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FORUM NON CONVENIENS: BALANCING JURISDICTION AND CONVENIENCE IN INTERNATIONAL LITIGATION

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ABSTRACT:

At the center of private international law is the doctrine of forum non conveniens. It allows courts to refuse cases, even when they have valid legal jurisdiction, if another forum is clearly better for resolving the dispute.[2]However, deciding not to hear a case is rarely simple. Judges must consider a complex mix of private and public interests.[3] On the private side, it mainly involves logistics and fairness. They look at where the witnesses live, how hard it is to transport evidence, and which law applies to the issue. Public interests require courts to consider the bigger picture. They need to preserve judicial efficiency, prevent clear "forum shopping," and maintain a basic respect for international comity. Much of this balancing act comes from the landmark Spiliada principles. The main goal is to identify the jurisdiction most closely connected to the dispute while ensuring that moving the case doesn't take away the plaintiff's access to justice.

Focusing on the Indian legal system, this paper examines how the Supreme Court of India has adopted and applied these international rules. Indian courts take a careful approach to the doctrine. They have consistently maintained that staying proceedings is a serious action that should be used rarely.[4]Generally, they will only intervene if allowing the local litigation to proceed would lead to clear injustice or severe hardship. By comparing Indian practices to broader global standards, this research shows how this delicate balancing act acts as a key limit on jurisdictional overreach. Ultimately, the paper argues that even in an increasingly borderless commercial world, forum non conveniens remains an important safeguard. It protects litigants from unfair tactics while ensuring the global justice system operates effectively.

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KEYWORDS: Forum non conveniens, Forum Shopping, International Comity, Substantial Justice, Cross-border disputes.

1. INTRODUCTION:

Forum non conveniens is a doctrine that is significant to the law of international commerce. It is a non- binding instrument that gives courts the opportunity to suspend or dismiss cases despite their jurisdiction.[5] It is not aimed at shutting access to justice but rather of the matters being addressed in a forum that is most appropriate in the matter and the one that will be most effective in a fair resolution. As the cross-border trade, migration and business by multinationals increase, the cases that are handled by courts may touch on various jurisdictions.[6] This presents complicated issues concerning the forum of choice and the decision of a court that has the power.

The doctrine in this respect is a kind of safety-value. It does not allow the existence of strict jurisdiction rules that cause unfair or inefficient outcomes. The courts must balance the right of the plaintiff to resolve matters in a forum with the wishes of the defendant of evading unnecessarily cumbersome and unwarranted litigation in the selected jurisdiction. The doctrine is currently applied through its effects on the principles established by Spiliada Maritime Corp v Cansulex Ltd. This case brought forth a two step procedure involving locate the most suitable forum depending on the pertinent factors and also making sure that the denial of jurisdiction is not accompanied by denial of substantial justice.[7]

Courts are very cautious with these principles in such places as India and the parallel proceedings situation and anti-suit injunction. Their goal is to prevent strategic forum shopping without prejudice in international cases.[8]

2. HISTORICAL DEVELOPMENT OF THE DOCTRINE

2.1 ORIGINS IN COMMON LAW

The doctrine of forum non conveniens was invented in Scotland law, in which it became acknowledged by courts that sometimes strict application of jurisdiction would be practically

[5] Adrian Briggs, Civil Jurisdiction and Judgments (7th edn, Informa Law 2021).
[6] Peter Stone, EU Private International Law (3rd edn, Edward Elgar 2014).
[7] Modi Entertainment Network v WSG Cricket Pte Ltd (2003) 4 SCC 341 (Supreme Court of India).
[8] Cheshire, North & Fawcett, Private International Law (15th edn, Oxford University Press 2017).

