



RECOGNITION OF FOREIGN DIVORCES IN INDIA (ii)

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INTRODUCTION

Until 1972, recognition of foreign divorces was governed by common law rules. The principle that all questions of domestic status are subject to the exclusive jurisdiction of the courts of domicile applies to the recognition by English courts of foreign decrees and to the competence of the foreign courts to adjudicate on status. Domicile for this purpose is domicile in the English sense.

IN **BALER V. BALER**

X and Y had married in England in 1880. In 1889, X the husband was living in New York, where he had acquired a domicile. In 1890 his wife obtained a decree of divorce in New York's on the ground of her husband's adultery alone was not a ground for divorce in English Law. In 1893 she married B in New York. In 1903, B petitioned for a nullity in the English Courts. On the ground that at the time of her marriage to him, Y was already married. The petition was dismissed, as the New York decree of divorce was recognized as a valid dissolution of the English marriage.

This principle of the exclusive recognition of foreign decrees pronounced by the court of the domicile is subject to two exceptions:

- (i) The domiciliary jurisdiction be interpreted in its widest sense, so that any decree recognized by the courts of the domicile would be similarly recognized in English law.

Recognition of foreign decrees of divorce pronounced on a basis of jurisdiction not simply of domicile, but more broadly of grounds substantially similar to those of English courts.

The general basis of recognition, it may be observed, is the jurisdiction of the courts of the personal law of the parties in the English sense, in which it is founded on their domicile, and not the personal law generally, whether its foundation be domicile or nationality. The unsatisfactory result in following this narrow principle is that English Court may refuse to recognize the validity of a French decree of divorce of two French nationals, resident in France but domiciled elsewhere, unless the decree were recognized as valid by the courts of the domicile. On the other hand, no recognition would apparently be granted to a French decree of divorce of French nationals resident in France, though domiciled in England, even if the French Court were to apply English law as that of the domicile; for the question of recognition the validity of a foreign decree is one of choice of jurisdiction, not of choice of law.

Greater difficulty arises where the law of the parties' domicile permits divorce by private act of the parties. The conflicting principles are that *Lex domicilii* should have exclusive jurisdiction over the status of the parties, yet status is a social conception which should only be created or dissolved by an act of some state organ, legislative, judicial or executive. In many parts of the British Empire divorce may take place according to a person's religious law by means of some unilateral act of the husband, such as the form of *talak* in muslim law or the Rabbinical decree in Jewish law, it is settled by the decision in **har-**



shefi har-shefi(1953) , that an extra-judicial divorce, obtained in accordance with the religious law of the common domicile of the parties, must be regarded as valid.

Thus, in early case, the rule that was laid was that English courts would not recognize a foreign divorce decree unless pronounced by the courts of the country where the parties were domiciled at the time of the suit. This basis was extended by laying down that English courts would recognize a foreign decree of divorce. Even though not pronounced by the court of domicile if it is recognized as valid by the court of the domicile of the parties. Later, the courts decided that if the foreign court exercised jurisdiction on a basis on which English courts would exercise jurisdiction, then the English courts would recognize the foreign decree of divorce. Then came the most radical decision of the house of Lords in

Indyaka v. Indyka , In which it was held that if there is a real and substantial connection between the party obtaining divorce and the country of the court which dissolved the marriage, then the foreign decree of divorce would be recognized.

In **Mathew v. Mahoney**. It was held that the court of the place where one of the parties has a substantial connection recognizes a decree of divorce passed by a foreign court, then the English courts too would recognize it.

ENGLISH LAW OF THE ENACTMENT OF THE RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS ACT, 1971

English law of recognition of foreign divorces has been codified and reformed by the Recognition of Divorces and Legal

Separations Act,1971. The Act was passed as a sequel to the Hague convention the recognition OF Divorces and Legal separations. The matter was referred to the Law commission, on whose recommendations the present Act, 1971 is based.

