CHAPTER IV

JURISDICTIONAL ADJUDICATION AND PROCEDURE
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English Law:

The jurisdictional and procedural aspect involved in
the matrimonial disputes have always been a thorny issue
before the English Courts. They have involved innumerable
questions in deciding the cases. The questions like the
jurisdiction of the court, application of the law, the
enforcement of the judgment and the extension and recogni-
tion of foreign judgments into the domestic law of a sove-
reign state are some of the important issues to be dealt
with. At the outset it will be appropriate to recite those
specific issues which have been specifically formulated by
Prof. Graveson, a well known international authority on the
conflict of law. He emphasizes that

"The English conflict of laws has developed around
three principal questions: the choice of jurisdic-
tion, or, has the English court jurisdiction to deal
with the specific issue?; the choice of law, or,
by what system of law generally shall the specific
issue be decided? and the recognition and enforce-
ment of foreign judgments, or, by what criterion
shall the English courts decide whether or not the
judgment of foreign court shall be recognised or
enforced in England?"

The questions relating to choice of jurisdiction and
choice of law are the most frequent and important aspects

1. Graveson, R.H. : Conflict of Laws Private International
Law, 7th edn., p.12
to deal with the matrimonial problems. The characteristics of these two major questions are that they are severally and mutually independent and that in most problems of conflict of laws both must be answered. Their mutual independence here means that a decision on one question in favour of a particular legal system has no influence on the decision on the other question in favour of the same or a different legal system. In a case of contract, for instance, the English court may answer the question of choice of jurisdiction in its own favour by holding that it has jurisdiction. But it does not mean that in finding its solution to the problem of choice of law, the court will necessarily apply English law in its local sense to deal with the substantive issue.

A. **CHOICE OF JURISDICTION** :

Prior to decide a case it is very essential that the court must have its jurisdiction over it. The first duty of the court is to satisfy itself that it has jurisdiction to determine the matters before it. The principles of the conflict of laws seek to establish rules by which it may be determined, interalia, which courts, in the international sense, shall have jurisdiction over any particular matter. In many cases involving actions in personam the courts of more than one country may have jurisdiction according to
the English conflict of laws, but in limited class of cases dealing formerly with divorce and nullity of voidable marriage, i.e. jurisdiction over personal status, the English courts as a general principle recognised that only the Courts of the country in which the parties were domiciled had jurisdiction. Similarly, though for different reasons, courts of situs of land alone have jurisdiction over it. It is in such cases that the problem of choice of jurisdiction assumes its greatest importance, for a court will refuse to entertain an action over which, according to the principles which it applies, it has no jurisdiction. In normal actions in personam such as breach of contract or tort, the solution of the problem is not so difficult, for jurisdiction to entertain such action may reside concurrently in the courts of the country where the contract was entered into, was to be carried out, or in which a breach occurred. These principles are based on the general concept of effective enforcement of English judgments, i.e. the English court will not generally pronounce a judgment which it cannot effectively enforce. The reason to follow this principle is to ensure for any consequent judgment or decree of the court a reasonable expectation of its international recognition as a valid decision on the question in issue.
Where the English court has no such jurisdiction the parties must generally decide for themselves which foreign court should decide their case, for English court often does not go beyond deciding whether or not it can claim jurisdiction for itself. This attitude of the court is due to the judicial tradition of the common law of deciding a case on the narrowest possible grounds for the purpose of disposing of it, since the decision may have a law making effect. The result is that some rules of the English conflict of laws are unilateral, i.e. they prescribe only the circumstances under which the English court has jurisdiction.

The test of jurisdiction for granting divorce was finally established, at common law, by the decision of the Privy Council in Le Mesurier case. This case decided that domicile, in the true and technical sense of the term, of the husband at the time of the suit was the sole general test of jurisdiction. With such domicile the court had jurisdiction over a foreigner as well as over a British subject without such domicile it had no jurisdiction, even though the parties were British subjects. This decision was reaffirmed by the House of Lord in Lord Advocate Vs. Jaffrey and another, where Lord Campbell, L.C. expressed his views as follows—

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2. Le Mesurier Vs. Le Mesurier, (1895) A.C.517
3. Gravesen, R.H.: Cases on the Conflict of Laws, 1st edn. p.106, See also Lord Advocate Vs. Jaffrey and another. (1921) 1 A.C.146
"I see the greatest difficulty in any invasion of the principle which appears to me to be fundamental, namely, that the unity which the marriage signifies is regulated by one domicile, and one domicile alone, i.e. that of the husband. I am quite sure that Lord Watson in Le Mesurier case, not only treated the matrimonial domicile as the real domicile, and nothing but the real domicile, which is the real domicile of one person, i.e. the husband. Much confusion may be caused by the introduction of the idea of there being two domiciles of the marriage, or two domiciles of succession while the marriage tie continues".

The effect of the above judgment was that a wife under English law could not acquire a separate domicile and therefore was unable to obtain relief before the courts unless her husband was domiciled in England, even if she was judicially separated from him. This was obviously a very humiliating and harrassing rule for the deserted women. In order to resolve the problem of the deserted wife whose husband was no longer domiciled in England, Parliament intervened and passed the Matrimonial Causes Act, 1973, Section 46 (1) (a), and later on the Domicile and Matrimonial Proceeding Act, 1973, Section 17 (2). Under these Acts a wife, but not a husband, could petition for divorce if she had been deserted by her husband or he had been deported and, immediately prior to the desertion or deportation, the husband had been domiciled in England. She could, under the Act, also petition for divorce if she had been ordinarily resident in England for three years immediately preceding the proceedings and her

4. Idem.
husband was domiciled elsewhere in the U.K.

The Domicile and Matrimonial Proceedings Act, 1973, provides two bases of divorce: jurisdiction domicile and habitual residence. It would be pertinent if we discuss the concept of these expressions in detail because these are the only two bases for jurisdiction.

I. Domicile As A Ground For Jurisdiction:

It is evident that in personal matters the lex domicilii is the governing law in the common law countries whereas lex partie is the governing law in the civil law countries. This fundamental difference between the two major systems of the world has been not only an obstacle in the unification of the rules of private international law, but, at times, has resulted in unique results. Because of this difference, generally, the result of a suit depends on the fact as to which country the suit has been filed. For instance, a suit is filed in an Italian court for the succession to the property of an Indian who died domiciled in Italy. According to Italian private international law, the Italian court will decide the matter on the basis of nationality of the deceased i.e. Indian law. On the other hand, if the suit is filed in the Indian court, the Indian court will decide the case on the basis of the Italian law, the law of domicile of the deceased. In some countries this
problem can be solved by the application of the doctrine of *renvoi*.5 To what absurdities this tangle of *lex partie* and *lex domicilii* can lead to may be illustrated from two cases, an English *Re O'keefe*6 and an Italian, *Re Samara*.7

In the English case, a woman of British nationality died intestate in Italy, leaving movable property. Her domicile of origin was Eire. By English conflict of laws succession was governed by Italian law, since she died domiciled there. By Italian law it was governed by her national law. Though she was born in India, her domicile of origin was Ireland, since her father was domiciled there when she was born. She had paid only one short visit to Ireland, she had stayed rather longer in England, but the only country in which she had settled was Italy. Crossman J. held that, in these circumstances, the law of her nationality should be taken to mean that part of the British Empire to which she belonged and that this was the southern part of Ireland, then (1940) Eire, now the Irish Republic.

In Italian case, one Samara, a Tunisian Jew, had died domiciled in Liborno, Italy. After leaving Tunisia in 1864, he first settled down in Paris till 1871 and then in Liborno and died there. While in Paris he executed a will which was

5. Diwan, Paras, op.cit.,p.112
6. *(1940)* Ch.124
7. Diwan, Paras, op.cit.,p.112
valid by the French law but was invalid by the Jewish law, i.e. the law of his nationality. Those relations of Samara who would have succeeded to his property had the will been invalid challenged the validity of the will in an Italian court, on the ground that Samara died a national of Tunisia and therefore the law of nationality governed succession to his property. The defendants, on the other hand, contend that the Tunisian nationality of Samara was lost the moment he left Tunisia in 1864; since Samara did not have any nationality at the time of his death, he was governed by the lex domicilii. On this basis the defendants contended that under the Italian private international law any act which was valid by the lex loci actus was valid, and since the will was valid by the French law, they were entitled to succeed to his property. The first trial court gave the decision in favour of the defendants. The first appellate court affirmed it, but the second appellate court reversed it on the ground that it has not been satisfactorily proved that Samara had ceased to be the national of Tunisia.

If these decisions have been criticized all over the world, it should not surprise any one. Even if it was possible for the Italian and English courts to have rendered more rational and just judgments, these decisions do bring to the fore the problem of dual system: so long as this tangle of lex partitae and lex domicilii continues, complications are bound to arise.
In the 1893 Hague Conference, the following three suggestions were made:

1. Personal status and capacity of an individual would be governed by law of his nationality;

2. In case an individual has no nationality, then his personal status and capacity would be determined on the basis of law of his domicile;

3. In a case where there are several legal systems prevalent in a country, then the law of that part of the country would apply to him with which he has closest connection.

