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“FROM COMITY TO CONSTITUTIONALISM: THE EVOLUTION OF CONFLICT OF LAWS IN MODERN JURISPRUDENCE.”

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Abstract

*The growing complexity of cross-border interactions in the modern world has significantly influenced the **development of Private International Law**. Traditionally, the resolution of transnational disputes was guided by the doctrine of comity, which encouraged courts to recognize and enforce foreign laws and judgments out of mutual respect and international cooperation. Early legal scholars such as **Joseph Story** and **Friedrich Carl von Savigny** played a fundamental role in shaping these principles and establishing theoretical frameworks for determining jurisdiction and applicable law.*

However, the rapid expansion of globalization, international commerce, and cross-border mobility has exposed the limitations of traditional comity-based approaches. Courts are increasingly confronted with disputes that raise concerns relating to constitutional rights, procedural fairness, and public policy. As a result, modern jurisprudence has gradually shifted toward a constitutionalized approach to conflict of laws, where constitutional values and fundamental rights influence decisions concerning jurisdiction, choice of law, and the recognition and enforcement of foreign judgments.

This research paper examines the historical evolution of conflict of laws from the doctrine of comity to a framework increasingly shaped by constitutional principles. It analyses the contributions of early legal scholars, the transformation brought about by judicial interpretation, and the growing role of constitutional courts such as the Supreme Court of India in integrating constitutional safeguards into private international law. The study further explores contemporary challenges arising from globalization, digital commerce, and transnational legal disputes, highlighting the need for a balanced approach that promotes international legal cooperation while safeguarding constitutional values.

The paper concludes that the shift from comity to constitutionalism represents a significant transformation in modern jurisprudence, reflecting the increasing importance of constitutional accountability and protection of fundamental rights in the resolution of cross-border legal disputes.

I. Introduction

The rapid growth of globalization, international trade, migration, and digital communication has significantly increased the number of disputes that involve more than one legal system. In such situations, courts must determine which jurisdiction has authority to hear the dispute and which country's law should be applied. These questions fall within the domain of Private International Law, a field that deals with legal disputes involving multiple jurisdictions and aims to ensure fairness and predictability in transnational litigation.

Historically, the resolution of cross-border disputes was guided by the [doctrine of comity](#), a principle based on mutual respect and courtesy between sovereign states. Under this doctrine, courts voluntarily recognized and enforced foreign laws and judgments as a matter of international cooperation rather than legal obligation. Early scholars such as Joseph Story played a crucial role in shaping the doctrine of comity and developing systematic principles for resolving conflicts of laws. Similarly, the theories of Friedrich Carl von Savigny emphasized the importance of identifying the legal system most closely connected to a dispute.¹

However, modern legal developments have gradually transformed the traditional approach to conflict of laws. Courts increasingly consider constitutional values such as due process, equality, and fundamental rights when resolving cross-border disputes. This shift has led to the

¹<https://www.livelaw.in/articles/the-doctrine-of-judicial-comity-in-india-challenges-and-the-need-for-a-consistent-approach-267286#:~:text=This%20period%20marked%20the%20solidification,those%20under%20its%20legal%20protection.> - <https://www.livelaw.in/articles/the-doctrine-of-judicial-comity-in-india-challenges-and-the-need-for-a-consistent-approach-267286> - This period marked the solidification of concepts such as the territorial and internal sovereignty of nations and the principle of non-interference.[1] As interactions between nations increased, various transnational issues arose, implicating the legal jurisdictions of multiple countries. In response, the doctrine of judicial comity emerged as a principle of mutual respect and obligation between the courts of different nations. It was essentially developed to address the challenges posed by uncertainties over multiple jurisdictions and to prevent the abuse of judicial processes.

The most widely accepted definition and theoretical foundation for comity was provided by Justice Gray in the landmark case of *Hilton v. Guyot* (159 U.S. 113, 143 (1895)). He described comity as neither an absolute obligation nor merely an act of courtesy or goodwill. Instead, he explained that comity involves a nation's recognition, within its own borders, of the legislative, executive, or judicial acts of another nation. This recognition is granted with due consideration for international duty, convenience, and the rights of the nation's own citizens or those under its legal protection

emergence of [constitutionalism in private international law](#), where constitutional principles influence decisions concerning jurisdiction, choice of law, and recognition of foreign judgments. In many jurisdictions, constitutional courts now play an active role in ensuring that the application of foreign law does not violate fundamental rights or public policy.

This research paper examines the evolution of conflict of laws from the traditional doctrine of comity to a more constitutionally grounded framework. It explores how constitutional values have reshaped private international law and analyses the role of courts in balancing international cooperation with the protection of individual rights in modern jurisprudence.