The present day law on recognition of foreign divorces is contained in sections 3 and section 6 of the Recognition of foreign and legal separation Act,1971 and section 16 of domicile and matrimonial proceedings act, 1973 and the act of 1984.

The following Pre-Act (old) grounds of recognition of foreign divorces were modified and substituted as given below:

The English courts will recognize a foreign decree of divorce if it has been passed by the court of the country where the parties were domiciled at the time of the filing of the proceedings. It would be immaterial if the parties changed their domicile after the date of the institution not the petition.

The English courts recognize a foreign divorce and if it is recognized as valid by the domicile of the parties. As the domicile and Matrimonial proceedings Act, 1973 allows the wife to have her separate domicile, section 6 of the act has been reconstituted. Now the English court would recognize a foreign divorce if:

(a) both the parties were domiciled in the country where divorce was obtained at the time of the institution of the suit.

(b)One of them was domiciled there and the divorce is recognized as valid in the country where the other is domiciled.

(C)the divorce is recognized as valid in the country of the common domicile of the parties, or where the parties have different



domicile in the country of domicile of each party.

(iii) Recognition of foreign divorce are there in statutes such as the colonial and other territories.

NEW GROUNDS OF DIVORCE ADDED BY THE ACT OF 1971:-

A foreign divorce will be recognized in England: if

- (A) At the time of the institution of proceedings either spouse was habitually resident in the country where divorce was obtained;
- (B) At the time of the institution of proceedings wither spouse was a national of the country where divorce was obtained
- (C) In respect of a country which uses the concept of domicile as a ground of jurisdiction in the matter of divorce the words 'habitual residence' should be substituted with 'domicile'. This may be formulated thus: "English Courts will recognize a foreign divorce if obtained in a country where either party was domiciled at the time of the institution of proceedings".

The term 'habitual resident' has not been defined either in the Act of 1971 or in the Convention; nor is there any judicial definition of the term. The habitual residence means the same thing which Indian Courts have given to 'residence' natural or limited sense.

In matters of status some countries have always adhered to nationality. The English courts has emphasised nationality connection. 'Nationality' has now been recognized as an independent basis of jurisdiction. Now a muslim of India or

Pakistan nationality can divorce his wife by Talak even though he was domiciled in England. (talak procedure was criminalised by Indian parliament in 2019).

Section 1 of the Act of 1971 lays down that a decree of divorce granted after the coming into force of the Act (i.e December 31,1971) in Scotland, Northern Ireland. The channel Island or the Isle of Mann. will be recognized in England.

Section 2 of the Act of 1971 lays down that in case the aforesaid grounds of divorce exist¹ then the foreign divorce will be recognized whether it is obtained in 'judicial proceeding or other proceedings'.

NON JUDICIAL GROUNDS

Section 4 of the Act of 1971 lays down that in case the aforesaid grounds of divorce exist then the foreign divorce will be recognized whether it is obtained in "judicial proceedings or other proceedings". This provision of sec.2 read with section.6 of the Act merely codified the existing law, i.e the non-judicial divorces will be recognized in England if they were valid under the law of the country where they were recognized under the personal law of parties.

IN QURESHI V. QURESHI it was held that a talak pronounced in England, even if pronounced in respect of a marriage celebrated in Englan will be recognized if under the law of domicile of the parties this mode of divorce was valid. Tis position has now been substantially changed by s.16, domicile and Matrimonial Act, 1973. Now after January 1, 1974 an extra judicial divorce obtained or pronounced in British Isles will not be recognized in England. Further, an extra judicial divorce obtained or pronounced

¹ Section 3 and 6 of the act



outside the British Isles will not be recognized in England, if both parties were habitually resident in the United Kingdom throughout the period of one year immediately preceding the institution of the proceedings. With these qualifications the non-judicial divorces will be continued to be recognized as they were before the coming into force of the act.² Non judicial divorces will also be recognized if they fall under the two new grounds of recognition, the habitual residence and nationality.³