The 1951 Hague Conference was an important step of resolving the conflict between nationality and domicile. At the conference the following three principles were accepted:

1. If in any suit there is a conflict between the laws of two countries, one of which adheres to nationality and the other to domicile, then the court would apply the domestic law of the domicile of the person concerned.

2. If in a suit there is a conflict between the laws of two countries both of which adhere to principle of domicile, then the domestic law of the country of the domicile of the person concerned would apply.

3. If in a suit there is a conflict between the laws of two countries both of which adhere to the principle of nationality then the law of the nationality of the person concerned would apply.

The domicile of a person in fact, is that place or country in which his habitation is fixed without any present intention of shifting therefrom. According to Halsbury, "a person's domicile is that country in which he has or is
deemed to have his permanent home". So the notion which lies at the root of the concept of domicile is that of permanent home.

The general meaning of domicile is 'permanent home'. This seems clear enough, but the view expressed by Lord Cranworth V.C. in *Whicker vs. Hume* that a person's domicile is what he regards as his permanent home is far too simplistic and, indeed, somewhat misleading. It is true that for most people their domicile coincides with their permanent home. However, domicile is a legal concept and a person's 'basic' domicile is his domicile of origin, which is ascribed to him by law at his birth, and is not necessarily the country of his family's permanent home at that time. A person may be said to have his home in a country if he resides in it without any intention of at present removing from it permanently or for an indefinite period. But a person does not cease to have his home in a country merely because he is temporarily resident elsewhere; and a person who has formed the intention of leaving a country does not cease to have his home in it until he acts according to that intention.

A technical meaning is thus given to home. It is not necessarily a place where a man is living with his wife and children for many years. If it can be shown that an inten-

9. (1858) 7 H.L.C. 124, p. 160
tion was always lurking in his mind not to make it a permanent home and to return to his original place, however faint and insignificant this lurking intention might be, he would not be deemed to have established his domicile there and his original domicile would continue to cling to him, though he has severed all his connections with it. Thus permanent home has become an everlasting home. This is well illustrated by the decisions of the House of Lords, in Ramsay vs. Liverpool Royal Infirmary, a person died leaving behind a will which was valid under Scottish law, though invalid by English law. The testator was born in Glasgow in 1845 and thus had a Scottish domicile of origin. From 1892, till his death in 1927 he lived in Liverpool, England. During these 37 years he never went to Scotland. Only fact that still 'connected' him with Scotland was that he often said that he was very proud to be a Glasgow man. On many occasions he refused to go to Glasgow. Moreover he did not go to attend the funeral of his mother. The House of Lords unanimously held that it was not proved that he made Liverpool his permanent home and therefore he continued to have his Scottish domicile of origin.

The notion of permanent home can be explained in the light of common sense principles, but the same is certainly not true of domicile. Domicile is an idea of law which

10. (1930) A.C.588
diverges from the notion of permanent home in two principal respects. In the first place, in order to acquire a domicile of choice in a country a person must intend to reside in it permanently or indefinitely. A person who intends to reside in a country for ten years and no more, does not acquire a domicile in it, although he has his home there during the ten years. Again a person cannot acquire a domicile of choice in a country in which he has never been physically present, but he may well have his permanent home in it if he establishes his family there and intends shortly to join it. Secondly, domicile differs from permanent home in that the law in some cases says that a person is domiciled in a country whether or not he has his permanent home in it. Thus a person may in fact have no home, either because he is a permanent vagrant or because he has abandoned one home and has not yet acquired another; but the law nonetheless attributes a domicile to him. Again a person may in fact have a permanent home in one country but he domiciled in another because the law denies him or her the capacity of acquiring a domicile. Thus children under sixteen and mentally disordered persons may be domiciled in countries in which they do not have their permanent home.

So domicile is generally stated to have reference to the territory over which a single system of law operates, whether or not the territory is co-extensive with national
boundaries. A person would thus have a domicile in England or Scotland, not in the United Kingdom.

However, this traditional view of domicile, which has been followed by courts, ignores the fact that the several states of a federation are subject to two concurrent legal systems, state and federal. In this sense it is inappropriate to speak of a person domiciled in federation as being domiciled in a territory subject to a single system of law. At most one can say that he is domiciled in a territory subject to one system of law in respect of the purpose of the inquiry e.g. divorce jurisdiction.

For although the law of the domicile is the chief criterion adopted by English courts for the personal law, it lies within the power of any man of full age and capacity to establish his domicile in any country he chooses, and thereby automatically to make the law of that country his personal law. The same is true, mutatis mutandis, of the more recent concept of habitual residence. The adoption of domicile in English law as the personal law of an individual is based on the sound reasoning that the law of the community in which a person lives and makes his home is the one most appropriate to govern his personal status and relationship as a permanent member of that community. The purpose of domicile as a legal conception is to ensure compliance by the individual with the
legal and social principles and standards of the society of which he forms part at any particular time and which has become his centre of gravity. Domicile may be defined as a place with which a person, either through the exercise of his own will or through the fact of dependence on either member of his family, has the closest personal connection in matter of domestic life. Looked at from another point of view, domicile is the legal relation existing between a person and the system of law of a place which in fact or by legal fiction is deemed to be that person's home.

Prof. Graveson has formulated four principles on which the English theory of domicile is strictly based. These principles have always been relied on by the English courts in determining the domicile of a person in question. These principles can be stated in the following manner:

(i) Every person must at all times possess a domicile.

(ii) No person can at the same time and for the same purpose have more than one operative domicile. Because domicile is for English courts the single test of personal law, a multiplicity of domiciles of the same person would be no less embarrassing than total absence of domicile. Though a person may at the same time have two domiciles in the sense that he never loses his domicile of origin, yet may acquire a domicile of choice or of dependence, only one domicile is allowed to operate at particular moment.

(iii) English courts, generally, decide according to rules of English law whether certain facts do or do not constitute domicile.

(iv) English courts have not yet fully considered the choice

11. Graveson, R.H., op.cit., p.190
of law problem of what law governs a person's capacity to acquire a domicile. This question is independent of that of characterisation of certain facts as constituting the concept of domicile.

In English law there are three kinds of domicile of natural persons: domicile of origin, domicile of choice, and domicile acquired by reason of a dependent legal relationship to some other person, which may conveniently be called domicile of dependence.

a. Domicile of Origin:

A domicile of origin is attributed to every person at birth by operation of law. A person's domicile of origin depends on the domicile of one of his parents at the time of his birth, not on where he was born, nor on his parents residence at that time. In Udny Vs. Udny, for example, Colonel Udny was born at Leghorn, then lived in Tuscany, where his father resided as British consul. But his father was domiciled in Scotland, so the Colonel's own domicile of origin was Scotland.

The rules for the ascertainment of the domicile of origin are: (i) a legitimate child takes his father's domicile, (ii) an illegitimate child and (iii) a posthumous child, that is a legitimate child born after his father's

12. (1869) 1 L.R. Sc. and Div. 441 H.L.
death, both take his mother's domicile and (iv) a foundling or one whose parent's domicile is unknown is domiciled in the place where he is found or born. In one situation only (v) the domicile of an adopted child, the domicile of origin can be changed after the child's birth. By statute, an adopted child becomes thenceforth for all legal purposes the child of his adoptive parents, so he takes their domicile as his domicile of origin.

A minor's domicile may change after his birth, but any new domicile he acquires is a domicile of dependence and not of origin (except where he is adopted); that the domicile remains the same which he acquired at birth.  

Every person has a domicile and the domicile of origin continues to exist till a person acquires a new domicile. When a person acquires a domicile of choice, his domicile of origin remains in abeyance and revives immediately on his giving up the domicile of choice. For the revival of the domicile of origin it is necessary that the domicile of choice should be abandoned voluntarily. If one is forced to leave the country of his domicile, even then the domicile continues to exist. As in Rehloyd Evans case, a person

13. This may be important if a person acquires a domicile of choice after his majority. If he then abandons it without acquiring another, it is his domicile of origin, not that of dependence, which will revive: Henderson vs. Henderson (1967) p.77
13a. (1947) Ch.695
having his domicile of origin in England established his domicile of choice first in Jawa, then in Belgium. In 1940, when German invaded that country, he came to England where he made a will and died. The question was: did he die domiciled in England? The court held that since he had not abandoned Belgium voluntarily, rather he fled to England on account of German invasion, and would have returned there on the circumstances becoming favourable, he died domiciled in Belgium. Thus the domicile of origin continues until domicile of choice is acquired.

The question of revival of domicile was decided beyond doubt in *Plummer Vs. Inland Revenue Commissioners*, where G, the taxpayer was born in England. In 1979 her grandmother bought a house in Guernsey. In 1980 when G was only 15, her mother took up residence in Guernsey with her grandmother. The father of G worked in England. She and her father used to go Guernsey at weekends and holidays. In 1981 she went to a boarding school in England and in 1983 she took a secretarial course in London. In 1984 she joined London University to read for a degree. She spent weekends and some, but not all, of her holidays in Guernsey. In 1985, a claim by G to have been domiciled outside the United Kingdom for the year 1983–84 and 1984–85 was rejected by the Revenue. G appealed to the Special Commissioners.

