

**Faculty of Law
University of Delhi
LL.M Course Material**

**Comparative Law of Marriage, Divorce and Civil Code
Course Code: (2YLM 114/ 3YLM 114)
2021-2022**

Course Objectives:

This paper will explore the differences and commonalities in the conceptualisation and legal treatment of marriage and matrimonial remedies in different legal traditions. This paper will be divided into two parts. Part A will focus on how different religions and cultures within India deal with different issues of matrimony such as validity, spousal rights, legitimacy of children and matrimonial reliefs. In part B, the focus will be on the legal perspectives and problems of Indian nationals who marry abroad with other Indian nationals or foreign nationals or foreign domiciled persons, and the resultant conflict of law between the law of nationality and the law of domicile.

Course Learning Outcomes:

On the successful completion of this Course the students will be able to:

1. Analyse the complexities involved between the law of nationality and the law of domicile vis-à-vis different issues of matrimony.
2. Apply their knowledge and critical thinking to solve the factual situations involving conflict of laws and support them with logical arguments.
3. Write research papers/notes and case comments.

Part A

Unit I: Multiplicity of Family Laws and Civil Code (*lex loci*)

1. Duality and pluralism in Indian Family Law
2. Civil Code – *Lex Loci* – Dealing with Diversity - Experience of Other countries
3. General laws overriding personal laws
4. Family law in India *vis-a-vis* the Constitution of India

Unit II: A comparative approach of Law of marriage, matrimonial rights and matrimonial remedies

1. Marriage and matrimonial rights under personal laws
2. Marriage and matrimonial rights under Civil laws
3. Matrimonial remedies under personal laws
4. Matrimonial remedies under civil laws

Unit III: Impact of conversion conflicts of laws in India

1. Personal law
2. civil law

Part B Unit

IV: Domicile – Basic concepts

1. Domicile, Nationality and Residence
2. Conflict between Law of Nationality and Law of Domicile – operation of *Renvoi*
3. General rules relating to Domicile
4. Domicile of origin and Domicile of choice
- 5 Theories of Domicile
 - a. Dual Domicile theory
 - b. Intended Matrimonial Theory Alternative approaches
- 6 Domicile of married women – during converture, after divorce, during judicial separation, after annulment of marriage and after the death of her husband
- 7 Difference between English Law and Indian Law

Unit V: Marriages solemnized between persons with different Nationality and Domicile

1. In India and Outside India
2. Choice between *Lex Loci* and *Lex Domicile*
3. Problems and perspectives
4. Need for a legislation

Unit VI: Recognition and enforcement of Foreign Decrees in India relating to matrimonial litigation 1. Relevant Statutes

- The Hindu Marriage Act 1955
- The Muslim Dissolution of Marriage Act 1939
- The Indian Christian Marriage Act 1882
- The Divorce Act 1869
- The Parsi Marriage and Divorce Act 1865
- The Special Marriage Act 1954
- The Foreign Marriage Act 1969
- The Prohibition of Child Marriage Act 2006

2. The Constituent Assembly Debates (Relevant portions) 3.

The relevant reports of the Law Commission of India

4. The books:

- Mulla Hindu Law by Satyajeet A. Desai
- Modern Hindu Law by Ramesh Chandra Nagpal
- Family Law by Paras Dewan
- Law of Marriage and Divorce by Paras Dewan
- Family Law Lectures by Kusum
- Nullity of Marriage under Hindu Law by M.S.Nijjar
- Studies in Hindu Law by Dr. Tahir Mahmood
- Syed Khalid Rashid's Muslim Law by V.P.Bhartia
- Muslim Law in India and Abroad by Dr.Tahir Mahmood and Dr. Saif Mahmood
- Mohammadan Law by Fyzee
- Cheshire and North's Private International Law
- Paras Dewan : Private International Law
- Atul M Setalvad, Conflict of Laws
- V.C Govindraj, Conflict of Laws in India

Suggested Readings

- Laura Dudley Jenkins, "Legal Limits on Religious Conversion in India", Law and Contemporary Problems, Spring, 2008 , Vol.71, No.2,Galanter-influenced Scholars (Spring,2008) at p-109-127.
- Indrani Kundu, "Conflicts of Laws: Jurisdiction of the Court and Choice of Law in Cross-Border Matrimonial Suit in India", Kathmandu School of Law Review, Vol.5(2)(2017) at p 80-87.
- T S Rama Rao,"Conflicts Laws in India" available on <https://www.Jstor.org/Stable/27873899>
- Prof. Usha Tandon, "Validity of Marriage under the Private International Law and Special Reference to 1978 Hague Marriage Convention: Towards Harmonization and Unification of Rules of International Private Law Relating to Marriage", Journal of Campus Law Centre (2013) at p-32-47.
- Lakshmi Jambholkar, "Recognition of Foreign Divorce Decrees in India: A case for Contextual interpretation, Journal of Indian Law Institute", Vol.33:3 available at www.ili.ac.in

Referred Cases :

1. *Parwathawwa v. Channawwa* [AIR 1966 Nys. 100].
2. *Smt. Satya v. Teja Singh* [1975 (2) SCR 197].
3. *Y. Narasinha Rao v. Y. Venkata Lakshmi* [AIR 1991 SC 821].

4. *Robasa Khanum v. Khoodabad Bomanji Irani* [(1946) 48. BOMLR 864].
5. *Thapita Peter v. Thapita Lakshmi* [(1894) ILR 17. Mad. 235].
6. *Vilayat Raj Alias Vilayat Khan v. Smt. Sunila* [AIR 1983 Delhi 351].
7. *Promila Khosla v. Rajneesh Khosla* [AIR 1989. Delhi, 78].
8. *Lily Thomas v. Union of India*, [AIR 2000 SC 1650].
9. *Neeraja Saraph v. Jayant v. Saraph*, [1994 (4) SCALE 445].
10. *Vikas Aggarwal v. Anubha* [(2002) 45. SCC 468; AIR 2002 SC 1796].
11. *Monica Variato v. Thomas Variato*, [2000 (2) GLT 149].
12. *Deva Prasad Reddy v. Kamini Reddy*, [AIR 2002 Karnataka 356].
13. *Marggarate Maria Pulparampil Nee Feldman v. Dr. Chacko Pulparampil*, [AIR 1970 Kerala 1].
14. *V. Ravichandran v. Union of India*, [(2010) 1 SCC 174].
15. *Arati Bandi v. Bandi Jagadrakshaka Rao*, [AIR 2014 SC 918].
16. *Surya Vadanam v. State of Tamil Nadu & Ors.*, [AIR 2015 SC 2243].
17. *Harmeeta Singh v. Rajat Taneja*, [102 (2003) DLT 822].
18. *Veena Kalia v. Jatinder N. Kalia*, [AIR 1996 Del].
19. *Dipak Bannerjee v. Sudipta Bannerjee*, [AIR 1987 Cal 491].
20. *Sondur Rajini v. Sondur Gopal* [(2005 (4) MhLj 68].
21. *Sheenam Raheja v. Amit Wadhwa* [CS (OS) 990/2010].