
INDIAN AND COLONIAL DIVORCE JURISDICTION ACT, 1940

3 of 1940

[10th July, 1940]

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An Act to explain and amend 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 Burma Independence Act, 1947.

1. Removal of doubts as to effect of Matrimonial Causes Act, 1937, on divorce jurisdiction under Indian and Colonial Divorce Jurisdiction Act, 1926 :-

(1) For the removal of doubts it is hereby declared that in considering for the purposes of Indian and Colonial Divorce Jurisdiction Act, 1926 (hereinafter in this Act referred to as "the Principal Act")-

(a) what are the grounds on which a decree for the dissolution of any marriage may be granted by the High Court in England according to the law for the time being in force in England, and

(b) what are the principles and rules on which in the exercise of its jurisdiction to make decrees for the dissolution of a marriage and as incidental thereto, to make orders as to damages¹, alimony or maintenance, custody of children and costs, the High Court in England for the time being acts and gives relief,

section 1 section 2 section 3 section 4 , section 6 and section 8 to ten of Matrimonial Causes Act, 1937 , have to be taken into account and that references in the Principal Act to a decree for the dissolution of a marriage include references to such a decree of presumption of death and of dissolution of a marriage as is authorised by the said section 8 .

(2) A decree for the dissolution of a marriage granted under the principal Act before the appointed day shall not be invalid by reason only that regard has not been had to the provisions of S.1 of the Matrimonial Causes Act, 1937² and where before the appointed day a petition under the principal Act has been dismissed which would not have been dismissed if the principal Act had been construed in the manner specified in sub-section (1) of this section, the dismissal of the petition shall not prejudice the bringing of a new petition upon the same or substantially the same facts.

1. (1937) 1 Edw. VIII and 1 Geo. VI, C. 57.

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

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 day¹ 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 husbands 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 :-

1 .- The 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 S.1 of the Indian and Colonial Divorce Jurisdiction Act, 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 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 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 S.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 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 Indian and Colonial Divorce Jurisdiction Act, 1940 , and the principal Act and this Act may be cited together as Indian and Colonial Divorce Jurisdiction Acts, 1926 and 1940.