II. Historical Foundations of Conflict of Laws

The discipline of Private International Law has its roots in the early attempts of legal systems to resolve disputes involving parties, property, or transactions connected with more than one jurisdiction. As international trade and mobility increased in medieval Europe, courts were confronted with cases where the applicable law was uncertain because different regions had distinct legal systems. This situation created the need for principles that could determine which law should govern a particular dispute.

One of the earliest developments in the history of conflict of laws emerged from the **Italian school of jurists**, particularly the post-glossators of the 13th and 14th centuries. These scholars attempted to interpret Roman law and reconcile conflicts between the laws of different city-states. They introduced the idea that certain laws should apply only within a particular territory, while others could have broader application depending on the nature of the legal issue involved. This early thinking laid the foundation for later theories that sought to determine the most appropriate legal system for resolving cross-border disputes.²

²<https://www.legalserviceindia.com/legal/article-13986-theories-of-private-international-law.html>

Should be English or French law for it is where the parties are domiciled? Should it be South Korea for the goods are from there? Should the Spanish law be applied for the contract was signed in Spain? Or Should Indian Court's apply Indian Law?

This problem is the problem of conflict of laws. It is a conflict between applicability of the domestic laws of various countries to a particular matter. This situation led to the development of a new system of Private International Law. Private International Law is also known as Conflict of Laws.

What is Private International Law?

Private International Law is a system of international law regulates the disputes between the parties of 2 or more different countries. It is called Conflict of Laws also. The term "conflict of law" was first used by Ulrich Huber in 1689.

Private International Law as per Cheshire is that part of the law which comes into play when the issue before the courts affects some facts, events or transaction that is so closely connected with a foreign system of law as to necessitate recourse to that system.

The systematic development of conflict of laws occurred in the nineteenth century through the works of influential legal scholars. Among them, **Joseph Story** made a significant contribution through his landmark treatise [*Commentaries on the Conflict of Laws \(1834\)*](#). Story emphasized the importance of **comity of nations**, arguing that courts should recognize foreign laws and judgments out of mutual respect and international cooperation. His work played a crucial role in shaping early American and common law approaches to private international law.

Another major contribution came from the German jurist **Friedrich Carl von Savigny**, who proposed a more scientific and systematic method for resolving conflicts of laws. Savigny argued that courts should identify the **legal relationship at the centre of a dispute** and determine the jurisdiction most closely connected to that relationship. His theory introduced the concept of the “seat” or “connecting factor” of a legal relationship, which later became an important element in modern choice-of-law analysis.³

These early theoretical developments established the intellectual foundations of conflict of laws and influenced the evolution of private international law in both civil law and common law jurisdictions. Although the doctrine of comity dominated early approaches to cross-border disputes, the historical foundations laid by these scholars eventually paved the way for more structured and principled frameworks that now incorporate constitutional values and human rights considerations in modern jurisprudence.

Under Private International Law, we have to answer 3 questions in every case.

These 3 questions are as follows:

1. Jurisdiction - Does the Court have the jurisdiction to take up the case?
2. Choice of law - Which Country's law is applicable in this particular case?
3. Recognition of Foreign Judgment - Can the Court recognize and enforce the Foreign Court's decision in their country?

³ <https://www.legalserviceindia.com/legal/article-13986-theories-of-private-international-law.html> -Von Savigny was the founder of the international theory. This theory is also called the theory of Natural Seat of Obligation. Von Savigny said that keeping in mind the international comity, the application of laws should be uniform. Apply customary and conventional laws to resolve disputes between parties of two different countries. He devised a scientific method of deciding which country's laws to apply. There is a legal system to which the facts of the case are naturally connected to and that is the NATURAL SEAT.

Natural Seat can be determined by the following factors:

- The domicile of a person affected by the legal relation
- The place where a thing, which is the object of a legal relation is situated
- The place where a juridical act is done
- The place where a Tribunal sits

III. The Doctrine of Comity in Conflict of Laws

The **doctrine of comity** has long been a foundational principle in the development of Private International Law. Comity refers to the practice by which courts of one jurisdiction recognize and give effect to the laws, judicial decisions, and administrative acts of another jurisdiction out of mutual respect and convenience rather than strict legal obligation. The principle reflects the idea that sovereign states, while independent, should cooperate in matters involving cross-border legal relationships in order to promote fairness, predictability, and international harmony.

The concept of comity was strongly articulated by the American jurist Joseph Story in his influential treatise [*Commentaries on the Conflict of Laws* \(1834\)](#). Story argued that although states are sovereign and possess exclusive authority within their territories, they may voluntarily recognize foreign laws and judgments as a matter of international courtesy. According to Story, such recognition helps maintain stable legal relations among nations and prevents unnecessary conflicts between different legal systems.