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unfair.[9] They acknowledged that technically the jurisdiction may exist but it does not need to be exercised when a different forum would be more suitable in the resolution of the dispute. With the intensification of cross-border interactions, the courts were confronted with conflicts that included foreign elements like a party in a foreign jurisdiction, foreign-controlled contracts or foreign events.[10] Old jurisdictional principles were found to be insufficient and the doctrine was created to be a litigation instrument in an attempt to reject jurisdiction in favour of a more closely related venue.[11]

2.2 MOVING TO DISCRETIONARY JURISDICTION.

History The forum non conveniens came into existence as a change of strict jurisdictional formalism, to judicial discretion of practical justice.[12] Previously, jurisdiction was perceived as being binding on the part of courts after it is established. They slowly realised that the jurisdiction must take into account the fairness, convenience and simple justice. This change was codified in Spiliada Maritime Corp v Cansulex Ltd, the House of Lords determined the framework whereby the court with the greatest significant connection was the one where the case should be able to be judged. Another concept of the doctrine that is also acknowledged by the United States is the one that directs the transfer of venue that is different in cases where the right venue is not in the jurisdiction of the court.

2.3 GLOBAL SUPREME COURT OF ENGLISH LAW.

The English common law has been at the forefront in developing the modern concept of forum non conveniens in its various jurisdictions. After the Spiliada case, the English rules were used to give precedent to other common law jurisdictions, such as Canada, Australia, and India. Although different jurisdictions have adjusted the doctrine to their own legal and constitutional institutions, the essence of the focus on the suitability of forum and judicial discretion is the same.[13]

This is most clearly demonstrated by the global pull of the English law through the manner in which courts evaluate factors like location of evidence, governing law and interest of justice in an attempt to determine whether to retain or waive jurisdiction. Due to judicial discourse and

[9] Sim v Robinow (1892) 19 R 665 (Court of Session, Scotland).
[10] Peter Stone, EU Private International Law (3rd edn, Edward Elgar 2014).
[11] Adrian Briggs, Civil Jurisdiction and Judgments (7th edn, Informa Law 2021).
[12] Dicey, Morris & Collins, The Conflict of Laws (15th edn, Sweet & Maxwell 2012).
[13] Cheshire, North & Fawcett, Private International Law (15th edn, Oxford University Press 2017).

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analogical reasoning, the concept of forum non conveniens has become a common doctrinal device of the private international law. This general usage constitutes a shared effort by common law countries to have disagreements with international aspects to be adjudicated in the court that is the most appropriate to administer both substantive and procedural justice.

3. THE SPILIADA PRINCIPLE: THE COMMON LAW FOUNDATION.

The Spiliada principle is the foundation of the common law doctrine of forum non conveniens that offers a systematic approach to determining whether a court should or should not assert jurisdiction in favor of a more suitable forum.[14] Lord Goff of Chieveley in Spiliada Maritime Corp v Cansulex Ltd authoritatively stated it. That ruling substituted the inflexible jurisdictional methods with a dynamic test to establish the forum that has the most relationship to the conflict. It created a two-level investigation; which is to identify the most suitable forum by linking factors and the withdrawal of jurisdiction should not preclude the claimant with justice.

3.1. STAGE ONE: IDENTIFICATION OF THE PROPER FORUM.

In the initial phase, the defendant is under the burden of proving and the defendant aims at a stay of proceedings. The defendant has to prove that there is another forum that is more appropriate than the forum seized clearly and distinctly.

The word clearly and distinctly is a very high threshold. It is not just a simple convenience or a minor advantage of another forum. The accused party should prove that the other forum is the one that has the most association with the dispute, and that the present forum is relatively inappropriate.[15]

The centre of gravity of the dispute is established by examining the connecting factors which include the location of the cause of action, the law which governs the dispute, the place of residence or place of doing business of the disputing parties, the location of evidence and witnesses and the presence of procedural redress. The measure is discretionary and holistic, which enables the courts to consider these aspects contextually as opposed to mechanically.

[14] Adrian Briggs, Civil Jurisdiction and Judgments (7th edn, Informa Law 2021).
[15] Cheshire, North & Fawcett, Private International Law (15th edn, Oxford University Press 2017).

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3.2 STAGE TWO: DENIAL OF SUBSTANTIAL JUSTICE.

The plaintiff has to prove the second stage, which is, once the defendant manages to prove the existence of a more appropriate forum. The plaintiff will have to demonstrate that stay of proceedings will lead to a refusal of substantial justice in the alternative forum.

Substantial justice does not imply that the foreign forum must provide the same procedures/ remedies. Rather, it is whether or not the plaintiff would be under a real risk of injustice, which can be lack of access to legal representation, excessive delay, procedural injustice, corruption, failure to enforce a judgment.

