

STUDIES IN PRIVATE INTERNATIONAL LAW - ASIA

INDIAN PRIVATE  
INTERNATIONAL LAW

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Stellina Jolly and  
Saloni Khanderia

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## INDIAN PRIVATE INTERNATIONAL LAW

This book provides an authoritative account of the evolution and application of private international law principles in India in civil commercial and family matters. Through a structured evaluation of the legislative and judicial decisions, the authors examine private international law in the Republic and whether it conforms to international standards and best practices as adopted in major jurisdictions such as the European Union, the United Kingdom, the United States, India's BRICS partners – Brazil, Russia, China and South Africa – and other common law systems such as Australia, Canada, New Zealand and Nepal.

Divided into 13 chapters, the book provides a contextualised understanding of legal transformation on key aspects of the Indian conflict-of-law rules on jurisdiction, applicable law and the recognition and enforcement of foreign judgments or arbitral awards. Particularly fascinating in this regard is the discussion and focus on both traditional and contemporary areas of private international law, including marriage, divorce, contractual concerns, the fourth industrial revolution, product liability, e-commerce, intellectual property, child custody, surrogacy and the complicated interface of 'Sharia' in the conflict-of-law framework.

The book deliberates the nuanced perspective of endorsing the Hague Conference on Private International Law instruments favouring enhanced uniformity and predictability in matters of choice of court, applicable law and the recognition and enforcement of foreign judgments.

The book's international and comparative focus makes it eminently resourceful for legislators, the judges of Indian courts and other interested parties such as lawyers and litigants when they are confronted with cross-border disputes that involve an examination of India's private international law. The book also provides a comprehensive understanding of Indian private international law, which will be useful for academics and researchers looking for an in-depth discussion on the subject.

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Much has been written about private international law in the EU and the US. Less is known about the conflict of laws in Asia. Thus, little attention has been paid so far to the modernisation of private international law codes and rules that has been taking place over the last decade all over Asia. That trend continues. Now is the time to take stock of those reforms that have already taken place and suggest further improvements for the future.

Published under the celebrated series *Studies in Private International Law*, this monograph sub-series provides a forum for discussion and analysis of private international law in Asia. The series is not solely a survey of jurisdictions for practitioners. Comprising in-depth thematic and country-specific studies, each volume considers the private international law of Asian countries from a variety of perspectives. An underlying assumption is that private international law in different jurisdictions follow broad discernible patterns. Each volume in this sub-series highlights those patterns and discusses how rules in different Asian jurisdictions are either converging with, or diverging from, the patterns identified. Such an analytical framework will assist academics, judges, lawyers and legislators to envisage ways in which laws affecting cross-border relationships can be harmonised across jurisdictions and be made more responsive to the needs of citizens in Asia and elsewhere.

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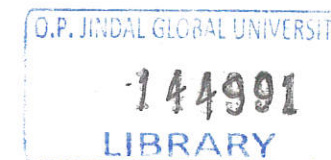
Volume 6: Indian Private International Law  
Stellina Jolly and Saloni Khanderia

# Indian Private International Law

Stellina Jolly

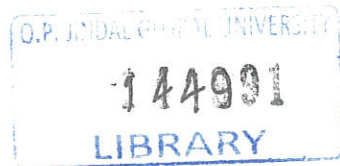
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## FOREWORD

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India has become an important role player on the international (commercial) scene. The law of the Republic, therefore, now more than ever, needs a lively and sophisticated branch of conflicts law, or private international law, to provide for, and support, the ever-increasing entanglement of national, regional, and international affairs in the private sphere. Development of case law (and legislation) in this regard is naturally preceded by academic curiosity. The Indian academic tradition in private international law has already been established for some time. Recently, however, there seems to have been an upsurge in scholarly activity in the field, including this fine book by two distinguished conflicts authors. A commendable openness to international, regional, and supranational instruments and the comparative study of a wide variety of national legal systems are the hallmark of their academic endeavours. Nevertheless, their commentaries and suggestions are well integrated into the current framework of Indian private international law in a way that facilitates the reception of valuable and suitable ideas from other traditions. The authors, from South Asian University and Jindal Global Law School, respectively, are both also much-appreciated associates of the Research Centre for Private International Law in Emerging Countries at the University of Johannesburg. Together with other emerging conflicts lawyers, they constitute the embodiment of our hope for the future innovative development of Indian private international law along rigorous intellectual lines. The authors, the series editor, and the publisher deserve our heartfelt congratulations.

