

---

# DOMICILE VS HABITUAL RESIDENCE: ASSESSING THE NEED FOR REFORM IN INDIAN PRIVATE INTERNATIONAL LAW

---

Dharani. V & Praveen Kumar. D, LL.B. (Hons), Vinayaka Mission's Law School, Chennai.

## ABSTRACT

This research paper examines the evolving debate between the traditional concept of domicile and the modern principle of habitual residence in the context of Indian private international law. With increasing globalization, cross-border movement, and internal migration, legal systems are facing growing difficulty in applying rigid, intention-based concepts like domicile to determine jurisdiction, applicable law, and personal legal status<sup>1</sup>. In India, domicile continues to play a central role in conflict of laws and family-related disputes, yet its relevance is increasingly being questioned due to its dependence on subjective intention and its inability to reflect the actual lived realities of mobile individuals<sup>2</sup>.

The paper critically analyses whether India is prepared to shift towards habitual residence as a more practical and fact-based connecting factor. It explores the conceptual foundations of both doctrines, their comparative development in foreign jurisdictions, and the limitations of the current Indian legal framework. The study highlights that habitual residence, unlike domicile, is grounded in objective indicators such as duration of stay, family connections, employment, and social integration, making it more suitable for modern legal challenges, particularly in family law and child custody disputes.

The research further argues that while a complete replacement of domicile is neither feasible nor desirable at present, India can benefit from a gradual and sector-specific reform approach<sup>3</sup>. It proposes statutory recognition of habitual residence, harmonisation with international principles such as those under the Hague framework, and the development of judicial guidelines to

---

<sup>1</sup> Eric Fripp, *Nationality and Statelessness in the International Law of Refugee Status* (Hart Publishing 2016), <https://ebin.pub/nationality-and-statelessness-in-the-international-law-of-refugee-status-9781782259213-9781782259244-9781782259237.html>

<sup>2</sup> Lakshmi Kunnath, *Domicile: Its Scope and Impact on the Indian Law System*, 5(4) Int'l J. L. Mgmt. & Human. 924 (2022), <https://ijlmh.com/paper/domicile-its-scope-and-impact-on-the-indian-law-system/>

<sup>3</sup> Law Related to Domicile in India, LAW COLUMN (May 25, 2021), <https://lawcolumn.in/law-related-to-domicile-in-india/>

ensure consistency. Additionally, it supports a hybrid model where domicile continues to govern succession and inheritance, while habitual residence is adopted in family law matters<sup>4</sup>.

Ultimately, the paper concludes that India stands at a transitional stage in private international law. Although not fully ready for a comprehensive doctrinal shift, India is well-positioned to initiate partial reforms that align legal principles with contemporary social realities and enhance legal certainty in cross-border and mobile contexts.

**Keywords:** Domicile; Habitual Residence; Private International Law; Conflict of Laws; Jurisdiction; Family Law; Child Custody; Cross-border Disputes; Legal Reform; India.

---

<sup>4</sup> Domicile and Habitual Residence, *Rule Stead*, <https://rulestead.com/domicile-and-habitual-residence/>

## 1. Introduction

In today's globalised world, human mobility has increased at an unprecedented scale. People frequently move across cities, states, and national borders for education, employment, marriage, business, and better living opportunities<sup>5</sup>. This constant movement has made traditional legal concepts of territorial attachment increasingly complex and, in many situations, outdated. Legal systems that were historically designed around relatively stable populations now face challenges in accurately determining a person's legal "home" for the purposes of jurisdiction, applicable personal law, and conflict of laws<sup>6</sup>.

One such traditional concept is domicile, which has long been used in common law systems, including India, as a primary connecting factor in private international law. Domicile is a legal construct that generally refers to a person's permanent home, determined not only by residence but also by the intention to remain indefinitely<sup>7</sup>. While it provides legal certainty in theory, in practice it often becomes difficult to establish due to the subjective requirement of intention and the evidentiary burden involved in proving a change of domicile. As a result, courts frequently encounter ambiguity and inconsistency when applying domicile in modern disputes.

In contrast, the concept of habitual residence has emerged as a more modern and practical alternative<sup>8</sup>. Unlike domicile, habitual residence is a fact-based standard that focuses on the actual place where a person lives regularly and has established social and family ties, without requiring proof of permanent intent. This approach has gained significant recognition in international legal frameworks, particularly in matters relating to family law and child welfare, as it reflects real-life circumstances more accurately.

Against this background, a critical question arises: *Is India ready to shift from a domicile-based framework to one based on habitual residence?*<sup>9</sup> This question becomes especially relevant in areas such as family law disputes, succession matters, child custody cases, and cross-border

---

<sup>5</sup> Socio.Health, *Major Determinants of Migration: Social, Economic, and Environmental Factors* (Sept. 15, 2024), <https://socio.health/population-studies-introduction/migration-drivers-economic-social-factors/>

<sup>6</sup> Jim Russel, *The Evolution of Legal Systems: A Comprehensive Analysis*, J. Civ. Legal Stud. 13, 423 (2024), <https://www.omicsonline.org/open-access-pdfs/the-evolution-of-legal-systems-a-comprehensive-analysis.pdf>

<sup>7</sup> Law Gnan, Domicile in Indian Law Guide, <https://lawgnan.in/llb-2nd-sem-family-law-ii/domicile-indian-law-guide/>

<sup>8</sup> Rhona Schuz, *Habitual Residence: Review of Developments and Proposed Guidelines*, 12 *Laws* 62 (2023), <https://www.mdpi.com/2075-471X/12/4/62>

<sup>9</sup> India Law Offices, *Changing Residency Status in India: Tax Implications*, INDIA LAW OFFICES (Apr. 11, 2025), <https://www.indialawoffices.com/legal-articles/residency-status-change-in-india-tax-implications>

litigation, where determining a person's legal connection to a jurisdiction is crucial.

