

## BOOK REVIEW



**Stellina Jolly and Saloni Khanderia, *Indian Private International Law*, Bloomsbury (Hart Publishing), London, United Kingdom; (2021), pg. x-351; Hardcover: USD 300/-; ISBN No. 978-93-543552-22-5.**

***Amrendra Kumar\****

In this contemporary world, international legal scholarships have witnessed exponential growth in the domain of private international law (hereinafter PvtIL) in different domestic jurisdictions. Increased human migrations, interactions, relations, and commercial transactions with other jurisdictions, supported by technological innovations and social transformations, have further expanded the horizons of PvtIL. The legal landscape of Indian PvtIL is not an exception to this pragmatic social and legal developments. To bring certainty, predictability, and enforceability, Indian rules of PvtIL are also evolving due to a growing number of native diasporas, commercial \*agreements, digital transactions, and offshore investments in foreign countries. Besides legislative development and judicial activism, academic contributions have also been witnessed in this subject under Indian jurisprudence in recent times. In this context, the book under review adds other feathers to the existing literature published in Indian context. It finds a novel and unique place among previously published books of renowned authors such as “K.B Aggrawal and Vandana Singh, *Private International Law in India* (2010)” and “V.C. Govindaraj, *The Conflict of Laws in India* (2011).” It is one part or volume of the series related to “*Studies in Private International Law: Asia*” published by the reputed publishers Bloomsbury (Hart Publishing), London, United Kingdom.

This book is a significant academic contribution with a systematic investigation and research of legislative intent and judicial practice revolving around the rules of private international law in India. It is limited in scope to three basic principles related to “jurisdiction, choice of law, and enforcement of foreign judgments under private international law” with specific three areas of practice under matrimonial relations, contractual, and non-contractual obligations. Besides, it also compares the Indian rules of PvtIL with other jurisdictions such as the United Kingdom,

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\* Assistant Professor (Sr. Scale), Law Centre-II, Faculty of Law, University of Delhi.

European Union, Australia, America, and Nepal. This book is structured in six parts with fourteen chapters referring to relevant cases, conventions, legislations, and references. Its first part consists of four chapters based on general principles of PvtIL dealing with nature, source, status, and operationalization in the domestic courts of India. The second part, in a single chapter, only deals with conflict of laws related to the jurisdiction of domestic court for judicial actions in '*rem*' and '*personam*'. Further, the third part includes four chapters analyzing the rules and practices related to marriage, divorce, custody of children, and cross-border surrogacy. The fourth part places two chapters on applicable law of contractual and non-contractual obligations under the rules of Indian PvtIL aligned with global trends in the contemporary age. The fifth part contains two chapters related to the rules of PvtIL on recognition and enforcement of foreign judgments and foreign arbitral awards. Finally, the last part in a chapter, ends with concluding remarks and a way forward demanding transparent and robust system for PvtIL in India.

In its first part, the book explores the conceptual foundations of the Indian rules of PvtIL, fundamental principles and operational aspects related to jurisdiction, characterization, application and exclusion of foreign law. In this part, the authors find that "private international law in India is not backed by explicit legislation, but traditionally guided by the principles of English private international law based on judicial decisions." For example, the characteristics and operationalization of domicile in India have been largely based on the English rules of PvtIL. In the second part, a chapter examines the principle relating to jurisdiction under Indian PvtIL, outlining the competency of domestic court in civil and commercial matters, jurisdiction for actions *in personam* as well as *in rem*, aligned with global trends noticed. Authors herein find that "although Indian rules of private international law do not explicitly categorize the jurisdiction of its courts as exclusive or permissive, these have implicitly been dealt under the provisions of Civil Procedure Code (CPC)." Further, they suggest that "India should rectify the Hague Choice of Court Agreement (HCCCA) for more clarity, certainty and predictability in defining jurisdictions for civil and commercial matters." The third part consists of four chapters relating to different dimensions of matrimonial or family matters with foreign element involved. Authors explore several statutory provisions and judicial decisions related to foreign marriage, divorce, child abduction, and cross-border surrogacy or commercial surrogacy. It has been firmly stated that "India currently has no legislation governing the recognition and validity of foreign marriages." However, the judiciary has been instrumental in recognizing foreign divorce in India based on the law under which the parties were married. Besides, it has also

