

Matrimonial Causes (War Marriages) Act 1948

February 15, 2013

[Act No. 40 of 1948]

3rd September, 1948

"In the course of the judgment delivered in the case of Mrs. Margaret Pierce v, Mr. Goerge Albert Pierce, the Additional District Judge, 24-Parganas, Calcutta, observed as follows:

"The position of a woman domiciled in India who marries a foreigner not domiciled in India appears to be extremely anomalous in regard to the law of divorce. She can apparently obtain no relief under the Indian Divorce Act, 1869, and, inasmuch as the Indian and Colonial Divorce Jurisdiction Act, 1926, is applicable only to parties who are British subjects domiciled in England and Scotland, she can obtain no relief under that Act either.....

The anomaly of this position is intensified in regard to a war-time marriage contracted by a woman domiciled in India with a foreigner serving temporarily in India on military duty, and inasmuch as not a few war-time marriages of this character must presumably have been contracted between women domiciled in this country and foreigners temporarily resident here during the war, it would seem that there is a lacuna in the present law of divorce which ought to be filled.

Under the existing law, no Court in India has jurisdiction to grant a decree of divorce unless the parties are domiciled in India or in England or Scotland. In other cases the woman has no remedy unless she is in a position to institute proceedings in the country of her husband's domicile. A clear case, therefore, exists on the merits for the enactment in India of a counterpart of the Act in the United Kingdom called the Matrimonial Causes (War Marriages) Act, 1944, whereby in the case of a marriage celebrated during the war period, where the husband was at the time of the marriage domiciled outside India, and the wife was, immediately before the marriage, domiciled in India, the Indian Courts exercising jurisdiction under the Indian Divorce Act should be vested with jurisdiction in relation to proceedings for divorce as if both parties were at all material times domiciled in India. Such a law would obviously apply only in cases where the petitioner or the respondent professes the Christian religion. Hence the present Bill.

Provision is also included in the Bill for limiting the time within which proceedings for divorce or for nullity of marriage may be commenced under the Act." -Gaz. of Ind., 1948, Part V, page 476.

An Act to confer upon Courts temporary jurisdiction in certain matrimonial causes ;

WHEREAS it is expedient to confer upon Courts ¹[* * * * *] temporary jurisdiction in certain matrimonial causes;

It is hereby enacted as follows :-

This Act has been extended to (1) the new Provinces and merged States by the Merged States (Laws) Act, 1940 (LIX of 1949), S. 3 (1-1-1950), and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 (6-4-1950). Manipur and Tripura are States. See Act 81 of 1971, Ss. 3, 4 (30-12-1971). Vindhya Pradesh now forms part of M. P. State – See Act 37 of 1956, Section 9(1) (e), and (2) to the Union Territory of Dadra and Nagar Haveli by the Dadra and Nagar Haveli (Laws) Regulation, 1963(Regn.VI of 1963).



1. Words "in the Provinces of India " were omitted by A.L.O., 1950.**2. Definitions**

In this Act, unless there is anything repugnant in the subject or context,-

- (a) "High Court" shall have the same meaning as in the Indian Divorce Act, 1869-;
- (b) "marriage" includes a purported marriage which was void ab initio, and "husband" and "wife" shall be construed accordingly:
- (c) "war period" means the period commencing on the 3rd day of September, 1939, and ending on the 31st day of March, 1946.

3. Application of Act

The marriages to which this Act applies are marriages solemnized during the war period, where the husband was, at the time of the marriage, domiciled outside India, and the wife was immediately before the marriage, domiciled in India

Provided that this Act shall not apply to any marriage if, since the solemnization thereof, the parties thereto have resided together in the country in which the husband was domiciled at the time of the residence.

4. Temporary extension of jurisdiction of High Courts

In the case of any marriage to which this Act applies, the High Court shall have jurisdiction in and in relation to any proceedings for divorce or for nullity of marriage as if both parties were at all material times domiciled in India; and subject to the provisions of this Act, the provisions of the Indian Divorce Act, 1869-, shall apply, so far as may be, in relation to any such proceedings instituted under this Act as if they were proceedings instituted under that Act: Provided that this section shall not apply in relation to any proceedings for divorce or for nullity of marriage unless-

- (a) the petitioner of the respondent professes the Christian religion, and
- (b) the proceedings for divorce or for nullity of marriage are commenced not later than three years from the commencement of this Act.

5. Saving

Nothing in this Act shall be deemed to extend or alter the jurisdiction of the High Court in, or in privation to, any proceedings for divorce or for nullity of marriage, where at the commencement of those proceedings the parties are domiciled anywhere in India.

6. Certain decrees, and orders to be recognised

The validity of any decree or order made in the United Kingdom by virtue of the Matrimonial Causes (War Marriages) Act, 1944 shall, by virtue of this Act, be recognised in all Courts in the States of India.

7. Power to make rules

The High Court may make such rules as may be necessary for the purpose of carrying out the objects of this Act.

