



Historical Backdrop of the Foreign Marriage Act, 1969

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Abstract: This present research paper relates with the historical backdrop of the wedding under the Foreign Marriage Act, 1969. The intention of this research paper is to realize the old age nature of the Foreign Marriage Act, 1903, needs of the foreign marriage law and enactments of the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969. This paper shows the divergence for matrimonial remedy, modus operandi and the difficulty that appears at the instance of the dissolution of marriage and this complication appears due to lack of strong Private International Law. This research paper concentrates on introduction, application, procedure and foundation of the Foreign Marriage Act, which is otherwise well-known as solemnization of marriage under the Act, this paper in brief, brings out the similarities between the Special Marriage Act and Foreign Marriage Act and the paper also focuses on the various matrimonial remedies under Foreign Marriage Act.

Keywords: Foreign Marriage Act, Special Marriage Act, Application, Foundation, History, Matrimonial Remedy, Complication, Private International Law, Similarities.

Throughout British period, Indian went in foreign country for the purpose of higher education but maximum Indians returned from foreign country to settle in India. Nevertheless after freedom, Indians started traveling for individual or professional grounds and were subjected to cross traditions influences. These emigrants frequently married local spouses either for loving coalitions with their classmates or juniors or contractual union to execute the necessities for visa-regulations. This is pertinent to explain here that the same position was present in India also; many foreigners came here and solemnized marriage with Indians.[1] Before independence, there were substantial quantities of ambiguity present as to the law relating to foreign marriage in India. In this condition then existing laws and legislation handled only the fringes of the foreign marriage and the subject was controlled by rules and regulations of the Private International Law which were so blurred and by no means well settled and which could not be willingly enforced to different societies.



After that looking for the requirement of foreign marriage law in India, the Act which used to prevail in India was the Foreign Marriage Act, 1903.[2] Although the Special Marriage Act, 1954 incorporated various provisions concerning to foreign marriage involving Indian citizens marrying in the foreign country. The Special Marriage Act, 1954 was launched to eliminate this ambiguity to some amount. During the Parliamentary debates in relation to the Special Marriage Act, it was recommended that there should be a law for foreign marriage where at least one of the parties is Indian Citizen and other may not be. In this process, a guarantee was provided that the Government would think about this issue and will launch complete legislation on this matter of foreign marriages. As a conclusion of that guarantee, the Foreign Marriage Bill, 1963 was introduced in the parliament of India. Fifteen years later of S.M. Act, 1954, recognizing the want for a separate law for foreign marriages, [3] the new Foreign Marriage Act, 1969 was introduced.

The Foreign Marriage Act, 1969 [4] enacted from the Bill moved in parliament in 1963 with a view to executing the 23rd Report of Law Commission of India on the subject of foreign marriages in India. This Bill of 1963 finally became law on 31st August 1969. This unique Act was modelled on the blueprint of the Special Marriage Act, 1954 and borrowing provisions from the British and Australian legislation on the subject of foreign marriage. The Special Marriage Act of 1954 is one of the most significant secular laws in India. The focal cause behind enacting the Special Marriage Act, 1954 was to provide a particular form of marriage for the people of India and all Indian nationals in various foreign countries irrespective of the religion, caste and faith followed by any parties of marriage.[5] The Special Marriage Act, 1954 replaced the old Act III, 1872. This new Act had three major purposes viz. (a) To provision for divorce; (b) To provision for a special form of marriage; and (c) To provision for registration of marriages.

According to the current legal system of India people have a choice between their respective religion based and community specific marriage laws on the one hand and on the other hand the general and common law of civil marriages. While the laws of the first of these categories are generally described by the compendious expression 'personal laws' and the later law is found in these two legislations: (i) Special Marriage Act 1954; and (ii) Foreign Marriage Act 1969. Above mentioned the first of these Acts is meant for those persons who are getting married within India and the later for those Indian citizens who may marry in a foreign country. The Foreign Marriage Act, 1969 makes possible the



solemnization of civil marriages by citizens of India outside the country with another citizen or with a foreigner. This Act also is not connected with the caste and religion of the parties of an intended marriage.

This Act authorizes the Central Government of India to appoint a Marriage Officers in all its ambassadorial assignments in foreign countries or abroad. Several marriages take place in India which are out of the territory of various personal laws and cannot be controlled by the Special Marriage Act either for the cause of not having been officially registered or solemnized under it. The question which law would then apply to such marriages remains unresolved. Both the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 are meant equally for all Indian communities and societies. They hold some legal provisions which deeply restrain members of certain societies to avail their provisions. The first law of civil marriages in India was the Special Marriage Act, 1872 enacted during the British rule on the suggestions of the first Law Commission of pre independence era. It was an optional law firstly made available only to those who did not profess any of the various faith traditions of India. In 1954 the first Special Marriage Act of 1872 was repealed and replaced by a new law bearing the same title. This is an optional law, an alternative to each of the various personal laws, available to all citizens in all those areas where it is in force.