This paper argues that India's continued reliance on the traditional domicile-centric approach is increasingly inadequate in addressing the realities of a highly mobile society. While domicile has historical and doctrinal importance, reform towards recognising habitual residence at least in selected areas of private international law may be necessary<sup>10</sup>. However, such a shift must be undertaken with careful legal calibration to ensure certainty, consistency, and compatibility with India's existing personal law framework.

## 2. Understanding the Concept of Domicile

Domicile is a foundational concept in private international law and plays a crucial role in determining a person's legal identity for the purpose of applying laws relating to marriage, succession, divorce, and jurisdiction<sup>11</sup>. In simple terms, domicile refers to a person's permanent legal home, but in law, it is not merely a place where one lives; rather, it is a legally constructed idea that connects a person to a particular legal system.

### 2.1 Definition and Nature

Domicile can be understood as a legal fiction representing a person's permanent home, even though it may not always reflect their actual physical residence. The law assumes that every individual must have one domicile at all times, which serves as their legal anchor.

There are three primary types of domicile<sup>12</sup>:

- **Domicile of origin:** This is the domicile a person acquires at birth, usually based on the father's domicile at the time of birth. It is the strongest form and is not easily displaced.
- **Domicile of choice:** This is acquired when a person voluntarily establishes residence in a new country or place with the intention of making it their permanent home.

---

<sup>10</sup> Santynirvaan, *Critical Analysis of Law of Domicile in the Domain of Private International Law*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html>

<sup>11</sup> SMA Legal, *The Importance of Domicile in Private International Law and How Is Domicile Different from Nationality*, SMA Legal, <https://www.smalegal.in/home/the-importance-of-domicile-in-private-international-law-and-how-is-domicile-different-from-nationality>

<sup>12</sup> *Concept of Domicile, Its Types and Its Principles*, SlideShare (last visited Mar. 25, 2026), <https://www.slideshare.net/slideshow/concept-of-domicile-its-types-and-its-principles/274582840>.

- **Domicile of dependency:** This applies to individuals who are legally dependent on others, such as minors or persons under guardianship, where their domicile follows that of the person they depend on.

Thus, domicile is not static; it can change, but only under strict legal conditions.

## 2.2 Legal Characteristics

A key feature of domicile is the intention plus residence test<sup>13</sup>. This means that merely living in a place is not enough; the person must also intend to remain there permanently or indefinitely. Courts examine both factual residence and the subjective intention of permanence, which makes domicile a mixed question of fact and law.

Another important characteristic is the high threshold for proving a change of domicile<sup>14</sup>. Since domicile of origin is presumed to continue, the burden lies heavily on the person claiming a new domicile to prove clear and convincing intention to abandon the earlier one and settle permanently elsewhere.

Additionally, there is a presumption of continuity, meaning once a domicile is established, it is assumed to continue until strong evidence proves otherwise<sup>15</sup>. This principle ensures legal stability but often makes change of domicile legally complex.

## 2.3 Domicile in the Indian Legal System

In the Indian context, domicile plays an indirect but significant role in determining personal law applications and jurisdictional questions. While India follows a plural system of personal laws such as Hindu, Muslim, Christian, and Parsi laws domicile often influences how courts determine applicable legal frameworks in cross-border and inter-state disputes<sup>16</sup>.

---

<sup>13</sup> *Interpretation and Misinterpretation of Law of Domicile in India*, ONE INDIA ONE LAW, <https://oneindiaonelaw.org/wp-content/uploads/2023/04/1.-Interpretation-and-Misinterpretation-of-Law-of-Domicile-in-India.pdf>

<sup>14</sup> Dep't of Pers. & Training, *Ch. 06* (Gov't of India), <https://dopt.gov.in/sites/default/files/ch-06.pdf>

<sup>15</sup> Harlem Solicitors, *An Appraisal of the Doctrine of Domicile under the Private International Law*, HARLEM SOLICITORS (Mar. 18, 2024), <https://www.harlemsolicitors.com/2024/03/18/an-appraisal-of-the-doctrine-of-domicile-under-the-private-international-law/>

<sup>16</sup> Dhruv Shrivastava, *Balancing Diverse Legal Traditions: The Intersection of Personal Laws and the Pursuit of a Uniform Civil Code*, Record of Law (Sept. 12, 2024), <https://recordoflaw.in/balancing-diverse-legal-traditions-the-intersection-of-personal-laws-and-the-pursuit-of-a-uniform-civil-code/>

For instance, in matters of succession and inheritance, courts may consider domicile to determine which legal system governs movable property, especially in cases involving foreign elements or Non-Resident Indians (NRIs). Similarly, in matrimonial disputes, domicile can affect jurisdiction under statutes like the Hindu Marriage Act and the Special Marriage Act.

In the field of conflict of laws, Indian courts have often relied on domicile to resolve questions of which legal system applies when parties have connections to multiple jurisdictions<sup>17</sup>. Judicial interpretation has evolved gradually, with courts sometimes adopting a more flexible approach, especially in cases involving migration and international residence. However, there is still no uniform statutory definition of domicile in India, which leads to interpretational variations.

## 2.4 Critiques of Domicile

Despite its historical importance, domicile faces several criticisms in modern legal systems. First, it is often considered outdated in a highly mobile society, where individuals frequently move across states and countries for education, employment, and lifestyle reasons. The idea of a single permanent home may no longer reflect social reality<sup>18</sup>.

