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CHOICE OF LAW AND JURISDICTION CLAUSES IN INTERNATIONAL CONTRACTS: BALANCING PARTY AUTONOMY AND JUDICIAL CONTROL IN PRIVATE INTERNATIONAL LAW

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Abstract

In the context of globalization and the rapid expansion of cross-border commercial transactions, international contracts frequently involve parties from diverse legal systems. This diversity often leads to uncertainty regarding the applicable law and the forum competent to resolve disputes. To mitigate such uncertainty, contracting parties incorporate choice of law and jurisdiction clauses, which allow them to predetermine the governing legal system and the forum for dispute resolution. These clauses are grounded in the principle of party autonomy, which is widely recognized as a fundamental concept in private international law.

However, the enforcement of such clauses is not without challenges. While courts in many jurisdictions generally uphold party autonomy, they also impose limitations where the chosen law or forum conflicts with public policy, mandatory rules, or principles of fairness. This creates a tension between contractual freedom and judicial control. Additionally, variations in national legal systems lead to inconsistent interpretations of these clauses, resulting in uncertainty and unpredictability in cross-border disputes.

This research critically examines the role and effectiveness of choice of law and jurisdiction clauses in international contracts. It explores the extent to which these clauses are recognized and enforced under private international law, with particular emphasis on the challenges posed by conflicting legal systems, parallel proceedings, and forum shopping. The study also analyses the impact of international instruments such as the Hague Convention on Choice of Court Agreements, which aims to promote uniformity in the enforcement of jurisdiction agreements.

Furthermore, the research identifies key gaps in the existing legal framework, including the lack of global harmonization and the inconsistent application of public policy exceptions. It

argues that while party autonomy remains central to international contracting, its effectiveness depends on a balanced approach that accommodates both contractual freedom and the regulatory interests of states.

The paper concludes by proposing recommendations for improving the enforcement of choice of law and jurisdiction clauses, including clearer legislative guidelines, stronger international cooperation, and greater judicial consistency. Ultimately, the study highlights the need for a more harmonized and predictable legal framework to support the growing demands of international commerce.

I. Introduction

International commercial transactions have become increasingly complex due to globalization and the integration of global markets. Businesses frequently engage in cross-border contracts involving parties from different jurisdictions, each governed by distinct legal systems. In such circumstances, determining the applicable law and the appropriate forum for dispute resolution becomes a crucial issue. The absence of clarity in these matters can lead to uncertainty, increased litigation costs, and delays in resolving disputes.¹

To address these challenges, parties often include choice of law clauses and jurisdiction clauses in their contracts. These provisions allow parties to select the governing law and the forum that will adjudicate disputes arising from the contract. The underlying principle behind these clauses is party autonomy, which enables contracting parties to structure their legal relationships according to their preferences. This principle is widely recognized in private international law as a means of promoting certainty and predictability in cross-border transactions.

Despite their importance, the enforcement of these clauses is not uniform across jurisdictions. While many legal systems recognize and enforce such clauses, they also impose limitations in certain circumstances. Courts may refuse to enforce them if they are found to be unfair,

¹ <https://www.abacademies.org/articles/crossborder-business-legal-challenges-in-international-trade-and-investment-17726.html#:~:text=To%20navigate%20legal%20challenges%20effectively,Google%20Scholar> - To navigate legal challenges effectively, companies should: Conduct thorough legal due diligence before entering new markets (Kusnardi et al., 1994). CONCLUSION Cross-border business offers immense potential—but only for those prepared to navigate its legal intricacies. From regulatory compliance to dispute resolution, the legal landscape is as diverse as the markets themselves. By understanding and addressing these challenges, companies can unlock global opportunities while safeguarding their interests and reputation.

unreasonable, or contrary to public policy. Additionally, conflicts may arise when multiple courts claim jurisdiction over the same dispute, leading to parallel proceedings and inconsistent judgments.

