



PRIVATE INTERNATIONAL LAW IN INDIA: ADEQUACY OF PRINCIPLES IN COMPARISON WITH COMMON LAW AND CIVIL LAW SYSTEMS (2010). By F.E.Noronha. Universal Law Publishing Co., C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi, 110033. Pp. xxiii+ 327. Price Rs.250/-.

PRIVATE INTERNATIONAL law governs the private rights of disputants, but with an international content because of a foreign element in it. The foreign element connects the dispute with the legal system of a foreign country. This is either in terms of jurisdiction of the court, or in terms of the applicable law to settle the dispute, or with both. The codification and academic research of this branch of law has received least attention in India. The Indian judiciary follows the English system to a large extent in deciding cases with a foreign connection. In some of the cases, the judges expressed their concern on the high reliance on English law.

Private international law is a complex and highly demanding subject, especially so with the expansion of economic activities worldwide. Global relocation of personnel on account of marriage or otherwise, is another related area where this subject is relevant. There are a few agencies engaged in the unification efforts of private international law - The Hague Conference on Private International Law, UNCITRAL, and UNIDROIT are some of them. Many countries have their own laws to tackle the issues of conflict in this area. However, the subject focuses upon the private rights of parties, which is a topic within the prerogative of the sovereign state. A uniform set of rules governing private international law then becomes a debatable option with lack of viability considering the scale of developmental differences, a hard reality among countries. At the same time, globalization demands a consensus that a national legislation is an urgent need.

Private International Law in India by F E Noronha is an addition to the list of the earlier books on the subject. Here the author presents a different outlook: one, an examination of the inadequacies of the subject in the Indian context; two, an attempt for codification of the laws for India.

The book has ten chapters. It begins with a discussion on the limitations of the private international law in India in chapter I. Chapter II examines the historical and analytical evolution of the subject world wide with a special mention of its genesis in England and India. Chapter III discusses some general questions-the meaning and scope of the subject, definitions, essential ingredients, the basis of the subject, and its classification. The author also elaborates the international efforts for unification of private international law. Absence of a universal system creates hardships for the parties involved in related legal disputes and for the general growth



of the subject. He considers specific contexts like marriage, insolvency, e-commerce, banking, contracts and property. Chapter IV examines one of the core areas namely, jurisdiction. It discusses the rules of jurisdiction in India with respect to jurisdiction in *rem* and in *personam*, immovables, persons, and choice of jurisdiction by agreement. It also covers topics like jurisdiction over companies, mass torts, parent child issues and the relevant rules in the US. Sovereign and diplomatic immunity to jurisdiction and the operating laws in different countries are also examined. The International Law Commission's work on this area also finds a mention.

Chapter V discusses issues of choice of law and the various stages involved in it. It particularly emphasizes international contracts and examines the proper law determination. It also discusses the operation of curial law and Indian cases on choice of law decided by the Supreme Court of India. Chapter VI discusses an important part of the subject, namely, domicile. It distinguishes between nationality and domicile, citizenship and state domicile, and the rules on domicile in India. The author points out the need for clarification on domicile rules in India. It is noted that Indian case law is substantially founded on English precedents. Statutory provisions on domicile as per the Indian Succession Act, 1925 are discussed along with the constitutional perspectives in the chapter. However, the author notes the Indian anomaly in the absence of reference to statutory provisions in the decided cases. Chapter VII discusses personal and property law and miscellaneous topics. It touches upon areas like matrimonial matters, custody of children, protection to women, tortious claims, succession, IPRs and conflict between English and Islamic law in England. Under miscellaneous topics, issues like extradition, illegal entry and stay, extra-territorial offences and conflict of criminal laws are addressed. International arbitration, a vibrant topic in private international law is the topic of discussion in chapter VIII. It analyses the existence, validity, effect, and enforcement of an international arbitration agreement. The Indian agreement for foreign arbitration finds a separate discussion. Similarly, the Indian civil court's jurisdiction in a suit challenging the arbitral clause stipulating English law is discussed in a separate heading. Indian Arbitration and Conciliation Act, 1996 and judicial decisions are briefly discussed in the context. The author suggests that the 1996 Act (which is an adoption of the UNCITRAL model law) needs to be made more meaningful by adding the rules and sub-rules evolved in judicial decisions.

The recognition and enforcement of foreign judgments is an area where Indian cases on private international law have had significant developments. There are specific provisions in the Code of Civil Procedure (CPC) addressing the intricacies of giving effect to foreign judgments. Chapter IX explains the relevant provisions of the CPC and its rules. It elaborates the meaning of foreign award and public policy, which is one of the grounds on which the Indian courts can refuse to recognize the award. The judgments passed in certain countries are enforced in India on the basis of reciprocity; the book presents a table showing a list of these countries.



In the final chapter, the author argues for an Indian legislation on private international law. He surveys the civil codes of several countries and the Swiss Private International Law Act of 1987. He proposes a model Indian Code on Private International Law. The various provisions suggested have a bearing on the codes surveyed by him. There are appropriate footnotes for these borrowings. The model code consists of nine chapters dealing with general provisions, choice of jurisdiction, rules for choice of law, recognition and enforcement of foreign decisions, legal capacity, marriage, succession, obligations and property.

The appendices contain some documents. Appendix 1 reproduces the Quebec, Egyptian, and Mexican Civil Codes. Appendix 2 discusses some of the landmark matrimonial cases decided by the English courts. Appendix 3 lists out the international conventions on private international law by The Hague Conference on a range of subjects. Some of the convention texts are reproduced. The bibliography consisting of the books and articles used by the author is also provided.

The book is an innovative attempt to bring into focus the scope of the subject in the globalized world. While emphasizing the need for a code, author takes efforts to explain the inadequacies in the Indian legal scenario, *viz.* the judicial trend to follow English precedents. The recent years have seen sustained efforts to change the laws related to matrimonial issues with special reference to NRI marriages. They draw our attention to recognize the possibility of an independent domicile for married women to provide some support for these abandoned wives (to have a legal remedy in the place of their domicile). Presently, the Ministry of Overseas Affairs, Government of India provides for financial and legal assistance to the affected women in NRI marriages through empanelled NGOs and women groups. The National Commission for Women also seriously approaches the subject.

Areas like contract, tort, and property also need serious debates on the major issues faced by the concerned groups in the Indian context. This can immensely benefit the law-making process. The model code suggested by the author is a tool, which could be used by the lawmakers as a beginning point in drafting the law for this country.

As a whole, the book is written in a simplified style with many Indian cases. This could benefit the student community and researchers, and the legal community in general. Leaving aside some areas of repetition and some avoidable discussions of public international law instead of private international law, it gives a direction for thinking in this branch of law. The book is one of its kind to point out the move towards blurring distinctions between private and public international law, as evident in the unification effort by international agencies.

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