Conflict of Laws: The Indian Innovative and Revolutionary Approach

Chandroday Pratap Singh Tomar & Sinduja Shukla[1]

Abstract

With this research paper we aim to make a detailed comparison of the European and American revolutions along with India's conflict of law position. India's private international law has long been recognized as a model heavily influenced by English conflict of law rules. We believe it should undergo a revolution of its own to conform to this nation's quasi-federal system. In recent years, English private international law has changed as in the development of on the choice of jurisdiction of the courts in the hands of the parties to the dispute. While private international law in Western countries tends to deal with conflicts between land rights, conflicts in India are mainly based on personal rights. This research paper seems to show the revolutionary changes that the United States and the European Union have introduced in their own way to conflict of law rules. Second, it draws a distinction between the two conflicts: the revolution and how each affected the conflict regime. Third, across the two revolutions, this paper will attempt to determine whether the Indian revolution should be based on either of the two methods of revolution adopted by the United States or Europe, or whether India should resort to a third method of revolution.

Keywords: *Conflict of Law; Private International Law; European Union; United States; India.*

Introduction

The stimulant for an established method for conflict of law rules is to determine the how in a legal dispute with a foreign element was before a national court. The rules of conflict of a state answer three basic questions: Under what circumstances can their courts assume it jurisdiction in cases with a foreign element, which domestic legal order applies (own or from a foreign jurisdiction), and which foreign judgments are susceptible recognition and enforcement within its national system.

Indian private international law has long been recognized as a heavily influenced model the English conflict of laws which the author thinks should be presented a revolution in its own right to conform to that nation's near-federal system. the last for years there has been a deviation in Spanish private international law, such as: B. the development of It is up to the parties to the dispute to choose the jurisdiction of the courts. While private international law in western nations is more concerned with conflicts between Land Laws Conflicts in India are mainly based on personal rights.[2] This research paper intends to record the revolutionary changes brought about by the USA and the European on his way to the conflict regime. Second motive is to make a

[1] Author & Co-author respectively, are Law Students in 4th year (8th Semester) at School of Law, Bennett University, Greater Noida, Uttar Pradesh, India.

[2] V.C. GOVINDARAJ, THE CONFLICT OF LAWS IN INDIA: INTER-TERRITORIAL AND INTER- PERSONAL CONFLICT, (2nd Ed, 2019) DOI:10.1093/oso/9780199495603.001.0001

difference between the revolution of the two conflicts and how each affected the conflict regime. Third motive is that across the two revolutions, this research paper will aim to determine whether the Indian Revolution must be based on one of the two methods of revolution adopted by the US or Europe, or if In India was to resort to a third method of revolution.

Conflict of Laws: The European Revolution

There have been conceptual and structural shifts in European disputes law away from the classic approach. Overcoming privatisation, nationalisation, and domestic internationalism is the focus of the European Community's recent "Choice of Law" movement.[3] Because the European paradigm the revolution is based on is so different from the doctrine of vested rights, it stands in stark contrast to the American revolution.[4] This means that federalization, constitutionalization, and pluralization are the three most important features lacking from American conflict law.[5]

1. Federalization: Under federalization, disputes between jurisdictions are referred to a supranational entity, like the European Court of Justice, for resolution.[6] Removing the advocacy from the states and centralising it has a revolutionary effect on the national choice of law.[7] The Rome II Regulation codifies the regulations regarding noncontractual duties that are caught between several jurisdictions, an authority provided to the European Union by the Treaties of Amsterdam, Article[8].
2. The European Court of Justice has ruled that it is essential to acknowledge the conflict of laws difficulties, therefore this should be reflected in any constitution.[9] The method takes into account the European Union's quasi-federal nature. Two fundamental changes occur as a result of constitutionalization:

[3] Ralf Michaels, *The New European Choice-of-Law Revolution*, Duke Law School Faculty Scholarship Series,(2008) Paper 151. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2552&context=faculty_scholarship

[4] Ibid.

