their own capacity can address loopholes in this Act. As an Indian citizen in the foreign land this Act can be seen as a protective measure.

In such special cases of marriage legally safeguarding the interest of both the parties in India as well as in abroad is prime need of this time. Both Special Marriage Act and Foreign Marriage Act governs and protects the parties to such special marriages from fraud and other hardships, although this protection is not yet full proof but it provides the basic guards. These rights and freedoms are helpful only when the person is well equipped with societal structure and legal schemes.

## VI. REFERENCES

- [1]. Prohibition of child marriage(amendment) bill,2021
- [2]. Kusum, Kumud Desai's Indian Law of Marriage and Divorce 645-650 (LexisNexis, Gurgaon, tenth edn., 2017)
- [3]. Apoorva Tomar, "The Unique System of Matrimonial Laws in India: Understanding the Religion Specific Marriage Rules" Alliance University Blog, May 25, 2021.
- [4]. <https://blog.ipleaders.in/an-overview-foreign-marriage-act-1969/>
- [5]. The Foreign Marriage Act, 1903 Act 14 Of 1903
- [6]. Jyoce Sumathi v. Robert Division Brodie, Air 1982 AP 389.
- [7]. Neerja Saraph v. Jayant V. Saraph, 194 SCC (6) 461.
- [8]. Rahul, "Solemnizing Marriage under Foreign Marriage Act" 1(Lawyer's Club India, 2011).
- [9]. Government of India, Marriage to Overseas Indians: A Guiding Booklet (Ministry of External Affairs, April 2019).
- [10]. Jindal, K., Dalal, S., & Sharma, K. K. (2014, February). Analyzing spoofing attacks in wireless networks. In 2014 Fourth International Conference on Advanced Computing & Communication Technologies (pp. 398-402). IEEE.
- [11]. Jaglan, V., Dalal, S., & Srinivasan, S. (2011). Improving performance of business intelligence through case based reasoning. International Journal of Engineering Science and Technology, 3(4), 2880–2886.
- [12]. Sharma, D., Sharma, K., & Dalal, S. (2014). Optimized load balancing in grid computing using tentative ant colony algorithm. International Journal of Recent Research Aspects, 1(1), 35–39.
- [13]. Dalal, S., Jaglan, V., & Sharma, K. (2014). Designing architecture of demand forecasting tool using multi-agent system. International Journal of Advanced Research in Engineering and Applied Sciences, 3(1), 11–20.
- [14]. Dalal, S., & Athavale, V. (2012). Analysing supply chain strategy using case-based reasoning. Journal of Supply Chain Management Systems, 1(3), 40.
- [15]. Sharma, P., & Dalal, S. (2014). Shortest Path Algorithms Technique for Nearly Acyclic Graphs. International Journal of Recent Research Aspects, 3(3), 36–39.
- [16]. Dahiya, N., Dalal, S., & Khatri, S. (2016). Refinement with Image clustering using Self-Organizing Map and Numerical Function Optimization. International Journal of Computer Science and Information Security, 14(11), 909.
- [17]. Dahiya, N., Dalal, S., & Tanwar, G. (2016). Refining of image using self-organizing map with clustering. In AIP Conference Proceedings (pp. 020064).
- [18]. Mittal, A., Sharma, K., & Dalal, S. (2014). Approach of BPEL in supply chain activities for managing bullwhip effect of SCM system. Int. J. Res. Asp. Eng. Manag, 1(2), 26–30.
- [19]. Mittal, A., & Dalal, S. (2014). Implying p-Cure algorithm in case retrieval stage of the case-based reasoning. International Journal of Recent Research Aspects, 3(3), 91-98.
- [20]. Jindal, U., & Dalal, S. (2016). Survey on Signature verification and recognition using SIFT and its variant. International Journal of Recent Research Aspects, 3(3), 26–29.

- [21]. <http://newapps.nic.in/acts/TheForeignMarriageAct1969.pdf>
- [22]. <https://www.latestlaws.com/articles/all-about-foreign-marriage-act1969-by-rohit-garg/>
- [23]. <https://www.indianfolk.com/foreign-marriage-act-critical-analysis/>
- [24]. [http://164.100.47.193/Refinput/New\\_Reference\\_Notes/English/Indian\\_Marriages.pdf](http://164.100.47.193/Refinput/New_Reference_Notes/English/Indian_Marriages.pdf)

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