



# **Interpretation & Misinterpretation of Domicile in India**

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# Related Terms

1. Citizenship – Nationality – Passport holder
2. Residency – Resident - Permanent Residency – PR – Green card holder - Canada PR
3. Immigration – Migration
4. NRI – Taxation – Students – Work permit
5. OCI Card Holder –Overseas Citizen of India
6. POI – Person of Indian Origin
7. Foreigner – Person who is not a Citizen of India

# Object of Domicile

- The object of determining a person's domicile is to connect that person with some legal system for certain legal purposes.

# Domicile defined...

- The term 'Domicile' is not defined in the Indian constitution.
- Ordinarily, it means a permanent home or place where a person resides with the intention of remaining there for an indefinite period
- ***Domicile is not the same thing as residence.***
- Residence implies a purely physical fact, the fact of just being and living in a particular place.
- ***But domicile is not only residence, it is residence coupled with intention to live indefinitely in the place***

# Domicile Defined

- “Domicile means **permanent home**, and if that was not understood by itself no illustration could help make it intelligible”
- **According to MORRIS definition in-**  
“It is important to identify an individual’s personal law, which governs questions concerning the personal and proprietary relationships between members of a family.
- Place of birth is an inadequate criteria by which to identify the personal law

# Domicile Defined...

- The domicile of a person is in that country in which he either has or is deemed by law to have his permanent home.
- The concept of domicile has been explained by a distinguished American Judge, Oliver Wendell Holmes J,  
“the very meaning of domicile is the technically pre-eminent headquarters that every person is compelled to have in order that certain right and duties that have attached to it by the law may be determined”

Under both Indian and English private international law there are four general rules in respect of domicile

1. No person can be without a domicile;
2. No person can at the same time have more than one domicile;
3. An existing domicile is presumed to continue until it is proved that a new domicile has been acquired; and
4. Domicile denotes the connection of a person with a territorial system of law.



# Domicile of Independent Persons:

- Domicile of an Independent natural persons falls under the following two categories:
  - A) Domicile of origin, and
  - B) Domicile of choice.





# Domicile of Origin

- (1) English Law –
  - (i) Legitimate child – Domicile of father and
  - (ii) Illegitimate Child – Domicile of mother
  - (iii) Posthumous Child- Domicile of Mother –
  - (iv) In India - Posthumous Child- Domicile of father's domicile at the time of father's death
  - (v) By marriage - Woman acquires domicile of husband

# Domicile of choice

Every individual person can acquire a domicile of choice by combination of

- (I) actual residence in particular place, and
- (II) intention to remain there permanently or for an indefinite period

The domicile of choice is acquired by the actual removal to another country accompanied by his place of residence or settlement, a permanent home

# Domicile of Choice – cases

- When a person, whose domicile of origin was British, came to India as a missionary and lived in India for over 60 years, with only short visits to Britain, it was held that he had acquired a domicile of choice in India;
- Where Hindus, whose domicile of origin was India, went to Sweden where they acquired Swedish nationality, and then to Australia, but there was no evidence that they had intended to make Australia their permanent home, their domicile of origin continued, and, consequently, relief could be granted under Hindu Marriage Act 1955.

# Domicile of Choice – cases

- The question of domicile has been considered in several decisions arising under the Indian Divorce Act 1869, **under which a court only had jurisdiction to grant matrimonial relief if the parties were domicile in India.**
- A residence in England, which had been obtained by lies, impersonation and fraud and was, therefore, illegal would not be regarded as residence which could confer a domicile of choice.

# Domicile of Dependents

## 1. Married Woman:

- English Common Law -Domicile that of a Husband and can not have independent Domicile
- India – Sec. 15 & 16 of Succession Act –
- Australia, Canada, the Republic of Ireland, and New Zealand - married woman is treated as having an independent domicile like any other person.

# Domicile of Dependents

2. Legitimated child in India – Domicile is not know in India if marriage happened after the birth

3. Illegitimate child – Common law and India – That of mother – Australia – that of father if living together & if parents are separated, that of parents with whom child is living.



