

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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NATURE AND SCOPE OF PUBLIC INTERNATIONAL LAW: A CRITICAL STUDY OF THE DISTINCTION BETWEEN PRIVATE INTERNATIONAL LAW AND PUBLIC INTERNATIONAL LAW

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ABSTRACT:

Public International Law and Private International Law are two important branches of international law that deal with legal situations involving an international or foreign element. **Public International Law** primarily regulates relations between States, but its scope has expanded to include international organizations, individuals, multinational corporations, and other non-State actors. It covers areas such as human rights, international humanitarian law, international criminal law, environmental protection, international trade and investment, and the law of the sea.

Private International Law, also known as the **conflict of laws**, deals mainly with private disputes involving a foreign element. Its principal functions are to determine **which court has jurisdiction, which law should apply, and whether foreign judgments or arbitral awards should be recognized and enforced.**

Although traditionally these two branches were treated as separate, globalization and the growth of cross-border activities have increased their interaction. International trade, investment, human rights, arbitration, and cross-border family and commercial disputes often involve principles from both fields. Consequently, modern transnational legal issues cannot always be effectively addressed by treating Public and Private International Law as completely independent.

The paper therefore examines the **nature, scope, sources, and subjects of Public International Law**, compares it with Private International Law, and analyses their evolving relationship. It particularly focuses on the **Indian legal framework**, referring to important

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cases such as *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*, *Satya v. Teja Singh*, *Y. Narasimha Rao v. Y. Venkata Lakshmi*, *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*, *Renusagar Power Co. Ltd. v. General Electric Co.*, and *Alcon Electronics Pvt. Ltd. v. Celem S.A.* Comparative perspectives from the **UK and USA**, along with relevant ICJ jurisprudence, are also considered.

Keywords: Public International Law, Private International Law, Conflict of Laws, International Jurisdiction, Choice of Law, Foreign Judgments, State Sovereignty, International Legal Personality, International Law, India.

INTRODUCTION

The growth of international relations has significantly changed the nature and role of law in the contemporary world. Today, people, money, goods, services, technology, information, and ideas regularly move across national borders, creating legal relationships that are no longer confined to the territory of a single State. As a result, many legal transactions and disputes now involve more than one legal system. For instance, a commercial agreement may be entered into in one country, be subject to the laws of another, be carried out in a third country, and eventually be brought before the courts of a fourth. In the same way, a marriage may take place in one country between individuals who are domiciled in different countries, with issues relating to divorce, matrimonial property, child custody, or inheritance arising later before the courts of another jurisdiction.

These developments have made international legal regulation increasingly necessary. However, the presence of a foreign or international element does not automatically mean that a dispute will fall within the scope of Public International Law. The legal framework applicable to an international dispute largely depends on the nature of the parties involved, the source of the relevant legal rules, and the issue that needs to be determined. For example, a dispute between two States may be governed by Public International Law, whereas a dispute between private individuals or commercial entities may be addressed through domestic conflict-of-laws principles. Similarly, the applicable rules may arise from an international treaty or from the conflict-of-laws rules of a particular country. The distinction also depends on whether the issue concerns obligations arising under international law or relates instead to questions of jurisdiction, choice of law, or the application of a particular national legal system by a domestic court.

Public International Law is generally described as the body of legal principles and rules that

regulates the conduct and relationships of States and other entities recognized as having international legal personality. Traditionally, the discipline was largely centered on States, with State sovereignty forming the foundation of the classical international legal system. This traditional approach is reflected in the well-known reasoning of the Permanent Court of International Justice in the *S.S. Lotus* case³, which emphasized the importance of State sovereignty in the international legal order.

However, the scope of Public International Law has considerably expanded over time and is no longer limited to relations between States. Individuals have increasingly acquired rights and obligations under international law, particularly in the fields of international human rights and international criminal law, where individuals may also be held personally responsible for certain international crimes. International organizations have likewise come to possess international legal personality and exercise powers derived from their founding or constituent instruments. In addition, corporations and other private entities have assumed an important role in various areas of international law, including international investment, trade, environmental regulation, and international arbitration. Thus, contemporary Public International Law reflects a broader and more diverse international legal system in which States remain central, but are no longer the only significant participants.