Under the doctrine of comity, courts often apply foreign law or recognize foreign judgments when doing so does not violate the public policy or legal principles of the forum state. This approach allows courts to respect the legal acts of other jurisdictions while preserving their own sovereignty and constitutional framework. In practice, comity has played a significant role in matters such as the recognition and enforcement of foreign judgments, cross-border contracts, and international family law disputes.

However, despite its importance, the doctrine of comity has certain limitations. Because comity is based largely on judicial discretion and courtesy rather than binding legal rules, its application may vary from one jurisdiction to another. Courts may refuse to apply foreign law if it conflicts with domestic legal principles, public policy, or constitutional guarantees. This discretionary nature has sometimes led to uncertainty and inconsistency in the resolution of transnational disputes.⁴

⁴<https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1195&context=bjil#:~:text=International%20justice%20can%20be%20realized,under%20the%20U.N.%20Convention%20on> – Competition and Comity page:121. International justice can be realized best not by developing new forms of comity or attempting to politically replace one regime with another, but, rather, by accepting the diversity of norms and tribunals in the system and allowing them to be subject to a kind of natural selection. I. COMITY AS A SOLUTION In weighing the benefits of increased comity and competition, the first inquiry is: what is meant by “comity”? As one scholar has noted, “[D]espite ubiquitous invocation of the doctrine of comity, its meaning is surprisingly elusive.”¹³

In modern jurisprudence, the growing influence of constitutional values, human rights protections, and due process requirements has gradually reshaped the traditional doctrine of comity. Courts increasingly examine whether the application of foreign law or recognition of foreign judgments aligns with constitutional principles. This transformation has contributed to the emergence of a more structured and rights-oriented framework, marking a shift from traditional comity toward **constitutionalism in conflict of laws**.

IV. Evolution Towards Constitutionalism

In recent decades, the traditional framework of Private International Law has undergone significant transformation with the growing influence of constitutional principles. While the doctrine of comity historically guided courts in recognizing foreign laws and judgments based on mutual respect among sovereign states, modern legal systems increasingly require that such recognition comply with constitutional norms and fundamental rights. This shift marks the gradual evolution of conflict of laws from a discretionary doctrine of international courtesy to a more structured framework grounded in constitutionalism.

Constitutionalism in conflict of laws refers to the application of constitutional values—such as due process, equality before the law, and protection of fundamental rights—when courts resolve transnational disputes. Courts are no longer concerned solely with maintaining harmonious relations between states; they must also ensure that the application of foreign law or the recognition of foreign judgments does not violate constitutional guarantees. This approach reflects the broader trend in modern legal systems where constitutional principles serve as the ultimate standard for evaluating legal rules and judicial decisions.⁵

Comity can mean anything from the foundation of international law to mere courtesy, from rules of jurisdiction to the discretion to decline a case.¹⁴ An example of comity serving as a rule of respect for the sovereignty and competence of another legal actor can be found in the MOX Plant cases.¹⁵ In these cases, the tribunal formed under the U.N. Convention on the Law of the Sea

⁵<https://lawbhoomi.com/enforcement-of-foreign-judgements-under-cpc/#:~:text=Object%20of%20Section.,-13%20And%2014&text=The%20primary%20objective%20of%20Sections.international%20conventions%20and%20bilateral%20treaties>. - The primary objective of Sections 13 and 14 of the Code of Civil Procedure is to provide a framework for the recognition and enforcement of foreign judgments in India. These sections are based on the principle that when a court of competent jurisdiction has adjudicated a claim, there is a legal obligation to satisfy that claim.

Section 13 outlines the conditions under which a foreign judgment can be recognised as conclusive in India. These conditions include that the foreign court must have had jurisdiction, the judgment must be on the merits of the case and it must not be contrary to Indian law or [principles of natural justice](#).

Section 14, on the other hand, deals with the presumption of lawfulness of foreign judgments. It presumes that a foreign judgment is valid unless proven otherwise.

The purpose of these provisions is to ensure that judgments from foreign courts are respected and enforced in India in a manner that is consistent with principles of justice, equity and good conscience. They also provide a framework for the recognition of foreign judgments based on international conventions and bilateral treaties.

The growing role of constitutional courts has further strengthened this transformation. For instance, the Supreme Court of India has emphasized that foreign laws or judicial decisions cannot be enforced if they are inconsistent with the constitutional framework or public policy of India. Similarly, courts in other jurisdictions often examine whether the enforcement of foreign judgments would infringe upon constitutional rights such as fair trial, natural justice, or equality before the law.

