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Doctrine of Renvoi in the Conflict of Law

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Abstract

The institution of marriage has been a valuable institution since the beginning of civilization. Because it embodies the relationship between husband and wife and gives both marital rights and responsibilities. International legal systems are dedicated to meeting these rights and ensuring the fulfillment of marital obligations. Matrimonial disputes are one of the most difficult legal interventions and the situation becomes even more complicated if a foreign party is involved, for example the party to the marriage belongs to a jurisdiction other than the country in question. Such marriages have become entangled in a labyrinth that leads to complex procedures such as intercountry disputes, jurisdictional issues, and disputes over the exercise of personal rights. Private international law aims to enable the application of foreign laws in a country's territory/region. The approach is to use international methods inspired by each country's national laws to resolve disputes between private parties. To resolve foreign jurisdictions regarding matrimonial issues, there is a need for a proper international law firm with the authority to recognize, multiply and formalize marriages across the country. The Confession of Doctrine is a body that governs decisions regarding foreign marriages. Regulatory doctrine refers to the process by which national courts adopt foreign laws in matters of law. This is an attempt to resolve disputes regarding foreign content. It concerns the principle of conflict in the application of law, in particular the possibility of application of more than one law. This principle apparently applies to matters where personal rights apply to individuals, such as disputes, inheritance, and inheritance. In Renvoi's absence, the court applied strictly.

Keywords: *Doctrine of renvoi, Single renvoi, Double renvoi, Conflict of law, foreign element.*

Introduction:

Private international law is a subset of the many rules that govern interactions and transactions between private residents of different nations. It is a framework of customs and principles that aid in governing cross-border interactions. It balances international harmony as well as sovereign acts with those of the private sector in a dualistic manner. Private international law is a body of law that addresses the private populations of different countries. Every nation has its own set of international laws. These are the guidelines developed by nations to control contact with autonomous nations. Each nation has its own set of guiding principles that it uses to determine the reach of the law.

In the realm of private international law, both the unification of substantive law and its conflicts are covered. Several different legal issues are addressed. These difficulties are endless for lawyers with an international practise and encompass a variety of topics like child abduction, wills and trusts, sales contracts, the enforcement of foreign judgements, negotiable instruments, etc. It has evolved into a tool for both the creation of multilayered international agreements that establish norms and other strategies for coordinating and harmonising substantive law.

Introduction of Renvoi

Renvoi (French) means "send back" or "return unopened". The Doctrine of Renvoi is a legal principle that is then applied in court when a dispute arises that is thought to include Private International Law, sometimes known as the law of another state. It is a crucial and fundamental area of conflict of laws or private international law. This is utilised in foreign succession planning and estate administration situations. The procedure by which a court adopts laws from a foreign country when there is a legal conflict is known as the doctrine of renvoi. It is a technique used to handle situations that are present in foreign elements.

The theory is based on the principle that regardless of the nature of the case, it bans forum shopping and mandates the application of the same law in all instances. It tries to accomplish the goal. The "regulation of Renvoi" is the process by which a court ascertains the norms of a remote locale in respect to any legal issue that may occur. The convention's goal is to prevent "discussion shopping," and a similar regulation is linked to achieve the same goal no matter where the case is actually handled. This goal is pursued by Renvoi's arrangement.

Even today, many nations still adhere to the idea of renvoi, which dates back to 1652 (the Roness judgement of 1652). It is applicable where the law of domicile, the law of the location where a will was made (lex loci actus), and the law of the location where the immovable property is arranged have been mentioned (lex situs). The three steps of private international law are as follows:

1. Selecting the appropriate forum or jurisdiction

2. Characterization/Law of Choice

3. The Use of Foreign Judgments

Renvoi comes under the second step of private international law.

Theory of Single Renvoi

The single renvoi arises when a country's conflict of laws rules makes references to the "law" of another country, while the foreign country's conflict rules make references back to the primary country and are chosen under the primary country's law. This process is sometimes referred to as remission or single renvoi. The Single Renvoi is now in use in Spain, Italy, and Luxembourg. This system refers to the rules of the law that a certain jurisdiction has decided to follow. The doctrine of renvoi is divided into two parts, namely renvoi in its restricted sense, or renvoi proper (remission), and renvoi in its wider connotation (transmission).

Example- According to the doctrine of single renvoi, if a judge in India is instructed to apply the "law" of Italy by his own rule of law selection, but Italy's rule of law selection directs such a case to be applied in accordance with "law" of India, the judge in A is required to do so.

Indian Private International Law principles will be considered in the first scenario; thus, we examine Italian law. Then, for Italy, domestic and internal law will be taken into consideration rather than the rules of private international law, therefore it will end at the Indian legal system.

This occurs as Italy accepts a single renvoi.

Forgo Case

A Bavarian native who had resided in France since he was 5 years old passed away in this case. The property was handed to the relatives in accordance with Bavarian law, but under French law, the government, not the family, will receive the property. The French court decided that it would consider the inquiry under Bavarian law. French state prevailed in the dispute, and the Bavarian regulations served as the standard. As a result of the French court accepting the remission and applying French law as the law of domicile, renvoi was firmly established as a component of French law.

Re Ross Case

In the aforementioned instance, the testatrix was a British citizen who resided in Italy and had made a will distributing her property there as well as in England and Italy where she owned movable property. She left her son off the list of beneficiaries in her will, which she used to dispose of her possessions. English internal law allowed exclusion, but Italian internal law mandates that the son should receive 50% of the property. The expert testimony demonstrated that an Italian court would once more rely on le patriae (nationality law) and accept the norm of internal English law that applied to land located in England and belonging to an English testator. This means that the son's claim was unfounded.

