

**LAWS AND RULES FOR  
EXPATS SEEKING  
DIVORCE IN UAE WITH  
SPECIAL REFERENCE  
TO SANDIP  
SHANKARLAL KEDIA  
VS. POOJA KEDIA  
CASE**



Expatriates living in United Arab Emirates (hereinafter UAE) are often get confused with respect to the jurisdiction of the court applicable to them in order to decide their divorce matter. This is the main concern for the expats, as they are unaware of the local laws and the procedure followed in UAE for obtaining divorce.

Now, let us understand the rules and laws which are applicable to the expats in order to seek divorce in UAE with special reference to an Indian case wherein the couple solemnized their marriage in 2000, in Coimbatore, as per Hindu Vedic rites and then later on registered their marriage in Mumbai. They later moved to Dubai, where they had a son in 2001 and a daughter in 2008. Soon after the birth of their daughter, the woman returned to Mumbai with the children and started living there whereas the husband continues to reside in Dubai. Later in 2012, husband filed a divorce petition before the Dubai court. The husband claimed that the wife was duly served with summons issued by Dubai Court, despite which the wife failed to appear in the Court, either personally or through her representative. Hence, the matter proceeded in the absence of the lady in Dubai (UAE Court). The Dubai (UAE) Court by judgment dated 1st November, 2012 granted divorce to the man. In 2014, she filed a petition for divorce and maintenance for her children before the family court. The man furnished a divorce order obtained from the Dubai court to counter her application. In 2016, the family court dismissed the woman's plea, following which she approached the high court and challenged the validity of ex –parte divorce decree passed by Dubai court in the absence of wife.

### **Application of UAE Law to expats for filing divorce petition**

Expats living in the UAE can file a case for divorce under Federal Law No. 28 of 2005.

According to **Article 1(2)** *‘The provisions of this Law shall apply to citizens of the United Arab Emirates State unless non-Muslims among them have special provisions applicable to their community or confession. **They shall equally apply to non-citizens unless one of them asks for the application of his law**’.*

The said Article of Federal Law states that, if the expats (non -citizens) wants to get divorced, they have full right to file a divorce petition in UAE and can choose UAE personal law to decide their divorce case. Further, it also provides one exception according to which either expat can choose their own home country’s personal laws (where their marriage was solemnized) to be applied over family disputes (including divorce) while deciding their matter

in UAE. In deciding divorce related issues, the home country's personal laws may prevail over UAE Personal Laws for the expats residing in UAE.

### **UAE court's jurisdiction to decide a divorce petition for foreign expats:**

Many times people do get confused with respect to the term "jurisdiction of court". When the court is allowed to accept and decide the petition it is known as its "jurisdiction". For expats, who got married in place other than UAE, are usually having an option of choosing jurisdiction of the court in which they like to seek divorce. It may include the following:

1. The foreign expats can apply for divorce petition before UAE courts on the basis of their residency in UAE.
2. Can apply for divorce in their own home country.
3. Can apply in the UAE as per their own home country's personal laws.

### **Expats of different Nationalities**

The issue of taking divorce become more complicated in such cases where husband and wife both are from different nationalities. As per [Article 13\(1\) of the UAE Civil Code \(1985\)](#), *"The law of the state of which the husband is a national at the time the marriage is contracted shall apply to the effects on personal status, and the effects with regard to property, resulting from the contracting of the marriage"*.

This section has cleared all the confusion with respect to the jurisdiction of the courts to be applied, if parties are of different nationalities and fails to reach to a common decision. In such cases, the nationality of husband shall be applicable over all the matters which arises out of marriage such as divorce, property related issue, child custody etc.

On the other side, where the home country's laws are absent regarding divorce procedure, in such situations UAE laws will be applied by the courts.

### **Validity of Divorce Decree passed by UAE**

The decree passed by the UAE court with respect to divorce shall be considered as final decree until and unless it has been challenged by the parties in their own home country/ countries as per their own personal laws. Here, let us take read the judgement for the case passed by the Indian High Court for the better understanding of this concept.



### **Court's Verdict in the case of *Sandip Shankarlal Kedia vs Pooja Kedia (2017)***

The Bombay High Court has held that the Dubai court would have no jurisdiction to entertain the petition in accordance with provisions of the [Hindu Marriage Act](#), 1955, unless it met the three exceptions:

1. if the spouse against whom the petition had been filed consents to have the case decided by the foreign court; or
2. submits to the jurisdiction; or
3. when the person is domiciled or permanently resides there.

So, after referring such Indian case, it is crystal clear that all those divorce decrees passed by the foreign court could be held valid in India, if it is passed on the merit of case. In the case of ex-parte decree its validity can be challenged before the Indian courts.

Likewise, if any expat feels that the divorce decree has been passed in violation of the provision of their own country's personal laws they can challenge such judgement in their own home country because the UAE laws clearly gives more importance to the expats' personal laws as per Article 1 of the said law over the UAE personal laws.