# Domicile of Dependent

- Domicile of mentally Deficient persons

## Common law -Australia – Canada

- Domicile which he had before mental deficiency
- Can not acquire domicile by choice
- No court decision in India but sec. 8 of Succession Act - a lunatic cannot acquire a domicile independently

# Domicile of Dependent

- **Domicile of Adopted child:**
- In Indian law there is Madras High Court decision that the domicile of the adopted child is the domicile of the adopting parent.
- No authority in English law
- As per Jurist A. V. Dicey - Domicile of adopting parents





# Comparison

## **DOMICILE**

- Difficult to determine
- Civil Status
- Person can acquire or loose
- Possible to bind to personal law

## **NATIONALITY**

- Easy to determine
- Political status
- Person can acquire or loose but only with government intervention
- may not be possible to bind to personal law



# Some examples

1. A child of Tanzania citizen domicile in UK is subject to Tanzanian law till reaches 18 years of age
2. All USA citizens are subject to USA taxation irrespective of where they live and for how long they stay out of USA
3. Canadian citizen living out of Canada for more than 182 days may lose Domicile of Canada



# Misinterpretation of Domicile in Gujarat & India



# History of Domicile Certificate in Gujarat and rest of India

- Resolution - 1.11.1940 – Original domicile rule before independence – Object was for Bombay Civil Service Classification and recruitment rules
- Resolution 27.09.1950 – The rules amended due to change in the Indian constitution and Rules made determine “Citizenship of India” and determine SC, ST and Decelerated Community and provide special privileges and rights given under the Indian constitution  
( *Ref. Format of Domicile Certificate on Page 5*)
- Part I Provision for determination of Domicile
- Part 2 Questionnaire of the Domicile
- Part 3 Instruction regarding Scrutiny of the Domicile Certificate application - Para 3- **Need for DC to receive State government benefit**
- Format of Domicile certificate

# **Rules for Domicile Certificate in Gujarat**

- **Resolution 08.08.1963 by GOG – Form of the Domicile Certificate is adopted and changed by Government of Gujarat to adopt for need of the State of Gujarat**
- **Resolution 6.06.1964 by GOG – Form amended again and word “Nationality” and “Citizen of India” removed.**
- **Resolution 14.09.1976 by GOG – Questionnaire made in original rules of 1950 were amended and it was translated in Gujarati.**

# **Rules for Domicile Certificate in Gujarat**

- **Question added above living outside India, Visa and receiving foreign citizenship at Question (gg)**
- **Question 7 ask for purpose of DC and also ask your Religion, Cast and Tribe**



# **Rules for Domicile Certificate in Gujarat**

- **Letter dated - 8.06.1989 by GOG – Who can be issued DC and 10 years continuous stay required**
- **Guideline dated 5.09.2009 - To issue DC, addressed to Ahmedabad CP - For Medical and Engineering admission –**
  - **(i) if student born in Gujarat and gone out of Gujarat for study, DC can be issued**
  - **(ii) If student born out of Gujarat but parents are settled in Gujarat and / or have real estate in Gujarat DC can be issued.**

# **Rules for Domicile Certificate in Gujarat**

- **Circular dated 17.3.2011 – 10 years of stay can be waived if born in Gujarat and gone out of Gujarat for study.**
- **This was for medical and engineering students who has gone to Kota for 11 & 12 study**



# **Domicile Requirement in Other states**

- **Gujarat – 10 years**
- **Maharashtra – 15 years**
- **Rajasthan – 10 years**
- **Tamil Nadu – 10 years or parents**
- **Karnataka – 6 years**
- **Kerala – 10 years**
- **Andra Pradesh – 10 years**
- **MP – 5 years**



# Domicile Requirement in Other states

- **Punjab - 10 years / 15 years**
- **Haryana – 15 years**
- **Telangana – Land and 7 years**
- **Utra Khand – 15 years / permanent home**
- **Uttar Pradesh – 3 years / parents or applicant**
- **Assam – Land Owner / 10 years / parents / Grand parents 50 years**