Frere V. Frere Case

A British subject with a place of residence in Malta made a will in England that was valid under English law but unenforceable under Maltese law. The English Court upheld the will in light of evidence indicating Malta courts would refer the legality of a foreigner's will's format to the law of the country in which it was drafted.

Theory of Double Renvoi

When no other relevant legislation can be found to answer the question, double renvoi is used by the forum court. The forum court believes itself to be a foreign court in this instance, and it will make its decision accordingly. There can never be more than two remissions under this structure. Dicey firmly believed in this philosophy throughout his entire life. When a court is directed to a foreign law by its own conflicting norm, as a matter of course, it should consider the entirety of the foreign law as the foreign court would administer it, according to Griswold, a moderate American. The foreign count idea was first put forth in 1841 by English Judge Sir Herbert Jenner, who said as follows: "The court sitting here determines from the person skilled in that law, and rules as it would if sitting in Belgium. The foreign Court theory (Cheshire) and doctrine of entire renvoi are other names for the theory of double renvoi (Dicey).

According to the "Foreign Court" principle, an English judge who is subjected by his own law to the legal system of a foreign nation must follow the same rules of law that a court in that nation would follow if it were hearing the case.

Example- If a judge in India receives a referral to French law under the rule of domicile, but

French law under the rule of choice of law recommends the matter to nationality, or Indian law. Due to the Double Renvoi for the law of residence, India would then send the case back to French law, and in the end, French domestic and internal law rather than the principles of private international law will be taken into consideration. Double renvoi is the name used because this occurs in the second stage. The fact that both France and India have accepted double renvoi is another factor.

Collier V. Rivaz Case

The court had to determine whether a will and six codicils created by a British national who passed away domiciled in Belgium—in the English sense, not the Belgian one—were formal legal documents. He used Belgian internal law rather than English law in the two codicils that were written in Belgium and the four that were written in English. It was clear from this that the plan was an elaborate artifice to get around the English conflict rule's restrictions.

Kotia V. Nahas Case

This case involved the intestate succession of land in Palestine. The deceased was a Lebanese national and neither a member of a religious group nor a Palestinian. Double renvoi was

employed in court. Succession was controlled by Palestinian law since the Palestinian court considered Lebanese law, which was to be ruled by lex situs.

Re Annesley Case

In this case, a 58-year-old woman who was born in France and had her primary residence in England also passed away in France. She did not leave her hire a two-thirds inheritance, hence the case was illegal under French law. a point that is made in French law. The women's authority certificate of domicile was requested by the English court since, at the time of her death, she had a French domicile. Because she had a French residence at the time of her death, the English court referred the case to the French court based on this. According to their single renvoi policy, France forwarded the case back to England. Hence the French court would have followed domestic law and accepted the remission.

Theory of No Renvoi

Countries like Denmark, Greece and the United States do not accept Renvoi.

Critical Analysis of Renvoi

After researching the meaning, varieties, and areas of interest of Renvoi. Importantly, it might be argued that not every situation will be affected. Renvoi doesn't find a place in the areas of contract or tort, and even if there isn't one, the court must use internal laws. Notwithstanding logical errors, British and American scholars endorse this notion of foreign courts. The concern with this Theory of Renvoi hinders fundamental rules of law selection. Even when a court plans to use the Renvoi Doctrine, it must rely on information from foreign specialists about what the foreign law is. The court's procedure is made more inefficient and peculiar by this need. Using foreign laws for which a judge lacks a basic understanding is risky since applying foreign law typically results in some degree of distortion. Hence, it would seem that no forum could be trusted to implement foreign country law that is substantive in a consistent manner. When the court wants to apply foreign choice of law standards, the issue becomes complicated. Many of these factors frequently lead judges to apply either international or local law depending on which fits their own views better. Under the pretext of interpreting a foreign choice of law, the court ultimately introduces its own doctrine of public policy. Nonetheless, the foreign law may be rejected if the court decides that it would be preferable to apply the Lex fori rather than the foreign rule. In fact, the Renvoi's logical and empirical issues might work well as cover for judicial eclecticism and legal change. Even while judicial law-making for Lex fori is admirable, they shouldn't offer this chance merely because it has a foreign component. With the aforementioned examples, it is clear that the Renvoi philosophy has a lot of flaws. It is challenging to defend the use of this doctrine as a method for selecting the correct Lex causae in light of these challenges. It lacks the clarity and predictability that come from a court of law.

Conclusion

It would be difficult to argue that the application of the renvoi theory is a satisfactory resolution to a specific legal conflict. There may be a way to do away with it, and doing so would also have the benefit of advancing the unification of private international law. The issue with double renvoi is that if there is no country that accepts single renvoi, the matter will never be resolved. The notion scarcely advances the goal of private international law, namely, to bring about legal consistency.

The theory of renvoi is not simply a means of applying the lex fori, but it may also result in the application of as many laws as there are states that may be involved in the dispute before the courts. The entire renvoi doctrine is not applicable in all situations. Its scope seems to be restricted to specific issues relating to either status or the distribution of property upon death. It is believed that no single businessman or his attorneys would seek to apply the renvoi doctrine in the area of contracts, making it one of the clearest places where it has been rejected. A solution to this could be uniformity in private international law, where a Unified Code could be created and signed by nations embracing it to end the problem of renvoi.

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