

Recognition and Enforcement of Foreign Decree Divorces in India with Special Reference to the Hindu Marriage Act, 1955

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Abstract : With the increase in number of Non-Resident Indian marriages there is also increase in foreign decree divorces which inevitably causes the problem of recognition and enforcement of foreign judgments in India. The Hindus in India are governed by the Hindu Marriage Act, 1956. According to the said Act the courts in India have jurisdiction to try the matrimonial dispute if the marriage is performed in India or the parties to the marriage have domicile in India irrespective of their nationality status. But, sometimes one of the parties to the marriage whose marriage is solemnized in India obtains divorce in foreign courts and prays for the recognition and enforcement of such divorce in India. In such case section 13 of the Indian Civil Procedure Code, 1908, comes into play for the recognition and enforcement of foreign divorces in India. The section makes a foreign judgment conclusive in India subject to the fulfilment of certain conditions. Even if a foreign decree divorce is given on personal connecting factors of the parties to the matrimonial dispute like domicile, such divorce may still be refused recognition in India by virtue of section 13 of the Indian Civil Procedure Code, 1908. It is a universal truth that municipal law of countries is not the same throughout the world. Comity plays an important role in recognition and enforcing a foreign judgment, but, now in India the principle is not applied mechanically as the divorce matter is dealt strictly with regard to Indian Law. So in this paper there will be deep analysis of Indian case laws relating to recognition and enforcement of foreign divorces and based on this a comparative study will be made with the laws of Canada and England on the same subject to find out whether the Indian law on recognition and Enforcement of foreign judgment are in line with the laws of Canada and England and whether in recent years the Indian courts have evolved some new principles of private international law to deal with limping marriages. At last conclusions will be drawn out from the comparative study and suggestions would be given to make the rules of recognition and enforcement of foreign judgments on divorce more certain.

Keywords : divorce, foreign decree, private international law, recognition and enforcement of foreign judgment

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