Second, domicile is difficult to prove due to its strong reliance on intention. Courts must infer a person's state of mind from conduct, which is inherently subjective and uncertain. This often leads to inconsistent judicial interpretations<sup>19</sup>.

Finally, the doctrine of domicile leads to uncertainty and increased litigation complexity, as parties frequently dispute whether a change of domicile has occurred<sup>20</sup>. This makes legal outcomes less predictable and places a heavy evidentiary burden on litigants.

In conclusion, while domicile continues to serve as a critical legal connecting factor in Indian law, its rigidity and reliance on subjective intention raise serious concerns about its suitability

---

<sup>17</sup> Conflict of Laws, *Mbatha v. Cutting: Implications for Litigants of Indian Origin*, (Aug. 21, 2023), <https://conflictoflaws.net/2023/mbatha-v-cutting-implications-for-litigants-of-indian-origin/>

<sup>18</sup> Ashok Agarwal et al., Citation Errors in Scientific Research and Publications: Causes, Consequences, and Remedies, 41 *World J. Mens Health* 461 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10579791/>

<sup>19</sup> Indian Exam Hub, *Domicile*, <https://indianexamhub.com/2025/10/15/domicile/>

<sup>20</sup> Awashy & Partners, *Domicile in Private International Law: Exploring the Complexities and Implications in Legal Disputes*, Awashy & Partners, <https://www.awashyapartners.in/post/domicile-in-private-international-law-exploring-the-complexities-and-implications-in-legal-disputes>

in a modern, mobile world.

### 3. Understanding Habitual Residence

#### 3.1 Conceptual Meaning

Habitual residence is essentially a fact-oriented connecting factor used in private international law to determine a person's real and practical home<sup>21</sup>. Unlike traditional legal concepts such as domicile, it does not depend on abstract legal intentions or formal declarations. Instead, it focuses on a simple but powerful question: *where does a person actually live in their normal course of life?*

In this sense, habitual residence looks at the reality of everyday living, including where a person eats, sleeps, works, studies, and maintains their social connections<sup>22</sup>. It is built on the idea that law should reflect lived reality rather than artificial legal constructs. Importantly, it does not require a strict intention to reside permanently in a place. Even temporary or evolving residence can qualify, provided it shows a sufficient degree of regularity and stability.

#### 3.2 Legal Development

The concept of habitual residence developed as a response to the limitations of domicile, especially in cross-border disputes involving families and children. It gained prominence in European legal systems and international conventions, where mobility of persons created uncertainty under traditional rules<sup>23</sup>.

A key driver of its development has been the Hague Conference on Private International Law, particularly in conventions dealing with child protection and family matters<sup>24</sup>. For example, in the Hague Convention on the Civil Aspects of International Child Abduction (1980)<sup>25</sup>, habitual residence is used as the primary connecting factor to determine jurisdiction and the wrongful

---

<sup>21</sup> Mohammad Shahadat Hossain & S.M. Shahidul Islam, *Habitual Residence as a Personal Connecting Factor in Private International Law: Significance and Future Direction*, EBAUB J. L. (Vol. III, Sept. 2023), [https://www.ebaub.ac.bd/journal/ejl/files/vol3/lawjc3\\_8.pdf](https://www.ebaub.ac.bd/journal/ejl/files/vol3/lawjc3_8.pdf)

<sup>22</sup> LegalClarity Team, *Habitual Residence: Definition and Legal Requirements*, LegalClarity (Dec. 16, 2025), <https://legalclarity.org/habitual-residence-definition-and-legal-requirements/>

<sup>23</sup> Kanoonpedia, *History and Development of International Law*, Kanoonpedia (Sept. 12, 2025), <https://kanoonpedia.com/history-and-development-of-international-law/>

<sup>24</sup> American Univ. Wash. Coll. of Law, Pence Law Library, Research Guides, <https://wcl.american.libguides.com/c.php?g=563261&p=3877837>

<sup>25</sup> Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, <https://www.refworld.org/sites/default/files/legacy-pdf/en/1980-10/3ae6b3951c.pdf>

removal or retention of a child.

Similarly, other Hague instruments concerning maintenance obligations and child protection also rely on habitual residence as a more practical and child-centric standard. Over time, jurisdictions such as the United Kingdom and many European states have adopted it either as a replacement for domicile or as a parallel test in family law contexts.

This evolution reflects a broader shift in international law toward functional and welfare-based connecting factors, particularly in sensitive areas like custody and family disputes<sup>26</sup>.

### 3.3 Determining Factors

Courts assessing habitual residence generally do not rely on a rigid checklist, but certain consistent factors are repeatedly considered<sup>27</sup>:

- **Duration of stay:** The length of time a person has been living in a particular place is an important indicator, though there is no fixed minimum period. Even relatively short stays can qualify if other elements are strong.
- **Integration into social and family environment:** This includes participation in local life such as schooling, employment, friendships, community involvement, and family settlement. The more a person is socially embedded, the stronger the case for habitual residence.
- **Stability and regularity of residence:** Courts look at whether the stay has a stable character rather than being casual, transient, or purely temporary. Indicators such as long-term housing, continuous presence, and settled routine are relevant.

Overall, these factors are assessed holistically, meaning no single element is decisive. The focus remains on the overall pattern of life rather than formal legal status.