# Domicile OR Residency?

## For medical admission

### **The Supreme Court Judgment of AIR 1984 Dr. Pradeep Kumar & Others v/s Union of India**

years. When we use a word which has come to represent a concept or idea, for conveying a different concept or idea it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning. **The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. We would, therefore, strongly urge upon the State Governments to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions.**

# **Misinterpretation of Domicile under Organ Donation Law in India**

- **The Transplantation of Human Organ Act (THOA) 1994 by government of India**
- **The Transplant of Human Organs and Tissue Rules of 2014**



# National Frame Work in India

**Dte.GHS**

**NOTTO**

**ROTO**  
Chennai

**ROTO**  
Mumbai

**ROTO**  
Kolkata

**ROTO**  
Chandigarh

**ROTO**  
Guwahati

**SOTTO**

**SOTTO**

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# Legal Framework in Gujarat

- **The Transplantation of Human Organ Act (THOA) 1994 by government of India**
- **The Transplant of Human Organs and Tissue Rules of 2014**
- **Gujarat Deceased Donor Organ and Tissue Transplantation Guideline ( G-DOT Guideline )  
Dated 14<sup>th</sup> March 2019 - Government of Gujarat.  
(Health and Family welfare department Resolution No. MKM-1018-SFS-69-Ss)**

# **Allocation of cadaver Organ Distribution System – Procedure:**

- **This whole para 13 gives authority to SOTTO and convener who and how hospital and patient will receive organ under cadaver.**
- **This para 13.1 (Page 22) provides and mentions domicile / residency certificate is mandatory.**



# **Allocation of cadaver Organ Distribution System – Procedure:**

- **13.10 (B) (1) provide for private hospital can use their own deceased donor for wait listed patient and if not used organ will go to common pool**
- **13.10 (C) (1) COMMON POOL – FIRST COME FIRST BASIS BUT ONLY AFTER ABOVE UTILISATION BY GOVERNMENT AND PRIVATE HOSPITAL.**
- **Para (C) 2 makes mandatory to have domicile / residency certificate of Gujarat for registration for cadaver organ transplant**



# **Likely Examples who may needs Domicile for organ transplant & may not get**

- 1. Mr. N. Modi**
- 2. Mr. M. Mandavia**
- 3. All MPs, IAS, IPS and such other officers**
- 4. All out of state High court & Supreme court Judges**
- 5. Arm force & Central Government employees**
- 6. Employees of Indian Multinational companies**
- 7. Migrant Workers**
- 8. All those who moved for job or business from their home states**



# **The Transplantation of Human Organ Act (THOA) 1994 & Rules of 2014 by government of India**

**The different state's **domicile / residency**  
Rules divides India in to 28 countries**



# **Real Example & Writ petitions in Gujarat High Court**

- 1. Company Employee in India**
- 2. Village in Gujarat now in MP**
- 3. OCI Card Holder living in Gujarat since 2009**

**On 21<sup>st</sup> Nov. 2022 High Court of Gujarat declared the domicile requirement by Government of Gujarat is illegal for cadaver organ transplant registry**

## Gujarat High Court strikes down domicile certificate requirement for registration as organ transplant recipient

*The Court declared illegal two instructions in the Gujarat Deceased Donor Organ and Tissue Transplantation Guidelines mandating a domicile certificate for registering under the organ transplant list.*



# **PIL in The Supreme Court of India**

- 5<sup>th</sup> December 2022 Directed to Ministry of health to bring uniformity for Domicile / Residency and other requirement across India
- 9<sup>th</sup> January 2023 a meeting was called by Central Health Ministry of NOTTO, ROTTO, NOTTO AND STATE HEALTH DEPARTMENT
- 10<sup>TH</sup> FEB. 2023 UNION OF INDIA DIRECTION TO REMOVE DOMICILE CERTIFICATE FOR ORGAN CADAVER REGISTRY



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## Government makes changes to organ transplant rules, scrap age bar, domicile certificate requirement

*According to health ministry sources, three significant changes have been introduced under the organ donation rules.*



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# One India One Law.org

- Legal portal to bring ease and uniformity of Organ Donation and Transplant Law
- Create legal awareness among legal community in India
- Bring reform to the organ transplant law to save more lives



**Thank you**

# **Q & A**

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