A major challenge lies in the lack of a uniform global framework governing the enforcement of these clauses. Although international instruments such as the Hague Convention on Choice of Court Agreements seek to harmonize the recognition of jurisdiction agreements, their limited adoption restricts their effectiveness. Moreover, domestic legal systems differ in their approach to party autonomy, further complicating the enforcement process.²

This research aims to analyse the role of choice of law and jurisdiction clauses within the framework of private international law. It examines the extent to which these clauses are recognized and enforced, the challenges associated with their application, and the need for greater harmonization. By exploring legal principles, judicial approaches, and international instruments, the study seeks to provide a comprehensive understanding of the balance between party autonomy and judicial control in international contracting.

II. Research Questions

The increasing importance of cross-border commercial transactions has made choice of law and jurisdiction clauses central to international contracting. However, their application within private international law raises several complex legal and practical issues. These issues arise due to differences in national legal systems, limitations on party autonomy, and the absence of a fully harmonized global framework.

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https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=2148&context=journal_articles#:~:text=The%20interpretation%20of%20choice%20of,choice%20of%20law%20clauses%20narrowly. - The interpretation of choice of law clauses normally proceeds according to customary principles of contractual interpretation. For the most part, courts are on the same page when it comes to interpreting clauses that do not leave much wiggle-room — e.g., clauses that provide that “all disputes arising from or related to the contract will be governed by [x] law.” Where things get dicey is where parties have agreed to a generic choice of law clause. A generic choice of law clause is one that provides that “the contract” will be “governed by” or “subject to” the chosen law. Here, there is a split of authority on how to interpret such language. Some courts hold that a generic choice of law clause should be interpreted narrowly. That is, the parties’ chosen law should be applied to contractual claims and contractual claims only. By contrast, some courts interpret a generic choice of law clause in the polar opposite way. These courts hold that the parties’ chosen law should apply to any and all disputes between the parties, including, for instance, tort and statutory claims. This Article examines this interpretative debate and sides with those courts that interpret generic choice of law clauses narrowly.

This research is guided by the following questions:

2.1. Primary Research Question

1. To what extent are choice of law and jurisdiction clauses in international contracts enforceable under private international law frameworks?

This question forms the foundation of the study and seeks to evaluate whether existing legal mechanisms effectively uphold the intentions of contracting parties in cross-border disputes.

2.2. Secondary Research Questions

1. Role of Party Autonomy

2. How does the principle of party autonomy influence the validity and enforcement of choice of law and jurisdiction clauses?

This question examines the extent to which courts respect contractual freedom and the limits imposed on such autonomy.

2. Limitations and Restrictions

3. What are the key limitations imposed on these clauses, particularly in relation to public policy, mandatory rules, and unequal bargaining power?

This explores the balance between private contractual freedom and state interests.

3. Jurisdictional Conflicts

4. How do courts resolve conflicts arising from competing jurisdiction clauses or parallel proceedings in different countries?

This question addresses practical issues such as overlapping jurisdiction and inconsistent decisions.

4. International Harmonization

5. What role does the Hague Convention on Choice of Court Agreements play in harmonizing the enforcement of jurisdiction clauses?

This evaluates the effectiveness of international efforts to reduce legal fragmentation.

5. Comparative Legal Approaches

6. How do different jurisdictions vary in their approach to enforcing choice of law and jurisdiction clauses?

This question supports the comparative analysis part of the research.

6. Gaps and Reforms

7. What are the major gaps in the current legal framework, and what reforms are required to ensure greater certainty and uniformity?

These questions collectively guide the research toward a comprehensive analysis of both the theoretical foundations and practical challenges associated with choice of law and jurisdiction clauses. They also establish a clear pathway for identifying gaps and proposing reforms within private international law.

III. Definitions and conceptual framework

A clear understanding of key concepts is essential for analysing the role and enforceability of choice of law and jurisdiction clauses in international contracts. This section lays the theoretical foundation of the research by defining core principles within private international law.

3.1. Choice of Law Clause

A **choice of law clause** is a contractual provision through which parties agree in advance on the legal system that will govern their contract. This chosen law determines:

- Interpretation of contractual terms
- Rights and obligations of the parties
- Validity and performance of the contract

The recognition of such clauses is based on the principle of party autonomy. Courts generally uphold the chosen law unless it conflicts with mandatory rules or public policy of the forum.³

3.2. Jurisdiction Clause

A **jurisdiction clause** (also known as a forum selection clause) specifies the court or forum that will have authority to resolve disputes arising from the contract.