---

<sup>26</sup> Bart Gaens, Ville Sinkkonen & Henri Vogt, *Connectivity and Order: An Analytical Framework*, 2023, 10.1007/s12140-023-09401-z, PMC9942628, <https://pmc.ncbi.nlm.nih.gov/articles/PMC9942628/>

<sup>27</sup> Habitual Residence: The Factors that Courts Consider, *ACADEMIA.EDU* (2024), [https://www.academia.edu/104752655/Habitual\\_Residence\\_The\\_Factors\\_that\\_Courts\\_Consider](https://www.academia.edu/104752655/Habitual_Residence_The_Factors_that_Courts_Consider)

### 3.4 Advantages

Habitual residence offers several significant advantages over domicile.

First, it is flexible and modern, making it well-suited for a globalised world where individuals frequently move for education, employment, and family reasons<sup>28</sup>. It adapts to changing social realities more effectively than rigid legal categories.

Second, it has a lower evidentiary burden. Since it is based on observable facts rather than subjective intention, courts can rely on concrete evidence such as residence records, school enrollment, employment contracts, and daily life patterns.

Third, it reflects actual lived circumstances, ensuring that legal decisions are grounded in reality. This is especially important in family law, where the welfare of children and practical stability matter more than formal legal declarations of intent.

### 3.5 Criticisms

Despite its advantages, habitual residence is not without challenges.

One major criticism is unpredictability. Because there is no fixed statutory definition or uniform threshold, different courts may interpret the same facts differently, leading to inconsistency in outcomes<sup>29</sup>.

Another concern is the risk of forum shopping, where parties may attempt to manipulate residence patterns to gain a favourable jurisdiction. Since the test is fact-sensitive, strategic relocation can sometimes influence legal outcomes.

Finally, there is a lack of global uniformity. While widely used in international instruments, habitual residence is not defined consistently across jurisdictions. This creates interpretive gaps and can lead to uncertainty in cross-border disputes<sup>30</sup>.

---

<sup>28</sup> Anton Stravinsky, *Where You Live vs Where You Pay: Domicile, Habitual Residence, and Remittance Basis Rules*, NEWSTRAIL (Sept. 17, 2025), <https://www.newstrail.com/where-you-live-vs-where-you-pay-domicile-habitual-residence-and-remittance-basis-rules/>

<sup>29</sup> Pippa Rogerson, *Habitual Residence: The New Domicile?*, 49 Int'l & Comp. L.Q. 84 (2000), <https://doi.org/10.1017/S0020589300063971>

<sup>30</sup> Loren Turner, *Researching the Harmonization of International Commercial Law*, GlobaLex (May/June 2022), [https://www.nyulawglobal.org/globalex/Unification\\_Harmonization1.html](https://www.nyulawglobal.org/globalex/Unification_Harmonization1.html)

## 4. Comparative Perspective

A comparative analysis of private international law reveals a clear global movement away from rigid domicile-based connecting factors towards the more flexible and fact-sensitive concept of habitual residence<sup>31</sup>. This shift is especially visible in family law, where courts prioritise real-life social integration over legal fictions of permanent home. The experiences of the United Kingdom, European Union, United States, and international treaty frameworks provide useful insights for assessing whether India is ready for similar reform.

### 4.1 United Kingdom

In the United Kingdom, there has been a gradual but significant decline in the dominance of domicile as the primary jurisdictional link, particularly in family law matters<sup>32</sup>. Traditionally, domicile played a central role in determining jurisdiction over issues such as divorce and legitimacy. However, modern developments reflect a shift towards habitual residence as a more practical and reliable standard.

In contemporary UK family law, habitual residence is widely used to determine jurisdiction in custody disputes, maintenance claims, and child welfare matters<sup>33</sup>. Courts focus on where the individual especially a child has established a stable and ongoing presence, rather than attempting to assess subjective intention. This is particularly evident in cases involving separated parents living in different jurisdictions, where habitual residence provides a clearer and more workable test for determining forum competence.

Thus, the UK approach demonstrates a functional transition: domicile remains legally relevant in limited contexts, but habitual residence has become the dominant connecting factor in family-related disputes.

---

<sup>31</sup> Sabavath Sreenivas, *Concept of domicile (Home) under private international law with special reference to women in India*, 6(2) *International Journal of Law, Policy and Social Review*, 6041 (2024), <https://www.lawjournals.net/assets/archives/2024/vol6issue2/6041.pdf>

<sup>32</sup> International Monetary Fund, *The Recent Decline in United Kingdom Labor Force Participation: Causes and Potential Remedies*, Selected Issues Papers No. 2023/051 (July 13, 2023), <https://www.imf.org/en/publications/selected-issues-papers/issues/2023/07/13/the-recent-decline-in-united-kingdom-labor-force-participation-causes-and-potential-remedies-536326>

<sup>33</sup> *Jurisdiction/Habitual Residence and Being Out of Reach of the Court*, Stephens Scown (Mar. 7, 2025), <https://www.stephens-scown.co.uk/family/children-issues/jurisdiction-habitual-residence-and-being-out-of-reach-of-the-court/>

## 4.2 European Union

The European Union presents one of the strongest and most systematic endorsements of habitual residence as a jurisdictional anchor. Under the Brussels II framework, habitual residence is the primary basis for determining jurisdiction in matrimonial matters and parental responsibility cases<sup>34</sup>. The approach is intentionally child-centric and designed to ensure consistency across Member States.

EU law prioritises the welfare and stability of the child, treating habitual residence as a reflection of the child's real and effective centre of life<sup>35</sup>. Courts assess factors such as duration of stay, schooling, family environment, and social integration. This factual approach avoids the complexities associated with proving domicile, which often involves subjective and uncertain elements like intention.