Though, shifts to harmonize the conflictual system have not reached the point where standardization of outcome can be guaranteed. In the case of divorce when a Court of law is attempting to dispense matrimonial property, if the spouses who are parties of divorce proceeding is local and the property is local then the Court of law applies its domestic law i.e. *lex fori*. The case becomes much more problematical if foreign elements are presence there, such condition arises when the country of marriage is different from the country where divorce was filed, when party's citizenships and domiciles do not match, when the property is situated in a foreign country or when the parties have changed residence several times during the marriage. In these situations each time a couple invokes the application of foreign law, the process of divorce slows down as the parties are directed to brief the issue of conflict of laws and provide translations of the foreign laws.

Further, it was felt that Special Marriage Act was insufficient regarding a foreign marriage or where only one party is Indian citizen than this Bill seeks to implement the 23rd Report of the Law Commission[6] of India on the law relating to foreign marriages. There is at present considerable uncertainty as to the law on the subject as the existing legislation



touches only the fringes of the subject and the matter is governed by principles of the private international law which are by no means well settled and which cannot readily be applied to a country such as ours in which different marriage law apply to different communities. The Special Marriage Act, 1954 sought to remove the uncertainty to some extent by providing that marriages abroad between citizens of India who are domiciled in India might be solemnized under it. In the course of the debates in relation to that Act in Parliament, it was urged that separate provisions should be made for marriages abroad, where one of the parties alone is an Indian citizen.

The present Foreign Marriage Act is modelled on the Special Marriage Act, 1954 and the existing English and Australian legislation on the subject of foreign marriages subject to certain modifications rendered necessary by the peculiar conditions obtaining in our country. Three most important features of this Act are following. *Firstly*, It provides for an enabling form of marriage more or less on the same lines as the Special Marriage Act, 1954 which can be availed of outside India where one of the parties to the marriage is an Indian citizen, the form of marriage thus provided being not in suppression of but only in addition to or as an alternative to any other form that might be permissible to the parties; *Secondly*, It seeks to lay down certain rules in respect of capacity of parties and conditions of validity of marriage and also provide for registration of marriage on lines similar to those in the Special Marriage Act, 1954. *Thirdly*, The provision of the Special Marriage Act, 1954 in regard to matrimonial reliefs are sought to be made applicable with suitable modifications, not only to marriages solemnized or registered under the proposed legislation but also to other marriages solemnized abroad to which a citizen of India is a party.

The Foreign Marriage Act, 1969 came into existence on 31st August 1969 and published in the Gazette [7] of India. This Act is a complete code in itself. The Act provides for marriages in foreign countries between parties one of whom at least is an Indian citizen. Section 30 of the Foreign Marriage Act, 1969 repeals the India Foreign Marriage Act, 1903. This Act does not have any provision relating to divorce, nullity or any other matrimonial remedy or relief. For this purpose the Act makes the relevant provisions of the Special Marriage Act, 1954 applicable, *mutatis mutandis*, also to all marriages solemnized or registered under its provisions. [8] This Act is entirely optional and its provisions do not adversely affect the validity of a marriage solemnized in a foreign country otherwise than



under its provisions. The Special Marriage Act, 1954 makes provision for all the matrimonial remedies. It also provides for ancillary reliefs. The Hindu Marriage Act, 1955 introduced all the matrimonial remedies for Hindus. After that the Foreign Marriage Act, 1969 also provide various matrimonial remedies in Section 18 of the said Act. According to this Section all the matrimonial remedies shall be provided by the Special Marriage Act, 1954 mentioned in the chapter IV, V, VI and VII of the said Act. [9]

Thus, in 1969 India reaches a stage when it recognizes all the matrimonial remedies for all the parties of foreign marriage which is performed under the Foreign Marriage Act, 1969.[10] Just as in India we do not have a uniform law of marriage, so also we do not have a uniform law of matrimonial remedies; every community has its own personal law. It is absolutely true that the question of conflict of inter communal law hardly arise in India, though conflict of laws situation in personal laws do arise at an international level.[11] The Foreign Marriage Act covers within its ambit, a marriage between an Indian and a Foreign National. Unlike Hindu Marriage Act, the Foreign Marriage Act is not concerned about religion; it focuses on the legal aspects governing the institution of marriage. Its features are derived from, both, the Hindu Marriage Act and the Special Marriage Act. A marriage, which is usually considered to be a family and a religious occasion, has its own legal impacts, which is not given much importance. The Foreign Marriage Act however, highlights these legal implications of the institution of marriage.

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