[5] Ibid.

[6] Jürgen Basedow, *Federal Choice of Law in Europe, and the USA—A Comparative Account of InterstateConflicts*, 82 TUL. L. REV. 2119 (2008).

[7] Ralf Michaels, *The New European Choice-of-Law Revolution*, Duke Law School Faculty Scholarship Series,(2008) Paper 151. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2552&context=faculty_scholarship

[8] Aude Fiorini, *The Evolution of European Private International Law*, vol. 57, THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, no. 4, 2008, pp. 969–984. JSTOR, www.jstor.org/stable/20488261. Accessed 20 Mar. 2023.

[9] Ralf Michaels, *The New European Choice-of-Law Revolution*, Duke Law School Faculty Scholarship Series,(2008) Paper 151. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2552&context=faculty_scholarship

First, in the case of Cassis de Dijon, the court issued a ruling valuing the member states' (EU's) reciprocal recognition of one another's laws[10], which paves the way for the creation of a domestic law internal market. Second, it presents the ideas of equality before the law, EU membership founded on the common thread of conflict of laws, and human rights.

3. The third approach, "Pluralization of Process," is a synthesis of the Federalization and Constitutionalization approaches. Traditional choice of law is represented by the first approach, whereas the second approach uses the four freedoms to balance the regulatory interests of states with those of individuals' private property rights.[11]

Pluralism in Approach appears to be immensely helpful since it prevents the privatisation of case law and instead ensures that the two fundamentally diverse approaches can coexist. The Viking ABP sought to join into a Collective Bargaining Agreement with an Estonian Union and hire Estonian crew members at lower salary costs[12] by having their ship re-flagged in Estonia. The International Brotherhood of Transport Workers deemed this action illegal (ITWF). Article 8(1) of the Rome Treaty, which establishes that the provision of law of the nation in which the employee is carrying out employment should apply, would have given the court jurisdiction to hear the case.[13] The case involved unions exercising their social rights on the one side and the corporation expressing its free freedom to movement on the other. However, the court did not privatise the matter by using solely Finnish law; instead, it harmonised the laws.[14] An indistinguishable situation arose in the Laval case, and the judge there chose the same course of action.[15] That it is changing the law from "Method of Conflicts" to "Conflicts of Method" is clear evidence of this change.[16] The mutual acknowledgment aids in considering crucial links.[17]

Private law's approach to conflict resolution based on closest relationship was set in motion by the European Revolution, which replaced privatised choice of law with a regulatory choice of law. That is why we employ the federalized regime's rules for distribution rather than referring to them.[18] The second dramatic shift occurred when European choice of law superseded the national character of the choice of law. If the Person so chooses, he or she may file an appeal against the laws of his or her home state.

[10] Ibid.
[11] Ibid.
[12] international Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?isOldUri=true&uri=CELEX:62005CJ0438

[13] Niklas Bruun, *The Viking Line Case*, INTERNATIONAL UNION RIGHTS 13, no. 4 (2007): 8-9. Accessed Mar 20, 2023. http://www.jstor.org/stable/41936400.

[14] Ralf Michaels, *The New European Choice-of-Law Revolution*, Duke Law School Faculty Scholarship Series,(2008) Paper 151. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2552&context=faculty_scholarship

[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] Ibid.

Finally, there is the choice of law that is mediated, which sets the stage for the supranational basis in the regime of choice of law.[19] The external regulations are more unilateral and exist primarily to safeguard the European Union's borders and to establish their location, while the inside regulations act as guidelines. After having been more bilateral prior to the revolution, the choice of law is now attempting to become more unilateral by becoming European law.[20]

The Revolution of Conflict of Laws in United States of America.

In 1934, the United States produced the First Restatement of the Conflict of Laws.