Under **Article 38(1) of the Statute of the International Court of Justice (ICJ)**, the main sources used to determine rules of Public International Law include **international treaties, international custom, general principles of law, judicial decisions, and scholarly writings**. These sources provide the basic framework for identifying and interpreting rules of international law and remain fundamental to the study and application of Public International Law.

Private International Law, on the other hand, primarily deals with private legal relationships that involve a foreign or international element. Its application generally revolves around three fundamental questions: **which court has jurisdiction to hear the dispute, which legal system should govern the matter, and whether a judgment or arbitral award delivered by a foreign court or tribunal should be recognized and enforced**. For instance, where an Indian citizen enters into a contractual relationship with a foreign company, a dispute arising from that agreement may require the court to determine whether it has jurisdiction over the matter, which country's law should be applied to interpret and enforce the contract, and whether a judgment obtained from a foreign court can subsequently be recognized and enforced in India.

³ *S.S. "Lotus" (France v. Turkey)*, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7, 1927).

In *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*⁴, the **Supreme Court of India** clarified that Private International Law does not govern relations between independent States. Instead, it forms part of the **domestic civil law of a State** and deals with private transactions, rights, or personal status involving a **foreign element**.

This distinction is essential to understanding the two branches of international law. Public International Law derives its authority primarily from international sources and operates within an international normative framework. Private International Law, in contrast, generally originates from the domestic laws of individual States, even though it deals with legal relationships and disputes involving a foreign or international element. Nevertheless, this difference in their sources and structure does not imply that the two branches function entirely independently. In practice, the increasing number of cross-border legal issues has created several areas where Public International Law and Private International Law interact with and influence one another.

The research aims not only to identify the differences between Public and Private International Law but also to **critically analyses the nature and scope of Public International Law** and examine how it differs from Private International Law in both **theory and practical application**.

RESEARCH OBJECTIVES

The principal objectives of this research are:

To examine the nature and meaning of Public International Law, To analyses the historical development of Public International Law, To examine the sources and subjects of Public International Law, To study the scope and contemporary application of Public International Law, To explain the meaning and functioning of Private International Law, To distinguish Public International Law from Private International Law, To examine the distinction through Indian judicial decisions, To analyses the changing relationship between the two disciplines, To undertake a comparative examination of the approaches adopted by India and other jurisdictions and To identify areas where the distinction between the two branches has become increasingly blurred.

Although Public International Law and Private International Law are conceptually distinct legal disciplines, the increasing internationalization of private relationships, expansion of individual rights, transnational commerce, international arbitration, investment law, and

⁴ *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*, AIR 1963 SC 1 : (1963) 3 SCR 22.

international human rights law has created substantial interaction between them. The distinction therefore remains legally important but is no longer absolute.

The research adopts a **doctrinal and analytical methodology**. Primary sources include treaties, international instruments, judicial decisions, statutory provisions, and constitutional provisions. Secondary sources include authoritative textbooks, scholarly writings, legal commentaries, and institutional materials.

The research is principally India-centered but incorporates comparative perspectives from the United Kingdom, United States, and international jurisprudence. Particular emphasis is placed on judicial decisions because courts frequently determine the practical boundary between Public International Law and Private International Law.

CONCEPTUAL FOUNDATION OF PUBLIC INTERNATIONAL LAW

Meaning of Public International Law

Public International Law is the body of legal rules and principles governing relations between States and other entities having international legal personality. Classical scholars such as Oppenheim and Brierly primarily viewed international law as rules governing relations between States, making their definitions largely State-centric.

However, modern international law has expanded beyond this traditional approach. International organizations, individuals, peoples, corporations, and other non-State actors now play significant roles in various areas of international law.

