CHAPTER-I
INTRODUCTION

In the new millennium, the movement of people from one country to another country has become a common practice. There are various issues arising out of cross-border transactions. In this research work, the researcher has made an attempt to critically analyse the recognition and enforcement of foreign judgments in Private International law. The areas considered for the research are personal law aspects, namely, marriage, divorce, maintenance, child custody, abduction, and Hague conventions in Private International Law and its impact on India.

Today there are marriages between two nationals. In this situation, the conditions prevailing in one country may not suit for the other country. However, there is no uniformity in this aspect. The present research is an attempt to study the validity of marriage between Indian spouse and spouse from another country.

Another important aspect of personal law is recognition of foreign divorce decrees. In this context, Indian law is not very
clear. Indian Civil Procedure Code, 1908 deals with the recognition and enforcement of foreign judgments subject to the fulfillment of the conditions laid down in the code. There are cases where the court dealt with the cases based on common law principles when there was inadequate law. In this context, the researcher explored the principles of recognition of law on foreign divorce decree and enforcement.

There are various issues arising for filing of maintenance petition if one of the parties is residing in another country. It is highly exorbitant to file a case and contest if the jurisdiction lies in a foreign country. The law for maintenance for divorced women is in great peril due to economic and social conditions. The study would discuss the law on filing of maintenance petition and competent jurisdictional court in this regard.

Childcare is the pivotal aspect in matrimonial relations. Despite the court orders, there are cases where the spouses flew from one country to another by abducting the children from the custody of the other spouse. The courts held that the child’s best

---

1 See Prof.T.S.Rama Rao, *Private International law in India*, Indian Year of International Affairs, 1955, p.219
interest would be taken into consideration for deciding custody of child. In this context, the researcher highlights the law of child custody between Indian spouse on the one hand and the foreign spouse on the other.

Hague Conference on Private International law is discussing for the last fifty years the need for uniformity on recognition and enforcement of foreign judgments. Some of the conventions have been ratified by member states. Besides, there are going negotiations among the member states. The researcher analyses the role and impact of the Hague conventions on member countries.

**Recognition of Foreign Judgment- Theories:**

On the recognition of Foreign Judgments, various theories have been propounded, of which the theory of comity is considered to be the oldest theory. Apart from the theory of comity, the obligation theory, the theory of judicial reason or ideas of social value, theory of harmony between judgment and law are some other countries.
The old English Cases took the view that foreign judgments are recognized on the basis of comity. The difficulty inherent in the theory of comity is that no foreign judgment can be recognized unless there is reciprocity. If reciprocity is the basis of recognition, then it is difficult to say as to what defences are precisely available to a defendant or a judgment debtor.

The theory of obligation was propounded at an early time.\(^2\) Blackburn, J. Said: “The judgment of a court of competent jurisdiction over the defendant imposes duty or obligation on him to say the sum for which judgment is given, which the courts in this country are bound to enforce.”\(^3\) Thus an adjudication of a competent foreign court becomes a legal obligation which can be enforced in any country as such.

Von Bar\(^4\) has propagated another theory. The basis of recognition for foreign judgments, according to him, is the doctrine of harmony between law and judgment. Von Bar holds that a judgment is a *lex specialis*, a law regulating one single case.

---

2 Russel v. Smyth, (1842) 9 M.& W. 810. See also Williams v. Jones (1845) 13 M.& W. 628; Schibsby v. Westenholz (1870) L.R. 6 Q.B. 139

3 ibid
Thus, he maintains, in order to maintain harmony between conflict rules and respect for foreign judgments, the courts of a given country ‘should in principle, and as far as possible, decide on such actions as are to be decided under the municipal law of that country.

Pilet propounded a simple theory as a basis for recognition of foreign judgments. He says that courts recognize a foreign judgment only if the judgment has been rendered in accordance with its rules of conflict of laws. Martin Wolff supports this view, though he also recognizes its limitation. The greatest objection to this theory is that ‘it reduces the number of enforceable judgments below a reasonable limit.’

The recognition of foreign judgments is also sometimes based on the theory of acquired rights. This theory holds the view that since a foreign judgment implies an acquisition of right, it should be enforced. Wolf says that the doctrine of acquired rights begs the question by presupposing a right as acquired, while the problem is whether the right has been acquired or not.


**Scope of the Research:**

The research work deals with recognition and enforcement of foreign judgments in Private International Law. The following issues are analysed in this research work.

1. Marriage
2. Divorce
3. Maintenance
4. Child Custody
5. Abduction

Difficulties in enforcing the judgments of the foreign courts in the above cases will be fully discussed in this research work. The research discusses the cases involved between Indian, USA, U.K. Germany, and other country nationals where the case involves Indian party one side and the nationals of another country on the other.

**Hypothesis:**

The hypothesis of the thesis is to critically analyse the attitude of the Indian Judiciary in recognition and enforcement of foreign judgments in Private International Law. The areas are limited to personal law matters.
Methodology:

The Researcher has adopted the historical method to trace the origin and development of recognition and enforcement of foreign judgments. Doctrinal method is adopted for the purpose of study of the problem. The research is based on the analogy drawn from both the primary and secondary sources.

Sources:

The primary sources are the statutes in India, United States, United Kingdom and Hague Conventions on Private international law.

The secondary sources are Text books and judgments of Supreme Court and various High Courts of India, Supreme Court of United States and House of Lords of United Kingdoms.

Scheme of the Study:
The research has been divided into six chapters

I. Introduction

II. Domicile and Habitual residence

III. Recognition of Marriage, Foreign Divorce Decrees and its Enforcement
IV. Maintenance Obligations and Child Custody

V. Role and Impact of Hague Conventions

VI. Conclusion

The first chapter being introductory deals with scope, methodology, hypothesis, sources and Scheme of the study.

The second chapter deals with concepts in Private International Law namely domicile and habitual residence. It deals with regard to application of foreign law based on domicile. The use and importance of habitual residence in the matters of child custody and abduction matters are analysed in detail. The impact of Hague convention and the shift from domicile to habitual residence are thoroughly analysed.

The third chapter deals with recognition of marriages, and its validity. It also discusses the application of foreign law for recognition of marriage. The orders passed by other courts in matters related to divorce are recognizable in other countries are discussed.

Chapter four discusses the maintenance obligations of the spouses. It deals with the jurisdictional issues of the parties regarding filing of the case for maintenance. The problems for filing
a case and time duration for disposal of case are dealt in the light of various case laws and international conventions. Child custody is vital in the matrimonial relations and there are instances where one spouse abducts the child without the knowledge of the other spouse or violating the court order. These issues are dealt in detail in this chapter.

Hague Conventions on private international law is discussing the issues of jurisdictional issues for the last five decades. It has come out with various conventions. There are ongoing negotiations in the filed of recognition and enforcement of foreign judgments. The role and impact of Hague Conventions on recognition and enforcement of foreign judgment are dealt in chapter five.

The concluding chapter is devoted for suggestions and recommendations.