

News

Haq and the million-dollar FAQ: Why Indian divorce law continues to fall short of the international gender justice standard



Gender inequality in family interactions had to be brought back into the public eye by the Indian film industry, not by Parliament or the courts.

Will I do better financially if I file for divorce in India? is the most commonly asked question in an international divorce involving India. The truthful response is that it depends on who is asking—the husband or the wife.

Whether an Indian wife is Hindu, Muslim, Sikh, or Christian doesn't really matter to her. The law seldom favors woman, regardless of her faith. Therefore, gender is significantly more important in Indian divorce proceedings than religion.

Once more, it was the Indian film industry—rather than Parliament or the courts—that brought gender inequality in household relationships back into the public eye. Bollywood continues to hold up a mirror, something our legal system is reluctant to do, from Thappad to Haq.

Haq literally translates to "one's right." However, the obvious issue in any cross-national comparison is: where are those rights?

Think about this: triple talaq, which allowed a Muslim husband to immediately dissolve a marriage by shouting "talaq" three times, sometimes even over text message, was only declared unconstitutional in India in 2017. Without any prior warning, waiting period, due process, or chance for the wife to challenge it, the marriage was dissolved right away. Decades passed before a practice that was fundamentally at odds with human rights standards and the public policy of the majority of contemporary legal systems was overturned. Meanwhile, the long-overdue constitutional reconsideration of Nikah Halala, polygamy, and the restoration of conjugal rights is still pending.

Furthermore, gender imbalance in Indian divorce law is still far from being addressed, even as we rejoice over the elimination of one antiquated practice. Consider, for example, the financial division of assets following a divorce. In most of the world, there is at least a basic understanding that marriage establishes an economic partnership that should be fairly divided upon its dissolution.

In the US, two states have restricted title-leaning systems, nine adhere to community-property ideas, and forty-one follow fair distribution. The United Kingdom treats homemaking and caring as equal contributions and allocates marital assets according to needs and sharing. Net family property is equalized in Canada. All contributions—financial, household, and caregiving—are assessed in Australia. Marriage is recognized as an economic partnership with explicit legal guidelines for dividing assets amassed during the marriage in South Africa, Singapore, and most of the European Union.

In contrast, India lacks all of these safeguards. There is no equitable distribution system, no 50/50 presumption, and no formal idea of marital property. This applies to all religions, even the Special Marriage Act, which one may naively assume would be more in line with modern

international norms. In reality, assets are only split when both couples' names are listed on the title. Even in those cases, the property is not regarded as the outcome of joint marital effort, caring sacrifice, or economic collaboration, but rather as regular co-ownership.

To put things in context, New York abandoned the title idea in 1980 and switched to an equal distribution system, which was deemed shamefully late. Even the most fundamental statutory marital property regime is still absent from India in 2025.

Courts stretch the maintenance doctrine in the lack of legislative instruction, filling the gap with concepts from broad equity or constructive trust. For the financially weaker spouse—typically the wife—the outcomes are erratic, unpredictable, and consistently insufficient. Additionally, the law gives women a variety of gender-specific criminal penalties to prosecute against the spouse rather than granting her clear pecuniary rights. This simply moves the venue to criminal court without addressing the underlying inequity; it does not produce economic stability.

Yes, there are occasionally significant rulings that advance gender equality in family law, but they typically lack the legislative support necessary to change day-to-day results. In the 2006 case of Naveen Kohli v. Neelu Kohli, the Supreme Court requested Parliament to acknowledge irretrievable collapse of marriage as a legislative basis for divorce. This appeal remained unanswered for almost twenty years. In more recent cases, the Court recognized irretrievable collapse as a legitimate reason under Article 142 in Shilpa Sailesh v. Varun Sreenivasan (2023) and Nandini Bajaj v. Gaurav Bajaj (2024), thus giving judicial voice to what many spouses have endured for years.

However, despite these repeated achievements, Parliament has not changed a single marriage law to include this ground, keeping litigants reliant on the extraordinary powers of the Supreme Court rather than on easily available, predictable legislation.

It is not surprising that the law has not addressed the much more fundamental issue of marital property, where women's financial destiny is determined, since it cannot even establish a widely recognized basis for ending a dead marriage.

The fundamental unresolved question is why these judicial changes never result in statutory revisions.

In the 1979 case of Orr v. Orr, the US Supreme Court overturned an Alabama legislation

requiring only spouses to pay alimony, ruling that support must be determined by need and financial capacity rather than by gender stereotypes. All around the United States, legislatures made the necessary updates to their statutes. That was over half a century ago.

Many countries have updated their family law systems in recent years to acknowledge marriage as a legitimate business partnership. While ignoring the systemic reforms that women so need, India continues to celebrate small wins.

A nation that takes pride in its constitutional equality cannot continue to abandon half of its citizens to struggle for rights that the rest of the world has long recognized.

Stutee Nag is a foreign family law lawyer with licenses in New Jersey, New York, and India.