It remains to be seen that what is the meaning of “other proceedings” in s.2 in the context of non-judicial divorces. It is clear that these words in the Hague convention in connection with non judicial divorces. It should be noticed that in the laws of many countries which recognize non judicial divorces some public proceedings are necessary, though more often than not they are nothing more than a public record or public seal on such divorces. Thus, a Jewish divorce among Jews even when it is granted by the rabbinical court does not involve any investigation⁴; in Egypt, talak needs registration, though non-registration does not render it invalid again no investigation is made; in Pakistan parties are required to undergo conciliation proceedings before an arbitration council. These may be termed as ‘other proceedings’ in the terms of s.2.⁶ It is submitted that the words ‘other proceedings’ in s.2 are used in contradistinction to ‘judicial proceedings’, and therefore would include all and every type of proceedings, howsoever minimal they may be. After all no divorce can be pronounced without some proceedings. Further, the requirement of notice in

s.8(2)(a)(i) has to be construed in this context. Too strict construction of this provision would, it is submitted, lead to non-recognition of such divorces. The object of the Recognition of divorces and Legal separations Act, 1971 and of the Hague Convention is to accord to extra-judicial divorces howsoever abhorrent they may appear to one. Any other construction would go to frustrate that object. It seems that English courts are not yet prepared to take this in the view.

The term “other proceeding” has come for the interpretation in several cases in **Quazi v. Quazi**,⁷ the House of Lords took the view that a divorce obtained in Pakistan by talaq followed by compliance with the procedural requirements of the Pakistani Muslim Family Laws Ordinance, 1961 was a divorce obtained by “other proceedings” within the intendment of section 2(a) of the Recognition and Divorces and Legal Separation Act as supplemented by section 16 of the Domicile and Matrimonial Proceedings act, 1973. But the HOUSE OF Lords did not express its opinion on the recognition of foreign bare talaqs which it is effective without any further procedure. In **sharif v. sharif**⁸ the family division took the view that bare talak would not fall within the phrase “judicial or other proceedings” in section 2(a) of the act of 1971. But a contrary view was expressed in **ZAAL V.ZAAL**.⁹

In the latter case Bush, said that where a bare talak was recognized by the local law as effective to end the marriage it was divorce within the phrase. In R.G. Immigration

² (1971) 2 W.L.R. 518

³ Section 3(1) of the Act of 1971

⁴ Her-shefi v. Her-shefi (1953) p.220

⁵ Russ v. Russ(1963)”

⁶ Quazi v. Quazi (1980)

⁷ (1980)A.C 744

⁸ (1980) 10 Fam. 216

⁹ (1982)4 f.l.r. 284



Appeal Tribunal,¹⁰ Tylor, j. was inclined to agree with Bush.J.

OBVIOUSLY, THE PURPOSE OF Act of 1971 was to reduce or prevent the continuance of “Limping Marriages”. In **Chaudhary v. Chaudhary**,¹¹ Cumming-Bruce L.J. observed that if the use of the phrase “Judicial and other proceedings” was meant to restrict recognition to narrow category whatsoever which are effective by the law of the country in which divorce was obtained should be recognized. If the legislature wanted to give it that wide meaning it would have used the words as used in the convention “officially recognized” in the country where divorce was obtained. Thus, it is necessary that divorce must be obtained in “some proceedings” and pronouncement of bare talaq in not such proceedings.

PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

Any Married person who alleges reasonable grounds for supposing that the other party is dead, to petition the court not only to have it presumed that such party is dead, but also to have the marriage dissolved.¹²

The jurisdiction of the English Court is provided for in section 5(4) of the Domicile and Matrimonial Proceedings Act, 1973. The sole grounds are that the petitioner:

- (a) Is domiciled in England on the date when the proceedings are begun;
- (b) Was habitual resident in England throughout the period of one year ending with that date.

So far as choice of law is concerned, the problem is similar to that in divorce.

The rules as to recognition of foreign decrees of presumption of death and dissolution of marriage are not wholly clear, for no statutory provision has expressly been made for them. An English court will recognize decrees granted in the country where the petitioner was domiciled or had been habitually resident for one year.