The dispute rule that applied back then was the law of the place where the wrong was committed, according to the principle of Lex Loci.[21] Due to the presence of fifty states, numerous disagreements arose among the states, and experts noticed very early that the rule of lex loci was faulty and will result in unjust consequences, so dissatisfaction with the rule began to manifest pretty clearly in the American system.[22] In the case of Alabama Great Southern R.R. v. Carroll[23] for instance, the plaintiff worked for a railway in the same state as the defendant. He was hurt in Mississippi while on the job as a brakeman for the company's train travelling from Alabama. The injury was caused by the failure of a connection between two cars. According to the preponderance of the lex loci rule, the "fellow servant rule" of Mississippi superseded the "employer's liability" policy of Alabama because the damage occurred in Mississippi. So, the plaintiff could have been recovered, and the plaintiff did deserve to be recovered, but the plaintiff was not recovered and was not compensated as due to the defective theory of lex loci.[24]

As a result of a string of such cases, in the early 1960s, the American system of conflict of laws underwent a radical overhaul with the intention of upending the lex loci rule and the premises and goals of the then-prevailing choice of law system as described in the First Restatement of Conflict of Laws. The lex loci rule has been replaced by a more modern strategy that relies on a variety of contracts and rules in the United States, which is at odds with the lex loci rule. Methods like the Second Restatement, interest analysis, and the better law approach are examples of more up-to-date methodologies.[25]

The core foundations of the previously established choice-of-law system changed.[26] The landmark case of Babcock v. Jackson was a catalyst for change.[27] By 1977, half of the states in the United States had abandoned

[19] Ibid.
[20] Ibid.
[21] Bernard Hanotiau, *The American Conflicts Revolution and European Tort Choice-of-Law Thinking*, THE AMERICAN JOURNAL OF COMPARATIVE LAW 30, no. 1 (1982): 73-98. Accessed Mar 20, 2023. doi:10.2307/839869.

[22] Ibid.
[23] Alabama Great Southern R.R. v. Carroll, 97 Ala. 126, 11 So. 803
[24] Bernard Hanotiau, *The American Conflicts Revolution and European Tort Choice-of-Law Thinking*, THE AMERICAN JOURNAL OF COMPARATIVE LAW 30, no. 1 (1982): 73-98. Accessed Mar 20, 2023. doi:10.2307/839869.

[25] Symeon C. Symeonides, *The American Revolution and the European Evolution in Choice of Law: ReciprocalLessons,* Volume 82, TULANE LAW REVIEW (2008).

[26] Ibid.
[27] Ibid.

the traditional lex loci delicti norm, which had its genesis in this case.[28] The notion of lex loci had shown to be somewhat confusing in the area of civil wrongs. For situations involving actions that result in death, for instance, the location where the fatal blow was delivered is the one selected by the First Restatement.[29] The methodology was ludicrous because it failed to take into account the idea of lex loci, which states that a murder occurs in the location where the victim dies rather than the location where the poison was administered.[30] As a result, the American Revolution got underway with the goal of rejecting this principle in favour of more rational contemporary approaches.

There were two major shifts caused by the revolution:

Where both the tortfeasor and the victim have their primary residence in the same state, but the tort itself takes place in a different state, the first modification moves the focus from the location of the incident to the nature of the parties involved.[31]

(2) The second modification is intra-territorial and runs counter to the Restatement's premise that the law of the injured party's location should be applied in international tort cases.[32]

Since increased instances were calling into doubt the clarity of the lex loci, the majority of US jurisdictions ultimately decided to stop using it.[33]Rather from the traditional methods of dispute resolution, they opted for more contemporary techniques. The lack of flexibility afforded by the lex-loci rule appears to have necessitated the development of a variety of contemporary approaches that take into account a wide range of contacts, variables, and policies.[34]

The territoriality approach to litigation has also been upheld by American courts. They would assure that the parties' domiciles would be disregarded and that the site of conduct and injury would take precedence. If the dispute involves two residents of the same state, for instance, the law of that state would govern. If the parties are from different states, however, the law of the state where the injury occurred would apply unless the law of the state where the conduct occurred set a higher standard of conduct for the tortfeasor.[35]

With the more recent methods, we find two main techniques, which are: -

[28] Symeonides, *The Choice-of-Law Revolution*, UNIVERSITY OF ILLINOIS LAW REVIEW, Vol. 2015, No. 2,2015
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.
[34] Ibid.
[35] Symeon C. Symeonides, *The American Revolution and the European Evolution in Choice of Law: ReciprocalLessons,* Volume 82, Tulane Law Review (2008).