Under Article 38(1) of the ICJ Statute, international conventions, international custom, general principles of law, and judicial decisions and scholarly writings serve as important means for identifying and applying international legal rules.

Therefore, contemporary Public International Law cannot be understood merely as “law between States.” It now covers diverse areas such as international peace and security, human rights, environmental protection, international criminal law, international economic relations, the law of the sea, diplomatic relations, and international dispute settlement.

HISTORICAL DEVELOPMENT OF PUBLIC INTERNATIONAL LAW

Classical Period

The classical period of Public International Law primarily focused on sovereign States and their relationships. Major concerns included State sovereignty, territorial integrity, independence, diplomacy, war, peace, and treaties.

The Peace of Westphalia (1648) is traditionally regarded as an important milestone in the development of the modern State system and the concept of sovereignty. However, modern scholarship suggests that it should not be viewed as the single event that created the contemporary system of State sovereignty.

Contributions of Grotius

Hugo Grotius played a major role in the development of modern international law. In his work *De Jure Belli ac Pacis*⁵, he addressed important issues such as war, peace, treaties, commerce, and relations between States.

His major contribution was promoting the idea that relations between States should be governed by legal principles and rules, rather than being determined solely by political power.

Nineteenth-Century Development

During the 19th century, Public International Law became more organized and systematic. The growth of treaties, diplomatic practices, international arbitration, and codification efforts helped establish and develop clearer international legal rules.

Post-World War I Period

After World War I, the creation of the League of Nations marked a significant step towards institutionalized international cooperation. The establishment of the Permanent Court of International Justice (PCIJ) further promoted the peaceful and judicial settlement of international disputes.

Post-World War II International Legal Order

The creation of the United Nations in 1945 brought a major transformation to Public International Law. The UN Charter established a framework for maintaining international peace and security and recognized principles such as sovereign equality, non-intervention, peaceful settlement of disputes, and prohibition of the use of force.

The post-World War II period also saw significant growth in various areas of international law, including human rights, humanitarian law, international criminal law, environmental law, and international economic law.

NATURE OF PUBLIC INTERNATIONAL LAW

Public International Law has several important characteristics:

International Character: It regulates conduct and creates legal obligations that operate across national boundaries within the international legal system.

⁵ Hugo Grotius, *De Jure Belli ac Pacis Libri Tres* (1625).

Normative Character: International law consists of legally binding rules based on recognized sources such as treaties, customary international law, and general principles of law, rather than merely political principles.

Decentralized Structure: Unlike domestic legal systems, there is no single global legislature, executive, or universally compulsory court. However, international law functions through State consent, customary practices, treaties, international institutions, adjudication, and diplomatic processes.

Sovereignty and Consent: State sovereignty and equality remain fundamental. States accept international obligations through treaties and customary rules, making consent particularly important in treaty obligations and international dispute settlement.

Dynamic Character: International law continues to evolve in response to emerging issues such as cyber operations, climate change, artificial intelligence, global health, international criminal justice, and transnational environmental harm.

SUBJECTS OF PUBLIC INTERNATIONAL LAW

Public International Law recognizes several important subjects:

States: States remain the primary subjects of international law. Under Article 1 of the Montevideo Convention, statehood requires a permanent population, defined territory, government, and capacity to enter into relations with other States.

International Organizations: Organizations such as the United Nations, WTO, IMF, World Bank, and ICC possess varying degrees of international legal personality. In the *Reparation for Injuries* case, the ICJ recognized the international legal personality of the United Nations and its capacity to bring international claims.

Individuals: Modern international law recognizes individuals as subjects with international rights and obligations. Human rights law provides individuals with direct rights, while international criminal law can impose direct criminal responsibility on individuals. The Nuremberg proceedings were particularly important in establishing individual international criminal responsibility.

Peoples: The principle of self-determination has given peoples an important position within the international legal order.

Non-State Actors: Multinational corporations, NGOs, armed groups, and other transnational actors increasingly interact with international law, although their legal status and obligations are generally different from those of States.