Another important factor contributing to the rise of constitutionalism in conflict of laws is the increasing recognition of **human rights in international and domestic legal systems**. Courts today frequently consider whether the application of foreign law would undermine fundamental rights protected under national constitutions or international human rights instruments. This rights-oriented approach has encouraged courts to adopt a more cautious and principled method when dealing with cross-border legal disputes.⁶

Thus, the evolution toward constitutionalism reflects a broader transformation in modern jurisprudence. While comity continues to play a role in facilitating international legal cooperation, constitutional principles now provide the ultimate framework within which courts evaluate jurisdiction, choice of law, and the recognition of foreign judgments. This shift demonstrates how conflict of laws has evolved to balance international cooperation with the protection of individual rights and constitutional values.

⁶[https://agrudpartners.com/cross-border-arbitration-india-2025/#:~:text=This%20decision%20cemented%20the%20principle,\(%E2%80%9CArbitration%20Act%E2%80%9D\)](https://agrudpartners.com/cross-border-arbitration-india-2025/#:~:text=This%20decision%20cemented%20the%20principle,(%E2%80%9CArbitration%20Act%E2%80%9D).). - The Supreme Court in *PASL Wind Solutions v. GE Power*, AIR 2021 SC 2517 confirmed that nothing in Indian law prohibits Indian parties from selecting an overseas arbitral seat, and an award from such arbitration is considered a “foreign award” enforceable in India.

This decision cemented the principle that an arbitration clause in a cross-border transaction contract can validly opt for a foreign seat without offending Indian public policy (such choice is not contrary to Section 23 of the [Indian Contract Act, 1872](#)).

When drafting these clauses, parties should ensure clarity on the choice of *substantive law* governing the contract vis-à-vis the arbitral seat. In cross-border transactions involving India, it is common to have an Indian substantive law clause alongside a foreign arbitral seat.

The Supreme Court has observed that if parties do not explicitly exclude Indian substantive law, an arbitrator at a foreign seat will apply the conflict-of-law rules of the seat to determine the governing law, often leading to Indian law for contracts centered in India.

Thus, a well-drafted clause should harmonize the governing law clause and arbitration clause in cross-border contracts, expressly stipulating the law applicable to the underlying contract and acknowledging the procedural law of the chosen seat. Indian law also permits parties to select institutional arbitration rules (e.g. ICC, SIAC) and such choices will be respected under the [Arbitration and Conciliation Act, 1996](#) (“Arbitration Act”).

V. Judicial Transformation of Conflict of Laws

The evolution from comity to constitutionalism in Private International Law has been significantly shaped by judicial interpretation. Courts across different jurisdictions have played a crucial role in redefining the traditional principles of conflict of laws by integrating constitutional norms and fundamental rights into their decision-making processes. Through various landmark judgments, courts have gradually moved away from a purely discretionary application of foreign law toward a more structured and rights-oriented approach.

In many legal systems, constitutional courts have emphasized that the recognition of foreign laws and judgments must comply with constitutional safeguards such as **due process, fairness, and public policy**. For instance, the Supreme Court of India has repeatedly held that foreign judgments may be recognized only if they do not violate the fundamental principles of justice or the constitutional framework of India. This approach reflects a broader judicial trend in which constitutional values guide the application of private international law principles.⁷

Similarly, courts in other jurisdictions have developed doctrines that ensure constitutional protections in cross-border disputes. In the United States, the Supreme Court of the United States has emphasized the role of constitutional due process in determining the limits of jurisdiction and the recognition of foreign judgments. The requirement that a court must have proper jurisdiction and that parties must receive fair notice and an opportunity to be heard demonstrates how constitutional guarantees influence conflict of laws decisions.

Judicial developments have also strengthened the role of **public policy exceptions** in conflict of laws. Courts may refuse to apply foreign law if it contradicts the fundamental legal values of the forum state. This doctrine allows courts to balance international cooperation with the need to protect constitutional rights and domestic legal principles. As a result, the application of foreign law is no longer based solely on the traditional doctrine of comity but is increasingly

7

<https://www.vidhikarya.com/legal-blog/global-norms-indian-courts#:~:text=The%20importance%20of%20international%20law,law%20in%20a%20globalised%20world.> - The importance of international law in the Indian courts does not consist of its direct enforceability but in its persuasive and interpretative capacity. Although the constitutional system of India is an expression of formal dualism, the practice of the judiciary indicates a sensitive and practical approach which is more oriented to establishing a correspondence between domestic law and international norms, especially in the area of protection of fundamental rights. The need to integrate global legal commitments with constitutional values has been achieved through international law to address the gaps in [Indian laws](#) and the interpretation of the Constitution by the Indian courts. Therefore, international law in India does not act as a rival; it serves as a supplementary power-directing, educating and empowering the local system of law in a globalised world.

subject to constitutional scrutiny.⁸

Overall, judicial intervention has played a central role in transforming the traditional approach to conflict of laws. By incorporating constitutional principles into the interpretation of private international law, courts have created a more balanced framework that promotes international legal cooperation while safeguarding individual rights and fundamental legal values.

