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A Study on Private International Law and its Conflicts

Dr Nisarg D Upadhyay

L.L.M, M.phil, Ph.D

Assistant professor Ananya college kalol

Email Id. nisargupadhyay1211@gmail.com

ABSTRACT

States are the main subject of international law. A sovereign state must have a permanent population, a fixed territory and the ability to form government and relations with other states. States have fundamental rights of liberty, equality, territorial sovereignty and self-defence and fundamental duties of ceasing hostilities, conscientious observance of treaties and non-interference with other states. States also have a duty to protect foreigners. The recognition of a foreign state or its government or territorial rights depends on the will of states. The General Assembly of the United Nations or the Union of Territorial States may also give recognition. A state of war or rebellion is also recognized. States acquire international status only after legal recognition and can sue the recognizing country in a national or international court, as well as the rights to appoint, dismiss, etc. ambassadors. New states are initially given de facto recognition, and legal recognition is given by examining their stability and international and mutual relations.

INTRODUCTION

A body of rules adopted by any country to resolve disputes involving the extraterritoriality of persons. Every citizen's dealings are subject to the laws of his own country; But when people of different countries engage in trade or other transactions with each other, those transactions are considered to have a 'foreign element' and the law of which country will apply to them. When the laws of two or more countries have definitions and remedies (conflicts of laws) for such transactions, it is called a 'conflict of law' difference. The rule of applying the law of one's own or another country in a case with such a foreign element is called the rule of conflict of laws. Public international law is therefore the law relating to the relations of different nations, equally applicable to all nations of the world, while private international law is the set of rules each country has adopted to apply to persons of foreign origin. Hence it is considered a branch of state law itself.

HISTORY AND DEVELOPMENT:

Since ancient times citizens of one country have had relations with citizens of other countries. Every state from time to time has recognized them as legally acceptable in the spirit of mutual cooperation and justice. Citizens of India used to intermarry and trade with Sri Lanka, Java, Africa etc. and were treated as subjects.

In the Middle Ages, European states also made their own rules to accept such transactions. In Muslim rule, if both parties or one of the two parties were Muslims, they would be judged according to the Shari'ah, while when both were non-Muslims, their customary laws would be considered. The British initially enforced their own laws in Hindustan, the most unjust example of which is the execution of King Nandakumar. He then recognized the personal customs then prevailing in India.

Ritual conflict developed mainly in Europe. In the fourteenth century, a writer named Bartolos de Saxoferrato gave the theory of 'established law'. It asks to examine the laws of the different countries involved in the dispute and decide according to the method which seems appropriate in view of justice and equity; But in respect of immovable property the law of the country in which it is situated shall apply and for movable property and other transactions the law of the country of citizenship shall apply. From time to time the law of domicile was adopted for movable property as well as personal transactions. Subsequently, jurists such as Cumolin d'Argentre, Savino, Storey, Nancy, Dicey, Westlake and Cheshire have extensively explored the rules of conflict of law. India has largely followed the rules of litigation where it has adopted British jurisprudence.

PRINCIPLES AND PROCEDURES OF LITIGATION:

Disputes with a foreign element involve three questions:

(1) choice of jurisdiction,

(2) choice of law,

and

(3) acceptance and enforcement of a foreign court's judgment. First the court will see whether it has jurisdiction to dispose of the question in dispute. Determine which state law to apply, if any.

If there is an application to enforce a decree of a foreign court, it enforces it only if it appears that the court had jurisdiction over the question in dispute; He will not execute the decree obtained by deception.

Courts in different countries deal with questions of foreign nature by coordinating different principles of conflict of law. According to Dicey the English courts adopted the principle of 'territorial and established right'. Accordingly, the courts of the country apply the laws of the country in all matters. Disposing according to foreign law does not mean that it is subject to foreign law, but only that it acknowledges the rights established in the foreign country. According to Professor Cooke's theory of 'local law' no court enforces foreign rights; But for the sake of simplicity and convenience, he administers justice with the help of foreign law according to the rules of legal conflict of his own country.