DISSOLUTION OF CIVIL PARTNERSHIPS

According to the Civil Partnership Act, 2004 an English court can make to bring a civil partnership to an end, or to provide for the separation of the parties. In particular, according to section 37(1) of the act, the High Court or a County Court has power to make four orders:

- (1) A dissolution order, which dissolves a civil partnership on the ground that it has broken down irretrievably,
- (2) A nullity order which annuls a void or voidable civil partnership
- (3) A presumption of death order, which dissolves a civil partnership on the ground that one of the civil partners is presumed to be dead;
- (4) A separation order, providing for the separation of civil partners.

It provides that the English court has jurisdiction to entertain proceedings for a dissolution in three situations:

- (1) The court has jurisdiction under the section regulation¹³. This regulation provides that the courts in England shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where:

¹⁰ (1984) 2 W.L.R. 36.

¹¹ (1985) 2 W.L.R. 350

¹² Section 19 of Matrimonial Causes Act, 1973

¹³ Section 219 of civil partnership act, 2004



- (a) Both civil partners are habitually resident in England.
- (b) Both civil partners were last habitually resident in England;
- (c) The petitioner is habitually resident in England and has resided there for at least one year immediately preceding the presentation of the petition, or
- (d) The petitioner is domiciled and habitually resident in England and has resided there for at least six months preceding the presentation of the petition.
- (2) Section 221 provides that the English court has jurisdiction to entertain proceedings for a dissolution order or a separation order if no court has, or is recognized as having, jurisdiction under the section 219 regulations, and either civil partner is domiciled in England on the date when the proceedings are begun.
- (3) Section 221 provides that the English court has jurisdiction to entertain proceedings for a dissolution order or a separation order if the following conditions are met:
- (i) The parties registered as civil partners in England or Wales;
- (ii) No court has, or is recognized as having, jurisdiction under the section 219 regulations and
- (iii) It appears to the court to be in the interests of justice to assume jurisdiction in the case.

There is no direct reference in the Civil Partnership Act, 2004 to choice of law.

Regarding the recognition of dissolution of civil partnership, the civil partnership Act, 2004 makes provisions in section 233 to 238.

Section 233 of the 2004 act states that no dissolution or annulment obtained in one part of the UK is effective in any of the UK, unless obtained from a court of civil jurisdiction.

Section 234 of the Act provides that the validity of an overseas dissolution, etc., is to be recognized in the U.K. only by virtue of the scheme of recognition imposed by sections 235 to 237 of the Act, which, in turn are subject to the recognition rules set out in the section 219 regulations. These provisions are the same which are provided in sections 46(1) and (2) and 51 of the Family Law Act 19

VALIDITY AND EXECUTION OF FOREIGN DIVORCE DECREE

Analysis of divorce decree granted by Foreign Courts:

Divorce decree granted by Foreign Courts can be divided into two categories:

1. Mutual consent divorce granted by Foreign Courts.
2. Decree granted in Contested Divorce.

In the case of mutual consent divorce decree, the decree granted by a Foreign Court is considered to be legal, valid and binding in the Indian Courts by the virtue of Section 13 and Section 14 of the Civil Procedure Code, wherein Section 13 enumerates the condition when a foreign judgment would not be considered valid in India and Section 14 states that when the Indian Courts would consider the Foreign judgment to be conclusive. A decree which is not affected by section 13 does not need to be validated in India and will be considered conclusive under Section 14 of the Civil Procedure Act. However, in a case where a divorce decree is granted by a Foreign Court in a contested divorce the answer to the question of validity of the divorce decree varies.

The cases in which the foreign divorce decree would not be considered conclusive:

First, when an ex-parte decree is passed by a Foreign Court, it would not be valid and conclusive in India. A decree would be



considered ex-parte if summons are not served on the opposite party. However, if such decree was deliberately left to go ex-parte i.e. no summons are served on the opposite party then the Indian Courts would not allow this fraud.