In instances where the alternative forum, however appropriate in theory, cannot provide its effective and fair results in practice, courts may decline to grant a stay. This step therefore serves as a check and balances and makes sure that the jurisdictional discretion is only applied on the technical convenience but the principle of justice as such.

4. APPLICATION OF FORUM NON CONVENIENS IN PRACTICE

The real-life use of the doctrine of forum non conveniens is indicative of a court attempt at finding a balance between territorial jurisdiction and fairness, efficiency, and access to justice.[16] The doctrine is not applied mechanically by courts, and the courts in the application of this doctrine undertake an organized evaluative process that makes sure that the jurisdiction discretion is not exercised in a capricious manner or in an arbitrary manner. In both the common law and Indian practice the doctrine will work as a corrective measure against forum shopping whilst protecting the right of the litigant to substantial justice.[17]

The issue of the correct forum is identified.

The initial step in the implementation of forum non conveniens would involve the court ascertaining the existence of an alternative forum that is more evident and clear that would be more suitable in adjudicating the dispute.[18] This question is not reduced to the issue of the presence of jurisdiction alone but to the general appropriateness of the forum to the successful resolution of the controversy.

[16] Adrian Briggs, Civil Jurisdiction and Judgments (7th edn, Informa Law 2021).
[17] Modi Entertainment Network v WSG Cricket Pte Ltd (2003) 4 SCC 341.
[18] Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460 (HL).

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The courts look at whether the alternative forum has competent jurisdiction over the parties and the subject matter, whether the proceedings can be fairly conducted and whether the judgment the court will give will be enforceable.[19]This evaluation works with the statutory jurisdiction in Section 20 of the Code of Civil Procedure, 1908 in the Indian context which dictates the place of ordinarily instituting a suit. [20]The doctrine does not replace the Section 20 but merely adds the extension by giving courts in extraordinary situations the right to refuse to take jurisdiction even where technically it exists.

At this point, it falls on the defendant to prove that some other forum has a stronger and more factual relationship to the dispute. The location of the cause of action emerging, the domestic or commercial residence of parties, locality of evidence, and the applicable law are some of the factors that determine the most favourable nexus of the forum. Notably, courts avoid comparative analysis of the benefits of the law; the question is put on suitability, not on convenience in itself.

This is a self-restraining practice so that the doctrine does not infringe procedural certainty or legitimate choice of forum by the plaintiff especially where transnational commercial or civil disputes are involved.[21]

The Substantial Justice Analysis was conducted as follows:
After having found an alternative forum, the court next goes to the second step the result of refusal to exercise jurisdiction would be a denial of substantial justice. This is where the onus is on the plaintiff to prove that going ahead with the alternative forum would expose him or her to actual injustice, rather than inconvenience or a less favourable legal result.

Substantial justice is evaluated as a concept in its entirety. Courts look at whether or not the plaintiff would have a meaningful access to remedies, existence of procedural safeguards and whether or not the forum can provide an impartial and effective adjudication. This step serves as a stringent protection against misuse of forum non conveniens especially where there are power distance between parties or where foreign forums are likely to pose structural disadvantages.

[19] Gulf Oil Corp v Gilbert 330 US 501 (1947).
[20] Code of Civil Procedure s 20.
[21] Cheshire, North & Fawcett, Private International Law (15th edn, Oxford University Press 2017).

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In the context of access-to-justice and common interest analysis, the analysis has increased significance in a case with mass torts, environmental damages, or transnational corporate tort. Courts need to make sure that the jurisdictional restraint does not act as an insidious impediment to responsibility and as a mechanism to compel helpless litigants into inefficient forums. This means that discretion taken by the courts can at this point be done carefully, as procedural fairness cannot be separated with substantive justice.[22]

The locus of justice is becoming a complicated issue in the modern litigation, particularly in cases involving digital transactions and the Cross-border commercial activity. It is thus the duty of the courts to adjust the old rules to the new reality without abandoning the main objective of the doctrine which is to ensure that the disputes are resolved in a forum that is best positioned to dispense justice in both form and substance.