These clauses are of two types:

- **Exclusive Jurisdiction Clause** – Only the selected court has the authority to hear the dispute.
- **Non-Exclusive Jurisdiction Clause** – Parties may approach other competent courts in addition to the chosen forum.

³ <https://blog.ipleaders.in/an-analysis-of-the-choice-of-law-existing-in-a-domestic-context/#:~:text=Choice%20of%20law%20or%20conflict%20of%20law,-The%20terms%20'conflict&text=In%20Indian%20private%20international%20law,disputes%2C%20avoids%20uncertainty%20and%20ambiguity>. – Choice of law or conflict of law: In Indian Private international law, parties are given the autonomy to choose the law they want to apply, restrictions to choice, choice of law of parties may be expressed or implied, pre-determined in nature and thus takes care of future disputes, avoids uncertainty and ambiguity.

Jurisdiction clauses play a crucial role in avoiding uncertainty and reducing the risk of multiple proceedings in different countries.⁴

3.3. Party Autonomy

Party autonomy is a fundamental principle of private international law that allows contracting parties to choose:

- The governing law
- The forum for dispute resolution

It promotes certainty, predictability, and efficiency in international commercial transactions. However, party autonomy is not absolute and may be limited by:

- Public policy
- Mandatory statutory provisions
- Principles of fairness and justice⁵

3.4. Lex Fori and Lex Causae

Two important concepts in conflict of laws are:

- [Lex Fori](#) – The law of the forum (the court where the case is heard).

⁴ <https://www.ashurst.com/en/insights/quickguide-jurisdiction-clauses/#:~:text=A%20jurisdiction%20clause%20should%20be,specifying%20which%20forum%20has%20jurisdiction>: - A jurisdiction clause should be included where the parties want all disputes arising under their agreement to be determined by a particular national court or courts. A party expressly submitting to the courts of a particular jurisdiction will find it difficult to argue that those courts are not the appropriate forum for the trial of disputes.

If there is no effective jurisdiction clause the correct forum for the determination of a dispute will be decided by reference to rules of private international law. This can cause uncertainty and inconvenience and can lead to additional costs and delay in progressing any proceedings.

How do I decide which jurisdiction to choose?

A jurisdiction clause may provide for jurisdiction in a country which is associated with one or more of the parties or it may provide for jurisdiction in a neutral forum. There are three principal reasons for specifying which forum has jurisdiction:

⁵ [https://www.hcch.net/en/instruments/conventions/full-text/?cid=135#:~:text=Content%20of%20the%20Principles,choice%20of%20law%20\(see%20Art.](https://www.hcch.net/en/instruments/conventions/full-text/?cid=135#:~:text=Content%20of%20the%20Principles,choice%20of%20law%20(see%20Art.) - **Content of the Principles**

I.15 The Preamble and 12 articles comprising the instrument may be considered to be an international code of current best practice with respect to the recognition of party autonomy in choice of law in international commercial contracts, with certain innovative provisions as appropriate.

I.16 Some provisions reflect an approach that is the subject of wide, international consensus. These include the fundamental ability of the parties to choose the applicable law (Preamble, para. 1 and Art. 2(1)) and appropriate limitations on the application of the parties' chosen law (see Art. 11). It is to be expected that a State that adopts a regime that supports party autonomy would necessarily adopt rules consistent with these provisions.

I.17 Other provisions reflect the view of the Hague Conference as to best practice and provide helpful clarifications for those States that accept party autonomy. These include provisions addressing the ability of parties to choose different laws to apply to different parts of their contract (see Art. 2(2)), to tacitly choose the applicable law (see Art. 4) and to modify their choice of law (see Art.

- **Lex Causae** – The law governing the substance of the dispute (chosen by the parties or determined by the court).

While the lex causae governs contractual rights, the lex fori determines procedural matters.⁶

3.5. Forum Shopping

Forum shopping refers to the practice where a party deliberately chooses a court that is more favourable to its interests, often ignoring agreed jurisdiction clauses.

This creates problems such as:

- Unfair advantage to one party
- Increased litigation costs
- Inconsistent judicial outcomes⁷

3.6. Public Policy

Public policy is a legal doctrine that allows courts to refuse enforcement of contractual clauses if they violate fundamental principles of justice, morality, or state interest.