Secondly, divorce obtained on grounds other than the grounds enumerated under the Hindu Marriage Act if the parties were married under Hindu Law, as a divorce matter is governed by the law under which one gets married and not the law of the land where the party is residing.

A Foreign divorce decree shall be considered to be valid and conclusive in the following case:

It is a general rule that if one of the partners contests divorce filed in Foreign Land it would be said that he/she consented to the jurisdiction of that Court, in such a case the decree would be considered to be a conclusive one.

Where the wife consents to the grant of the relief by the foreign Court although the jurisdiction of the foreign Court is not in accordance with the provisions of the Matrimonial Law of the parties, to be valid and the judgment of such foreign Court to be conclusive.

EXECUTION OF FOREIGN DIVORCE DECREE

A foreign judgment can be executed in two ways in India. The ways are as follows:

First, by filing an execution under Section 44A of the Civil Procedure Code. Section 44A states that a decree passed by Courts in reciprocating territories can be executed in India as if the decree was passed by the Indian Courts only.

Secondly, by filing a suit upon the foreign judgment/decree. For instance, the decree does not pertain to a reciprocating territory or a superior Court of a reciprocating territory, as notified by the Central Government in the Official Gazette, the decree is not directly executable in India. Here the decree passed by the foreign court shall be considered as another piece of evidence.

WHEN FOREIGN DECREES NEED NOT BE RECOGNISED:

1971, A FOREIGN DECREE WHICH WAS OFFENSIVE TO English notions of justice would not be rec where substantial justice, according to English notion, is not offended, all that the English courts look to is the finality of the judgment and the jurisdiction of the court, in this sense and to this extent, merely, its competence to entertain the sort of case which it did and its competence to required the defendant to appear before it. If the foreign court has jurisdiction, England never requires whether the jurisdiction has been properly or improperly excersiced, provided always that no substantial injustice according to English notions, has been committed.

The law has now been codified in section 8 of the Recognition of Divorces and Legal Separation Act, 1971.

The Act of 1971 lays down that foreign divorces will be refused recognition on any of the following grounds:

- (c) when there is violation of principles of natural justice; or
- (d) when recognition would manifestly be contrary to public policy

Natural Justice :- An English Court may refuse to recognize a foreign divorce if it was obtained by one spouse, (i) without such



steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken : or (ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings. s. having regard to the matters aforesaid, he should reasonably have been given. The English Court interferes in those cases where it considers the foreign rules of service contrary to natural justice. Mere want of notice is no ground for refusing a foreign divorce decree, unless it is proved that the respondent had no notice of the proceedings, Public Policy :- Generally English Courts refuse to recognise foreign judgment when it is against public policy of the UK. The refusal of recognition can only be refused on the grounds laid down in the 1986 Act One of these is that recognition would be manifestly contrary to public policy. Denial of recognition to an overseas divorce etc., on public policy grounds specifically provided for in Section 51 (3) of the 1986 Act. The court has a discretion to refuse recognition if such recognition "would be manifestly contrary public policy". It means very likely that the courts will, in applying this provision, seek guidance from the common law decisions just discussed in deciding whether recognition would be contrary to public policy. It should be emphasised that, again, the court has a discretion; there is no requirement that recognition be refused on this basis and there is some authority for the unusual View that in discretion would be exercised in favour of recognition even if such recognition would be manifestly contrary to public policy. Section 51 (3) refers recognition being

'manifestly' contrary to public policy. This does not more an confirm the stated attitude at common law that the discretion is one to be exercised sparingly. The courts deny recognition where the application of the foreign rule is, in the particular circumstances, felt to be contrary to public policy.

INDIAN LAW

In India, the courts followed English Law of recognition of foreign divorces:

In **Joao Gloria Pines v. Ana Joquina Pines**,¹⁴, two persons

of Roman Catholic faith underwent a ceremony of marriage in Goa in the Church. Parties were resident and evidently domiciled in Goa at the time of marriage. The husband obtained a decree of divorce from Uganda Court, where he was residing.