14. (1988) 1 All E.R. 97
At the hearing of the appeal G, the taxpayer, gave evidence of her attachment to Guernsey and of her intention to live and work there. The Commissioners accepted her evidence, but found that she had not become an 'inhabitant' of Guernsey during the years in question and therefore could not be said to have acquired a domicile of choice there. G appealed, contending that a person whose presence in a new country was sufficient to amount to residence could, notwithstanding that his chief residence remained in his domicile of origin, acquired a domicile of choice in the new country be evincing an intention to continue to reside permanently in that country.

The court held that although a loss of domicile of origin or choice was not inconsistent with a retention by a person of a place of residence in that country..... chief residence had been established elsewhere, a person who retained residence in his domicile of origin could acquire a domicile of choice in another country only if the residence established in that country was his chief residence. Since the commissioners were not satisfied that the taxpayer had established her chief residence in Guernsey, they had been entitled on the evidence to conclude that she had not settled there. It followed, therefore, that the taxpayer had not acquired a domicile of choice in Guernsey.
The court further observed that residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it. If the necessary intention is also there, an existing domicile of choice can sometimes be abandoned and another domicile acquired or revived by a residence of short duration in a second country. But that state of affairs is inherently improbable in a case where the domiciliary divides his physical presence between two countries at a time. In that kind of case it is necessary to look at all the facts in order to decide which of the two countries is the one he inhabits.\textsuperscript{15}

b. **Domicile of Choice:**

Any independent person may acquire a domicile of choice. The question about the capacity to acquire a domicile of choice is determined by law of his existing domicile. Under English law, before the coming into force of the Domicile and Matrimonial Proceedings Act, 1973, a minor, lunatic and married woman had no capacity to acquire a domicile of choice.

No formal steps are necessary for the acquisition of a domicile of choice according to English law. Its acquisition requires three factors:

(i) capacity;
(ii) residence in the country of choice and
(iii) an intention at the commencement or during the time of such residence to remain permanently in that country.

\textsuperscript{15} Ibid., p. 105
(i) Persons under disability, such as infants, lunatics, or married women, are not able to acquire a domicile of their own choice. 16 If a person is an infant under the law of his domicile though not under English law—e.g. if he is 22 years old and domiciled in Hungary, where majority is not attained till the age of 24 he will not be capable of acquiring a domicile in England by his own choice, because his capacity is governed by the law of his domicile.

(ii) Residence may be defined as habitual physical presence at a place. It is more than sojourn (physical presence) and less than domicile. It is a purely factual conception and requires no legal capacity. A minor can acquire a residence different from his father. A wife may have a residence of her own. Though no one can have more than one domicile, anyone can have an unlimited number of residences. Furthermore, residence requires 'habitual' presence while domicile presupposes the intention of indefinite residence. In both cases, however, it depends on intention whether presence can be designated as habitual or not, therefore a temporary interruption of presence does not destroy residence.

It is pertinent to mention here that residence alone i.e. not amounting to domicile is in some particular cases

16. After Jan 1, 1974, a married woman can acquire a domicile of choice separate from her husband.
regarded by English law as a sufficient point of contact. Thus jurisdiction concerning judicial separation or restitution of conjugal rights can be based on residence.

(iii) As regards the intention to permanent residence the person must intend, at the relevant time, to stay in a country for good, or at least for an unlimited period. If he does so, it does not matter that he later changes his mind, so long as he does not actually leave the country. If, however, he intends to reside in a country for a fixed time, say five years, or for an indefinite time, but thinks that he will some day return, then he does not acquire a domicile of choice there. If the possibility of departing is in his mind, however, that possibility must depend upon a real contingency and not a fanciful one (such as if he won the football pools), nor one which is too vague. For example compare I.R.C. vs. Bullock\textsuperscript{17} with Re Furse.\textsuperscript{18} In the former case, Group Captain Bullock, a Canadian, lived in England for forty four years. He had married an Englishwoman and in deference to her wishes set up home in England. He often expressed an intention to return to Nova Scotia should she predecease him. The court of Appeal held that he had not acquired a domicile in England. Group Captain Bullock's intention indeed depended upon a contingency which might not

\textsuperscript{17} (1976) 3 All E.R. 353
\textsuperscript{18} (1980) 3 All E.R. 638
occur, but it was quite possible that it would, for it was nearly as likely that his wife would predecease him as that he would predecease her.

But in *Re Purse* an American who owned a farm in England where he lived and worked and had his family after 1923, had considered returning to New York from time to time but after the 1940s had abandoned searches for a house in America. Thereafter he stayed on his farm and said nothing except that he might go back to the United States if he ceased to be capable of leading an active life on the farm. It was held that he had acquired a domicile of choice in England, since his intention to leave was vague and indefinite. There was no pressure on him to stay here, and he was wholly integrated into the community in which he lived. *Re Purse* also demonstrates that residence in a country for a particular limited purpose does not in itself create a domicile of choice there.

Physical residence and the requisite intention must coincide at the relevant time. If they do not it is immaterial that the intention can be shown to have been formulated at some subsequent time.

A domicile of origin is distinguishable from a domicile of choice in following respects. In the first place, a
domicile of origin is more tenacious: in other words, it is more difficult to prove that a person has abandoned his domicile of origin than to prove that he has abandoned his domicile of choice. Secondly, if a person leaves the country of his domicile of origin, intending never to return to it, he continues to be domiciled there until he acquires a domicile of choice in another country. But if a person leaves the country of his domicile of choice, intending never to return to it, he forthwith ceases to be domiciled in that country and unless and until he acquires a new domicile of choice his domicile of origin revives.\textsuperscript{19} Lastly the domicile of origin is ascribed to a person by law and does not depend on his own acts or intentions; a domicile of choice is acquired if a person goes to live in a country with the intention to remain there permanently.

c. Domicile of Dependence:

The general principle is that a dependent person has a domicile of the person on whom he is considered by law to be dependent. The class of dependent persons was greatly reduced in size by the Domicile and Matrimonial Proceedings Act, 1973. It now comprises children who are under sixteen and unmarried and mentally disordered persons. Previously the age of dependence was the age of majority, eighteen years

\textsuperscript{19} Supra note 12
(or, before 1970, twenty one) and the class of dependents included all married women.\textsuperscript{20}

It follows from the general rule that a dependent person cannot acquire a domicile of choice by his own act. Thus although a child under sixteen may have a home separate from that of his parents he cannot acquire an independent domicile unless he is married.

Where a person is not sui juris, but there is no person in existence on whom he is dependent, his domicile cannot for the time being be changed at all. Such is the position of a child without parents or guardians, and probably of a child without parents but with a guardian. The same is also in certain circumstances true of a mentally disordered person.\textsuperscript{21}

i. Married Women

Until 1 January 1974, as a matter of law, a married woman automatically possessed the domicile of her husband even if he and she lived apart and even though they were judicially separated. Only if their marriage was void or after it has been annulled or dissolved or after her husbands death she could have her own domicile, separate from his.\textsuperscript{22}

\begin{footnotes}
\item[20] Dicey and Morris, op.cit.,p.130
\item[21] Ibid.,p.131
\item[22] A wife could live in another country from her husband and if she intended to live there permanently then on his death she would immediately acquire a domicile there, even though she was unaware that she was a widow. Re Wallach (1950) 1 All E.R.199
\end{footnotes}
This was because of the common law principle that the domicile of a married woman is, during coverture, the same as, and changes with the domicile of her husband.

However, by the Domicile and Matrimonial Proceeding Act, 1973, from and after Jan. 1, 1974, the domicile of a married woman is ascertained in the same way as is that of an adult male. This rule applies to women who are married either before or after that date. If a woman was married immediately before this date and had her husband's domicile by dependence, she is to be regarded as retaining that domicile as her domicile of choice, unless and until she acquires another domicile of choice, or her domicile of origin revives on or after Jan. 1, 1974. It has been held that her previous domicile of dependence must continue as a 'deemed' domicile of choice until she actually departs from, say, England for another country. 24

ii. Minors

A minor is a person who is aged under eighteen. 25 But since Jan. 1, 1974, a minor can, acquire his own domicile even when he attains his sixteenth birthday or, if he is below he can acquire an independent domicile on marriage. 26

23. Section 1-(1) the Act is not retrospective, and the common law rules still have to be applied to determine the domicile of a married woman before 1 Jan. 1974.
25. Before the Family Law Reform Act 1969, Section 1 (1) age of minority was upto twenty one years of age.
The domicile of dependence of a legitimate minor is that of his father, and changes automatically if his father changes his own domicile. That will also remain his domicile after his father's death until the minor becomes sixteen. It may then, however, follow that of his mother. But if his mother changes her domicile, the minor's domicile does not necessarily alter. The mother has a power to change the minor's domicile along with her own, but she must positively change it and must not abstain from doing so. If she does exercise this power she must not do so fraudulently, that is, for the purpose other than for the benefit or welfare of the minor.

Thus in Re Beaumont case 27 Mr. and Mrs B were domiciled in Scotland. They had several children all of whom had a Scottish domicile of origin and dependence. The father died and Mrs B then married N. They went to live in England where they acquired a domicile. They took all the children to live with them except Catherine, who was left in Scotland with her aunt, with whom she had lived since her father's death. Catherine attained her majority and shortly thereafter died in Scotland.