In the context of jurisdiction and choice of law clauses, courts may refuse enforcement where:

- The clause is unconscionable

⁶ <https://www.khuranaandkhurana.com/2023/11/25/understanding-lex-fori-in-international-civil-procedure-principles-and-interplay#:~:text=Because%20procedural%20law%20regulates%20the,the%20merits%20of%20the%20dispute.-Because%20procedural%20law%20regulates%20the%20public%20service%20of%20rendering%20justice,it%20can%20only%20be%20regulated%20by%20the%20law%20of%20the%20forum.Under%20certain%20circumstances,the%20judicial%20authority%20will%20apply%20foreign%20law%20to%20the%20merits%20of%20the%20dispute.>

⁷ <https://www.drishtiiias.com/daily-updates/daily-news-analysis/forum-shopping#:~:text=For%20Prelims:%20Forum%20Shopping%2C%20CJI,Disadvantages:-For%20Prelims:Forum%20Shopping,CJI,Supreme%20Court,Principle%20of%20Forum%20non-conveniens.>

For Mains: Forum Shopping, its disadvantages and Prevention.

Why in News?

Recently, the **Chief Justice of India (CJI)** has condemned the practice of **Forum Shopping** after a **litigant** mentioned the hearing before CJI although he had mentioned the same case a day before another Judge.

What is the Practice of Forum Shopping?

- **About:**
 - Forum shopping refers to the practice of **deliberately choosing a specific court for a legal case** in the hope of getting a favorable outcome.
 - Litigants and lawyers often consider this strategy as part of their litigation plan.
 - For example, they might opt for a higher court like the **Supreme Court (SC)** to gain more attention for their case. However, if someone is clearly trying to manipulate the system or avoid a particular judge, **it is seen as unfair.**
 - Similarly, “**Bench Hunting**” refers to **petitioners managing to get their cases heard by a particular judge** or bench to ensure a favourable order.
- **Advantages:**
 - It can allow plaintiffs to **seek justice and compensation in a court** that is more sympathetic to their claims or interests.
 - It can encourage **competition and innovation among courts** and judges to improve their efficiency and quality of service.

- It results in injustice ⁸
- It conflicts with mandatory laws ⁹

3.7. Mandatory Rules

Mandatory rules are legal provisions that apply irrespective of the parties' choice of law. These rules are enforced to protect:

- Public interest
- Weaker parties (e.g., consumers, employees)
- National legal policies

Such rules limit the absolute application of party autonomy.

3.8 International Legal Framework

An important instrument governing jurisdiction clause is the Hague Convention on Choice of Court Agreements, which seeks to:

- Promote recognition of exclusive jurisdiction clauses
- Ensure enforcement of resulting judgments
- Enhance predictability in international disputes

However, its limited adoption reduces its global impact.

The concepts discussed above form the theoretical backbone of this research. They illustrate the balance between party autonomy and judicial control, which lies at the heart of private

⁸ <https://lawbhoomi.com/agreements-opposed-to-public-policy/#:~:text=Under%20Public%20Policy?,What%20is%20Public%20Policy?,an%20illegal%20or%20immoral%20contract.> - What is Public Policy?

Public policy is a broad, somewhat flexible concept used by courts to prevent enforcement of contracts that harm the public interest, morality, or the State's sovereignty. It represents the collective interest of society and acts as a guideline against contracts that offend societal norms or constitutional values.

The Latin maxim *ex turpi causa non oritur actio* ("no action arises from a dishonourable cause") underpins the doctrine. It means a party cannot seek the court's help to enforce an illegal or immoral contract.