applied the applicable law as domestic law for wrongful custody and abduction, adhering to "best interests" or "welfare" of the child. The conflict of laws concerning cross-border surrogacy in India has also been analyzed applying the principles of "legal parentage and nationality", but further trapped under the web of legal and judicial imbroglios.

In a couple of chapters, the fourth part deals with rules of private international law on applicable law in contractual obligations (proper law of contract) and non-contractual obligations (proper law of tort) related to cross-border disputes. In India, the proper law of contractual obligations is based on express choice of law or, in the absence of it, the implied choice of law of the parties concerned. However, such a choice of parties will be mala fide if it overrides the mandatory provisions of the Indian Contract Act (ICA). As far as the proper law of non-contractual obligations is concerned in India, the "common law's double actionability" principle is applied in the cross-border tortious claims or disputes. However, the authors have compared this principle for its applicability with other jurisdictions (European Union, Russia, China, Australia, New Zealand, and Nepal) which have discarded it, considering it 'absurd and anomalous' in today's context. For keeping aligned with the global trends, the authors have suggested that "new principles of Indian private international law on applicable law in non-contractual matters must incorporate party autonomy"; and must also be "determined by reference to whether a claim is general or special in nature." Further, its fifth part, in two chapters, discusses the recognition and enforcement of foreign court judgements as well as foreign arbitral awards in India. In this corollary, authors have taken assistance from the provisions of the Indian Civil Procedure Code (CPC) and the application of 'the doctrine of obligation' for qualification and disqualification of such foreign judgments and degrees to be enforced in India. In this regard, they juxtapose the Indian rules with other jurisdictions (European Union, South Africa, New Zealand, Australia, Canada, and Nepal). Further, they suggest that India should rectify two recent legal treaties, the HCCCA and the Judgement Convention, to harmonise the domestic law on recognition and enforceability of foreign judgements for predictability, certainty, and access to justice. Unlike the foreign judgments, recognition and enforcement of foreign arbitral awards has been found more settled and predicated in India by enacting specific legislation, "Arbitration and Conciliation Act, 1996", being aligned with the "New York Convention (1958)" and the "Geneva Convention (1927)." The last part at the end concludes the book with final remarks and specific suggestions putting them as a way forward. It has been academically remarked at the end that "The increased discussion and case law reveal the slow progress in Indian private international law. Though

the Indian private international law community is small, there is a growing interest in the study of private international law in India. It is opined that private international law in India deserves to be systematically studied and researched so that the current framework of private international law in the Republic can be improved.”

The authors of this book, being renowned scholars of International Law from the Global South, have contributed a systematic and updated corpus of Indian PvtIL which provides a serious and in-depth analysis of legislative developments and judicial trends related to matrimonial, contractual, and non-contractual cross-border disputes. Compiling fourteen chapters in a single volume of a book is a mammoth task; however, outline and structure of such chapters should have been balanced in the context and content. This book has also limited scope for its analysis taking three areas: matrimonial reliefs, contractual and tortious obligations only. The emerging cross-border issues (appropriation of foreign property, misuse or abuse of intellectual property and e-commerce transactions) in the respective chapters have been flagged, but not concluded with a settled position under Indian PvtIL. Still, the author and publisher of this book deserve rich credit for adding this timely and scholarly work in limited corpus of Indian PvtIL. In view of the academic contributions and suggestions made in the current domain of Indian PvtIL, this book would be a vital resource for law scholars, practitioners, researchers, students, and government institutions engaged in cross-border disputes and policies in this globalized world.