In cross-border disputes, especially child abduction cases, habitual residence serves as a key mechanism to prevent jurisdictional manipulation and forum shopping<sup>36</sup>. The EU framework therefore illustrates how habitual residence can be successfully institutionalised within a supranational legal system to promote uniformity and predictability.

## 4.3 United States

In contrast, the United States continues to rely heavily on domicile as the principal jurisdictional connecting factor, particularly in constitutional and federal diversity jurisdiction cases<sup>37</sup>. Domicile is used to determine citizenship for jurisdictional purposes and remains a central concept in conflict of laws.

While this approach offers doctrinal clarity, it is comparatively rigid. Establishing domicile requires proving both physical presence and intent to remain indefinitely, which can be difficult and fact-intensive. However, the US system values this rigidity for its predictability, especially in constitutional adjudication and federal court access.

---

<sup>34</sup> Thalia Kruger, *Brussels IIa, Habitual Residence and Forum Necessitatis*, Conflict of Laws (Aug. 10, 2022), <https://conflictoflaws.net/2022/brussels-ii-a-habitual-residence-and-forum-necessitatis/>

<sup>35</sup> Children, MDPI, <https://www.mdpi.com/2227-9067/8/12/1181>

<sup>36</sup> Adult habitual residence in EU private international law: an interpretative odyssey begins, Taylor & Francis Online (2025), <https://doi.org/10.1080/17441048.2025.2479265>

<sup>37</sup> U.S. Const. art. III, § 2, cl. 1, Overview of Diversity Jurisdiction, Legal Info. Inst., Cornell L. Sch., <https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/diversity-jurisdiction-overview>

Unlike the EU or UK, the US has not broadly adopted habitual residence as a general jurisdictional standard in family law, making it more conservative in its approach to private international law.

#### 4.4 International Instruments

At the international level, the shift towards habitual residence is strongly reflected in Hague Conference instruments. The Hague Convention on the Civil Aspects of International Child Abduction (1980) uses habitual residence as the central connecting factor to determine wrongful removal or retention of children<sup>38</sup>. This ensures that custody disputes are resolved in the child's home environment, discouraging unilateral relocation by parents.

Similarly, the Hague Convention on the Protection of Children (1996) reinforces habitual residence as the primary basis for jurisdiction, applicable law, and recognition of measures of protection. These instruments collectively demonstrate a global consensus that habitual residence better serves child welfare and cross-border legal cooperation than domicile.

#### 4.5 Lessons for India

The comparative analysis reveals a clear global trend towards fact-based residence as the preferred connecting factor in private international law. Jurisdictions increasingly favour habitual residence because it reflects real-life social and familial connections rather than abstract legal intent.

For India, this evolution offers important lessons. First, habitual residence provides greater practical clarity in disputes involving migration, cross-border families, and custody battles. Second, it aligns closely with the principle of child welfare, which is increasingly central in modern family law jurisprudence<sup>39</sup>. Finally, it reduces evidentiary burdens on courts by focusing on observable facts rather than subjective intention.

However, the Indian legal system must also consider its own pluralistic personal law structure before adopting such reforms wholesale. A gradual, sector-specific incorporation of habitual

---

<sup>38</sup> U.S. Dep't of State, Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction (1986), [https://travel.state.gov/content/dam/childabduction/Legal\\_Analysis\\_of\\_the\\_Convention.pdf](https://travel.state.gov/content/dam/childabduction/Legal_Analysis_of_the_Convention.pdf)

<sup>39</sup> Centre for Economic Data & Analysis, Ashoka Univ., *How India Moves: Understanding Patterns of Migration Within the Country*, <https://ceda.ashoka.edu.in/how-india-moves-understanding-patterns-of-migration-within-the-country/>

residence particularly in family law may offer a balanced path forward, combining global best practices with domestic legal realities.

## 5. Position of Indian Law on Domicile (India)

The concept of domicile occupies a significant yet somewhat unsettled position within the Indian legal framework, especially when examined in relation to citizenship, personal laws, and jurisdictional questions<sup>40</sup>. Although domicile is not expressly defined in a comprehensive statute, it continues to play an important role in determining legal identity and applicable law in cross-border and inter-state disputes.

### 5.1 Constitutional and Statutory Framework

Under Indian law, domicile is conceptually distinct from citizenship, even though both may overlap in practice<sup>41</sup>. Citizenship determines a person's political and national status under the Constitution, whereas domicile is more closely linked to personal law and private legal relations such as marriage, divorce, and succession. For instance, a person may be an Indian citizen but may still raise complex questions regarding their domicile when they reside abroad or shift between states.

In terms of jurisdiction, domicile indirectly influences which court has authority in civil disputes, particularly in family law matters such as matrimonial relief, custody, and maintenance. The Code of Civil Procedure, 1908<sup>42</sup>, and various personal law statutes do not always explicitly define domicile, but courts often rely on residence-based connecting factors when determining jurisdiction. This creates a hybrid approach where domicile-like reasoning is used without a uniform statutory foundation.

### 5.2 Judicial Interpretation

Indian courts have consistently treated domicile as an important connecting factor in deciding the applicability of personal laws. However, the judiciary has also recognised that domicile is

---

<sup>40</sup> *Laws of Domicile in India*, Perry4Law (Oct. 26, 2022), <https://perry4law.org/2022/10/26/laws-of-domicile-in-india/>

<sup>41</sup> Diwan Ghani, *Citizenship in India: Understanding Rights, Obligations, and Domicile Under the Indian Constitution*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-15748-citizenship-in-india-understanding-rights-obligations-and-domicile-under-the-indian-constitution.html>

<sup>42</sup> Legal Bites, *Code of Civil Procedure, 1908 - Notes, Case Laws and Study Material*, LEGAL BITES, <https://www.legalbites.in/library-code-of-civil-procedure>

not merely about physical residence but also involves an element of intention to permanently reside in a place<sup>43</sup>. This dual requirement makes the doctrine heavily dependent on subjective assessment.