⁹ <https://www.cyrilshroff.com/wp-content/uploads/2020/09/ABLJ.pdf#:~:text=Indian%20courts%20respect%20the%20choice,asymmetric%20jurisdiction%20clause%20is%20enforced.> - Indian courts respect the choice of parties to provide for dispute resolution before a "neutral forum" or a "forum of choice" through exclusive or non-exclusive jurisdiction clauses incorporated in their contracts. Nevertheless, such clauses are not regarded as determinative of the jurisdiction of Indian courts. If the court which ordinarily does not have jurisdiction under the Code of Civil Procedure, 1908 has been conferred with such jurisdiction pursuant to a contract, then such choice-of-forum clause will not be upheld by Indian courts. Parties also cannot through a contract oust the jurisdiction of a court that has exclusive jurisdiction. To avoid injustice and in exceptional facts and circumstances of a matter, Indian courts may also assume jurisdiction over a dispute. The status of asymmetric jurisdiction clauses is unclear in India due to contrary judicial pronouncements. However, Indian courts may not enforce such a clause to avoid injustice and in cases where foreign proceedings have been construed unjust and unfair due to exceptional facts and unforeseen circumstances of a matter, which would cause manifest injustice to the party if the consensually agreed asymmetric jurisdiction clause is enforced.

international law. Understanding these principles is essential for evaluating the effectiveness and limitations of choice of law and jurisdiction clauses in international contracts.

IV. Legal Framework Governing Choice of Law and Jurisdiction Clauses

The enforcement of choice of law and jurisdiction clauses in international contracts is governed by a combination of international conventions and domestic legal systems. While these frameworks aim to promote certainty and uniformity, differences in their application often lead to legal fragmentation in cross-border disputes.

4.1. International Legal Framework

(A) [Hague Convention on Choice of Court Agreements \(2005\)](#)

The Hague Convention on Choice of Court Agreements is the primary international instrument governing jurisdiction clauses in international commercial contracts.

Key Features

- It applies to **exclusive jurisdiction clauses** in civil and commercial matters.
- Courts of contracting states must **respect and enforce the chosen court**.
- Judgments delivered by the chosen court must be **recognized and enforced** by other contracting states.

Significance

- Promotes **legal certainty and predictability**
- Reduces risk of **parallel proceedings**
- Strengthens **party autonomy** in international contracting

Limitations

- Limited number of member states
- Does not cover **non-exclusive jurisdiction clauses**
- Excludes certain areas such as consumer and employment contracts ¹⁰

¹⁰ <https://www.tandfonline.com/doi/full/10.1080/17441048.2022.2148905#:~:text=A.-Introduction,also%20accepted%20in%20Indonesian%20law.-Abstract>

Indonesian civil procedure law recognises choice of court agreements made by contracting parties. However, Indonesian courts often do not recognise the jurisdiction of the courts chosen by the parties. That is because under Indonesian civil procedure codes, the principle of *actor sequitur forum rei* can prevail over the parties' choice of court. In addition, since Indonesian law does not govern the jurisdiction of foreign courts, Indonesian courts continue to exercise jurisdiction over the parties' disputes based on Indonesian civil procedure codes, although the parties have designated foreign courts in their choice of court agreements. This article suggests that Indonesia pass into law the Bill of Indonesian Private International Law that has provisions concerning international jurisdiction of foreign courts as well as Indonesian courts, and accede to the 2005 HCCH Choice of Court Agreements Convention. This article also suggests steps to be taken to protect Indonesia's interests.

Keywords:

Thus, while the Convention represents a major step toward harmonization, its limited scope reduces its global effectiveness.

4.2. Domestic Legal Framework

Domestic laws play a crucial role in determining the validity and enforcement of contractual clauses.

(A) India

In India, the enforcement of jurisdiction and choice of law clauses is governed by:

- [Code of Civil Procedure, 1908](#)
- [Indian Contract Act, 1872](#)

Judicial Approach

Indian courts generally uphold jurisdiction clauses if:

- The selected court has jurisdiction under law
- The clause is not unfair or opposed to public policy

Courts have also held that parties cannot completely oust the jurisdiction of all competent courts.¹¹

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- [Indonesian private international law](#)
 - [choice of court agreements](#)
 - [jurisdiction of the chosen court](#)
 - [Hague Choice of Court Convention](#)
 - [party autonomy](#)
 - [legal certainty](#)
 - [Ease of Doing Business index](#)

A. Introduction

Choice of court agreements, also known as jurisdiction clauses, are commonly found in contracts in civil and commercial matters. The clauses or agreements express the parties' intention that the courts chosen by them will decide disputes between the parties. Choice of court agreements are the reflection of the principle of party autonomy, including freedom of contract, that provides the contracting parties with the right to establish their own rules, including the rules to settle their disputes. The principle of party autonomy is also accepted in Indonesian law.