SOURCES OF PUBLIC INTERNATIONAL LAW

Under Article 38(1) of the ICJ Statute, the principal sources and subsidiary means of determining Public International Law are:

International Treaties: Formal agreements between subjects of international law that create legal rights and obligations. Important examples include the UN Charter⁶, Vienna Convention on the Law of Treaties (1969)⁷, Geneva Conventions (1949)⁸, UNCLOS (1982)⁹, and Paris Agreement (2015)¹⁰. Treaties provide clear and written legal obligations.

International Custom: Customary international law develops through two essential elements: consistent State practice and *opinio juris*, meaning the belief that such practice is legally required. Both elements are important in identifying customary international law.

General Principles of Law: These principles help courts resolve disputes when applicable treaty or customary rules do not fully address an issue.

Judicial Decisions: Judicial decisions serve as a subsidiary means for determining international legal rules. Under Article 59 of the ICJ Statute, an ICJ decision is binding only on the parties involved and only in relation to that particular case.

Teachings of Publicists: The writings of highly qualified international law scholars assist courts and lawyers in identifying, interpreting, and explaining international legal rules.

SCOPE OF PUBLIC INTERNATIONAL LAW

The scope of Public International Law has expanded dramatically. International law regulates the formation, interpretation, application, modification, and termination of treaties. Modern international law recognizes extensive obligations concerning human dignity, equality, liberty, and fundamental rights. The Geneva Conventions and related instruments regulate armed conflict and protect civilians, prisoners of war, and wounded combatants. International criminal law establishes individual responsibility for crimes such as genocide, crimes against humanity, war crimes, and aggression. The law of the sea regulates territorial seas, exclusive economic zones, continental shelves, high seas, marine resources, and maritime boundaries. Climate change, biodiversity, transboundary pollution, environmental impact, and sustainable development have become significant subjects of international law. Climate change, biodiversity, transboundary pollution, environmental impact, and sustainable development

⁶ *Charter of the United Nations*, 26 June 1945, 1 UNTS XVI.

⁷ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331.

⁸ *Geneva Conventions*, 12 August 1949, 75 UNTS 31.

⁹ *United Nations Convention on the Law of the Sea (UNCLOS)*, 10 December 1982, 1833 UNTS 3.

¹⁰ *Paris Agreement*, 12 December 2015, 3156 UNTS 79.

have become significant subjects of international law, International trade, investment, monetary relations, and development increasingly involve international legal regulation, The Vienna Convention¹¹ on Diplomatic Relations and Vienna Convention on Consular Relations establish rules concerning diplomatic missions and consular functions and International disputes may be resolved through negotiation, mediation, conciliation, arbitration, judicial settlement, and other peaceful mechanisms.

MEANING AND NATURE OF PRIVATE INTERNATIONAL LAW

Private International Law, commonly known as “conflict of laws,” is generally a part of a State’s domestic legal system. Unlike Public International Law, it primarily deals with private disputes involving a foreign element, rather than relations or obligations between States.

For example, when an Indian company enters into a contract with a German company and a dispute arises, Private International Law may determine:

- ✚ Whether the Indian court has jurisdiction;
- ✚ Which country’s law applies;
- ✚ Whether a foreign judgment should be recognized; and
- ✚ Whether a foreign arbitral award should be enforced.

The Supreme Court of India clarified in *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*¹² that Private International Law is not the law governing relations between independent States. Instead, it is a branch of the civil law of a State dealing with private transactions and personal status involving a foreign element.

PRINCIPAL AREAS OF PRIVATE INTERNATIONAL LAW

Private International Law mainly consists of three principal areas:

Jurisdiction: Determines which court has authority to hear an international dispute. It includes questions about where proceedings can be filed, whether parties can choose a foreign court, and whether proceedings should be stayed in favor of a more appropriate forum.

Choice of Law: Determines which country’s law applies to the dispute. For example, parties from India and Singapore may agree through a contract that English law will govern their relationship.