5. FORUM NON CONVENIENS IN THE POST-BREXIT JURISDICTIONAL LANDSCAPE

The exit of the United Kingdom in the European Union greatly modified the jurisdiction regulations in the field of private international law. Although the UK was subject to Brussels I Recast Regulation, the English courts were restricted in the application of the forum non conveniens because the Regulation established mandatory jurisdiction which primarily depended on the domicile of the defendant.[23]The common law doctrine of Spiliada Maritime Corp v Cansulex Ltd was therefore to a great extent supplanted in the intra-EU disputes.

The Regulation no longer applies after Brexit, and English courts returned to common law principles of jurisdiction.[24] Consequently, the concept of forum non conveniens has become relevant again as a tool of dealing with interstate litigation. Where there is domestic jurisdiction, courts can now decide that England is the best suited to sit. This reinstatement of the judicial discretion in staying proceedings done elsewhere having a closer relationship to the conflict.[25]

[22] Adrian Briggs, Civil Jurisdiction and Judgments (7th edn, Informa Law 2021).
[23] Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
[24] European Union (Withdrawal) Act 2018 (UK).
[25] Civil Procedure Rules (UK), Pt 6.36 and Practice Direction 6B.

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To litigants, the change is great. Defendants may make forum non conveniens claims over overseas torts, weak English relationships or parallel foreign litigation; claimants are required to show that England is the appropriate forum. Critics are however concerned that an increased exposure to discretion can impact on access to justice where other means of justice are not sufficient to ensure redress. The English courts are thus required to consider both the jurisdictional restraint and fairness and also adjust the time-honored principles of Spiliada to the contemporary international litigation.

6. COMPARATIVE AND BROADER IMPLICATIONS OF FORUM NON CONVENIENS

Forum non conveniens really shapes how international lawsuits play out. It doesn't just influence how efficient things run in court it changes the way people handle their legal strategy when cases cross borders. In common law countries, it becomes clear this doctrine serves as a powerful mechanism to prevent individuals from choosing a court only because they assume it advantages their argument, but it remains imperfect. Fairness and access to justice often get tangled up in the process.

For someone dealing with an international dispute, forum non conveniens offers flexibility but also brings uncertainty. Even when a court technically has the right to hear a case, it can still step back if there's a better-suited court elsewhere. This means defendants have the power to push back if a case is filed somewhere that barely connects to the issue at hand.

Examine the United States, for instance. Courts in that region use this doctrine all the time in big commercial and tort cases crossing international borders. In Piper Aircraft Co v Reyno, the Supreme Court let a case filed by foreign plaintiffs get dismissed so it could be heard in Scotland instead.[26] The court declared that merely because Scotland's legal system was not as supportive didn't mean Scotland wasn't the suitable place. It showed how judges often choose efficiency and convenience over sticking with the original court if there's a stronger connection somewhere else.

Over in England, things run through the framework set in Spiliada Maritime Corp v Cansulex Ltd. The defendant has to show another court is plainly more appropriate. That case is still the

[26] Piper Aircraft Co v Reyno 454 US 235 (1981).

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go-to guide for deciding whether to pause proceedings and send a case to a different jurisdiction.

India's a bit different. They haven't officially written forum non conveniens into their law, but courts still use similar ideas. The Supreme Court in Modi Entertainment Network v WSG Cricket Pte Ltd talked about when Indian courts can block proceedings overseas. They focus on what's equitable, what ensures justice, and deciding on the suitable forum fundamentally making certain the case finds itself in the place that makes the most sense.[27]

In short, forum non conveniens is a balancing act. Courts want efficiency and a fair trial, but people fighting cross-border cases just want some predictability and a shot at justice.

6.1. ACCESS TO JUSTICE CONCERNS:

Forum non conveniens appears beneficial on paper, but in reality, it's provoked widespread discussion regarding if it prevents individuals from obtaining justice. Critics say it may severely impact plaintiffs, especially if they don't possess the financial resources or access to legal assistance to pursue their claim in another country. This concern truly emerges when it comes to multinational corporations and cross-border tort cases. Individuals in developing nations frequently attempt to litigate in courts which they consider provide stricter regulations as well as enhanced protections. However, when these cases are dismissed for being in the "wrong" forum, the plaintiffs could find themselves trapped incapable of obtaining any genuine relief elsewhere.

