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The Conflict of
Laws in India *Inter-Territorial
and Inter-Personal Conflict*

V.C. GOVINDARAJ

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The Conflict of Laws in India

To

*my dear wife, (late) Lakshmi Govindaraj,
as a token of my gratitude to, and appreciation of,
her lifelong service and sacrifice for her family*

Foreword

Professor Govindaraj is a legal scholar who had a long stint at the University of Delhi, where he taught conflict of laws to several generations of students. Conflict of laws is a tough branch of jurisprudence, and only a master of jural scholarship, can write, with authority, on any branch of the subject. Professor Govindaraj is among those few erudite scholars who have chosen to write a book on the subject. The book is voluminous, and deals with several dimensions of this complicated subject. No law person can claim to be a competent jurist without a fair knowledge of the conflict of laws, which in modern international jurisprudence is gaining greater relevance. The subject itself is so important that several universities have made it compulsory for law students to specialize in some facets of this jurisprudence.

I am happy to write a brief foreword to this learned work. While I pay a tribute to the author for the excellent handling of the subject, I have condensed my thoughts hoping that the reader would be persuaded to read the book in whole. My brief preface is meant only to initiate him into this very important work. As one reads on, the appreciation of the quality of the book grows. Surely the Indian universities will be grateful to Professor Govindaraj for the contribution he has made in so lucid and learned a manner that a difficult subject has become accessible to the average student of law.

Laws vary with countries, communities, and sovereignties, and differ with regions and sometimes even with personalities. So the laws conflict with each other, particularly private laws. Therefore, in a given case what law governs a person is a complicated question engaging both lawyers and courts alike. In theory law is the same for all people under the same jurisdiction. However, jurisprudence differs in different jurisdictions; and conflicts arising in individual cases, for instance,

in matrimonial and property disputes, where more than one party is involved, are governed by different personal laws. Laws are often confusing and conflicting, thus making the conflict resolution even more difficult. Therefore, I would strongly plead for comprehensive legislation on this subject which will prevail over different discordant notes. This objective can be achieved only by elimination of conflicts and convergence of laws.

16 January 2011

V.R. KRISHNA IYER

Preface

A case-oriented presentation of the subject, 'The Conflict of Laws in India: Inter-Territorial and Inter-Personal Conflict', has assumed importance in the new millennium we have embarked upon. Needless to say, there has taken place a shift in emphasis from the States to the individual in the globalized world in which we live. Naturally, therefore, private international law or conflict of laws assumes greater importance than does public international law for the simple reason that in the case of the latter, it is not law but power politics that is the determinant of interstate relationships, more so in context of the present day world. Moreover, the legitimacy of private international law as a subject of study is borne out by the fact that travel across frontiers by individuals and the legal transactions that take place among them transnationally have become so frequent and so common that we need norms to regulate their rights and duties through the instrumentality, primarily of courts, for a resolution of conflicts between the laws of countries or, more preferably, by states becoming parties to international conventions and treaties that lay down uniform norms as respects the rights and duties of individuals.

In this connection, it is gratifying to note that universities and law schools have now realized the relevance and importance of the subject and are keen to make it compulsory in the law courses. Besides, law firms and companies are eager to entertain young law graduates who have a sound knowledge of private international law.

The present work lays greater emphasis on case law rather than on an exclusive dependence on rules and principles which are open to multiple interpretations creating uncertainty even in such matters as commercial transactions, not to speak of family law relationships such as marriage and divorce and allied personal law subjects besides, of course, the law of obligations and the law relating to property.

As per the treatment of the subject, particularly in the area of law of property, the author had recourse to the Halsbury's Laws of England, *Conflict of Laws*, for which he expresses his profound gratitude.

It is customary for an author, based on propriety, to thank all those who had a role to play in bringing this work to its successful conclusion. Accordingly, the author's foremost thanks are due to the Indian Council of Social Science Research, New Delhi, for funding the project. Also, the author's thanks are due to the Indian Society of International Law, New Delhi, for agreeing to audit the accounts. It is virtually impossible for the author to name all those who contributed to the success of the project. All the same, the author chooses to name Dr T.C. Gupta, the Research Associate of the project, whose assistance in successfully carrying out the present work cannot adequately be expressed in words. He, in particular, had chiefly been instrumental in casting the chapter on marriage and divorce. The author's colleagues in the Indian Society of International Law deserve special mention for the help and assistance they rendered. In particular, the author cannot but extend his deep gratitude to his friend and colleague, Mr C. Jayaraj, Advocate, Supreme Court of India, whose constant help and advice contributed in no small measure to accomplishing the task the author had set for himself. In this connection, mere words of thanks may not suffice to express the author's gratitude to (late) Mr Ram Niwas Mirdha, the President of the Indian Society of International Law, for his concern and encouragement all along for the success of the project. Thanksgiving may become no more than formality if the author fails to express his gratitude to (late) Mr V.K. Krishna Menon, the Founder-President of the Indian Society of International Law, who introduced teaching of Private International Law in the Society's Academy, and insisted that the author should shoulder the responsibility of teaching that subject in the Academy. Above all, the author is highly grateful to the Oxford University Press, New Delhi, for agreeing to consider publishing his work which, it goes without saying, would enhance its value. Last, but not the least, the author owes a deep debt of gratitude to Mr Amresh Chadha who, despite his other commitments, social and official, gave his best in typing the work on the computer.

V.C. GOVINDARAJ

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