⁸<https://www.mondaq.com/guides/results/6/1224/all/united-states-enforcement-of-foreign-judgments#:~:text=Answer...-Yes.,Recognition%20Act%20C2%A7%204%20cmt.> - Yes. Foreign judgments must be final, conclusive and enforceable in the country in which they are rendered (see 2005 Recognition Act 3(a)(2); 1962 Recognition Act 2). For example, a pre-judgment attachment issued by a foreign court while the merits of the case were being litigated in Spain was an interim order not enforceable in the United States (*Maquinaria Cerezo, SA v Babson Bros Co*, 1992 WL 18875 (ND Ill 1992)). In making finality determinations, US courts look to the law of the rendering country; mere assertions of finality will not suffice (*Despotovic v Gavrilovic Holding Petrinja*, 2018 WL 6016710 (Conn Super Ct 2018) – representations of counsel not evidence).

2.3

Is a foreign judgment enforceable if it is subject to appeal in the foreign jurisdiction?

United States - Williams & Connolly

Answer...

The fact that a final judgment is on appeal will not prevent it from being recognised and enforced in the United States. If a party establishes that an appeal from a foreign country judgment is pending or will be taken, the court may, in its discretion, stay the US proceedings (eg, see Cal Civ Proc Code § 1720 (2019): “If a party establishes that an appeal from a foreign-country judgment is pending or will be taken in the foreign country, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so”. See also *PJSC Credit-Moscow Bank v Khairoulline*, No CV 15-6604, 2016 WL 4454208 (ED Pa 24 August 2016), issuing stay pending resolution of appeals that had already been argued).

2.4

What is the limitation period for making an application for recognition and enforcement?

United States - Williams & Connolly

Answer...

Neither the Restatement nor the 1962 Recognition Act addresses the statute of limitations question. The 2005 Recognition Act, however, includes a statute of limitations; it provides that “[a]n action to recognize a foreign-country judgment must be commenced within the earlier of (i) the time during which the foreign-country judgment is effective in the foreign country, or (ii) 15 years from the date that the foreign-country judgment became effective in the foreign country.” Some courts have applied the state’s general statute of limitations, while some states have their own application limitations period (see Cal Civ Proc Code § 1721: “An action to recognize a foreign-country judgment shall be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country”). The New York Convention does not contain a statute of limitations for enforcement of arbitral awards or restrictions with respect to foreign judgments; accordingly, parties are free to incorporate time limits into their arbitration agreements.

3

Recognition and enforcement process

3.1

Is recognition of a foreign judgment a separate process from enforcement and does it have separate legal effects?

United States - Williams & Connolly

Answer...

Yes. A plaintiff seeking to enforce a foreign judgment within the United States must first have the judgment recognised by a domestic court. Recognition of a foreign judgment means that “the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country” (2005 Recognition Act § 4 cmt).

VI. Constitutional Values in Modern Conflict of Laws

The modern development of Private International Law reflects an increasing emphasis on constitutional values when resolving cross-border legal disputes. While traditional conflict of laws principles was largely based on the doctrine of comity and international cooperation, contemporary jurisprudence places greater importance on ensuring that the application of foreign law and recognition of foreign judgments are consistent with constitutional guarantees. This transformation demonstrates the growing influence of constitutionalism in shaping private international law.

One of the most important constitutional values influencing modern conflict of laws is the principle of **due process**. Courts must ensure that parties involved in transnational disputes receive fair treatment, adequate notice, and an opportunity to be heard before a judgment is recognized or enforced. In jurisdictions such as the United States, the requirement of due process plays a crucial role in determining whether a court has proper jurisdiction over a dispute. The Supreme Court of the United States has consistently emphasized that jurisdiction must be exercised in a manner that respects fairness and procedural justice.⁹

Another key constitutional value is the **protection of fundamental rights**. Courts increasingly evaluate whether the application of foreign law would violate constitutional rights such as equality before the law, personal liberty, or access to justice. In India, the Supreme Court of India has emphasized that foreign judgments cannot be enforced if they conflict with the fundamental rights guaranteed under the Constitution of India. This approach ensures that constitutional principles remain the ultimate standard in determining the applicability of foreign legal rules.

