



PRIVATE INTERNATIONAL LAW

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INTRODUCTION

- The Private International Law is that branch of law which is administered by the Court of Nation over the citizens or individuals in cases involving a foreign element.
- The Private International Law often referred as conflict of laws. In modern era, almost every country has its own system of Municipal Laws as well as its own system conflict of law. Its comes into operation whenever the court is faced with a claim that contain foreign element. It is applicable only on civil matters not on criminal matters.
- National Laws are the primary sources of Private International Law. But it is also embodied in treaties and conventions (for example Hague Conventions on Private International Law).

Meaning and Definition

In the case of **R. Vihwanathan v. Syed Abdul Wajid** Justice J. C. Shah observed that private international law is not the law governing relations between States. It is simply a branch of Civil law of State evolved to do justice between litigating parties in respect of transactions or personal status involving a foreign element. Its rules vary in nature of things differ from State to State, but by the comity of nations, certain rules have been recognised as common to civilized jurisdictions. Through part of the judicial system of each State, these common rules have been recognised as common to civilized jurisdictions. Through part of the judicial system of each State, these common rules have been adopted to decide disputes involving a foreign element and enforce foreign judgment, often as a result of International Conventions.

Nature & Scope

Private International Law is that part of Law which comes into operation whenever the court is faced with a dispute that Its comes into operation whenever the court is faced with a claim that contain foreign element. It is applicable only on civil matters not on criminal matters. Thus Private International Law deals with variety of cases such as contracts, marriage and divorce, child adoption etc. and when parties can not resolve their differences amicably, then three types of questions may arise in such cases:

- i. Whether the court has jurisdiction to deal with the issue before it?
- ii. By what system of law should the issue be decided?
- iii. Whether the judgment of a foreign court should be recognised or enforced?

Areas of law involving in conflict of laws

1. **Law of obligations:** contracts, torts etc.
2. **Property and succession:** property *inter vivos*, succession, matrimonial property relations.
3. **Family law:** marriage, divorce, custody of children etc.

Foundation of the Rules of Private International Law

- I. **Comity of Nations as foundation of Private International Law:** Doctrine of Comity of Nations is basis for applying the principles of conflict of laws. In the cases of *Satya v. Teja Singh*, Justice Y. V. Chandrachud observe that Indian rules may require foreign law not as an act of courtesy but on consideration of justice.

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II. Equal Treatment: Principle of Private International Law is that a case will be treated in same way under the appropriate law irrespective of the forum of decision. Thus a marriage will be adjudicated upon in accordance with the law of place where it was entered into, no matter where the adjudication take place.

III. Convenience: For the sake of convenience and expediency resort is made to Private International Law.

IV. Interest of Justice: Sovereignty and Social needs: Justice is broadly a legal reflection of ethical or moral values conditioned by time, place and circumstances. For the sake of justice the court goes beyond the geographical limits of its sovereignty. It is really a conflict, if at all, or at least a discrepancy between consideration of sovereignty and justice. Great injustice could result if the law of the court's country is applied where justice requires that the law of another country be applied to the facts and circumstances under adjudication.

Genesis and Development of Private International Law in India

Regulating Act, 1772

Before 1772, India has had an older development of Private International Law peculiar to her historical, political and social circumstances. The Modern Private International Law begun in Bengal presidency when Lord Warren Hasting passed Regulation of 1772 and from then, there has been evolution of rules to regulate inter-personal conflict of laws considering the personal laws of different communities in India. By this regulation, Lord Warren Hasting had attempted to introduce impartial, fair and inexpensive administration of justice. This regulation laid the foundation of a sound judicial system wherein section 23 of this prescribed application of Hindu and Mohammedan laws to Hindu and Muslims in their respective matters relating to inheritance, marriage, case and other religious usage or institutions.

Before independence, and till its recognition as a State, India was a federation between British India and Native Indian Princely States,

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Having distinct legal system. As a result, conflictual questions often arose in the area of law and administration of justice particularly the recognition of “Foreign Judgments” because at that time a judgment passed by a princely State was ‘foreign’ to the court of British India. This can be seen from the provisions of section 13 of the Code of Civil Procedure, 1908, which deals with recognition of foreign judgments.

Difference between Private International Law and Public International Law

1. Private International Law is also known as Law of Conflicts.
 2. Private International Law is that piece of the law of any State which comes into activity when a court is called upon to decide a suit containing a foreign element.
 3. National laws are primary source of Private International Law enacted by the legislature of the concerned sovereign State.
 4. Private International Law is differ from State to State.
1. While Public International Law is known as Law of Nations.
 2. While Public International Law is designated as International Law and regulate the relation between different countries.
 3. Treaties, Conventions and International customs are the primary source of Public International Law.
 4. Public International Law is applied uniformly to all the member States and its rules are same everywhere.

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Difference between Private International Law and Public International Law

5. Private international law deals with the legal relationships that exist between private individuals, businesses, and other entities that conduct business in other countries. It addresses issues like the recognition and enforcement of foreign judgments, the choice of law, and jurisdiction. Although states are not bound by private international law, national legal systems recognize it as a set of rules and principles that govern cross-border transactions.

5. On the other hand, relationships between states, international organizations, and other entities with international legal personality are the focus of public international law. The use of force, diplomatic immunity, human rights, international trade, and the rights and obligations of states in their interactions with one another are all governed by it.

Difference between Private International Law and Public International Law

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| <p>6. Private International Law is “Private” because it regulates relations between private parties and includes civil and commercial law.</p> <p>7. Private international law is enforced through domestic courts and arbitration.</p> | <p>6. Public Law regulate relations between States and include the law of nations or Public International Law.</p> <p>7. whereas public international law is enforced through diplomatic channels, international courts and tribunals, and economic sanctions</p> |
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Conflict of Laws

1) **Jurisdiction** - In which legal jurisdiction may a case be heard?

(determining whether the proposed forum has jurisdiction to adjudicate and whether it is the appropriate venue for dealing with the dispute)

2) **Choice Of Law** - The law of which jurisdiction(s) should be applied to the issues in the case?

- determining which of the competing state's laws are to be applied to resolve the dispute – *choice-of-law rules* (zakoni o rješavanju sukobu zakona)
- (the court first must settle these conflict of law questions before beginning to hear the merits of the case and deciding on a resolution to the dispute)

3) **Recognition And Enforcement Of Foreign Judgements** -How a foreign judgment will be enforced?

The stages in a conflict case

1. The court must first decide whether it has jurisdiction and, if so, whether it is the appropriate venue resolving the issue of forum shopping
2. The characterization of the cause of action into its component legal categories which may sometimes involve an incidental question
3. Each legal category has one or more choice of law rules to determine which of the competing laws should be applied to each issues
4. Application of selected laws to reach a judgment.
5. The successful party must enforce the judgment which will first involve the task of securing cross-border recognition of the judgment.

Choice of law rules

Courts faced with a choice of law issue have a two-stage process:

1. the court will apply the law of the forum (*lex fori*) to all procedural matters
2. it counts the factors that connect (connecting factors) or link the legal issues to the laws of potentially relevant states and applies the laws that have the greatest connection

e.g.

- the law of nationality (*lex patriae*) or domicile (*lex domicilii*) will define legal status and capacity,
- the law of the State in which property is situated (*lex situs*) will be applied to determine all questions of title,
- the law of the place where a transaction physically takes place or of the occurrence that gave rise to the litigation (*lex loci actus*) will often be the controlling law selected when the matter is substantive,

(In any case **PROPER LAW** will be applied

Proper law means the law which seems to have the closest and most real connection to the facts of the case, and so has the best claim to be applied.