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LEGAL BONDS AND BREAKS: COMPARATIVE PERSPECTIVES ON MARRIAGE AND DIVORCE LAWS IN THE USA AND INDIA

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I. ABSTRACT

This is a comparative analysis of the complex legal structures surrounding marriage and divorce in the United States and India. Therefore, this research digs into the different marital arrangements recognized in both countries, procedural intricacies surrounding divorce cases, and the hurdles that come with cross-border divorces. The paper will revolve around the play of structures of law, cultural norms, and societal values against the tapestry of changing nature of matrimonial relationships and their dissolution between the two nations. Central themes discussed include issues relating to jurisdictional considerations, recognition of foreign decrees, and the legal precedents that cut across divorces across borders.

II. KEY WORDS

Marriage, Divorce, United States, India, Legal Frameworks, Cultural Norms, Societal Values, Cross-Border Divorce, Jurisdictional Considerations, Recognition of Foreign Decrees, Legal Precedents

III. RUDIMENTARY NOTE

Exploring the intricate fabric of marriage and divorce laws in the United States and India unveils a complex interplay of legal frameworks, cultural norms, and societal values. These statutes, rooted in deep-seated perceptions of familial relationships, exert profound influences on issues such as child custody and property distribution. Understanding the evolution of these laws is crucial. In India, the establishment of

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dedicated Family Courts under the Family Court Act of 1984 marked a significant step in adjudicating matters related to marriages and marital discord. Conversely, in the United States, Family Courts handle a range of issues including divorce, legal separations, and custodial disputes, with variations across states. Despite disparities, a profound recognition of the divergent legal structures governing matrimonial unions and dissolution shapes familial dynamics in both nations. The need is to comprehend that divorce is something that is lender of the last resort, but it is something which is a statutory right in case the sacred union does not function.

For many NRIs, facing the emotional strain of divorce, a significant question arises on where the filing of divorce petition should be done. This gives birth to the functionality of private international law. Private international law, also called conflict of laws, is a segment of law that deals with the settlement of legal disputes which are bound by elements of foreign law. Its area of application is in cases where parties to a legal issue are connected to various legal jurisdictions, such as citizens from different countries or companies practicing their businesses in different countries.

The goal of private international law is simply to determine which system of law should apply to the dispute in question. Such connecting factors include, for example, the nationality of the parties, the place where the contract was entered or performed, and the location of property. After the courts and other bodies have determined what applicable law exists, they can then proceed to apply the foreign relevant law pertinent to the resolution of the dispute.²

IV. COMPREHENDING MARITAL BONDS

In both India and the United States, a variety of marital arrangements are recognized, each governed by distinct legal frameworks. In India, a secular nation, marriages are solemnized according to religious customs codified by statutory personal laws, including the Hindu Marriage Act of 1955, Muslim Marriages, Indian Christian

² Private International Law by Ronald A. Brand (5th ed. 2018)

Marriage Act of 1872, and Parsi Marriage Act. Additionally, the Special Marriage Act of 1954 caters to individuals of all faiths. Conversely, the United States offers options beyond traditional marriage, such as civil unions and domestic partnerships, though these may not afford the same federal benefits as marriages. While states regulate marriage, certain formalities such as obtaining a marriage license and having the ceremony solemnized by a qualified official are universally required.

Notably, some forms of marriage, like common law unions, may no longer be recognized in many states, mirroring India's stance on civil partnerships, which are typically not legally sanctioned. Both countries acknowledge the validity of prenuptial and postnuptial agreements, albeit subject to different legal criteria. In India, such agreements are construed as contracts under the Indian Contract Act of 1872, covering matters like asset distribution and child custody, yet lack binding legal enforceability. Conversely, the United States adheres to the Uniform Premarital Agreement Act (UPAA), predominantly grounded in contract law, which delineates the rights and obligations of each party. While prenuptial agreements are generally upheld, courts may void them if found involuntary or lacking full disclosure of financial matters, reflecting the nuanced approach to marital contracts in both jurisdictions.

V. APPREHENDING SEPARATION LAWS

Commencing the divorce process in both the United States and India entails adhering to procedural requisites. Jurisdictional rules must be satisfied for a court to hear a case, granting it the authority to issue legally binding orders. In India, divorces are regulated by the Section 27 of SPECIAL MARRIAGE ACT, 1954, with petitions presented in the court of the district judge under the INDIAN DIVORCE ACT, 1869. Marriages can be dissolved under either customary or statutory law, with fault-based or mutual consent grounds available.