In a dispute with a foreign element, if it has jurisdiction over the cause of action, the court examines the facts and sees which definition of law it fits. If a European property is held in trust in India, it has to be decided whether it is a 'trust' or a 'transfer of property', as trusts are not created in Europe; So it has no definition. Then it is seen according to which law the question in dispute is to be decided; For example, in the *Re Corwin Trust* case, an English citizen with Russian domicile made a gift of movable property at death. According to English law it was a death gift, but according to the Russian law of domicile it was considered an inheritance. The court accepted the English definition and held that the property was a gift of property as it was situated in England.

Renvoi :

After the definition of the facts as described above, the court of another country has to decide what to do with the law of another country when it is decided to apply it. In *Forgo's* case, an unborn child of Bavaria living in France died leaving movable property in France. According to the law of the conflict of domicile of France, the law of the country of citizenship applies to this case, but according to a similar rule of Bavaria, the law of the domicile applies to it, so it is as if the case had gone to Bavaria and the Bavarian court had sent it back. Now if a French court re-imposes the internal law of Bavaria, it is said to be a complete repugnancy. To put an end to this, France accepted the principle of partial reversion and transferred the property to the state according to the laws of its own country.

Domicile:

In many cases of 'litigation disputes', domicile has to be determined. If a person resides in another country with the intention of permanent residence, he gets domicile there. Usually of personal status (status) and times Sai questions are disposed of according to the law of domicile.

Adhivas are of three types:

(1) by birth,

(2) by choice and

(3) by law.

Birthright of one's own country is converted into domicile of choice by permanent residence in another country. While by law the child gets the father's domicile and the wife gets the husband's domicile. An auras child gets mother's domicile. In the case of *Lloyd Evans*, an English citizen of Belgian origin who fled to England during World War II (1939–45) died. His property was settled according to the Belgian law of domicile as he had not voluntarily acquired England domicile. The domicile of an organization or corporation is the place where it is incorporated.

MARRIAGE AND MATRIMONIAL RIGHTS:

In this two questions have to be resolved namely the formality and the theoretical reality of marriage. The substantive legality is determined by the law of the place where the marriage took place and the law of the place of domicile. *Mehta Vs. In Mehta's* case, after marrying a Hindu from Mumbai in an Arya Samaji ceremony, an English immigrant woman went to England and applied for annulment on the grounds that she herself did not understand the ceremony to be a marriage ceremony. The court recognized the marriage as a monogamous Christian marriage, but held that his domicile was not voluntarily changed and void under English domicile law.

Contract: In questions of contract, its proper law is determined according to the 'principle of intention'. Judgment shall be given according to the law accepted by the parties to the contract; But it has added the principle of 'most real relationship'. In the case of *Vita Food Products*, a Newfoundland trader was to load a Canadian ship and land it in New York. The parties to the contract accepted English law. The Privy Council ruled in this on the 'doctrine of intention'; But as England was nowhere to be found in the agreement, it was heavily criticized. Now the real relationship of the contract is seen.

Foreign Tort: A tort committed abroad requires two main facts:

(1) it must be a tort under the law of the court and

(2) the act must be wrongful in the country where it occurred, even if it does not fall within the definition of a tort there. Machado Vs. In the Fontes case, damages were awarded in Britain for defamation in Brazil which would have been a tort in England and a criminal offense in Brazil.

Limitation: Courts generally do not entertain claims against the public policy or justice and ideals of one's own country and based on foreign penal or revenue laws.

CONCLUSION

A set of principles and rules of conduct that sovereign states are bound to observe in their relations with each other. It includes the relations of international organizations with each other and their relations with states and individuals, and rules relating to persons and non-state entities having international relations. Today it has added rules and principles of human rights related to multinational corporations, political parties, pressure groups, international terrorist groups, etc.

International law is primarily a system governing the rights and duties of states 'reciprocally'. Certain rules regarding his rights and duties are binding; While United Nations declarations or International Labor Union recommendations are guidelines. These rules are national or regional. Rules formulated through organizations such as the United Nations are universal, while rules from organizations such as the European Economic Community or the Organization for African Unity are regional.

The main purpose of international law is to create a just and, if not perfect, orderly system of international relations. It emphasizes international peace, reconciliation, arbitration and human rights.

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