¹¹<https://upscalelegal.com/exclusive-jurisdiction-clause-in-contracts/#:~:text=Such%20a%20clause%20is%20often,The%20Section%20provides:>

- Such a clause is often misinterpreted to include all and any courts by the parties. But, in fact with accordance to the law, this is not the case. Section 9 of The Code of Civil Procedure, 1908 ("CPC") states that, all courts shall have jurisdiction to try all suits of civil nature unless the jurisdiction is either expressly or impliedly barred. The CPC, through Section 20 lays down the various jurisdiction of the Courts where a suit can be instituted, such Courts, may be in the jurisdiction of the defendants' resident or place of business or jurisdiction of the place where the cause of action wholly or partially arises.

With a view of convenience and minimizing legal costs for the parties, The Indian Contract Act gives an extent of liberty to the parties to limit the place of legal proceedings to one place and forum. This is done by expressly including a valid "*Exclusive Jurisdiction*" clause in the Contract.

Section 28 of the Indian Contract Act, makes agreements in restraint of legal proceedings void. The Section provides:

Key Principle

India follows a **balanced approach**, recognizing party autonomy while ensuring fairness and preventing misuse.

(B) United Kingdom

The [Civil Jurisdiction and Judgments Act 1982](#) governs jurisdiction agreements.

Approach

- Strong emphasis on **party autonomy**
- Courts generally enforce jurisdiction clauses strictly
- Limited interference unless the clause is unreasonable or unjust ¹²

The UK is considered a **pro-enforcement jurisdiction**.

(C) United States

In the United States, jurisdiction clauses are generally enforceable unless:

- The clause is **unreasonable or unjust**
- It is obtained through **fraud or coercion**
- It violates **public policy** ¹³

The legal system emphasizes **contractual freedom**, making it favorable for enforcing such clauses.

(D) Other Jurisdictions (General Trend)

Globally, jurisdictions follow three broad approaches:

¹²<https://law.asia/india-exclusive-jurisdiction-clauses/#:~:text=An%20EJC%20is%20valid%20if,the%20clause%20will%20be%20void>.

- An EJC is valid if it selects one of several courts that already have jurisdiction. Conversely, a clause that attempts to confer exclusive jurisdiction on a court that is not otherwise competent is void because parties cannot confer jurisdiction by contract.

Section 28 of the Contract Act nullifies agreements restraining enforcement of rights through legal proceedings or unfairly extinguishing remedies. EJCs are generally not affected by section 28 because they do not bar recourse to courts; they only identify the forum in which recourse must be pursued. However, if an EJC attempts to select a court without section 20 of the CPC jurisdiction, the clause will be void.

¹³

<https://www.sirion.ai/library/contract-clauses/jurisdiction-clause/#:~:text=Even%20well%20drafted%20clauses%20face,followed%20regardless%20of%20governing%20law>) - Even well-drafted clauses face potential enforceability challenges. Understanding these limitations is essential for creating realistic expectations and developing contingency strategies.

1. Public Policy Exceptions

Courts may refuse to enforce governing law choices that violate fundamental public policy. For example:

- Consumer protection laws in many jurisdictions cannot be circumvented by choice of law
- Employment protection provisions may be mandatory regardless of chosen law
- Competition/antitrust regulations often apply despite contractual provisions to the contrary

2. Mandatory Local Laws

Some types of laws apply regardless of the parties' choice, particularly in areas like:

- Real property (the law where property is located often governs)
- Intellectual property (territorial protection principles often prevail)
- Insolvency (local insolvency regimes typically override contractual provisions)
- Regulatory compliance (local regulations must be followed regardless of governing law)

1. **Pro-Enforcement Approach** – Strong respect for party autonomy
2. **Balanced Approach** – Recognition with limitations
3. **Restrictive Approach** – Greater judicial control
- 4.3. Role of Courts in Enforcement

Courts play a critical role in:

- Interpreting contractual clauses
- Determining jurisdiction
- Applying public policy limitations

Key Judicial Functions

1. **Validation** – Checking whether the clause is legally valid
2. **Interpretation** – Understanding the scope of the clause
3. **Enforcement** – Deciding whether to uphold or reject it ¹⁴
- 4.4. Key Issues in the Legal Framework

1. Lack of Uniformity

Different countries apply different standards, creating unpredictability.