The Court of Appeal held that Catherine died domiciled in Scotland, since her mother had not exercised her power to

27. (1893) 3 Ch. 490 C.A.
alter her domicile. It should be observed that Catherine remained with her aunt for all purposes; the case would probably have been different if she had been left in Scotland for a limited and temporary purpose, for example, to remain at school there in order to finish her education.

The domicile of origin of an illegitimate child is that of his mother when he is born. I think that Re Beaumont applies to an illegitimate child's domicile during his minority. It is not at all clear that this is so. The domicile which Catherine retained was that acquired from her father, that is, her domicile of origin. That which an illegitimate child would retain would be the one derived from his mother. Moreover, Catherine remained in the country of her domicile of origin. Suppose X is born in France and illegitimate, when his mother is domiciled in New Zealand. If his mother acquires a domicile in England leaving X in France, then, if his domicile does not automatically change, X will remain domiciled in New Zealand, a country in which he has never set foot, until he is sixteen at least. This does not look very sensible. Re Beaumont does not seem a very satisfactory decision now a days, when man and woman are equal in law. 28

28. Until 31st Dec., 1973, a married woman's domicile automatically changed with that of her husband. So if N had left his wife and acquired a domiciled in Peru, her domicile including her children with Catherine would have become Peruvian. But the unity of domicile of husband and wife was abolished as from Jan. 1, 1974.
One problem has not been dealt with in a very lucid manner in the Domicile and Matrimonial Proceeding Act, 1973. It concerned the domicile of a minor whose parents had been divorced before 1st Jan., 1974 or after that date were separated, and lived in different countries and acquired separate domiciles, and who lived exclusively with mother. The Act provides that where the parents of a child under sixteen are alive but live apart, the child's domicile of dependence is that of his father. But if he has a home with his mother and none with his father, his domicile is that of his mother. Once he acquires his mother's domicile under this provision he retains it during his minority though he ceases to have a home with her, unless he has at any time a home with his father.

Here two questions may aptly be raised. First, the statutory rules appear to apply only to the domicile of dependence since they envisage the domicile of origin of the child being that of his father. Suppose he is legitimate but his parents separate before he is born. Presumably his domicile of dependence is that of his mother, but his domicile of origin that of his father, in which case his domicile changes immediately after his birth. This seems very strange.

29. Section 4 (1)
Secondly, suppose a child acquires a domicile with his mother under the Act and then goes to live with his father on 1st March, and his father dies on 2nd March, he reacquires the domicile of his father. Thereafter, the statutory rules ceases to govern, and the common law rules, including Re Beaumont, will be applied. Moreover, since the Act is concerned with a situation where the parents are alive, it may be that Re Beaumont will apply after the father's death, even though the child had not reacquired a home with him. Nothing seems satisfactory; it would have been better had Parliament made it clear that the Act continued to apply, or better still, abolished the common law rule in Re Beaumont altogether.

iii. Mental Patients

The domicile of a mentally disordered person cannot be changed by his own act since he is unable to form the requisite intention and thus he retains the domicile he had when he became insane. There are proposition that if a person becomes insane during his minority his domicile of dependence can be changed by an alteration of the domicile of the parent upon whom he is dependent. Even if he attains majority, there shall be no change. However, if he becomes insane after attaining majority, his domicile cannot be changed.

30. Supra note 27
So the domicile of dependence, being the domicile conferred on persons legally dependent, is one which arises by operation of law. It is based on the idea of preserving the unity of the family in all matters of the law governing their personal relations.

**Criticism and Reform of the Law of Domicile:**

The rules regarding domicile have long been criticised. Generally these rules were laid down by judges in Victorian times. These rules may have been satisfactory as reflecting social factors then in existence, but nowadays certainly they have become artificial or inadequate. However, the only reform in the law has been the Domicile and Matrimonial Proceedings Act, 1973. This Act has discarded the common law unity of domicile between married persons and has made some limited reforms in relation to the domicile of minors.

There are two main objections in this connection: first, concerns the alleged difficulty which arises from the presumption of the continuance of the domicile of origin, in establishing the acquisition of domicile of choice and the second concerns the revival of the domicile of origin. These are sometimes compared with the corresponding rules in United States law. They demonstrate the tenaciousness of the domicile of origin; the American rules do not. But the contrast can be explained when the rules were being formulated, England
was not a country of immigration as was the United States, and it was more a country of emigration. But many Englishmen went abroad for particular, temporary purposes, such as governing the Empire, especially India, or to make their fortune, intending to return home. The court would be hesitant to hold that such people had acquired a domicile in the country to which they had gone. But the case with United States was different; there they had come to escape from persecution or hardship in Europe and did, in fact, intend to make a new life in the New World. The same considerations underline the doctrine of revival of the domicile of origin.  

Attempts were made in 1950 to abolish the presumption of the continuance of the domicile of origin and replace it by a presumption that a person is domiciled in his country of residence, but bills introduced into the House of Lords for this purpose were lost or withdrawn in consequence of representations from American businessmen resident and working in England, who saw that if the burden of proving that they were not domiciled here was placed on them, it would be much more likely that the Revenue would successfully claim that they had acquired such domicile and that they would, therefore, be liable to pay more by way of United Kingdom taxes.

32. J.G. Collier, op. cit., p. 55
Possible solution to these problems in the law of domicile are either to regard the law as beyond redemption and abandon it as a connecting factor or make another connecting factor an alternative to domicile. Nationality is too artificial and has little to recommend it. Successive Hague Conventions on Private International Law have resulted into a compromise that neither domicile nor nationality but 'habitual residence' should be the connecting factor.

Recently, the Law Commission has had under consideration the law of domicile and has put forward some provisional proposals.\(^\text{33}\) The Commission has rejected the possibility of abandoning domicile as a connecting factor in favour of either habitual residence or nationality. Instead, rules are proposed for determining the domicile of children, that is, persons under the age of sixteen. The domicile of such a person should be determined as follows:

a. where he has a home with both parents, his domicile should be the same as, and change with, the domicile of

   (i) his parents where their domiciles are the same or

   (ii) where they are different, his mother;

b. where he has a home with one parent his domiciled should be the same as, and change with, the domicile of that parent, and

c. in any other case he should be domiciled in the country with which he is for the time being, most closely connected. These rules should determine the domicile of a child at birth.

\(^{33}\) Working Paper no.88 (1985)
No person or court should have power to abrogate or override these rules. No provision need to be made to determine the domicile of a person who marries when under sixteen. The adoption of these rules would simplify matters considerably by getting rid of the complicated rules under the Domicile and Matrimonial Proceedings Act, 1973 and Re Beaumant. 34

With respect to the acquisition of a domicile of choice, it is recommended that the normal civil standard of proof on a balance of probabilities should apply in all disputes about domicile; that no higher or different quality of intention should be required when the alleged change of domicile is from one acquired at birth than when it is from any other domicile and that to establish a domicile it should suffice to show an intention to make a home in a country indefinitely. Furthermore, it is suggested that subject to contrary evidence, a person should be presumed to intend to make his home indefinitely in a country in which he has been habitually resident for a continuous period of seven years or more since reaching the age of sixteen.

The doctrine of revival of the domicile received at birth should be abolished and the established domicile should continue until a new domicile is acquired.

34. Supra note 27
A mental patient who has reached the age of sixteen should be domiciled in the country with which he is, for the time being, most closely connected.

The adoption of these rules would probably work a great improvement upon the existing ones.

Thus the English courts have jurisdiction to entertain divorce proceedings if either of the parties to the marriage is domiciled in England at the time when the proceedings are begun. Jurisdiction is based on the domicile of either party whether petitioner or respondent, bearing in mind that a wife can now acquire a domicile separate from that of her husband. Thus a husband domiciled abroad may petition for divorce on the jurisdiction ground that his wife, the respondent, is domiciled in England, even though he has never visited England. 35

The time at which domicile is to be determined is the time when proceedings are commenced, not at the later date when the case is tried. If the rule were otherwise, a respondent domiciled in England could frustrate a petition brought by the other spouse, domiciled and resident abroad, by changing his domicile, between the presentation of petition and the hearing of the case. The rule is "once competent,

always competent, and this will be so even if the party domiciled in England at the time of the proceedings has since changed his domicile, disassociated himself from the determination of his status by an English court and even take proceedings in the court of his new domicile.

2. Habitual Residence As a Basis of Jurisdiction:

Habitual residence is another connecting factor as is used as an alternative to domicile in respect of the jurisdiction of the English courts to grant decrees of divorce, judicial separation and nullity of marriage. It is used as an alternative to nationality as a basis for the jurisdiction of a foreign court when the recognition of an overseas divorce is in issue.