In migration-related cases, courts often face significant difficulty in determining domicile of choice. With increasing mobility for education, employment, and business, individuals frequently live in multiple jurisdictions without clear intent to permanently settle in one place<sup>44</sup>. As a result, proving a change of domicile becomes complex and evidentiary-heavy, often leading to inconsistent outcomes. Courts sometimes rely on factors such as long-term residence, property ownership, and family settlement, but no uniform test is consistently applied.

### 5.3 Practical Issues in India

In practice, India's large-scale internal migration and extensive diaspora create significant challenges for the domicile doctrine<sup>45</sup>. Individuals regularly move between states for work and education, making the traditional idea of a "permanent home" increasingly artificial. Similarly, Non-Resident Indians complicate domicile assessments due to their transnational lives across multiple legal systems.

Another major issue is the absence of a statutory definition of habitual residence in Indian law. While many jurisdictions have shifted towards habitual residence as a more practical connecting factor, India continues to rely on domicile without codifying alternative standards. This leads to uncertainty in cross-border family disputes, especially custody and maintenance cases.

Further, the coexistence of multiple personal laws Hindu, Muslim, Christian, and others creates overlapping jurisdictional questions. Courts often struggle to determine which personal law applies when parties have multi-jurisdictional ties, resulting in legal ambiguity and procedural delays.

---

<sup>43</sup> Daily Excelsior, SC Declares Regional Domicile Concept Alien to Indian Legal System, *Daily Excelsior* (Jan. 29, 2025), <https://www.dailyexcelsior.com/sc-declares-regional-domicile-concept-alien-to-indian-legal-system/>

<sup>44</sup> BA Notes, *State Politics in India: Legal Framework & State Response to Migration in India*, BA Notes, <https://banotes.org/state-politics-in-india/legal-framework-state-response-migration-india/>

<sup>45</sup> *Internal Migration in India: Trends and Impacts*, PolSci Institute (Aug. 20, 2025), <https://polsci.institute/state-politics-india/internal-migration-india-trends-impacts/>

## 5.4 Critical Evaluation

A key criticism of the Indian approach is its over-reliance on intention-based legal fiction. Domicile assumes a fixed and deliberate connection to a place, which does not accurately reflect modern patterns of mobility<sup>46</sup>. The requirement to prove intention often leads to speculative reasoning and evidentiary uncertainty.

Moreover, judicial application of domicile in India lacks consistency. Different courts adopt varying standards to assess intention and residence, leading to unpredictable outcomes. This inconsistency undermines legal certainty and highlights the need for a more objective and fact-based standard, such as habitual residence, particularly in family and private international law contexts.

## 6. Need for Reform: Domicile vs Habitual Residence in India

### 6.1 Changing Social Reality

The traditional legal concept of domicile is increasingly struggling to keep pace with the changing socio-economic realities in India<sup>47</sup>. One of the most significant developments is the sharp rise in both interstate and international migration. Within India, individuals frequently move across states for employment, higher education, marriage, and better living conditions. Cities like Bengaluru, Delhi, Mumbai, and Chennai have become major hubs attracting long-term residents who may not necessarily intend to permanently settle there. Similarly, Indian citizens living abroad for work or study often maintain complex, multi-jurisdictional ties with India.

Alongside internal migration, globalisation has intensified cross-border mobility. The rise of multinational companies, remote work opportunities, and international universities has created a generation of individuals who live “fluid lives” across multiple jurisdictions<sup>48</sup>. In such a context, the idea that a person has a single fixed legal home (as required under domicile rules)

---

<sup>46</sup> N.Roja Rani, Law of Domicile: An In-Depth Analysis and Implications, STUDOCU, <https://www.studocu.com/in/document/karnataka-state-law-university/ballb-5-years-law/domicile-of-a-person/101393774>

<sup>47</sup> Lakshmi Kunnath, *Domicile: Its Scope and Impact on the Indian Law System*, 5(4) Int'l J. L. Mgmt. & Human. 924 (2022), <https://doi.org/10.1000/IJLMH.113416>

<sup>48</sup> International Organization for Migration, *World Migration Report 2024: Reveals Latest Global Trends and Challenges in Human Mobility* (May 7, 2024), <https://www.iom.int/news/world-migration-report-2024-reveals-latest-global-trends-and-challenges-human-mobility>

appears increasingly artificial. Instead, people often have multiple meaningful connections to different places, making the rigid domicile test less reflective of real-life conditions.

## 6.2 Limitations of Domicile in Modern India

One of the core weaknesses of the domicile concept is the difficulty in proving intention, especially in urbanised and mobile populations. Domicile of choice requires not only physical residence but also a clear intention to permanently settle in a particular place. In practice, proving such intention is highly subjective and often inferred from indirect factors like property ownership, voter registration, or long-term residence<sup>49</sup>. This creates uncertainty and inconsistency in judicial decisions.

In modern India, where individuals frequently relocate for temporary or semi-permanent reasons, establishing a “final intention” becomes even more complicated. A person may live in one state for decades due to employment but still retain emotional, familial, or legal ties elsewhere<sup>50</sup>. Courts are often required to interpret ambiguous facts, leading to prolonged litigation and inconsistent outcomes.