The **public policy doctrine** also plays a significant role in protecting constitutional values

⁹ <https://www.ijlra.com/public/details/due-process-of-law-for-giving-justice-by-sudhnva-vedpathak#:~:text=ABSTRACT,those%20involved%20in%20legal%20proceedings.> -**ABSTRACT**

In the realm of justice, due process acts as a reliable guide for our legal system. Its roots can be traced back to ancient civilizations and it has been formalized through significant documents like the Magna Carta and the U.S. Constitution. Due process guarantees fair treatment for individuals under the law, protecting them from arbitrary actions and ensuring fundamental rights during legal proceedings. Today, due process remains a crucial legal principle globally, adapting to societal changes and evolving interpretations of civil liberties, especially with the rise of technology. It encompasses the fair and just legal procedures that individuals are entitled to, ensuring equal treatment under the law and safeguarding essential rights such as the right to a fair trial, legal representation, and protection against arbitrary government actions. This concept is vital for upholding justice and protecting individual liberties within a legal framework. Strengthening due process protections within legal systems leads to more equitable outcomes, ensuring fair and just resolutions for those involved in legal proceedings.

within conflict of laws. Under this principle, courts may refuse to apply foreign law or recognize foreign judgments if doing so would violate the fundamental legal principles or moral standards of the forum state. The public policy exception acts as a safeguard that allows courts to balance international legal cooperation with the need to preserve constitutional integrity and social justice.¹⁰

Furthermore, the increasing recognition of **human rights norms** in international and domestic legal systems has reinforced the constitutionalising of conflict of laws. Courts often consider international human rights standards when evaluating cross-border legal disputes, particularly in cases involving family law, labour rights, or commercial transactions. This development reflects a broader trend in which constitutional values and human rights principles influence the interpretation and application of private international law.

Thus, constitutional values have become a central element in modern conflict of laws. By integrating principles such as due process, protection of fundamental rights, and public policy, courts ensure that international legal cooperation does not compromise the constitutional framework of the forum state. This shift highlights the transformation of conflict of laws from a system based primarily on comity to one increasingly guided by constitutional norms and legal accountability.

VII. Contemporary Challenges in Conflict of Laws

The increasing interconnectedness of the modern world has created new and complex challenges for Private International Law. Globalization, technological advancement, and the expansion of international trade have significantly increased the number of disputes involving multiple jurisdictions. As individuals, corporations, and digital platforms operate across national borders, courts are often required to determine issues relating to jurisdiction, applicable law, and the recognition of foreign judgments. These developments have exposed several limitations in traditional conflict of laws principles and have prompted the need for more coherent and adaptable legal frameworks.

¹⁰ <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/#:~:text=Article%2021%20of%20Indian%20constitution,protective%20of%20life%20and%20liberty>. - Article 21 of Indian constitution reads:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.” In **Francis Coralie Mullin vs The Administrator (1981)**, Justice P. Bhagwati had said that Article 21 ‘embodies a constitutional value of supreme importance in a democratic society’. Further, Justice Iyer characterised Article 21 as ‘the procedural Magna Carta protective of life and liberty’.

One major challenge arises from the rapid growth of **international commerce and cross-border transactions**. Businesses frequently operate in multiple countries, and contractual disputes often involve parties located in different jurisdictions. Determining the appropriate forum and the governing law can become complicated when contracts do not clearly specify jurisdictional clauses or when multiple legal systems claim authority over the dispute. Courts must carefully balance the principles of fairness, efficiency, and international cooperation when resolving such conflicts.¹¹

Another significant challenge relates to the **rise of digital technology and electronic commerce**. Online platforms allow transactions to occur instantly across borders, often without a clear physical connection to any particular jurisdiction. This creates uncertainty in determining which court has jurisdiction and which law should apply. Issues such as data protection, cyber fraud, and digital contracts increasingly require courts to adapt traditional conflict of laws principles to the realities of the digital age.

The **recognition and enforcement of foreign judgments** also remain a persistent challenge in international legal practice. Although many jurisdictions recognize foreign judgments under principles of comity or statutory frameworks, differences in legal standards and procedural requirements can create obstacles. Courts must ensure that foreign judgments meet requirements of fairness, jurisdiction, and public policy before granting recognition. In India, the Supreme Court of India has emphasized that foreign judgments must comply with the standards laid down under the Code of Civil Procedure before they can be enforced within the country.

Furthermore, conflicts may arise when **constitutional rights or public policy considerations** are implicated in transnational disputes. Courts must determine whether the application of