In Cruse Vs. Chittum, the meaning of 'habitual residence' and its inter-relation with domicile was considered. The court had to determine whether a spouse had been habitually resident in Mississippi for the purpose of deciding whether to recognise a divorce obtained in that state. Habitual residence was summed up as "a regular physical presence which must endure for some time". This appears to be different from domicile in that the element of "animus" required is weaker. No more than a present intention to reside should

36. Ibid
37. (1974) 2 All E.R. 940
be necessary for habitual residence and this ought to be assumed from the fact of continuous residence. Domicile is a legal concept whereas the habitual residence is far more a question of fact. The essence of the concept of 'habitual residence' is less demanding in terms of intention than the concept of domicile, but a residence must be more than transient or casual; once established, however, it is not necessarily broken by a temporary absence. What is far from clear is whether a person may have more than one habitual residence.

"Habitual residence" may be distinguished from mere "residence". The adjective "habitual" indicates a quality or residence rather than its length. Although it has been said that habitual residence means "a regular physical presence which must endure for some time", it is submitted that the duration of residence, past or prospective, is only one of a number of relevant factors. There is no requirement that residence must have lasted for any particular minimum period.

The English courts have jurisdiction to hear divorce petitions if either party, husband or wife, petitioner or respondent, was habitually resident in England throughout the period of one year upto the date when the proceedings

38. Ibid., p. 943
had begun. As with domicile, the relevant date is one year's habitual residence up to the date of commencement of proceedings, rather than of trial or judgment. This time factor is even more significant in the case of habitual residence than domicile for it is easier to change one's residence than domicile and thus frustrate the petitioner. It will also be the case that a spouse who has never been to England and has no personal connection with England whatsoever, will be able to petition for divorce on the basis of the respondent's habitual residence in England.

Although domicile and habitual residence are determined at the date when proceedings are begun, the Domicile and Matrimonial Proceedings Act, 1973 makes provision for jurisdiction to be assumed in other circumstances. If proceedings are pending for divorce, judicial separation or nullity in which the court has jurisdiction by reason of the grounds mentioned in the 1973 Act, then the court has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity even though there would be no jurisdiction under the Act of 1973. 39 For example, that a husband, habitually resident in England at the date of proceedings are begun, in case of petition for nullity, before the petition is heard, abandones his English

39. Section 5 (5)
residence. The wife, domiciled and resident abroad, wishes to cross-petition for divorce. At that time, there is no apparent jurisdictional basis for her petition; but Section 5 (5) confers jurisdiction because proceedings for nullity are pending in respect of which the court does have jurisdiction. Secondly, the English court appears also to have jurisdiction where petition changes his mind, as in the case where a spouse petitions for judicial separation, jurisdiction being based on his habitual residence, then before the petition is heard but after he has lost his English habitual residence, he amends his petition to one for divorce.

3. Procedure Issues:

Having dealt with the problem of determining the domicile and habitual residence for the application of law and the jurisdiction of the English courts, the other problems which have often cropped up is the procedural aspect of the issue. This procedural aspect problem includes the service of the notice, its contents and the manner it is to be served. The problem, however, has been put forth by Prof. Cheshire in the following way:

"a copy of every petition for divorce must be served personally or by post upon the respondent and every co-respondent. An order for substituted service may be made in appropriate circumstances, and service may even be dispensed with altogether in any case in which service is impracticable or dispensation otherwise

40. Cheshire and North, op.cit., p.361
appears necessary or expedient. This discretion is unfettered, but it will be exercised in favour of the petitioner only in exceptional cases, for instance, when the possible method of substituted service are likely to be ineffective.

Where it appears before the beginning of the trial of proceeding for divorce, and only divorce, that proceedings for divorce or nullity are continuing elsewhere in the British Isles, that the parties to the marriage have resided together after its celebration, that the place where they resided together when those proceedings began or where they last resided together before those proceedings began, is that other jurisdiction in the British Isles, and that either of the parties was habitually resident there for a year ending with the date on which they last resided there together the English Court must, on the application of one of the spouses, order the English proceedings to be stayed.

The salient features of this mandatory stay are that it only applies to English divorce proceedings and only when the parties to the marriage are closely and clearly connected with the other jurisdiction in the British Isles. If the proceedings are other than for divorce, or if the residential connection with the other British jurisdiction are not at all satisfied, this does not mean that the other proceedings can not be stayed. It means that there will be no mandatory stay and that the question must be considered instead in the con-
text of the court's statutory discretion to stay the other proceedings. The object of the mandatory stay is to ensure that the proceedings are heard in the more appropriate form.

In *Shemshadfar Vs. Shemshadfar*\(^4^1\) while rejecting the application for stay proceedings the Court held that the balance and fairness demanded that the proceedings in English court should continue so as to enable the wife to pursue her litigation successfully. The court has categorically refused to grant stay the English proceeding until disposal of the proceedings by the Iranian court.

**INDIAN LAW:**

In India, the rules to govern jurisdiction of the court are also based on the same two basis i.e. domicile and residence.

1. **Domicile As A Ground For Jurisdiction:**

The law relating to domicile has been formally used in the Indian Succession Act, 1925\(^4^2\) and the Constitution of India,\(^4^3\) but the term 'domicile' has not been defined.

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41. (1981) 1 All E.R. 726
42. Relevant sections where the word domicile is used have been discussed ahead at appropriate place.
43. Constitution of India, Article 5- At the commencement of this Constitution, every person who has his domicile in the territory of India and-
(a) who was born in the territory of India; or
(b) either of whose parents was born in the territory of India; or
(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.
The Supreme Court of India has, in the *Central Bank of India Vs. Ram Narain*, 44 applied the definition of 'domicile' as given by Mr. Justice Chitty in *Craignish Vs. Hewett* 45 to the effect that "that place is properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom". 46 This definition of domicile has also been adopted by the Bombay High Court in *M.A. Rodrigues Vs. Bombay State* 47 and subsequently other courts also followed the same.

Thus the Indian definition of domicile is based upon the English law. There are two essential ingredients for the existence of domicile:

(i) a residence of a particular kind, and
(ii) an intention of a particular kind.

The residence needs not be continuous, but it must be indefinite, not purely fleeting. The intention must be a present intention to reside forever in the country where the residence has been taken up.

Alike English law in India also, there are three kinds of domicile, namely (a) domicile of origin, (b) new domicile or domicile of choice, and (c) domicile of dependence.

44. AIR 1955 SC 36
45. (1892) 3 Ch 180
46. Ibid, p 192
47. (1956) 58 Bomb 825
(a) **Domicile of Origin**:

Law confers on every person a domicile on his birth. This is called the domicile of origin. Domicile of origin is a creature of law and no person can give it up totally. Every person must have a domicile and the domicile of origin continues till a person acquires a new domicile.\(^48\) When a person acquires a domicile of choice, his domicile of origin remains in abeyance and revives immediately on his giving up the domicile of choice. The Indian case of **Govindan vs. Bharti,\(^49\)** is a good illustration of this rule. One Krishnan, domiciled in India (Kerala) went to England for higher education in 1925. With the help of an English friend he completed his studies in 1939 and set up his private practice in medicine at sheffield. He earned a fortune. He then joined the British Health Service. In 1950 Krishnan died in England. During the period of 25 years he did not come even once to India. But in letters that Krishnan wrote to his friends and relations in India, he always expressed his intention of returning to India. On these facts the Kerala High Court held that Krishnan did not abandon his domicile of origin. But on appeal, the Supreme Court had reversed this finding of the Kerala High Court. The Supreme Court observed that

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\(^{48}\) Indian Succession Act, 1925, Section 9- The domicile of origin prevails until a new domicile has been acquired.

\(^{49}\) 1964 Ker.244. Judgment reversed on appeal by the Supreme Court, AIR 1974 SC 1774
till 1939, Krishnan has his intention to return to India. But when he acquired a comfortable practice, and purchased a house in Sheffield, he changed his intention.

The important aspect of the English domicile of origin is that it automatically revives by operation of law on the abandonment of the domicile of choice. However, this is not followed in India. Under Indian law domicile of choice continues until a new domicile is acquired or the domicile of origin is resumed *amino et facto*.50

(b). **Domicile of Choice**

Domicile of choice is a new domicile voluntarily chosen by a person of full age and capacity.

According to the Indian Succession Act, 1925 a man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.51 In other words, *factum et animus* must concur. Intention may precede the residence, such as the case of an emigrant who leaves his country of domicile of origin with an intention to settle in another country, or it may be formed after years of residence just as in the case of fugitive. But the coexistence of an intention and residence is essential for acquiring a

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50. Indian Succession Act, 1925, Section 13- A new domicile continues until the former domicile has been resumed or another has been acquired.
51. Section 10
domicile of choice. A new domicile continues until a
former domicile is resumed or another new one is acquired.\textsuperscript{52}
To acquire a domicile in India a person has to make and
deposit in one of the offices in India appointed in this
behalf by a State Government, a declaration in writing of
his desire to acquire such domicile, provided he has resided
in India for one year immediately preceding the time of his
making such a declaration.\textsuperscript{53}

Thus to acquire a domicile of choice, two elements,
namely, residence and intention must be existent. Though
intention is an intangible fact but it can be gathered from
events and circumstances, as in \textit{Kedar Pandey Vs. Narayan
Bikram Shah}\textsuperscript{54}, where Narayan Bikram Shah's father was domi-
ciled in Nepal but he was born in Varanasi. He received his
whole education in India. He lived in Ram Nagar where his
father built a palace in 1938-41. Subsequently in 1942 there
was a partition suit between Narayan Shah and his brother.
After partition, he acquired properties in Patna and several
other places. In 1949 he got issued an Indian passport in

\textsuperscript{52} Supra note 50
\textsuperscript{53} Indian Succession Act, 1925, Section 11- Any person may
acquire a domicile in India by making and depositing in
some office in India, appointed in this behalf by the
State Government, a declaration in writing under his hand
of his desire to acquire such domicile; provided that he
has been resident in India, for one year immediately pre-
ceding the time of his making such declaration.