This rigidity becomes particularly problematic in child custody and family disputes. Domicile-based reasoning does not always reflect the child’s actual environment or emotional stability. For instance, a child may have lived continuously in one place with one parent, but jurisdictional disputes may arise based on the parents’ alleged domicile rather than the child’s lived reality. This can result in decisions that are technically legally correct but practically disconnected from the child’s welfare.

## 6.3 Advantages of Habitual Residence for India

The concept of habitual residence offers a more pragmatic and fact-based alternative. Unlike domicile, it focuses on where a person actually lives on a regular and stable basis, without requiring proof of long-term intent. This makes it more aligned with modern patterns of

---

<sup>49</sup> Legal Service India, Critical Analysis of Law of Domicile in the Domain of Private International Law, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-400-critical-analysis-of-law-of-domicile-in-the-domain-of-private-international-law.html>

<sup>50</sup> Rameez Abbas & Divya Varma, *Internal Labor Migration in India Raises Integration Challenges for Migrants*, Migration Policy Institute (Mar. 3, 2014), <https://www.migrationpolicy.org/article/internal-labor-migration-india-raises-integration-challenges-migrants>

mobility.

One of its key strengths is that it reflects lived reality rather than legal fiction. It recognises that individuals may not have a permanent “intended home” but still maintain a stable centre of life in a particular place. This is particularly useful in a diverse and mobile society like India, where migration is frequent and multi-layered<sup>51</sup>.

In the context of family law, habitual residence is especially beneficial because it supports welfare-based adjudication, particularly in matters involving children. Courts can focus on the child’s actual environment schooling, social connections, and emotional stability—rather than abstract legal notions of parental domicile. This aligns more closely with the principle of the best interests of the child, which is increasingly recognised in comparative family law systems.

Additionally, habitual residence reduces the evidentiary burden on courts. Instead of requiring proof of subjective intention, courts can rely on objective indicators such as duration of stay, integration into the community, and continuity of residence. This simplifies litigation and promotes more consistent judicial outcomes.

#### **6.4 Risks of Transition**

Despite its advantages, a shift from domicile to habitual residence is not without challenges. One major concern is legal uncertainty during the transitional phase<sup>52</sup>. Since Indian law is still largely structured around domicile in several contexts, introducing a new standard may initially create confusion regarding which rule applies in which situation.

Another challenge lies in potential conflicts with existing personal laws. India’s legal system is pluralistic, with different personal laws governing marriage, divorce, and succession. Introducing habitual residence as a connecting factor may disrupt established jurisdictional rules and lead to overlapping interpretations unless carefully legislated.

Finally, there are significant administrative and judicial training challenges. Judges, lawyers, and administrative authorities would need to be trained to apply a more flexible, fact-intensive

---

<sup>51</sup> Norrbottens Technological Megasystem as a Heritage Discourse: Paradoxes and Controversies, Academia.edu, [https://www.academia.edu/84127729/Norrbottens\\_Technological\\_Megasystem\\_as\\_a\\_heritage\\_discourse\\_paradoxes\\_and\\_controversies](https://www.academia.edu/84127729/Norrbottens_Technological_Megasystem_as_a_heritage_discourse_paradoxes_and_controversies)

<sup>52</sup> Adv. Hemant More, *Domicile of Origin (Ss. 6, 7, 8, and 19 of the Indian Succession Act)*, The Legal Quotient, <https://thelegalquotient.com/family-laws/indian-succession-act/domicile-of-origin/238/>

standard. Unlike domicile, which is relatively structured, habitual residence requires a case-by-case assessment, which may initially increase judicial workload and inconsistency until jurisprudence stabilises.

## **7. Policy and Legal Reform Suggestions**

The debate between domicile and habitual residence in private international law reflects a deeper tension between legal tradition and social reality. In India, the concept of domicile continues to dominate legal reasoning in matters of personal law and conflict of laws, yet it is increasingly misaligned with the realities of a highly mobile population<sup>53</sup>. As individuals frequently migrate for education, employment, and family reasons, the rigid and intention-based nature of domicile often fails to reflect actual lived circumstances. In this context, India should consider a calibrated reform strategy that introduces habitual residence as a parallel or alternative connecting factor, rather than replacing domicile abruptly.

### **7.1. Introducing a Statutory Definition of Habitual Residence**

One of the most urgent reforms required is the codification of the concept of habitual residence in Indian law. At present, Indian statutes do not clearly define this term, leaving courts to interpret it on a case-by-case basis<sup>54</sup>. This creates uncertainty and inconsistent judicial outcomes. A statutory definition should focus on factual residence rather than subjective intent. For instance, habitual residence could be defined as the place where a person has been living with a sufficient degree of continuity and stability, reflecting integration into social, family, and professional life.

Importantly, the definition should remain flexible rather than rigid. Unlike domicile, which depends heavily on intention to remain permanently, habitual residence should be grounded in objective indicators such as duration of stay, family location, employment ties, and social connections. Codification would provide clarity while preserving judicial discretion.

---

<sup>53</sup> Awashya & Partners, Domicile in Private International Law: Exploring the Complexities and Implications in Legal Disputes, AWASHYA & PARTNERS, <https://www.awashyapartners.in/post/domicile-in-private-international-law-exploring-the-complexities-and-implications-in-legal-disputes>

<sup>54</sup> IndiaCorpLaw, Habitual Residence under the Indian Arbitration Regime (June 11, 2020), <https://indiacorplaw.in/2020/06/11/habitual-residence-under-the-indian-arbitration-regime/>

## 7.2. Gradual Adoption in Family Law and Custody Matters

A sudden replacement of domicile with habitual residence across all legal domains may not be practical in the Indian legal system. A more realistic approach would be gradual adoption, beginning with family law, particularly matters involving child custody, guardianship, and matrimonial disputes<sup>55</sup>.