Hence the courts are required to probe before reaching decisions on jurisdiction. They have to be sure the alternative forum can actually deliver a fair trial and real relief. It's not enough to just shift cases for convenience. The standard that considerable justice must exist in the new forum maintains the integrity of the system, avoiding procedural guidelines from weakening people's chances to obtain justice. This flexibility tries to strike a balance between respecting international relations and sticking to strong procedural protections at home. As cross-border disputes increase, courts must ensure these principles must not only facilitate processes for judges or businesses they need to protect fairness and real access to justice.

[27] Modi Entertainment Network v WSG Cricket Pte Ltd (2003) 4 SCC 341.

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7. FORUM SHOPPING AND ABUSE OF JURISDICTION:

Forum shopping arises when an individual engaged in litigation opts for the court that is most advantageous to their side not always the court most directly related to the events in question. Individuals engage in this to discover judicial systems which include rules or procedures which offer them a benefit, whether it means a shot at higher compensation, faster timelines, or plaintiff-friendly judges. It comes up regularly in cross-border cases, where multiple courts might address the issue.

7.1 FOR WHAT REASON DO INDIVIDUALS MAKE A SPECIAL EFFORT TO SEEK OUT THE SUITABLE JURISDICTION?

It's clear-cut. The greatest draw is the expectation of earning additional income. Take the U.S., for example, owing to jury trials and some tort laws, courts there often hand out higher damages compared to courts in other nations. At times, exactly the manner in which one country interprets negligence or consumer protection might create a substantial difference. Plaintiffs constantly seek for areas where they have legal backing.

Yet, it's not merely about the money. The rules of the courtroom matter too. Some courts offer wider discovery, class actions, or contingency fee arrangements, making it easier and less risky to sue. Efficiency and proficiency also are taken into account. Judicial bodies with judges familiar with intricate cross-border commercial cases offer more predictability, which lawyers and their clients like a lot.

An illustrative example is Piper Aircraft Co v Reyno. This is what occurred: After a deadly plane crash in Scotland killed several Scottish citizens, the victims' representatives sued in the United States, targeting the American manufacturer. Why go with the U.S.? Because the courts in that jurisdiction tend to award bigger damages. However, the defendants resisted, arguing Scotland was the more logical choice the accident occurred there, and that's where the testimony and evidence were located.

The case proceeded to the U.S. Supreme Court, that rejected it. They said just because Scottish courts might award less money doesn't mean those courts are inadequate. Scotland had a stronger tie to the crash, so the case belonged there. This decision shows how courts use doctrines like forum non conveniens to keep litigants from shopping around too aggressively or unfairly. Ultimately, these rules help keep things fair and efficient in cross-border lawsuits.

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7.2. RELATIONSHIP BETWEEN FORUM SHOPPING AND FORUM NON CONVENIENS

Forum shopping happens when someone tries to file their lawsuit in a place that gives them some sort of advantage maybe better laws, bigger payouts, easier procedures, or just a better shot at winning. People generally have the freedom to pick where they start their case, but if they go too far trying to game the system, it makes things unfair and clogs up international courts.

That's where the idea of forum non conveniens comes in. It lets judges block these tactics by refusing to hear cases in their court if there's another place that's clearly a better fit. Judges look at which court is really tied to the dispute, making sure the case lands where it makes the most sense.

The big case for this idea is Spiliada Maritime Corp v Cansulex Ltd. The House of Lords made it clear: defendants have to prove there's a better forum out there, not just raise the idea. But if there is one, plaintiffs can still object if moving the case would really hurt their chances at justice. In short, forum non conveniens is a safety net. It stops courts from being used just because it suits one side and puts cases where they truly belong.

7.3. INDIAN PERSPECTIVE

In India, courts handle issues like forum shopping and jurisdiction disputes in cross-border cases mainly through rules on anti-suit injunctions, not by following a formal forum non conveniens doctrine. The Supreme Court's decision in Modi Entertainment Network v WSG Cricket Pte Ltd really set the tone here. It laid out the situations where Indian courts must act to prevent a person from transferring a case to a foreign jurisdiction.

