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THE APPLICABILITY OF PRIVATE INTERNATIONAL LAW WITH COMPARATIVE LAW

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Private International Law is a merger of two concepts: that of Private Law and of International Law. Private law is the law that is voluntarily invoked by individuals or States acting in the capacity of an individual by entering into any sort of legal relationship.² International law is the law arising between different national (or municipal) systems of law.³

In the words of Cheshire: “Private International Law, then, is that part of the law which comes into play when the issue before the courts affects some facts, events or transaction that is so closely connected with a foreign system of law as to necessitate recourse to that system.”⁴

The reason behind Private International Law is the existence in the world of a number of separate municipal systems of law.⁵ National legal systems reflect differences in history, tradition, and socio-cultural values. The United States has a common law system characterized by a strong emphasis on judicial decisions as an independent source of law. Canada combines this common law system with civil law Quebec and considers it bi-jural.

Civil law systems trace their origins to Roman law and traditionally rely on comprehensive codes for ordering their legal materials.⁶ The legal systems of the world consist of a variety of territorial systems, that is their own municipal system, each dealing with the same phenomena of life-birth, death, marriage, divorce, bankruptcy, contracts, wills and so on-but in most cases dealing with them differently. The moment that a case is seen to be affected by a foreign element, the court must look beyond its own internal law.⁷

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² Steve headly, private law conference paper

³ Dr. F.E. Noronha, *Private International Law in India: adequacy of Principles in Comparison with Common Law and Civil Law Systems* p.33 (Universal Law Publishing Co. 2010).

⁴ Cheshire, *Private International Law* p.5 (8th edition).

⁵ Cheshire, North and Fawcett, *Private International Law* p.4 (Oxford University Press 14th Edition 2008).

⁶ Nigel Banks, *Legal Systems*, Artic Human Development Report 101,102(2004).

⁷ *Supra* note 4, at p.5.

Foreign element may be foreign law or facts, that is, factual circumstances, factual content, factual ingredients of a legal cause of action, fact patterns which in one or more ways are linked to a foreign legal system or a foreign country. It just means contact with a foreign system.⁸

When it is said that cases having foreign elements are to be determined by reference to relevant foreign law, the question is what is meant by 'foreign law'. When a case is decided by a court with reference to a system of law which is different from a system of law which the court will apply to a purely domestic case, such law is called foreign law.⁹

Private International Law suffers from a curious juxtaposition. In spite of the term 'international' being part of its nomenclature, the only international aspect is the foreign element. Private International Law, though has an international aspect, is essentially a branch of municipal law. This is why every country has its own private international law. However, Private International Law through a branch of municipal law, does not deal with any one branch of law, but is concerned practically with every branch of law and thus has a very wide ambit.¹⁰

DEFINITIONS OF PRIVATE INTERNATIONAL LAW

Private International Law describes the body of law surrounding which law governs when there is a conflict between citizens of different countries. In common law jurisdictions, it is sometimes known as "conflict of laws."¹¹

According to Nygh the conflict of law is referred as follows

"Conflicts of law, as its titles suggest, is concerned with resolving the conflicts which arise because of the interaction between different legal systems. The title is not altogether satisfactory. While it is true that the resolution of the conflicts between laws is the most important and dramatic aspect of the subject, there are other issues, such as jurisdictional questions, which do not necessarily arise out of conflicts between laws and yet indisputably belong to the subject."

According to North and Fawcett, Private International Law is defined as:

⁸ Dicey & Morris, *The Conflict of laws* p.3(8th Edition).

⁹ Paras Diwan & Peeyushi Diwan, *Private International Law:Indian and English* p.39 (Deep & Deep Publications 4th Edition 1977)

¹⁰ R. *Vishwanathan v. Syed Abdul Wajid*,1stAIR,(SC 1963).

¹¹ <https://libguides.law.ucla.edu/privateinternational>

“The main criticism directed against its use is its tendency to confuse Private International Law with the law of nations or public international law, as it is usually called... There is, at any rate in theory, one common system of public international law... but there are as many systems of Private International Law as there are systems of municipal law”.