Subsequently he made a petition in a Goa court that the decree of divorce obtained by him from the Uganda Court be confirmed.

Wife opposed the petition on the grounds, inter alia that under Goan law a Roman Catholic marriage is a sacrament and an indissoluble union. and the Uganda decree of divorce cannot be conformed as Section 1102 (6) of the Civil Code of Goa lays down that a foreign decree or judgement which is against public policy cannot be recognized. It was held that the law of indissolubility of Roman Catholic marriage was a matter of pertaining to public policy and therefore the Uganda divorce decree being against public policy cannot be confirmed or accorded recognition in Goa.

In *Teja Singh v. Smt. Satya*, [(1970) 72 PLR 235], a Hindu wife filed a petition for

¹⁴ [1967 Goa 113]



maintenance of herself and her two children under Sec 488 (Sec 225 of the Code) of the old criminal procedure code against the husband. The husband defended that his marriage with the petitioner had been validly dissolved by a court of Nevada where he was domiciled at the time of the decree. The court held that a decree of divorce pronounced by the court of domicile will be accorded recognition universally and would be recognized in India.

In *Hogan Bhai v. Hariben*, [1983 Guj. 187], the court refused to recognize a foreign judgment obtained by the husband who falsely represented to the foreign court about his domicile and residence recognition of divorce granted in the country of domicile of the parties should continue in India and no law has yet been passed.

LAW COMMISSION'S 65TH REPORT RECOMMENDATIONS

- (1) The practice of recognition of divorce granted in the country of domicile of the parties should continue.
- (2) The divorce or legal separation though not granted in the country of domicile, if recognised as valid in the country of domicile should be recognised in India and this should be expressly provided for.
- (3) There should be a general provision to save the provisions of any other enactment which provide for recognition.
- (4) Non-recognition of a divorce by a third country should not be a bar to the recognition of divorce in India.
- (5) It is desirable to provide for the recognition of foreign divorces or legal

separations granted by countries where both parties were habitually resident or by countries of which both are a national, in addition to the current test of domicile.

(6) It is desirable to provide that the rule that on marriage the wife acquires the domicile or the nationality of the husband shall not apply in relation to the recognition of foreign divorces and separations.

(7) A foreign judgment will not be recognised (i) If the other party had no reasonable notice proceedings, or

(ii) If the party had no opportunity of hearing depending on the nature of the proceedings and all circumstances of the case, or *Satya v. Teja Singh*,¹⁵ 1975 S.C. 105. The Supreme Court said that the judgment was also vitiated by fraud.

CASE LAW

Narasimha Rao and Ors. Vs. Y. Venkata Lakshmi and Anr¹⁶

It is not uncommon to hear about cases either the husband or the wife filed for divorce in a foreign court, while the spouse did not attend the proceedings either due to notice not being served or due to some other reason. In such a situation, the case of *Y Narasimha Rao* is relevant. **Y. Narsimha Rao and Y. Venkata Lakshmi** were married in Tirupati, India as per Hindu customs in 1975. They separated in July 1978. Mr. Rao filed a petition for dissolution of marriage in the Circuit Court of St. Louis County Missouri, USA. Mrs. Lakshmi sent her reply from India under protest. The Circuit Court passed a decree for dissolution of marriage on February 19, 1980 in the absence of Mrs. Lakshmi. Mr. Rao had

¹⁵ 1985 Guj. 187. 182. 183.

¹⁶ 1991 SCR (2)821,1991 SCC(3) 451.



earlier filed a petition for dissolution of marriage in the sub-Court of Tirupati. Later, he filed an application for dismissing the petition in view of the decree passed by the Missouri Court. On 2 November 1981, Mr. Rao married another woman. Hence, Mrs. Lakshmi filed a criminal complaint against Mr. Rao for the offence of bigamy. The Supreme Court refused to accept the divorce decree granted by the court at Missouri, USA. While deciding the case the Supreme Court laid down the law for foreign matrimonial judgments in this country. The relevant extract from the judgment is as follows: The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent is domiciled.