These areas already require courts to prioritize welfare considerations over technical legal formalities. Habitual residence is especially suited to such cases because it allows courts to determine the child's real environment rather than relying on legal fiction. For example, in cross-border custody disputes, identifying the child's habitual residence ensures that jurisdiction is based on the most meaningful and stable environment for the child's upbringing.

By introducing habitual residence first in family law, India can test its effectiveness without disrupting the entire conflict-of-laws framework.

## 7.3. Harmonisation with International Conventions

India's legal system increasingly interacts with global legal frameworks due to migration and transnational families. Therefore, harmonisation with international conventions particularly the Hague Conference on Private International Law principles becomes essential<sup>56</sup>.

Although India is not a full party to all Hague Conventions, adopting their underlying principles, especially those relating to child protection and custody disputes, would significantly improve legal certainty. The Hague framework consistently prioritises habitual residence as the primary jurisdictional connecting factor in child-related disputes. Aligning Indian law with these principles would enhance predictability in cross-border litigation and reduce jurisdictional conflicts.

Such harmonisation would also strengthen India's position in international family law cooperation and improve enforcement of foreign judgments.

---

<sup>55</sup> Perry4Law, *Laws of Domicile in India* (Oct. 26, 2022), <https://perry4law.org/2022/10/26/laws-of-domicile-in-india/>

<sup>56</sup> Harsh Sharma, *Advancing Global Justice Through International Law: Insights from the Indian Constitution*, INT'L J. L. MGMT. & HUMAN. 7(4) 1710–1716 (2024), <https://ijlmh.com/paper/advancing-global-justice-through-international-law-insights-from-the-indian-constitution/>

#### 7.4. Judicial Guidelines for Determining Habitual Residence

Even before full legislative reform, the judiciary can play a transformative role by developing structured guidelines for determining habitual residence<sup>57</sup>. Courts should be guided by a non-exhaustive list of factors, such as:

- Duration and continuity of residence
- Location of family members
- Schooling or employment ties
- Social and cultural integration
- Intent only as a secondary consideration

This would ensure consistency in judicial decision-making while retaining flexibility. Over time, such judicially developed standards could evolve into well-established doctrine, paving the way for legislative codification.

#### 5. Hybrid Model: Domicile for Succession, Habitual Residence for Family Law

A balanced reform strategy for India would be a hybrid model that retains domicile in specific legal domains while introducing habitual residence in others<sup>58</sup>. For instance, domicile could continue to govern succession and inheritance laws, where stability and long-term legal identity are important. On the other hand, habitual residence could govern family law, custody, maintenance, and guardianship, where the focus is on present factual circumstances and welfare.

This dual system would prevent disruption of established legal doctrines while ensuring modernization where it is most needed. It would also reduce resistance from legal institutions accustomed to domicile-based reasoning.

---

<sup>57</sup> Rhona Schuz, *Habitual Residence: Review of Developments and Proposed Guidelines*, 12 *Laws* 62 (2023), <https://www.mdpi.com/2075-471X/12/4/62>

<sup>58</sup> The World Bank's Vision for India's Economy: Aligning Reforms with Domestic Priorities, GNLU J.L. & Econ. (July 3, 2025), <https://gjle.in/2025/07/03/the-world-banks-vision-for-indias-economy-aligning-reforms-with-domestic-priorities/>

## 8. Conclusion

The ongoing debate between domicile and habitual residence reflects a broader transformation in how law understands human mobility and identity. The doctrine of domicile, rooted in permanence and intention, is increasingly inadequate in a world where individuals frequently relocate across states and countries<sup>59</sup>. It often creates artificial legal connections that do not reflect real-life circumstances, leading to jurisdictional uncertainty and inconsistent outcomes.

In contrast, habitual residence offers a more realistic and flexible framework. By focusing on actual living conditions rather than presumed intent, it better captures the social and familial reality of individuals. This makes it particularly suitable for sensitive areas such as child custody and family disputes, where the welfare of individuals must take precedence over technical legal classifications.

However, India's legal system cannot transition abruptly from domicile to habitual residence across all areas of law. Such a shift would risk doctrinal confusion and institutional resistance<sup>60</sup>. Therefore, any reform must be incremental and context-specific. A phased approach beginning with family law, supported by judicial guidelines, and gradually expanded through legislative codification would be more practical and sustainable.

In conclusion, India is not yet fully ready for a complete replacement of domicile. Nevertheless, it is certainly ready for partial reform. The adoption of habitual residence in family law and child welfare matters represents a necessary and achievable step toward modernising Indian private international law in line with global legal trends and contemporary social realities.

---

<sup>59</sup> Harlem Solicitors, An Appraisal of the Doctrine of Domicile under the Private International Law, HARLEM SOLICITORS (Mar. 18, 2024), <https://www.harlemsolicitors.com/2024/03/18/an-appraisal-of-the-doctrine-of-domicile-under-the-private-international-law/>

<sup>60</sup> Pippa Rogerson, *Domicile and Habitual Residence*, in *Collier's Conflict of Laws* 11–39 (Cambridge Univ. Press 3d ed. 2013), <https://www.cambridge.org/highereducation/books/colliers-conflict-of-laws/84156E890448EA50D5FB1A1D4A186FD4/domicile-and-habitual-residence/EB7B126D32DD29D21CC6DCE7DAC28B19>