HOW IS COMPARATIVE LAW CONNECTED TO PRIVATE INTERNATIONAL LAW?

It should have become clear that comparative law and private international law are intricately connected – not only in their objects (a plurality of laws), but also in their application. Yet, although the connection between comparative law and private international law is often mentioned in theory, it is not often operationalized in practice. Comparative lawyers rarely pay attention to private international law at all. Private international lawyers use insights from comparative law more rarely than they should. Both disciplines could benefit more from each other than they presently do.

As concerns the consequences for private international law, the judge is in multiple constellations required, at least in theory, to engage in a sophisticated comparative law analysis. Insofar, it is deplorable that private international law practitioners are often insufficiently aware of modern insights in the discipline of comparative law, whether methodological or substantive. It has often been suggested that the judge is incapable of such an analysis, which must instead be exercised by scholars. Yet the judge’s inability to fulfil a perfect comparison should not be enough reason for her to refrain from proper comparison altogether.

Moreover, the requirements in practice are often less high than those in theory. Usually, the judge need not compare solutions from all legal systems, but only from those that could possibly be applicable. Sometimes, as in the alternative application of different laws, comparison goes merely to the concrete result of application and does not require a more comprehensive understanding of the foreign law. Sometimes, as in the public reservation, the comparison serves merely as the basis for what remains, to some extent, a judgment call on whether the core of the forum’s legal order is endangered – here, comparison needs not be exact (though it does need to be accurate). In addition, even in systems in which questions of law are allocated to the judge, in reality, the parties and their counsel will bear a significant part of the comparative law burden. Alternatively, the parties can release the judge thereof, by choosing the *lex fori* as applicable law, or by agreeing that the foreign law should be presumed to have a certain content.

THE THIRD SCHOOL OF COMPARATIVE LAW

Yet in another way comparative law has been used for the development of private international law. Franz Kahn suggested as early as 1900, a third school of private international law that he also called the comparative method. This method is based on the assumption that the substantive laws of different states represent the stuff of private international law. Private international law, even where it is the positive law of one state, can therefore not be developed on the basis of just that state's substantive laws, as the nationalist school of private international law does; this approach can only produce unilateral private international law rules. Nor, however, is it possible to develop rules of private international law in a sphere entirely detached from all substantive laws, as was done in the so-called internationalist school. Instead, private international law rules must be developed on the basis of a comparison of the world's existing private law rules. The idea was taken up and expanded later by *Ernst Rabel*, especially in the area of characterization.

As attractive as it looks, the approach has been only moderately successful. The hope, implicit in the method, that a comparatist method can transcend domestic policies, has proven erroneous, both empirically and theoretically. Empirically, legislators still tend to develop private international law rules in close parallel to the development of substantive law rules. To name but one example, the German legislator adopted a private international law provision for registered partnerships only when such registered partnerships were accepted in German domestic law, just as though the choice of law problem could only occur at that moment. It might be desirable if private international law rules were developed more in view of the laws of other countries, but presumably, the political salience of issues that are not part of a country's substantive law is not great enough in most situations.

Theoretically, the idea that a private international law based on a comparison of the respective substantive laws can transcend politics seems implausible: although such an approach can and should transcend the substantive policies of the individual laws, it merely leads to the formulation and negotiation of specific choice of law policies and interests.

APPLICATION OF PRIVATE INTERNATIONAL LAW IN COMPARATIVE LAW

The shortcoming of the third school of private international law can be phrased differently: even a comparative perspective can never be a truly neutral perspective; although the judge is enlightened by the engagement with foreign law, he remains an officer of his own state, situated within his own legal

system. This insight parallels the recent shift in comparative law from a functionalist to a cultureless perspective, paired with the insight that comparative law is not a neutral discipline, that the corporatist is always situated and that her own interests shape, inevitably, her analysis.