\textsuperscript{54} AIR 1966 SC.100
which he mentioned himself an Indian citizen and domicile and resident of Ram Nagar. He married with an Indian girl. All his children were educated in India. His name was in the voter list of Ram Nagar. In 1957 he contested a general election from the Ram Nagar constituency. Now the question before the Supreme Court was whether Narayan Shah was domiciled in India in 1949.

The Supreme Court held that after taking into account all the events and circumstances of Narayan Shah's life, it was clearly established that long before 1949, he had acquired a domicile of choice in India. It was observed that any person not under disability at any time can change his existing domicile and acquire a domicile of choice by the fact of residing in a country other than that of his own domicile of origin with the intention of continuing to reside there indefinitely.55

Declaration of one's intention and motive may be taken into account but they are not the conclusive test. The court has to consider all facts and circumstances in which declaration of intention was made. In Ross Vs. Ross56 the English court observed that declarations as to intention are rightly regarded in determining the question of a change

55. Ibid., p.160
56. (1930) A.C.1, p.6
of domicile, but they must be examined by considering the person to whom, the purpose for which and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and actions consistent with the declared expression. Motive, however, stands on a bit higher footing. Motive gives direction to a person's intention; motive may indicate whether a man really intends to settle down in a particular place. For example suppose a criminal runs away from his country and settles down in another country, or a retired person goes to another country and settles down there. The motive in both the cases is different. Motive helps in judging the sincerity of the declaration of intention.\textsuperscript{57} The another glaring example on this point is an Indian case of Satya Vs. Teja Singh\textsuperscript{58} where the husband, a domiciled Indian national who married with an Indian domiciled woman before leaving India, went to New York for study in 1959. He completed his doctorate from Utah University. He got a job in Utah. In December 1964 he obtained a decree of divorce from a Nevada Court after falsely representing himself that he was residing in Nevada (he had merely fulfilled the requirement of 30 days residence there). Immediately after securing the decree of divorce he left Nevada and settled down in Utah. The Supreme Court in this case had no difficulty in holding that the husband was not domiciled in

\textsuperscript{57} Diwan, Paras, op.cit.,p.128
\textsuperscript{58} 1975 SC.105
Nevada and therefore the Nevada decree of divorce cannot be recognised. 59

An intention to settle down in another country must be free and voluntary. The Indian Succession Act, 1925 provides that a man is not deemed to have taken up his fixed habitation in India merely by reason of his residing there in his Majesty's civil, military, naval or air force service in the exercise of any profession or calling. 60

Since to establish domicile of choice the factum and animus of residence must be proved, it follows that if these two conditions cease to exist the domicile of choice is lost or deemed to have been abandoned. Just as mere intention to settle down or mere residence in another country is not enough to acquire domicile of choice, so also mere intention or mere residence to abandon the domicile of choice in a country is not enough.

Domicile, although in some cases spoken as 'home' imparts an abiding and permanent home and not merely a temporary one. In Bank of India Vs. Ram Narayan, 61 before partition of India one Ram Narayan carried on his business in Multan where he was then domiciled. After partition Multan became part of Pakistan. During disturbance that followed in the wake of

59. Ibid., p.106
60. The Indian Succession Act, 1925, Section 10...Explanation
61. AIR 1955 SC.36
partition, he sent away his family to India but he himself continued to reside there with a view to wind up his business. Thereafter he also migrated to India. The question before the court was whether before migration he continued to be domiciled in Pakistan, or whether he acquired an Indian domicile the moment he sent his family to India. The Supreme Court of India held that his domicile cannot be determined by his family coming to India without any proof that he had established a home for himself in India. Even if animus could be ascribed to him, the factum of residence is wanting, and therefore he continued to be domiciled in Pakistan.

(c). Domicile of Dependence:

Married women, minors and mentally retarded persons such as idiots and lunatics fall in the category of dependents as they are incapable of choosing their own domicile and their domicile depends on the domicile of others.

(1) Married Women:

The Indian statutory law does not follow English law. The Indian Succession Act, 1925, Sections 1562 and 1663 incorporates the general rule: on marriage the wife acquires the

62. Indian Succession Act, 1925, Section 15- By marriage a woman acquires in domicile of her husband, if she had not the same domicile before.
63. Ibid., Section 16- A wife's domicile during her marriage follows the domicile of her husband.
Exception- The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent court, or if the husband is undergoing a sentence of transportation.
domicile of her husband and during coverture her domicile is the domicile of her husband. Further it is laid down that wife can acquire her own domicile in the following two cases: (i) if the wife is living separate under a decree of the court, or (ii) if the husband is undergoing life sentence.

The general rule has been followed by Indian Courts in various cases. In *Prem Pratap Vs. Jagat Pratap* 64 Indian domiciled man married a German domiciled woman. They set up their matrimonial home in India. After sometime the husband abandoned his wife. The wife then filed a suit for maintenance in an Indian court. The main defence of the husband was that on abandonment the wife's pre-marriage domicile had revived and therefore, the Indian court has no jurisdiction to entertain the petition. Rejecting this plea, the court observed that during coverture the domicile of wife remains that of the husband.

In *Christopher Neelkantham Vs. Annie Neelkantham* 65 the husband who had Indian domicile and had married in England applied for divorce in Jodhpur court on the ground of desertion by the wife. As the petitioner was living within the jurisdiction of the Jodhpur District Court and as on the well settled principle that the domicile of wife was that of her

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64. 1944 All 97  
65. AIR 1959 Raj 133
husband, under the private international law, the court held that it had jurisdiction to entertain the application.

In *Teja Singh Vs. Smt Satya* 66 the general rule was rather wrongly applied by the Punjab High Court. The husband Teja Singh had gone to the United States for studies. He obtained a decree of divorce with his wife Satya from the Nevada court on the plea that he was domiciled in the Nevada State. When his wife filed an application for maintenance under Section 488 of the Criminal Procedure Code, Teja Singh pleaded that his marriage with Satya was dissolved and so he was not liable for her maintenance. On her appeal, the Punjab High Court on the basis of this general rule as the wife's domicile follows that of her husband held that Smt Satya was also domiciled in Nevada, and therefore the decree passed by the Nevada court was valid. This decision was unfortunately so much influenced by the age old rule of English law regarding the unity of domicile of husband and wife that the High Court ignored the provision of Explanation to Section 16 of the Indian Succession Act, 1925 which provides for an exception to the general rule. 67

It was really very unfortunate that our courts blindly followed the common law principle of the unity of domicile

67. The Indian Succession Act, 1925, Section 16 .......
Exception- The wife's domicile no longer follows that of her husband if they are separated by sentence of the competent court, or if the husband is undergoing a sentence of transportation.
of the wife and husband. The pity to be noted was that they even ignored the specific provision of section 16 of the Indian Succession Act, 1925 while following English precedent. Now we hope that whenever a case with regard to domicile will come before our courts they will follow the socially just view keeping in view of the circumstances prevailing in India.

(ii) **Minors**:

According to Indian Succession Act, 1925 a minor means any person subject to the Indian Majority Act IX of 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of 18 years; and minority means the status of any such person. 68 The Indian Majority Act, 1875 provides that every person shall be deemed to have attained majority when he shall have completed the age of 18 years. But in the case of a minor in respect of whose person or property a guardian has been appointed or superintendence has been assumed by the Court of Wards before he attained the age of 18 years, he shall attain majority when he completes the age of 21 years. 69 This general rule has an exception in Section 2 which provides that nothing in the Act shall affect the capacity of any person in respect of marriage, dower, divorce, adoption and

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68. Section 2 (e) Indian Succession Act, 1925
69. Section 3
his religion or religious rites. But this provision of capacity was materially changed by the Child Marriage Restraint Act, 1929 as it defined a "Minor" as a person under 18 years of age and provided punishment for male adults below 21 years for contracting child marriage.70 This Section 2 mentioned above was again changed by the Special Marriage Act, 195471 and the Hindu Marriage Act, 1955,72 which requires that the age of marriage in the case of male should be 21 years while in the case of female it should be 18 years.