2. Parallel Proceedings

Multiple courts may hear the same dispute despite jurisdiction clauses.

3. Public Policy Exception

Broad interpretation weakens enforceability.

4. Limited Scope of International Instruments

Global conventions do not fully cover all types of agreements.

¹⁴<https://viamediationcentre.org/readnews/MTAz/Role-of-courts-in-arbitration-process#:~:text=Section%2045%20talks%20about%20the,or%20incapable%20of%20being%20performed.&text=Section%2027%20states%20the%20court,the%20endorsement%20of%20the%20court.&text=Section%2034%20specifies%20about%20the,the%20agreement%20of%20the%20parties.> - Section 45 talks about the power of judicial authority to refer the parties for arbitration. That is through this section the act enables the courts to decline to refer parties to arbitration if it is found that the arbitration agreement is null and void, inoperative or incapable of being performed.

- During the arbitration process

Section 27 states the court assistance in handling the evidences. Section 27 of the arbitration and conciliation act makes a provision for the arbitral tribunal to seek the assistance of the court in taking evidences. Such help can be looked for willingly, or by involved with the contest, with the endorsement of the court.

- Post arbitral award

Section 34 specifies about the application for setting aside an award. An arbitral award might be put aside by the court only if:

- The party was under some incapacity
- When the arbitration agreement is not under the law
- When the party making the application was not given legitimate information or notice of the appointment of an arbitrator
- It contains choice on issues past the extent of discretion
- The composition of the tribunal or arbitral procedure was not at par with the agreement of the parties.

The legal framework governing choice of law and jurisdiction clauses reflects a combination of international efforts and domestic legal systems. While international instruments aim to harmonize enforcement, their limited scope and adoption leave significant gaps. Domestic laws continue to play a dominant role, leading to variations in enforcement standards. As a result, achieving consistency in cross-border disputes remains a major challenge in private international law.

V. Comparative Analysis

The enforcement of choice of law and jurisdiction clauses varies significantly across jurisdictions. This comparative analysis highlights how different legal systems approach party autonomy, judicial control, and enforcement of such clauses within private international law.

5.1. Pro-Enforcement Jurisdictions

Certain jurisdictions strongly uphold the principle of party autonomy and adopt a pro-enforcement approach toward contractual clauses.

United Kingdom

Under the Civil Jurisdiction and Judgments Act 1982, courts in the UK generally enforce jurisdiction clauses strictly.

Key features:

- Strong respect for **party autonomy**
- Courts rarely interfere with contractual choices
- High predictability in enforcement

Judicial Attitude

UK courts typically hold that parties who freely agree to a jurisdiction clause must be bound by it, unless exceptional circumstances exist.

United States

The United States also adopts a pro-enforcement approach, emphasizing contractual freedom.

Key Features

- Jurisdiction clauses are generally valid
- Enforcement denied only if:
 - Unreasonable
 - Obtained through fraud
 - Against public policy

Significance

This approach promotes **certainty and commercial efficiency**, making the US a favorable jurisdiction for international contracts.

5.2. Balanced Approach Jurisdictions

Some jurisdictions recognize party autonomy but impose reasonable limitations to protect fairness and public interest.

India

India follows a balanced approach under:

- Code of Civil Procedure, 1908
- Indian Contract Act, 1872

Key Features

- Jurisdiction clauses are enforceable if valid
- Courts ensure:
 - No exclusion of all competent courts
 - No unfair or unjust terms

Judicial Approach

Indian courts attempt to balance **contractual freedom with justice**, ensuring that weaker parties are not disadvantaged.

5.3. Restrictive Jurisdictions

Some legal systems adopt a more cautious or restrictive approach.