In this regard, private international law has lessons to teach comparative law. Firstly, private international lawyers are aware of their own situations and the inability to fully transcend it; they are therefore experienced in dealing with this situation. Secondly, private international lawyers inevitably confront foreign law in very concrete situations. They are therefore forced to engage in very specific comparison, something that more careless comparative lawyers sometimes eschew. Thirdly, private international lawyers cannot confine themselves to an understanding of different laws in isolation; they are required to coordinate these laws and thus understand them also in their interaction. Fourthly, private international lawyers must necessarily render a decision (resolve a true conflict): they must, in the end, prefer the solution of one law over that of another. They are thus not only forced to make a value decision between different laws (albeit one based on values found in the private international law regime), but also to justify such a solution to the losing party.

It is therefore not much of an exaggeration to claim that what a private international lawyer engages in is, ultimately, a form of comparative law that can be called applied comparative law. The private international lawyer is engaged in all three strands of comparative law as explained in the introduction: she must understand and compare different legal systems, she must transplant solutions from foreign law into her own legal system, and she must transcend the substantive law of any one given legal system in building an internationalist perspective. Methodologically, she will often benefit from a functionalist perspective, while being aware of her own situations within her own legal system. This is applied comparative law, because it is done in the context of a particular litigation and situation, but as such it is not inferior to academic comparison that can be more abstract.

Private International law has become a necessity in this era of Globalisation. Nations are connected with one another. It is now evident how nations work for economic prosperity through economic cooperation. In such pursuit of material wealth, it becomes very obvious that there will be clashes between parties engaging in the contract, not only in the contract but also other legal issues may arise. For such issues, it becomes necessary to take help of Private international law.

As discussed in various statutes of Indian Laws have taken into consideration the need for the comity of the nations, which forms the foundation basis of Private International Laws. Various countries follow the traditional rule, whereas few members of the European Union follow Unified Private International Laws. There are various benefits that arise out of the use of Unified Private International

Laws. The law-makers and legislators should focus on rectifying the discrepancies and the incoherency within the domestic law, in order to pave the way for a much larger system of the Unified Private International Laws.

As for Comparative law, the scholars thought for some time that the mere exposition of foreign law is not yet comparative law but rather mere collection of information. Nowadays, it is more and more acknowledged that the recognition and understanding of foreign law itself already imply a necessarily comparative approach, and thus comparative law competence. With its focus on the plurality of legal system, and an attention towards their interactions and equivalences, comparative law displays obvious parallels with private international law.

Practical application of private international law always engages at least two legal systems—that of the forum, and a foreign one. In this sense at least, private international law will frequently require some of comparative law. An analysis of the specific interactions between comparative law and private international law goes beyond this general truth and provides insights relevant for both disciplines. Although the connections between private international law and comparative law are manifold, they can be grouped.

BIBLIOGRAPHY

I. PRIMARY SOURCES:

- Myneni, Dr. S.R., *Private International Law (Conflict of Laws)*, Asia Law House, Hyderabad, 2021.
- Diwan and Diwan, *Private International Law, Indian and English*, Deep and Deep Publications, Delhi, 1998.
- Garimella, Dr. Sai Ramani., *Private International Law (Conflict of Laws)*, Central Law Publications, Allahabad, 2021.
- Mony, Dr. V.L., *Private International Law (Conflict of Laws)*, Central Law Publications, Allahabad, 2021.

II. SECONDARY SOURCES:

https://www.iilsindia.com/study-material/742301_1626932610.pdf

<https://blog.ipleaders.in/private-international-laws-recognition-foreign-judgements/>

<https://www.legalserviceindia.com/articles/frpca.htm>

<https://www.sconline.com/blog/post/tag/private-international-law/>

<https://www.lawteacher.net/free-law-essays/commercial-law/rules-of-private-international-law-commercial-law-essay.php>

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6384&context=faculty_scholarship#:~:text=With%20its%20focus%20on%20the,forum%2C%20and%20a%20foreign%20one.