

Indian and Colonial Divorce Jurisdiction Act 1940

February 15, 2013

3 of 1940

10th July, 1940

An Act to explain and amend the Indian and Colonial Divorce Jurisdiction Act, 1926. Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the authority of the same as follows:- This Act has been amended by the Colonial and Other Territories (Divorce Jurisdiction) Act, 1950(c. 20) and the Burma Independence Act, 1947 (11 and 12 Geo. VI, c. 3).

2. Amendment of certain conditions precedent to the granting of relief

(1) Sub-section (1) substituted section 1(1)-, proviso (c) of the principal Act, see that Act, ante.

(2) For the removal of doubts it is hereby declared that the provision in the said proviso(c) as originally enacted that no Court shall make any decree of dissolution of marriage except where either the marriage was solemnised in India or the adultery or crime was committed in India did not operate so as to prevent the making of such a decree on grounds other than adultery or crime where the marriage was solemnised in India; and where before the appointed day ¹ a petition for the dissolution of marriage has been dismissed on the ground that the said provision did so operate the dismissal of the petition shall not prejudice the bringing of a new petition upon the same, or substantially the same facts.

1. i.e. 1st January, 1941 ; see section 7 of this Act.

3. Jurisdiction under the principal Act in case of husband's change of domicile

Where a wife has been deserted by her husband, and the husband was immediately before the desertion domiciled in England or Scotland but has changed his domicile since the desertion, a High Court in India shall, as from the appointed day, have the same jurisdiction under the principal Act as it would have if the change had not taken place; but, in any such case, a power conferred on the Court by proviso (d) to sub-section (1) of section 1-of the principal Act to require the petitioner to show that she is prevented from taking proceedings in the Court of the Country in which she is domiciled shall include power to require her to show that she is similarly prevented from taking proceedings in the High Court in England, or, as the case may be, the Court of Session,

4. Registration in England and Scotland of decrees and Orders under principal Act

This section substituted sub-section (2) and amended, sub-section (3) of section 1-of the principal Act – see that Act, ante.

5. Application to Burma and Colonies



¹The foregoing provisions of this Act shall, with the necessary adaptations, apply in relation to any part of His Majesty's dominions to which the provisions of section 1 of the principal Act (Act of 1926) apply by virtue of an order in Council under section 2 thereof, wherever made, as they would have applied in relation to India, if the Indian Independence Act, 1947, had not passed.

1. Section reads thus after being amended by the Burma Independence Act, 1947, and the Colonial and Other Territories (Divorce Jurisdiction) Act, 1950.

6. Areas for which the various High Courts in India are to act

(1) A High Court in India on which jurisdiction is conferred by sub-section (1) of section 1 of the principal Act shall, on and after the appointed day, exercise that jurisdiction if, and only if, the parties to the marriage last resided together, or at the date of the presentation of the petition each reside, in the appropriate area.

(2) In this section the expression "the appropriate area" means, in relation to any Court, the area with reference to which that Court is for the time being a High Court for the purposes of the Indian Law known as the Indian Divorce Act, 1869-, or such other area as the Governor-General may from time to time by public notification specify, in relation to that Court as the appropriate area for the purposes of this section.

(3) The functions of the Governor-General under this section shall be deemed, for the purposes of Government of India Act, 1935, to be included among the functions which he is, by or under that Act required to exercise in his discretion and so much of section 18A of the Interpretation Act, 1889, as provides that the expression "Governor-General" shall in relation to the period between the commencement of Part III of the Government of India Act, 1935, and the establishment of the Federation of India, mean the Governor-General in Council shall not apply to this section.



7. Meaning of "appointed day"

In this Act the expression "the appointed day" means the first day of January nineteen hundred and forty-one.

8. Short title and citation

This Act may be cited as The Indian and Colonial Divorce Jurisdiction Act, 1940-, and the principal Act and this Act may be cited together as the Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940.