Recognition and Enforcement of Foreign Judgments: Determines whether a judgment given by

¹¹ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331.

¹² *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*, AIR 1963 SC 1 : (1963) 3 SCR 22.

a foreign court can be recognized and enforced in another country. In India, Section 13 of the Code of Civil Procedure, 1908 generally makes foreign judgments conclusive, subject to exceptions such as lack of jurisdiction, absence of merits, violation of natural justice, fraud, and conflict with Indian law. Section 44A provides a mechanism for enforcing decrees from reciprocating territories. In *Alcon Electronics Pvt. Ltd. v. Celem S.A.*¹³, the Supreme Court recognized the importance of Section 44A in facilitating the enforcement of foreign decrees from reciprocating territories.

DISTINCTION BETWEEN PUBLIC INTERNATIONAL LAW AND PRIVATE INTERNATIONAL LAW

Public International Law and Private International Law differ mainly in their purpose, subjects, sources, and application.

Public International Law governs relations and legal obligations within the international legal system. It primarily concerns States and international organizations, with sources such as treaties, customary international law, and general principles. It deals with matters including State responsibility, sovereignty, peace, and disputes between States, often through international tribunals and institutions.

Private International Law deals with private legal relationships involving a foreign element, such as disputes between individuals or companies from different countries. It is mainly a branch of domestic law and is applied by national courts to determine jurisdiction, applicable law, and recognition and enforcement of foreign judgments or arbitral awards.

In essence: Public International Law regulates international legal relations and obligations, whereas Private International Law resolves private disputes involving an international or foreign element.

DISTINCTION ON THE BASIS OF SUBJECT MATTER

Public International Law primarily deals with relations between States, such as disputes concerning maritime boundaries between India and another State. Private International Law, in contrast, deals with private relationships involving a foreign element, such as a contractual dispute between an Indian and French company. In *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*, the Supreme Court of India clarified that Private International Law does not govern relations between sovereign States, reinforcing the distinction between the two

¹³ *Alcon Electronics Pvt. Ltd. v. Celem S.A.*, (2017) 2 SCC 253.

branches.

Distinction on the Basis of Sources

The sources of Public International Law are primarily international and include treaties, customary international law, general principles, and subsidiary means under Article 38 of the ICJ Statute. In contrast, Private International Law is mainly derived from domestic law. In India, its rules are spread across various statutes, including the Code of Civil Procedure, 1908; Indian Contract Act, 1872; Indian Succession Act, 1925; Special Marriage Act, 1954; Hindu Marriage Act, 1955; and Arbitration and Conciliation Act, 1996, along with judicial decisions. In *Y. Narasimha Rao v. Y. Venkata Lakshmi*¹⁴, the Supreme Court observed that India does not have one comprehensive statute codifying Private International Law; instead, its rules are distributed across different enactments and developed through judicial decisions.

DISTINCTION ON THE BASIS OF JURISDICTION

Public International Law primarily concerns jurisdiction and legal authority among sovereign States and international institutions. Private International Law, however, determines which domestic court has jurisdiction over a dispute involving a foreign element. In *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*¹⁵, the Supreme Court considered issues such as anti-suit injunctions, foreign jurisdiction clauses, forum conveniens, and judicial comity. The Court recognized that where multiple courts may have jurisdiction, the appropriate forum may be determined based on legal principles, and proceedings that are oppressive or vexatious may be restrained. Parties may also agree to submit disputes to a foreign court, subject to applicable legal requirements. Thus, questions concerning the appropriate domestic forum for cross-border private disputes are primarily matters of Private International Law.

DISTINCTION ON THE BASIS OF CHOICE OF LAW

Public International Law identifies applicable legal rules through treaties, customary international law, general principles, and other recognized international sources. Private International Law, however, involves choosing between the laws of different countries in a dispute containing a foreign element. For example, a cross-border contract may require a court to decide whether Indian, English, Singaporean, or another national law should apply.