Interest Analysis

The Second Restatement of United States Law, which focuses on the interpretation of the substantive rules of law as the decisive factor for application in a dispute including multi-state aspects, includes the interest analysis as a strategy to address conflict of laws. This approach, known as the "Revolutionary Change in the American System of Conflict of Laws," was implemented as a result of a tort case in which it was supported by a 4-3 majority and has since gained widespread approval across the country.[36] Courts will look at the intent and rationale behind a statute as part of their investigation.[37] When the importance of a contact is determined in light of the policies underpinning each state's law, the major contacts test included in the Second Restatement transforms into an interest analysis.[38] When deciding which body of law to apply in a given situation, a court is presumed to use a "interest analysis" to make its decision. Although this methodology may not appear to be the most significant replacement of lex loci, it seems to be one of the efficient and unbiased choices that the judges of the court had in making a decision because the American revolution brought about quite a few modern changes, including the better law approach. The fundamental advantage of interest analysis is that it acknowledges that laws and norms of decision are used so as to attain their respective social goals, regardless of whether the case is multistate in character or not.

Interest analysis proceeds through the following conceptual steps:

1. First Stage: Identifying the Involved States and Establishing an Appropriate Framework Question arises: we do not know what "competing positive laws" are.[39]
2. Second, analyse the underlying policies of the many laws that are at odds with one another.[40]
3. The third step is to categorise the data gathered from the tracking method into the following three categories:

i) Fake conflicts, where only one state wants its legislation to apply.

ii) Real conflicts occur when the laws of more than one state could potentially apply to the same set of facts.

iii) the "no-interest" pattern describes situations in which not one of the relevant states wants their legislation applied.[41]

After classifying it, interest analysts claim to provide a mutually agreed-upon solution.[42] Interest analysis differs from other types of legal scrutiny in that it focuses solely on the extent to which applicable laws are enforced in light of their underlying policies.

[36] David P. Earle III, *Conflict of Laws, and the Interest Analysis - An Example for Illinois*, 4 J. Marshall J. of Prac.& Proc. 1 (1970)
[37] Ibid.
[38] Ibid.
[39] Sagi Peari, *Better Law as a Better Outcome*, vol. 63, THE AMERICAN JOURNAL OF COMPARATIVELAW, no. 1, 2015, pp. 155–195. JSTOR, www.jstor.org/stable/26386651. Accessed 20 Mar 2023.
[40] Ibid.
[41] Ibid.
[42] Ibid.

Better Law Approach

Professor Robert Leflar, the founding father, developed the better law approach as a follow-up to the interest analysis method.[43] This strategy looks for the better law to apply to the situation by comparing the two feasible options. Lex fori is often used in the better law approach. An excellent illustration of the better law method in action is provided by the case of Chaplin v. Boys[44]. The concept of lex fori, which was applied in the case of Chaplin v. Boys, has been compared to the better law approach. As a technician in the British armed forces, Mr. David Boys was also stationed in Malta. Boys' sense of balance was severely affected, and he sustained catastrophic injuries in a fatal accident brought on by Mr. Chaplin. The court rejected the principle of "double actionability," as defined in Philip v. Eyre, and instead reached the conclusion that the tortfeasor must be "civilly actionable." This is because the court applied the "lex fori," or in American terms, the "better-law approach," when the lex fori had a much closer connection with regards to the dispute. When parties to a dispute are from different states, the better law method requires that the disagreement be resolved in accordance with the law that has the strongest connection to how the dispute arose.