However, for the purpose of domicile the minority in Indian law continues till a person attains the age of 18 years. In respect of legitimate child, Indian Succession Act, 1925 says that the domicile of origin of every person of legitimate birth, is in the country in which at the time of his birth his father was domiciled; or if he is posthumous in the country in which his father was domiciled at the time of father's death.73 As to the domicile of an illegitimate child this Act provides that the domicile of origin of an illegitimate child is in the country in which at the time of his birth, his mother was domiciled.74 This Act further provides that the domicile of minor follows the domicile of the parent from whom he derived his domicile of origin. Indian

70. Section 2 and 3  
71. Section 4 (e)  
72. Section 5  
73. Section 7  
74. Section 8
law recognises three exceptions when a minor does not acquire the domicile of his parents: (1) If the minor is married, (2) If the minor holds any office or employment in the service of Her Majesty, or (3) If the minor has set up, with the consent of the parent, any distinct business. 75

During minority a child has no capacity to change his domicile. In Kurimunnisa Vs. State of Madhya Pradesh, 76 the court held that in the case of dependent, his domicile follows the domicile of the person on whom, as regards his domicile, he is legally dependent, and that the domicile of an infant is determined by that of its father. In this case the infant had migrated to Pakistan alongwith its father and therefore it was ascribed Pakistan domicile.

Where in Sharafat Ali Vs. State of Uttar Pradesh, 77 a minor had gone to Pakistan with his maternal uncle while his father had stayed in India. When on his return to India on a permit issued by the Indian High Commissioner in Pakistan, he was to leave India, he filed a writ petition and argued that he could not during his minority acquire a new domicile.

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75. Indian Succession Act, 1925, Section 14— The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception— The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of Government, or has set up, with the consent of the parent, in any distinct business.

76. AIR 1955 Nag.6
77. AIR 1961 All 637
and had continued to retain his father's domicile while in Pakistan. The High Court admitted this view.

(iii) Mental Patient:

As far as Indian law with regard the domicile of lunatics is concerned we have a statutory provision. Like minor and a married woman, a lunatic person also has no capacity to acquire a fresh domicile of choice. He follows the domicile of a person who is having the care and custody of such lunatic. Such person may be parent if he is minor, husband if lunatic be a married woman and guardian if he has, even when becomes major. There is no reason why the Indian courts should follow the English principle that is, a major lunatics domicile remains the same as it was at the time when he legally began to be treated as insane.

Under the Indian Divorce Act, 1869, an action for divorce or any other matrimonial cause is maintainable only where the petitioner or respondent professes the Christian religion. To seek relief for the dissolution of marriage, the parties must be domiciled in India at the time of presenting the petition. Before 1926 to confer jurisdiction, the

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78. The Indian Succession Act, 1925, Section 18- An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

79. Section 2 (Para 2) Infra note 57 Chap V

80. Section 2 (Para 3)
residence of husband or wife at the time of presentation of the petition within the jurisdiction of the court was enough though the parties were domiciled in England.\textsuperscript{81} But in \textit{Bernard Hall Vs. Constance Hall}, the Judicial Commissioner of Sind held that he has no jurisdiction to divorce persons domiciled in England who had resided in Sind. To remove this controversy, the Indian and Colonial Divorce Jurisdiction Act, 1926 was passed directing English courts to accord recognition to divorce decrees passed in India and other colonies on the basis of residence. The Indian Divorce Act was then amended in 1926 by Indian and Colonial Jurisdiction Act to provide that Indian courts would have no jurisdiction to entertain a petition for divorce unless the parties were domiciled in India at the time of presenting the petition. The District Court within the local limits of whose jurisdiction the parties to the marriage reside or last resided has jurisdiction to entertain the petition; and the High Court has jurisdiction to confirm the decree for divorce. As regards non-British subjects the law remained unchanged, and therefore in accordance with the principles of private international law a petitioner in India with a foreign domicile could not seek divorce as was held in \textit{Tiscenko's case}.\textsuperscript{83}

Under the Parsi Marriage and Divorce Act, 1936 the

\textsuperscript{81} Lee Vs. Lee AIR 1924 Lah. 513
\textsuperscript{82} AIR 1933 Sind 70
\textsuperscript{83} 45 C.W.N. 1045
court gets jurisdiction if both parties to a petition for divorce are Parsis. 84 The Act provides for the establishment of special courts for Parsi matrimonial causes known as Parsi Chief Matrimonial Courts at Calcutta, Bombay and Madras, and the Parsi District Matrimonial Courts. Each of these courts is assisted by seven delegates who must all be Parsis. The suit in Parsi matrimonial must be filed in the court within the local limits of whose jurisdiction the defendant resides at the time of the institution of the suit, or the parties last resided together; or with the permission of the court at a place where the plaintiff is residing or at a place where the parties last resided together irrespective of the fact whether the defendant resides in India or not. 85

The Special Marriage Act, 1954 applied to the citizens of India domiciled in the territories to which the Act extends and also applies to Indian citizens outside India. Every petition for divorce has to be presented to the District Court within the local limits of whose jurisdiction the marriage was solemnized or the husband and wife resided or last resided together. 86 The district court may also entertain a petition by a wife domiciled in India for divorce if she is ordinarily

84. Section 2 (5), Infra note 58, Chap.V
85. Section 29, Infra note 59, Chap.V
86. Section 31 (1) same as Section 19 (1) of the Hindu Marriage Act, 1955, Infra note 52
resident therein for a period of three years immediately preceding the presentation of the petition and the husband is not in the said territories. 87 But there is no such provision in the Act for the poor husband who is domiciled and resident in India and whose wife is residing abroad. It is, therefore, submitted that a similar provision should also be provided for the husband. He should be treated as par with the wife. The Rajasthan court was confronted with such a case in which a petition was filed by husband before the Jodhpur District Court for divorce on the grounds of desertion by his English wife domiciled and resident in England.

The Court in this case observed that (i) as the petitioner had admitted that their marriage was solemnized in England and not within the jurisdiction of this court and that at no time during their marriage, the petitioner and his wife ever resided together within the jurisdiction of the said court, the petition could not lie under section 31 of the Special Marriage Act, 1954; (ii) that it was the principle of private international law that the court of domicile had jurisdiction to deal with such a matter; (iii) that as the petitioner was an Indian citizen domiciled in India, and had been living for several years past within the jurisdiction of

87. Section 31 (2), Infra note 53, Chap. V
the Jodhpur District Court, that court was the court of his domicile; (iv) that it was well settled that the domicile of husband was the domicile of the wife, the respondent in this case; (v) that according to the principle of private international law, the district court within whose jurisdiction the petitioner lived, had a proper jurisdiction to entertain the suit for divorce. 88

It is submitted that in the above case the husband could have presented his petition for divorce in India under the Indian Divorce Act, 1869, for he was domiciled in India and so the wife's domicile was also in India. Moreover, one of the parties was Christian.

For all matrimonial causes, the petition lies to the district court within the local limits of whose jurisdiction (i) the marriage was solemnized; or (ii) the respondent at the time of the presentation of the petition resides; or (iii) the parties to the marriage last resided together; or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more. 89 Thus the place of solemn-
zation of the marriage or the residence of the parties is the main basis of the court jurisdiction under Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 while domicile is a regulating factor only when both or one of the parties are habitually residing outside India.

So far as Muslim law is concerned, a husband can divorce his wife at any moment and without any reason. The wife can do so only with the mutual consent. These are the ways by which talaq can be obtained without recourse to the court. But a judicial action for divorce can be taken by the wife alone against her husband on any one of the grounds laid down in the Dissolution of Muslim Marriage Act, 1939. In the absence of provision for legal action under the Act, the jurisdiction of the court is regulated by the provision of the Civil Procedure Code. This means that a suit can be instituted in the court within jurisdiction the defendant resides at the time of filing the suit or the cause of action has arisen.

2. Residence As The Basis of Jurisdiction:

As we have seen that in all matrimonial cases "residence" forms the basis of court jurisdiction under the personal laws of all communities in India. What is the

90. Infra note, 26 Chap.V
91. The Code of the Civil Procedure, 1908 (as amended by the Act, 1976), Section 20, Infra note 63, Chap.V
meaning of the term 'residence'? This has been interpreted by the Supreme Court in *Jagir Kaur Vs. Jaswant Kaur*. The court held that it includes both permanent dwelling and temporary living at a place, but it does not include a casual stay in, or a flying visit to, a particular place. To serve as a basis for court jurisdiction, the residence must be something more than occupation during occasional or casual visit within the local limits of the court.

The presumption in law is that every person has some place of residence. Now the question is—How will the court fix a person’s residence if he has no fixed home? For example where the husband and wife did not have any fixed marital home, after their marriage, the words "reside" or last "resided" were to be given a wider meaning. It was held that the husband and wife who had last lived together at any place for a few days was held for the purpose of jurisdiction to have "last resided together" at that place. Even if the husband and the wife last resided together outside the district court jurisdiction, but are residing separately within its jurisdiction at the time of filing the petition, the court will have jurisdiction.

Thus for the purposes of matrimonial jurisdiction, "residence" means the place where the parties have set up

92. AIR 1963, SC 1521  
93. Murphy Vs. Murphy AIR 1921, Bom.211  
94. Borgonha Vs. Borgonha, (1920) 22, Bom.L.R.361
their permanent matrimonial home or abode where they lived together, and where the parties have no such matrimonial home, it will be a place where they last resided together, though for few hours. If in some cases it is found that the conditions regarding residence in matrimonial enactments are not satisfied then the Court will invoke the general provision of the Civil Procedure Code. 95

The High Courts were conferred with the jurisdiction on the basis of residence of the defendant. Temporary residence or mere presence of the defendant is enough to confer jurisdiction. In Paul Engel Vs. Edith Engel 96 the parties were Jews married in Vienna in Austria in 1936. When their country was overrun by enemy forces, they came to India with the intention of making Bombay their home. When the husband filed a suit for divorce on the ground of adultery, the High Court had to invoke clause 12 of the Letters Patent to acquire jurisdiction. It was held by the Bombay High Court that as the parties had acquired Indian domicile, it had jurisdiction to entertain the suit and a decree for divorce was granted as according to Jews personal law adultery was a ground for divorce.