For instance, the Section 13 of HINDU MARRIAGE ACT of 1955 and the DISSOLUTION OF MUSLIM MARRIAGES ACT of 1939 outline fault grounds, while mutual consent requires a year of separation, akin to U.S. requirements.

In the United States, divorces are broadly categorized into fault and no-fault divorces, with some jurisdictions adopting mixed regimes similar to Indian laws. The Uniform Marriage and Divorce Act mandates a judicial finding of an "irretrievably broken" marriage, coupled with a waiting period while living separate and apart. Grounds for fault divorces include physical and mental cruelty, spousal abuse, adultery, and desertion, with alternative remedies available.

Mediation has gained prevalence in both countries, with India recognizing and encouraging its use. Reconciliation attempts are mandated under Indian laws, mirroring practices in the United States where courts may require mediation before intervention. The child's welfare holds paramount importance in both jurisdictions, guiding decisions in divorce proceedings. Factors such as parental capacity to provide for the child are considered, highlighting the holistic approach adopted by courts in India and the United States.

VI. VALIDITY OF EACH OTHERS' PRONOUNCEMENTS

A. The Question Pertaining to Jurisdiction

In the realm of cross-border divorce between India and the USA, jurisdictional considerations are paramount, especially for H1-B visa holders and their spouses, including those on dependent H4 visas. Despite being married in India, both parties retain the right to file for divorce in either country. Most US states recognize foreign marriages, enabling divorce proceedings within the jurisdiction of residence. However, the potential impact of work permit constraints on legal proceedings underscores the need for a nuanced understanding of private international law.

The growing trend of seeking *ex parte* decrees in divorce proceedings, particularly in the pursuit of avoiding alimony and asset settlement obligations while expediting the process, is notable. In divorces filed in the US, the legal framework includes provisions for marital property rights, facilitating the equitable division of assets acquired during marriage between both spouses. However, such provisions are absent in Indian laws,

presenting a contrast in legal approaches between the two jurisdictions. Consequently, there is a common perception that divorce proceedings abroad, particularly in the US, offer expedited processes and afford women greater rights in matters of divorce and asset distribution. Thus, it takes form of subjectivity though following the common law system.³

Ex-parte decree refers to a court decree granted in favor of one of the parties to a legal dispute without the said party having been there or being given an opportunity to be heard. In cross-border divorces between India and the USA, ex-parte decrees may, at times, be prayed for by petitioners in their efforts to get an expedited divorce, possibly without alimony or liabilities over settling assets with an estranged spouse. Validity and enforceability of ex-parte decrees is prominent but this becomes entirely dependent on the jurisdiction where it issues and where it seeks execution. Some jurisdictions, in other words, do not recognize or are unenforceable when cross-border if perceived as procedurally flawed, or where there is an issue raised about the existence of proper jurisdiction over the person whom the decree was issued against.⁴

B. Acknowledgement of Foreign Decrees

Section 13 of the Code of Civil Procedure delineates that a foreign judgment lacks conclusiveness on matters adjudicated if it hasn't been pronounced by a court with competent jurisdiction.⁵ Moreover, numerous provisions for divorces accessible abroad may not align with the stipulations outlined in various Marriage Acts in India, rendering them non-maintainable under Indian law. This dichotomy underscores the complexities inherent in recognizing and enforcing foreign judgments within the Indian legal framework, necessitating careful consideration of jurisdictional competencies and legislative disparities.

³ Barton, David. *US Divorce Law*. 3rd ed. New York: Thomson Reuters, 2023

⁴ Mulla, Dinshaw Fardunji. *Mulla's Indian Civil Procedure and Limitation Act*. 20th ed. Nagpur: Wadhwa & Co., 2023.