The better law method has been challenged by some academics because it is too similar to the cadi justice theory, which proposes that the substance of the judicial process can be reduced to a matter of responding to the specific facts of each case.

To sum up, it is safe to say that the American Revolution is among the most fruitful uses of the Conflict of Laws doctrine. A revolution is not necessarily an overnight event.

The development of a robust and effective framework for Private International Law is a long and arduous process.

Evolution of Conflict of laws in India

To this day, it is the English who are mostly responsible for laying the groundwork of India's Private International Law.

Although, the judiciary has departed from the English rules that will be found unsuited to Indian situations to varying degrees in different rulings.

Private International Law as it relates to Business Transactions in India: The new principle of party autonomy offers the parties the right to determine the governing law from any part of the world, replacing the old connecting factors required for the place of conclusion of a contract and the location of performance of the contract.[45]

---

[43] Ibid.

[44] Adrian Briggs,. *What Did Boys v. Chaplin Decide?*, no. 4, ANGLO-AMERICAN LAW REVIEW 12, (October1983): 237–47. https://doi.org/10.1177/147377958301200402.

[45] : Saloni Khanderia, *Indian private international law vis-à-vis party autonomy in the choice of law*, OXFORDUNIVERSITY COMMONWEALTH LAW JOURNAL (2018) DOI:10.1080/14729342.2018.1436262.

Despite the fact that the disconnecting element wasn't always allowed. Although the courts in earlier judgements like British India Steam Navigation Co Ltd v. Shanmughavilas Cashew Industries[46] upheld the validity of a choice of law that was not contrary to public policy, they did not agree that a choice of law could be totally disconnected from the facts of the case. Ultimately, the Supreme Court confirmed that the Indian Private International Law on commercial contracts permits the choice of any legal system, even if it lacks the pertinent nexus to the contractual agreement in question, in the cases of National Thermal Power v. Singer Company and Modi entertainment v. WSG Cricket Ltd.[47]

Personal Laws the Christian Marriage Act of 1872 and the Indian Divorce Act of 1869, both of which govern personal law in India, are woefully outdated and unable to meet the needs of the modern Indian Christian community.[48]

India is a multifaceted nation where many different faiths and traditions coexist. A universal code of conduct could offend people of many faiths. Thus, this essay proposes a tweaked version of the interest analysis that the United States has recently accepted. Marriage, adoption, and legal standing are significant topics in Indian law, as is the fact that different faiths—including Hindus, Muslims, Christians, Parsis, Buddhists, Sikhs, and Jains—abide by different canons. With so many different legal systems in place, disputes are inevitable.

Do Conflict of Laws allow for an Indian Revolution?

It is fair to say that the Indianization of the Conflict of Laws is still in its preliminary stages. The Parliament of India has recently enacted new laws addressing issues including marriage and matrimonial causes, succession, minority and guardianship, adoptions, and maintenance, and more.[49] Disputes in the West, like the United States and Europe, tend to centre on territorial claims, while in India, where many sects and faiths coexist, there is a wider range of interpersonal problems.

Do we really need to Indianize Conflict of Laws?

Due to the fact that Private International Law is dependent on the structure and operation of the specific nation, it must undergo the required revolution in every country. For instance, up to this day, English courts still use the method of mechanically selecting the country or jurisdiction whose laws decide the rights of the parties based on the linking element.[50] Nonetheless, Americans tend to examine each situation independently to determine which legal system is superior and why. The author finds this practise particularly limiting when it comes to issues of intellectual property rights and international commercial transactions, since the law

[46] British India Steam Navigation Co Ltd v Shanmughavilas Cashew Industries 1990 SCR (1) 884.

[47] Diva Rai, *Choice of law, international contracts and Indian jurisprudence,* October 2020. https://blog.ipleaders.in/choice-laws-international-contracts-indian-jurisprudence/

[48] V.C. GOVINDARAJ, THE CONFLICT OF LAWS IN INDIA: INTER-TERRITORIAL AND INTER-PERSONAL CONFLICT, (2nd Ed, 2019) DOI:10.1093/oso/9780199495603.001.0001

[49] Ibid.