Thus we have seen that under certain circumstances the Indian courts have the power to acquire jurisdiction even

when the defendant is outside the jurisdiction provided the cause of action partly or wholly arises in India.

Procedure:

So far as the domestic suits are concerned the summons are issued to the defendants to appear before the court according to the Rule 1 order V. But in respect of service of summons on defendants who are outside India, the Civil Procedure Code makes several rules. (1) Service of summons may be made on the agent of the defendant appointed to accept service of the process. Service of process may also be made on "recognised agent" of the defendant.

97. The Code of Civil Procedure, 1908, Order V, Rule 1-(1) when a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) ....

(3) every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the court.

98. Ibid., Order III Rule 6- (1) ... any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.

(2) such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in court.

99. Ibid., Order III Rule 2- The recognised agents of parties by whom such appearances, applications and acts may be made or done are-

a. persons holding power of attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

b. persons carrying on trade or business for and in the names of parties not resident within which limits of the jurisdiction of the court within which limits the Contd....
Generally service of summons is made to the defendant in person, unless he has an agent to accept such service. But if the defendant can not be found or is absent from his residence, and has no agent empowered to accept service of summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Where the defendant is avoiding the service of summons, the court may order the summons to be served by affixing a copy thereof in some conspicuous place or may order that the summons may be served either through post or advertisement in the newspaper. These rules are though made for domestic suits, but it can also be used in respect of foreigners.

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appearance applications or act is made or done, in matters connected with such trade or business only where no other agent is expressly authorised to make and do such appearances, applications and acts.

100. Ibid., Order V, Rule 12- Where ever it is practicable service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

101. Ibid., Order V, Rule 15- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

102. Ibid., Order V, Rule 20- (1) where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy thereof in some

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In case, a foreigner is not covered by any one of the above rule, the summons shall be served by post to the defendant if there is postal communication between such place and the place where the court is situated.\(^{103}\) The service of summons may also be completed through political agent in a foreign country.\(^{104}\) In such case the conspicuous place in the courthouse, and also upon such conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.\(^{(1-A)}\) where the Court acting under sub rule (1) orders service by an advertisement in a newspaper, the newspaper shall be daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

\(^{103}\) Ibid, Order V, Rule 25 - Where the defendant resides out of India and has no agent in India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the court is situate:

Provided that where any such defendant (reside in Bangladesh or Pakistan) the summons, together with a copy thereof, may be sent for service on the defendant, to Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides:

Provided further that where any such defendant is a public officer in Bangladesh or Pakistan not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air force or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant to such officer, or authority in that country as the Central Government may, by notification in the Official Gazette, specify, in that behalf.

\(^{104}\) Ibid, Order V, Rule 26 - (a) in the exercise of any foreign jurisdiction vested in the Central Government, a political agent has been appointed, or a Court has been established or continued, with power to serve
summons may be sent to such Political Agent or court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or court returns the summons with endorsement signed by such Political Agent or by the Judge or other officer of the court that the summons has been served on the defendant in manner directed, such endorsement shall be deemed to be the evidence of service.

B. CHOICE OF LAW:

The next problem which comes before the court after having determined the jurisdiction of English Court over a matter is the application of law to a given case. Sometimes it becomes a herculean task for a judge to decide as what a particular law should or should not be applied, because it is not only the question of the application of a particular law but the protection of the interest of the party in a dispute. Therefore the problem of choice of law seems not to be a unanimous one. No hard and fast rule has

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summons, issued by a court under this code, in any foreign country in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(b) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service.
been followed by the court in this regard. The choice of law has been variably adopted in various cases taking into account the facts and circumstances of a case. No definite law has been adopted. However, it seems that the earlier decisions of the court are the principles and guides for the English court to decide the choice of law to be applied in a particular case.

When the sole basis of the jurisdiction of the English courts in divorce was domicile, no choice of law problem arose. English law was applied and this could be justified either as the application of the *lex domicilii* to issues affecting status or as the application of the *lex fori* on the basis that dissolution of a marriage is a matter which touches fundamental English conceptions of morality, religion and public policy, and one which is governed exclusively by rules and conditions imposed by the English legislature. 105

The need for a choice of law rule arises when the court possesses jurisdiction on some basis other than the domicile, as may be illustrated by *Zanelli vs. Zanelli* 106 an Italian national, domiciled in England, married an English woman in England in 1948. Later on he was deported from this country and thereupon reverted to his original Italian

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105. Holland Vs. Holland, 1973 (1) S.A.901
106. (1948), 64 T.L.R.556
domicile. The Matrimonial Causes Act, 1937, which was then in force, gave the English court jurisdiction in divorce in such a case, but it did not impose a rule for the choice of law.

The court, applying English domestic law but without any consideration of the choice of law issue, granted the wife a decree of divorce, despite the rule of the Italian Law of her domicile at that time under which divorce was not permissible. Thus, English law was applied by the court as being the lex fori.

In case of India, once the Indian court assumes jurisdiction to entertain a petition for divorce, it will be for the court to make choice of law if there is no general law on the point. If there is any statutory direction making a particular choice of law obligatory, it will be bound to make choice of law accordingly. In the absence of such direction, the court will make its own choice of law in accordance with the general juristic principles as best as it can. 107

Where the parties are Indian resident or Indian domicile then the dispute will be settled according to their personal law. If the marriage is a civil marriage whether performed

in India or abroad or even if it has some foreign element, the court will apply the provisions of the Special Marriage Act, 1954. 108

If an Indian citizen marries with a foreigner abroad in accordance with the lex loci celebrationis, and if later on they come to India, and one of them applies for a divorce, the court may apply the provisions of the Special Marriage Act, that is, the law of the forum of the court or lex fori, and not the law of the domicile of the parties. But if there is a marriage of two persons following different religion and governed by different personal laws (if there is inter-personal conflict) then divorce, it is submitted, should be regulated by the Special Marriage Act.

C. THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS:

The next important question after the question of jurisdiction and choice of law, requires to be considered is the recognition and enforcement of foreign judgments in England. The conditions under which the English Courts may or may not recognise and enforce the foreign judgments are to be found in judicial decisions and statutes. Here the question is not, whether the foreign court applied the correct system of law or the correct rule of law but the

108. Christopher Neelkantham Vs. Annie Neelkantham, AIR 1959, Raj.133.
question exclusively relates whether the foreign court had jurisdiction. Apart from the questions of fraud, if a foreign court possesses jurisdiction in the English sense but fails to apply the proper system of substantive law, its judgments will be recognised in England. On the other hand, if it lacks jurisdiction in the English sense but applies the proper system of substantive law, its judgment will not be recognised in England unless it would be recognised as effective by the courts, of whatever system had jurisdiction, a relatively narrow exception. This exaggerated emphasis on a strict application of the rules of choice of jurisdiction proceeds from a natural reluctance of English judges to reopen final and conclusive decisions of any court, English or foreign, where no question of appeal is involved.

The question of recognition and enforcement of foreign judgments is not an independent or cannot be separated from the question of choice of jurisdiction. Both are corollary and concomitant to each other. That is whether the question, relates to the English court jurisdiction or to the foreign court jurisdiction these are of the same nature and have the same effect and scope. In practice, however, the recognition of foreign judgment is subsidiary for two reasons. First, that the test of whether the foreign court had jurisdiction

is conditioned very largely by the conflicts rules of jurisdiction of English courts, not of the foreign court concerned; \(^{110}\) secondly, questions of such recognition arise for less frequently in English courts than the general question of choice of jurisdiction to which an answer must be given or implied in every case which comes before the courts.

Therefore, the question of recognition and enforcement of foreign judgments have always been impliedly and implicitly raised and answered along with the question of the choice of jurisdiction. This has never posed a serious legal problem as the problem of jurisdiction involves indirectly the question of recognition and enforcement of foreign judgments.

In India, the law of recognition of foreign divorce is governed by section 13 of the Civil Procedure Code, 1908. \(^{111}\) It makes foreign judgments conclusive except when it has not been pronounced by a court of competent jurisdiction, it is not on merits, it is opposed to natural justice, it is obtained by fraud or when it is contrary to any law in India. There are not many decisions by Indian courts elucidating and developing Indian private international law on this subject except a Supreme Court’s decision in Smt. Satya vs. Teja Singh. \(^{112}\)

110. Travers vs. Holley (1953) All E.R. 794
111. Section 13, Infra note 98 Chap. VII
112. AIR 1975 SC 105
where the court observed that in determining whether a divorce decree will be recognised in another jurisdiction, no country is bound by comity to give effect in its courts to divorce laws of another country which are repugnant to its own laws and public policy.