⁵ Sarkar, B.N. *Sarkar's Law of Civil Procedure*. 18th ed. Calcutta: Eastern Law House, 2022

VII. THREAD OF PRECEDENTS

A. Case Name: *Y. Narasimha Rao and Ors v. Y. Venkata Lakshmi and Anr.*⁶

Issue: *Validity of a US divorce decree in India.*

In this case, the husband sought a divorce in India and Missouri, USA, claiming residency in Louisiana. However, contradictory statements arose regarding the last place of residence with his wife. The Supreme Court ruled that the foreign court lacked jurisdiction under the Hindu Marriage Act, and "Irretrievable Breakdown of Marriage" wasn't a recognized ground for divorce. Therefore, the US decree, based on unrecognized grounds, was deemed invalid in India. This case highlights the importance of jurisdictional competence and adherence to recognized legal grounds for divorce.⁷

B. Case Name: *Rajiv Tayal v. Union of India & Ors.*⁸

Issue: *Impoundment of passport for failure to respond to summons.*

In this case, an NRI husband residing in the USA failed to respond to summons issued by the Ministry of External Affairs, prompting the Consulate General of India, New York, to impound his passport. The husband contested this action through a writ petition, arguing that subjecting him to Indian criminal proceedings while abroad was unjust. The Court rejected his plea, emphasizing that citizenship status does not grant immunity from legal obligations. All citizens, regardless of residency, are bound to respond to legal summons. Granting special treatment to NRIs would undermine the integrity of the judicial process and incentivize abuse of legal procedures. This case underscores the principle of equality before the law and the importance of upholding legal obligations irrespective of residency status.

C. Case Name: *Harmeeta Singh v. Rajat Taneja*⁹

⁶ *Y. Narasimha Rao and Ors v. Y. Venkata Lakshmi and Anr.*, (1991) 3 SCC 451

⁷ Mayne, Charles James. *Mayne's Hindu Law and Custom*. 13th ed. Nagpur: Wadhwa & Co., 2018

⁸ *Rajiv Tayal v. Union of India & Ors.*, (2005) 7 SCC 601

Issue: *Recognition of foreign divorce decree and its implications on remarriage.*

In this case, the husband abandoned the wife within six months of marriage. The question arose whether a divorce decree granted in America would be recognized in India, as per the principles of private international law under Section 13 of the Civil Procedure Code, 1908. The court highlighted that for the divorce decree to be valid in India, it must be confirmed by an Indian court. Additionally, if the husband were to remarry in the United States based on the foreign divorce decree, he would be guilty of bigamy under Indian law until the decree is recognized in India. This case underscores the importance of legal recognition and compliance with foreign divorce decrees to avoid legal repercussions, such as charges of bigamy, in the jurisdiction where the marriage originally took place.

D. Case Name: Anubha v. Vikas Aggarwal¹⁰

Issue: *Recognition and enforceability of foreign divorce decree in India.*

In this case, the couple was married for only two months when the husband filed a 'no fault divorce' petition in the USA and abandoned the wife there without any financial support. The wife managed to return to India and initiated legal proceedings. Despite the husband obtaining a divorce decree in the USA during the ongoing proceedings in India, the Indian court held that the grounds for divorce in the USA were not valid in India. Since the marriage was solemnized according to Hindu rituals and governed by the Hindu Marriage Act¹¹, the USA's jurisdiction over the matter was not recognized. Furthermore, the wife had not submitted to the jurisdiction of the USA court, rendering the decree unenforceable in India. Additionally, when the husband sought exemption from appearing in court due to apprehensions of arrest under Section 498 A of the Indian Penal Code filed by the wife, the High Court rejected the application. This case highlights the complexities involved in recognizing and enforcing foreign divorce

⁹ Harmeeta Singh v. Rajat Taneja, (2003) 2 SCC 352

¹⁰ Anubha v. Vikas Aggarwal, (2002) 4 SCC 355

¹¹ Mulla, Dinshaw Fardunji. *Mulla's Indian Family Law*. 20th ed. Nagpur: Wadhwa & Co., 2023

decrees, especially in cases where the marriage is governed by specific religious or cultural laws.

VIII. CLINCHING REMARK

In conclusion, the realm of private international law, particularly concerning the recognition and enforcement of foreign divorce decrees in India, remains a subject of complexity and subjectivity. While the legal framework exists, its effectiveness is often challenged by the lack of rigid uniformity and the discretionary application of principles like comity and convenience. However, Indian courts have demonstrated a progressive approach in addressing these challenges. They have been vigilant in ensuring that foreign divorce decrees are scrutinized thoroughly to prevent any manipulation or abuse of the judicial process.