Key Characteristics

- Greater emphasis on **public policy**
- Increased judicial scrutiny
- Limited reliance on party autonomy

Impact

- Reduced predictability
- Higher judicial intervention
- Potential discouragement of international contracting

5.4. Comparative Evaluation

1. Party Autonomy vs Judicial Control

- UK & US → Strong party autonomy

- India → Balanced approach
 - Restrictive systems → Judicial dominance
2. Treatment of Jurisdiction Clauses
 - Pro-enforcement jurisdictions → Strict enforcement
 - Balanced jurisdictions → Conditional enforcement
 - Restrictive jurisdictions → Frequent rejection
 3. Public Policy Application
 - Narrow interpretation → Enhances enforceability
 - Broad interpretation → Weakens contractual certainty
 4. Impact on International Trade
 - Pro-enforcement → Encourages cross-border trade
 - Restrictive → Creates uncertainty and risk

5.5 Key Problems Identified

1. Lack of Uniformity

Different jurisdictions apply different standards, creating unpredictability.

2. Parallel Proceedings

Multiple courts may hear the same dispute despite agreed clauses.

3. Forum shopping

Parties may avoid agreed forums to gain advantage.

4. Enforcement Uncertainty

Variation in judicial approaches affects contractual reliability.

The comparative study demonstrates that while the principle of party autonomy is widely recognized, its application varies significantly across jurisdictions. Pro-enforcement jurisdictions provide greater certainty and predictability, whereas restrictive approaches introduce legal uncertainty. The lack of uniformity in enforcement standards remains a major challenge in private international law, highlighting the need for greater harmonization.¹⁵

¹⁵ <https://academic.oup.com/bybil/article/84/1/187/2262836> - It is clear that this reflects a collective policy decision by states that there are situations in which more than one state has a legitimate regulatory interest which should be recognised as compatible with international law. Potentially overlapping and even conflicting regulation⁴⁷ is thus simply a part of the reality of international law, albeit one which is much more limited under accepted jurisdictional rules than it would be under the *Lotus Case* approach. This is not to deny that overlapping jurisdiction may be problematic, and that it would be helpful to develop principles of priority in such cases. One such potential principle is the rule of 'reasonableness' which is accepted as part of US law, but not widely accepted as part of international law, which requires comparing the strength of connections which a person or activity has to different states, before determining which state might most 'reasonably' impose its regulatory authority.

VI. Conclusion

Choice of law and jurisdiction clauses have become indispensable components of international contracts in the modern globalized economy. They serve as crucial tools for ensuring predictability, reducing legal uncertainty, and facilitating efficient dispute resolution in cross-border transactions. Rooted in the principle of party autonomy, these clauses allow contracting parties to structure their legal relationships according to their preferences, thereby enhancing commercial confidence and stability.

However, this research demonstrates that the effectiveness of such clauses is significantly influenced by the legal framework within which they operate. While many jurisdictions recognize and enforce these clauses, their application is not uniform. Differences in domestic legal systems, judicial attitudes, and interpretations of public policy create inconsistencies in enforcement. As a result, parties to international contracts cannot always be certain that their agreed choices of law and forum will be upheld in foreign courts.

The analysis further reveals a fundamental tension between **party autonomy and judicial control**. On one hand, courts seek to respect contractual freedom and promote certainty in international commerce. On the other hand, they impose limitations to safeguard public interest, prevent unfairness, and protect weaker parties. This balancing act often leads to divergent outcomes across jurisdictions, particularly in cases involving unequal bargaining power, mandatory legal provisions, or conflicting jurisdictional claims.

The study also highlights several key challenges, including forum shopping, parallel proceedings, and inconsistent judicial interpretation. These issues undermine the primary objective of such clauses, which is to provide clarity and avoid disputes regarding applicable law and forum. Although international instruments such as the Hague Convention on Choice of Court Agreements aim to promote harmonization, their limited adoption restricts their effectiveness in creating a uniform global framework.

In light of these challenges, there is a clear need for reform. Greater harmonization of legal standards at the international level would significantly enhance the predictability and enforceability of these clauses. Domestic legal systems should strive for consistency in judicial interpretation, particularly in the application of public policy exceptions. Additionally, clearer

legislative guidelines can help reduce ambiguity and strengthen the reliability of international contracts.

In conclusion, while choice of law and jurisdiction clauses remain essential mechanisms in private international law, their full potential can only be realized through coordinated efforts toward legal harmonization and judicial consistency. Strengthening these aspects will not only improve dispute resolution but also promote greater confidence in international commercial transactions.

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