¹¹<https://www.ibanet.org/bli-may-2023-blockchain-private-international-law#:~:text=With%20regards%20to%20PIL%2C%20however,closely%20connected%20to%20the%20technology,-With%20regards%20to%20PIL,however,the%20economic%20benefits%20of%20dFIMs%20must%20be%20weighed%20against%20the%20legal%20issues%20that%20arise%20when%20using%20digital%20platforms.%20Unlike%20parties%20to%20a%20transaction%20that%20is%20settled%20through%20a%20heavily%20regulated%20clearing%20house,%20decentralised%20platforms%20lack%20jurisdictional%20boundaries%20-%20defining%20the%20jurisdiction%20to%20be%20used%20in%20a%20situation%20of%20conflict%20of%20laws%20will%20depend,%20inter%20alia,%20upon%20the%20ability%20of%20parties%20to%20be%20identified.%20If%20the%20pseudonymity%20of%20participants%20on%20the%20network%20cannot%20be%20resolved,%20then%20the%20application%20of%20PIL%20frameworks%20is%20not%20only%20undesirable,%20but%20also%20practically%20impossible%20in%20relation%20to%20the%20initiation%20of%20legal%20proceedings.%20It%20limits%20the%20process%20as%20the%20choice%20of%20governing%20law%20cannot%20be%20determined,%20and%20the%20jurisdictional%20origin%20of%20the%20transaction%20may%20be%20completely%20unknown%20to%20injured%20parties.%20Moreover,%20as%20Lehman%20notes,%20DLT%20is%20not%20connected%20to%20any%20state%20and%20thus%20the%20resolution%20of%20the%20identification%20problem%20does%20not%20necessarily%20resolve%20the%20dilemma%20that%20no%20particular%20jurisdiction%20is%20closely%20connected%20to%20the%20technology.> - With regards to PIL, however, the economic benefits of dFIMs must be weighed against the legal issues that arise when using digital platforms. Unlike parties to a transaction that is settled through a heavily regulated clearing house, decentralised platforms lack jurisdictional boundaries – defining the jurisdiction to be used in a situation of conflict of laws will depend, inter alia, upon the ability of parties to be identified. If the pseudonymity of participants on the network cannot be resolved, then the application of PIL frameworks is not only undesirable, but also practically impossible in relation to the initiation of legal proceedings. It limits the process as the choice of governing law cannot be determined, and the jurisdictional origin of the transaction may be completely unknown to injured parties. Moreover, as Lehman notes, DLT is not connected to any state and thus the resolution of the identification problem does not necessary resolve the dilemma that no particular jurisdiction is closely connected to the technology.

foreign law is compatible with the constitutional framework of the forum state. This balancing exercise often requires courts to reconcile the goals of international cooperation with the need to protect fundamental rights and domestic legal principles.¹²

These contemporary challenges highlight the evolving nature of conflict of laws in the modern legal landscape. As cross-border interactions continue to expand, legal systems must develop more effective mechanisms for addressing jurisdictional conflicts and ensuring the fair resolution of international disputes. The growing influence of constitutional values and international legal cooperation will likely play a crucial role in shaping the future direction of conflict of laws.

VIII. Future of Conflict of Laws: Towards a Constitutional Framework

The continuing evolution of Private International Law suggests that its future development will increasingly be shaped by constitutional principles and international cooperation. While traditional conflict of laws relied primarily on the doctrine of comity and judicial discretion, modern legal systems are gradually moving toward a framework in which constitutional norms guide the interpretation and application of cross-border legal rules. This transformation reflects the growing recognition that international legal interactions must respect both state sovereignty

¹² <https://iclg.com/practice-areas/enforcement-of-foreign-judgments-laws-and-regulations/india#:~:text=Recognition%20and%20enforcement%20may%20be,courts%20generally%20decline%20enforcement%20where>: - Recognition and enforcement may be challenged on any of the grounds under Section 13 of the CPC, including:

- lack of jurisdiction;
- absence of adjudication on merits;
- violation of natural justice;
- fraud; and/or
- conflict with Indian public policy.

In practice, absence of adjudication on merits and violation of the principles of natural justice are the most commonly invoked grounds, often pleaded expansively to resist enforcement.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

Certain subject matters involve additional considerations, including:

- Insolvency: Enforcement is stayed once insolvency proceedings against the judgment debtor is commenced.
- Family law: Recognition depends on compliance with Indian matrimonial law principles.
- Employment and labour: Public policy considerations play a significant role.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

Indian courts generally decline enforcement where:

- a binding Indian judgment already exists between the same parties on the same issue; or
- local proceedings are pending that directly impinge on the foreign judgment.

and the protection of individual rights.

One significant direction for the future of conflict of laws lies in the **greater harmonization of legal principles across jurisdictions**. As global economic and social interactions expand, inconsistencies between national legal systems can create uncertainty and inefficiency in resolving transnational disputes. International conventions, regional agreements, and model laws may contribute to establishing more uniform rules regarding jurisdiction, choice of law, and recognition of foreign judgments. Such harmonization can enhance predictability and facilitate smoother international legal cooperation.¹³

Another important aspect of the future framework is the **integration of constitutional and human rights standards** into private international law. Courts are increasingly required to assess whether the application of foreign law or the recognition of foreign judgments aligns with constitutional guarantees such as due process, equality before the law, and protection of personal liberty. In India, the Supreme Court of India has emphasized that constitutional values serve as the ultimate benchmark for determining the enforceability of foreign legal acts. This approach ensures that international cooperation does not undermine the fundamental rights protected by national constitutions.