[50] Ibid.

chosen to define the rights of the parties is often used without any examination of its contents beforehand.[51] It's possible that the disagreement is illusory, or that applying the chosen legislation will result in injustice for the persons involved. There is a risk of irreparable harm and hardship in the areas of law and justice if India mindlessly adopts the model of the English Conflict of Laws.[52] India takes a more flexible approach to the connecting variables than the other two models do, allowing the parties to select any forum that best suits them.

The private international laws in India have not yet been developed by the legislature.

The tendency of the Indian judicial system to rely on the English Conflict of Laws norms is not surprising given the lengthy history of British influence on Indian law.

In contrast to England's slow development and conflict of laws revolution, the United States' recent developments—including the interest analysis, third restatement, and better law approach—have been nothing short of spectacular.[53] The Indian judiciary can take heart from the United States' progressive stance on the conflict of laws, which has grown exponentially in recent years. It is a slow process, but it is possible if it is given enough care and if other ways are not imposed, but instead other methods are adapted to meet the needs of India's society and legislative.

It is possible that Indian courts may need to start determining cases on the basis of issues rather than parties, taking into account not only our history but also the makeup, values, and requirements of our society as a whole.[54] By analysing the differences between the conflict of laws models used in the United States and Europe, the author of this study concludes that Indianization of conflict laws is essential.

1. The provision of Triple-talaq or Dissolution of Muslim Marriage is an example of how India's personal laws, which are quasi-federal in nature, can conflict with one another and the constitution. It is crucial for a nation to develop multiple methods of resolving these inter-personal conflicts in order to ensure that every personal legislation is protected simultaneously, without overlap or causing unfairness to the members of the nation.

2. In the lack of law on a matrimonial issue, cases like Y. Narasimha Rao and Ors vs Y. Venkata Lakshmi and Anr demonstrate how reliant India is on English precedents, resulting in a contentious judicial ruling.[55] India, however, will need to set its own precedents in order to accommodate the country's rich cultural mosaic. The country should not feel pressured to rely on English law since, for one, it does not have the same diverse social and cultural milieu as India and, for another, Indian conflicts are more suited to English law.

[51] V.C. GOVINDARAJ, THE CONFLICT OF LAWS IN INDIA: INTER-TERRITORIAL AND INTER-PERSONAL CONFLICT, (2nd Ed, 2019) DOI:10.1093/oso/9780199495603.001.0001

[52] Ibid.

[53] Ibid.

[54] Ibid.

[55] V.C. GOVINDARAJ, THE CONFLICT OF LAWS IN INDIA: INTER-TERRITORIAL AND INTER-PERSONAL CONFLICT, (2nd Ed, 2019) DOI:10.1093/oso/9780199495603.001.0001

3. Despite the author's high regard for the recent advances in European Conflict of Laws and the possibility that India will come to rely on it due to the revolutionary emphasis on quasi-federal nature and the evolutionary mutual recognition that will undoubtedly benefit the Indian internal conflicts, this should not be the deciding factor.

So, the author thinks it is crucial to have a revolution in India concerning the conflict of laws. In a semi-federal state like India, it is not appropriate to base important policy decisions on the practises of other countries, no matter how helpful they may be.

Conclusion

Private international law is thought to be in its preliminary stages of development in India. Even though it has progressed at its own rate. The author maintains hope for an Indian conflict law revolution, but only if the country rejects the tactics of other countries in favour of reforming its own legislation to better reflect Indian society and culture. India cannot take its cues for an innovative approach to conflicts of law from the United States or Europe. The author of this paper thinks it is important to combine elements of the European pluralization approach with those of the American interest analysis. The reason for this is because it is hard to create a uniform set of personal laws due to the sheer number of existing statutes. Thus, India needs to figure out how to get coordinated with the interest analysis and give a fair assessment of why it applies those rules.