The key rule laid by the Supreme Court can be summed up as follows: If a couple is married under Hindu law, (a) the foreign court that grants divorce must be acceptable under Hindu law; and (b) the foreign court should grant divorce only on the grounds which are permissible under Hindu Law. The two conditions make it almost impossible for a Hindu couple married in India to get a legally valid divorce from a foreign court since no foreign court is an acceptable one under Hindu Marriage Act and also because no foreign court is likely to consider the provisions of Hindu Marriage Act before granting divorce. The exceptions that Supreme Court has permitted to the above rule laid by it are as follows in a case where

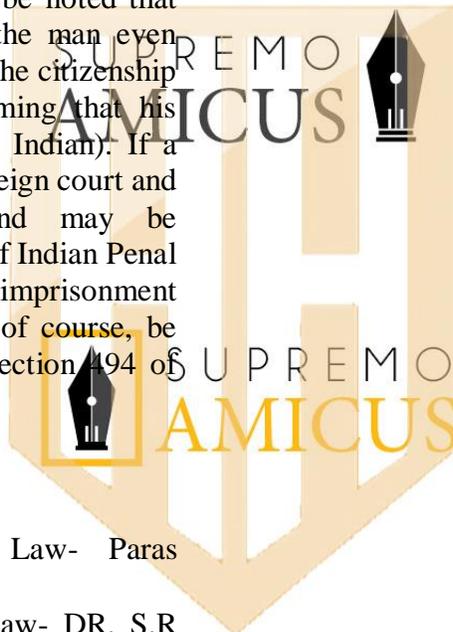
husband has filed for divorce in a foreign land: A) The wife must be domiciled and permanently resident of that foreign land AND the foreign court should decide the case based on Hindu Marriage Act. B) The wife voluntarily and effectively attends the court proceedings and contests the claim on grounds of divorce as permitted under Hindu Marriage Act. C) The wife consents to grant of divorce Exception A seems almost impossible. Exception B is examined in the next section. Exception C means that the divorce is obtained by mutual consent and therefore the courts of India do not want to interfere with it. In a recent case (March 2012), Sunder and Shyamala tied the knot in Vellore district in 1999, Sunder went to the USA within a year and did not communicate with Shyamala after that. In 2000, she received summons from Superior Court of California, which subsequently granted divorce despite the wife's defence statement. Madras High Court held that the Superior Court of California was not a court of competent jurisdiction to decide the matrimonial dispute in this case.

SUGGESTION:-

It is not unusual for one of the partners to obtain a decree of divorce from a foreign court while the other partner is either in India or in some other part of the world. The partner who has obtained divorce may feel comfortable in the thought that the other partner has neither protested nor contested the decree of divorce. However this comfort may be a false one. Assuming that the husband has obtained the decree of divorce from a foreign court, some consequences that may be faced by the man in due course are as follows: a) If he remarries, he may be prosecuted for bigamy. There is no time limit for the first wife to file a complaint with the



police against the husband in the matter of bigamy. We have seen in the case of Y Narasimha Rao⁵ that the couple separated in 1978, the man remarried in 1981 and ten years later, Supreme Court ordered for bigamy proceedings to be started against the man. Bigamy is punishable under section 494 of Indian Penal Code with imprisonment of seven years. b) Wife (divorced as per foreign law) may file for maintenance. c) In case the man dies without making a will, the first wife will have the right to her share in the property of the man while the second wife will get nothing because her marriage will not be considered legitimate. It may be noted that the above may be faced by the man even though he may have acquired the citizenship of the foreign country (assuming that his domicile or his heart remains Indian). If a woman gets divorce from a foreign court and remarries, her new husband may be prosecuted under section 497 of Indian Penal Code under which he may face imprisonment of five years. The wife will, of course, be liable for punishment under section 494 of Indian Penal Code for bigamy.



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