Technological advancements will also influence the future development of conflict of laws. The expansion of digital commerce, online dispute resolution, and cross-border data flows presents new legal challenges that traditional jurisdictional doctrines were not designed to address. Courts and legislatures must adapt existing principles to regulate disputes arising from digital transactions while maintaining fairness and legal certainty.

Furthermore, judicial dialogue and cooperation between courts of different countries may strengthen the constitutionality of conflict of laws. Courts increasingly refer to comparative jurisprudence and international legal standards when addressing complex transnational disputes. This trend promotes the development of a more coherent global approach to conflict

¹³https://www.nyulawglobal.org/globalex/unification_harmonization1.html#:~:text=Conventions:%20The%20harmonization%20of%20international,obligations%20on%20private%20commercial%20companies.

Conventions: The harmonization of international commercial law has frequently been brought about by the adoption and ratification of conventions (primarily multilateral) that govern selected topics within international commercial law. Conventions are international treaties that States may choose to join and to ratify into their domestic legal frameworks. Conventions create binding obligations for State parties on the international level and they may also create binding, mandatory or default obligations on private commercial companies.

of laws while preserving the constitutional identity of individual states.¹⁴

In conclusion, the future of conflict of laws lies in striking a careful balance between **international cooperation and constitutional accountability**. The gradual shift from comity to constitutionalism indicates that modern private international law is no longer governed solely by diplomatic courtesy but is increasingly guided by constitutional values, human rights protections, and principles of legal justice. This evolving framework will play a critical role in ensuring that cross-border disputes are resolved in a manner that promotes fairness, stability, and respect for fundamental legal principles.

IX. Conclusion

The development of Private International Law reflects a gradual yet significant transformation in the way courts address cross-border legal disputes. Traditionally, the resolution of conflicts involving multiple jurisdictions was guided by the doctrine of comity, which emphasized mutual respect and cooperation among sovereign states. Under this framework, courts often recognized foreign laws and judgments as a matter of international courtesy rather than legal obligation. Early legal scholars such as Joseph Story and Friedrich Carl von Savigny played a crucial role in shaping the theoretical foundations of conflict of laws and establishing principles that encouraged international legal harmony.

However, the complexities of modern global interactions have required a more structured and principled approach. The rise of constitutionalism has introduced a new dimension to conflict of laws, where courts increasingly evaluate cross-border legal issues through the lens of constitutional values and fundamental rights. Constitutional courts, including the Supreme Court of India, have emphasized that the recognition and enforcement of foreign laws and

¹⁴<https://ijlr.iledu.in/v6i230/#:~:text=However%2C%20this%20approach%20is%20undergoing,comity%20in%20cross%2Dborder%20adjudication>. - However, this approach is undergoing a transformation. At the same time that cross-border disputes have become more common, Indian constitutional jurisprudence has expanded considerably, with courts increasingly emphasizing dignity, equality, liberty, and individual autonomy^[2]. The doctrine of constitutional morality developed and clarified in decisions such as Navtej Singh Johar v. Union of India, Indian Young Lawyers Association v. State of Kerala, and Joseph Shine v. Union of India has reinforced the idea that constitutional values must prevail over discriminatory social practices and majoritarian norms^[3]. This paper examines whether and to what extent constitutional morality is reshaping Indian private international law. It argues that courts are increasingly testing foreign laws and judgments against constitutional principles, especially in areas such as family law, gender justice, and the public policy exception. In doing so, India appears to be gradually moving away from a purely formalistic conflict-of-laws model toward a rights-oriented framework. While this shift strengthens constitutional supremacy, it also raises important concerns about predictability and international comity in cross-border adjudication.

judgments must be consistent with constitutional guarantees, public policy, and principles of natural justice.

This evolution from comity to constitutionalism highlights a broader transformation in modern jurisprudence. While international cooperation remains an essential objective of private international law, it must now operate within the framework of constitutional accountability and protection of individual rights. Courts are increasingly required to balance respect for foreign legal systems with the duty to safeguard constitutional principles and ensure fairness in legal proceedings.

Furthermore, contemporary challenges such as globalization, digital commerce, and transnational human rights concerns continue to reshape the landscape of conflict of laws. These developments underscore the need for greater harmonization of legal principles and stronger judicial cooperation across jurisdictions. At the same time, constitutional values must remain central to the resolution of cross-border disputes to ensure that international legal interactions do not compromise fundamental rights or domestic legal integrity.

In conclusion, the evolution of conflict of laws from the traditional doctrine of comity to a more constitutionally grounded framework reflects the changing demands of an interconnected world. By integrating constitutional principles into private international law, modern legal systems are better equipped to address the complexities of transnational disputes while promoting justice, fairness, and respect for the rule of law.