¹⁴ *Y. Narasimha Rao v. Y. Venkata Lakshmi*, (1991) 3 SCC 451.

¹⁵ *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341.

This is called a choice-of-law problem. The court does not create a new international rule; instead, it applies its own conflict-of-laws rules to determine which national legal system governs the dispute.

DISTINCTION ON THE BASIS OF RECOGNITION OF FOREIGN JUDGMENTS

Public International Law does not generally require States to automatically recognize or enforce foreign judgments. Such recognition is mainly governed by domestic laws, treaties, international conventions, and principles of comity. In India, Section 13 of the Code of Civil Procedure, 1908 sets out the conditions under which a foreign judgment may be treated as conclusive.

In *Y. Narasimha Rao v. Y. Venkata Lakshmi*¹⁶, the Supreme Court held that a foreign divorce decree could not be recognized where the foreign court lacked proper jurisdiction or where the ground for divorce was not recognized under the law applicable to the marriage. The case demonstrates how Private International Law balances international comity with domestic law, public policy, jurisdictional requirements, and personal law.

CASE LAW ANALYSIS

R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid¹⁷

This case is a key Indian authority for understanding the distinction between Public and Private International Law.

The Supreme Court held that Private International Law is essentially a branch of the civil law of the forum State. It also clarified that, while determining whether a foreign judgment can be recognized under Section 13 of the CPC, the competence of the foreign court must be assessed in an international sense, and not merely according to the foreign country's own internal laws.

Satya v. Teja Singh

In *Satya v. Teja Singh*¹⁸, the Supreme Court examined whether a foreign divorce decree obtained by a husband in the United States should be recognized in India.

The Court addressed issues of foreign jurisdiction, fraud, public policy, matrimonial status, and recognition of foreign judgments. It highlighted that international comity is not absolute and that Indian courts may refuse to recognize a foreign judgment when it conflicts with

¹⁶ *Y. Narasimha Rao v. Y. Venkata Lakshmi*, (1991) 3 SCC 451 : AIR 1991 SC 2217.

¹⁷ *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*, AIR 1963 SC 1, at 7.

¹⁸ *Satya v. Teja Singh*, (1975) 1 SCC 120 : AIR 1975 SC 105.

fundamental principles of Indian law or public policy.

The case demonstrates the role of Private International Law in controlling the recognition of foreign matrimonial judgments.

Y. Narasimha Rao v. Y. Venkata Lakshmi

In *Y. Narasimha Rao v. Y. Venkata Lakshmi*¹⁹, the Supreme Court considered the validity of a foreign divorce decree involving parties married under Hindu law.

The Court held that the foreign decree could not be recognized under Section 13 of the CPC because the foreign court lacked appropriate jurisdiction and the ground for divorce was not available under the law governing the marriage. The Court also noted that India's Private International Law is not contained in one comprehensive statute but is spread across various statutes and judicial decisions.

Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.

In *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*²⁰, the Supreme Court dealt with foreign jurisdiction and anti-suit injunctions in the context of an international commercial agreement.

The Court considered principles including personal jurisdiction, ends of justice, international comity, forum conveniens, oppressive or vexatious proceedings, and contractual jurisdiction clauses. The case highlights the important role of Private International Law in regulating cross-border commercial disputes and determining the appropriate forum for international litigation.

Renu Sagar Power Co. Ltd. v. General Electric Co.

In *Renusagar Power Co. Ltd. v. General Electric Co.*²¹, the Supreme Court examined the role of public policy in relation to foreign arbitral awards.

The Court clarified that public policy may operate differently in domestic disputes and cases involving a foreign element. In international matters, courts generally adopt a more limited and restrained approach when applying public policy. The case demonstrates the interaction between domestic public policy and Private International Law, particularly in the recognition and enforcement of foreign awards.

Alcon Electronics Pvt. Ltd. v. Celem S.A.