Jan L Neels  
Professor of Private International Law, University of Johannesburg  
Honorary Member of the Governing Council of UNIDROIT  
March 2021

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## FOREWORD

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This book closes a gap in the literature on private international law from a comparative perspective by exploring a legal system which, so far, has not been very present in the global private international law discourse: India – a legal system which covers a vast (and partly internationally most mobile) population of great cultural diversity. Tushar Kumar Biswas comes in the *Encyclopaedia of Private International Law* to conclude that legal practice in India mainly relies on English literature as in India 'there has not been much doctrinal development' in this area of law.

It is rather surprising that India is a blind spot of private international law doctrine. Although India clearly belongs to the common law world, it had to react to the fact that English private international law has for decades been influenced by the legislation of the European Union and the case-law of the European Court of Justice. Hence, India, as other common law jurisdictions had to find their own solutions and had to emancipate from the jurisprudence of the English courts. The Indian solutions could, after the exit of the United Kingdom from the European Union, even serve as an inspiration for the new role of the English common law in the area of private international law.

Against this background, this volume of the *Studies* will be an important source not only for academics and practitioners in India but also a valuable contribution to the private international law community worldwide. The authors do not restrict themselves to thoroughly document the current state of Indian private international law, covering all areas of this branch of law and gathering the relevant case-law of the Indian courts. They also explore a potential reform of the Indian rules defining jurisdiction, determining the applicable law and dealing with the recognition and enforcement of foreign decisions in the light of international developments.

The effort of both authors commands the most tremendous respect and should be rewarded by many interested readers.

Anatol Dutta  
Professor of Private Law, Private International Law and Comparative Law,  
Ludwig-Maximilians-University, München  
March 2021

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The beginning of this enriching knowledge collaboration began in the 8th Journal of Private International Law Conference room in Munich, 2019. Prof. Paul Beaumont, University of Stirling, introduced us to each other. Professor Beaumont proposed the idea of a book on Indian Private International Law.

We were excited about the idea, as it was a substantial opportunity to contribute to the research on Indian private international law, which remains a domain under-researched and underdeveloped. We also felt that a book showcasing the Indian private international law in the global context could significantly reduce the academic void and lack of material faced by the faculties and students all over India. As far as the content of the book is concerned, it emanated and emerged out of our experience of teaching the courses of Conflicts of laws / Private International law at South Asian University (SAU), New Delhi, and OP Jindal Global Law School (OPJGU), Haryana, India. The curious questions and the vibrant deliberation with the dynamic minds in and around the classroom gestated the content for this book.

After this initial stage of fruition, many rendered their assistance in putting together the current version. Reviewers of this volume deserve a special mention for their valuable suggestions and comments. We would also like to thank the entire Hart team, especially Prof. Anselmo Reyes, International Judge of the Singapore International Commercial Court and Series Editor, Prof. Paul Beaumont, University of Stirling, and Ms Roberta Bassi, Commissioning Editor (Hart Publications) and Ms Rosemarie Mearns, Editorial Assistant (Hart Publications), for their encouraging response to our project, the constant cooperation, and for ensuring an accelerated publication process.

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Special thanks are extended to Professor Jan Neels and Professor Anatol Dutta for contributing the foreword to this book. We are sure the endorsement and support provided by them will increase the credibility and visibility of our work. We also express our gratitude to our colleagues and University functionaries at SAU and OPJGU for their constant encouragement.

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