The Court said they'd authorize an anti-suit injunction exclusively in exceptional cases such as when a foreign lawsuit serves merely to harass someone, evade a contract, or cause trouble for the opposing party. Basically, if someone opts for a courtroom abroad merely to gain a tactical advantage, the Indian judiciary may step in to prevent it. The concept is to reduce forum shopping, when litigants decide on the court that benefits them the most, instead of it being the correct forum for the dispute.

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But there's a catch. The judiciary further clarified that India's judges are required to acknowledge the rulings of foreign tribunals and exercise caution the principle of international comity is crucial, especially regarding cross-jurisdictional cases.

While Indian courts do not utilize the forum non conveniens doctrine in the same manner as English courts, the concerns are similar. They prefer to avoid individuals misusing the system, and they seek the court most intimately linked to the dispute. Similar to the rationale in Spiliada Maritime Corp v Cansulex Ltd. It's primarily about discovering the ideal venue for the true spectacle.

7.4. MODERN RELEVANCE

Forum non conveniens remains highly relevant in contemporary private international law because cross-jurisdictional legal cases are continually becoming more complex. Worldwide trade exists everywhere at present international corporations, e-commerce activities, and much more therefore courts encounter difficult choices about the appropriate national court must adjudicate a case. The advantage of forum non conveniens is how flexible it is. Judges need not be bound by strict technical rules; they may consider issues of equity, efficiency, as well as practicality.

When it comes to international business lawsuits, people routinely try to pick a court that gives them an advantage maybe a country with faster procedures or judges experienced in commercial law. The judiciary invoke forum non conveniens to prevent that type of forum-shopping, particularly when the designated location is not closely connected to the dispute.

The doctrine's even more important when massive companies operate across several countries. An issue might arise in one place, but the legal consequences could impact various legal frameworks. In such cases, it's essential to choose the court truly connected to the matter if not, you're merely squandering time and effort, and no one is satisfied in the end.

It's the same story for cross-border tort claims. Imagine a scenario where the parties concerned, the main evidence, and the witnesses are spread across the world. Courts require the ability to declare, "This case ought to be heard somewhere else," so the hearing takes place where factual and legal matters can effectively be addressed.

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As of now, bring digital life into the picture, in which online actions instantly transcend borders while courts must determine jurisdiction. Statutory provisions direct the procedure, but the principle of forum non conveniens remains useful when deciding the appropriate court in a dispute that extends across the internet.

All in all, the doctrine of forum non conveniens might have originated as an established legal concept, but it's proving to be just as vital in navigating the complexity of contemporary cross-border cases particularly as commerce and daily life become more globalized.

8. CONCLUSION

The doctrine of forum non conveniens still takes place at the centre of the private international law as it balances the jurisdictional power with the realities of the transnational litigation. It brings in judicial discretion whereby the courts could examine the substantive relationship between a case and the court. The framework formulated in Spiliada Maritime Corp v Cansulex Ltd proved a systematic investigation to determine which forum would have the strongest relationship and yet massive justice was achieved. The doctrine also covers shopping in forums, whereby, fairness and comity are encouraged. Its relevance is maintained in the post-Brexit UK jurisdictional practice and comparative cases like the case of Modi Entertainment Network v WSG Cricket Pte Ltd, in the face of its predictability concerns, and it remains applicable in dealing with international disputes of complexity.

8.1. SUGGESTION AND RECOMMENDATIONS:

Considering the changing international litigation, there are a number of considerations that can enhance the use of the forum non conveniens. First, courts must make the jurisdictional discretion more doctrinally transparent by structuring their reasoning to identify the factors that warrant an appropriate forum that will enhance transparency and mitigate uncertainty. Third, the factual availability of alternative forums, taking into account effective remedies, procedural fairness, and timely adjudication, and not simply formal jurisdiction is challenged by digital commerce and cross boundary online practices. Fourth, the jurisdiction such as India can enjoy better principles of forum non conveniens and forum shopping by judicial clarification. Lastly, cross-jurisdictional discussion can also be used to fine-tune the doctrine and facilitate effective and fair dispute resolution.

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