In *Alcon Electronics Pvt. Ltd. v. Celem S.A.*²², the Supreme Court dealt with the enforcement of a foreign judgment under Section 44A of the CPC.

The Court recognized Section 44A as an independent statutory mechanism for enforcing

¹⁹ *Y. Narasimha Rao v. Y. Venkata Lakshmi*, (1991) 3 SCC 451 : AIR 1991 SC 2217.

²⁰ *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341 : AIR 2003 SC 1177.

²¹ *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644 : AIR 1994 SC 860.

²² *Alcon Electronics Pvt. Ltd. v. Celem S.A.*, (2017) 2 SCC 253 : AIR 2017 SC 1612.

decrees from courts of reciprocating territories. The case shows that Private International Law has practical importance, particularly in ensuring the recognition and enforcement of cross-border commercial rights and foreign judgments.

PUBLIC POLICY AS A BRIDGE BETWEEN THE TWO DISCIPLINES

Public policy is an important area where Public International Law and Private International Law intersect. It allows a State to protect its fundamental legal and social values when dealing with matters involving a foreign or international element.

In Private International Law, the public-policy exception permits courts, in limited circumstances, to refuse to apply a foreign law or recognize and enforce a foreign judgment when doing so would seriously conflict with fundamental principles of the domestic legal system.

In *Renusagar Power Co. Ltd. v. General Electric Co.*²³, the Supreme Court held that public policy has a narrower scope in matters involving conflict of laws than in purely domestic disputes.

The doctrine therefore seeks to balance: Protection of fundamental domestic legal values, and Respect for international comity, cross-border cooperation, and legal certainty.

Thus, public policy acts as a bridge between domestic and international legal systems, protecting essential national principles while avoiding unnecessary interference with the recognition of foreign laws and judgments.

INTERNATIONAL COMITY

International comity refers to the respect and consideration that States and their courts give to the laws, judgments, and institutions of other States. It plays an important role in Private International Law by facilitating cross-border legal cooperation and recognition.

However, comity does not require unconditional recognition of foreign judgments. Recognition may be refused when the foreign court lacked proper jurisdiction, Natural justice was violated, the judgment was obtained through fraud, it conflicts with fundamental public policy, The foreign law was improperly applied or Recognition would violate mandatory domestic law.

Therefore, international comity operates within the limits of the domestic legal system, balancing respect for foreign legal systems with the protection of fundamental domestic principles.

²³ *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644 : AIR 1994 SC 860.

COMPARATIVE PERSPECTIVE

The approaches to Private International Law differ across the United Kingdom, United States, and India.

United Kingdom: English Private International Law has developed through judicial decisions and statutory instruments. Important doctrines include *forum conveniens*, *forum non conveniens*, proper law of contract, recognition of foreign judgments, and jurisdiction agreements. These principles have significantly influenced Indian courts, particularly in commercial disputes.

United States: American conflict-of-laws law initially followed territorial rules under the First Restatement. It later adopted more flexible approaches, particularly the “most significant relationship” test under the Second Restatement. This shows the movement from rigid territorial rules towards flexible connecting factors.

India: India follows a combination of statutory provisions and judicial decisions and does not have a single comprehensive Private International Law Code. Relevant principles are found in the CPC, contract and family laws, succession law, arbitration law, constitutional principles, and case law.

CONSTITUTIONAL DIMENSION IN INDIA

The Indian Constitution recognizes the importance of international law through certain constitutional provisions.

Article 51 directs the State to promote international peace and security and foster respect for international law and treaty obligations. Article 253 gives Parliament the power to make laws for implementing treaties, agreements, conventions, and decisions of international bodies. These provisions reflect India's constitutional recognition of international legal obligations. However, international law does not automatically become part of domestic law in every situation. Its domestic application depends on factors such as constitutional provisions, legislative implementation, judicial interpretation, and the nature of the international rule. This distinction further highlights the different ways in which Public International Law and Private International Law operate within the Indian legal system.

INTERACTION BETWEEN PUBLIC AND PRIVATE INTERNATIONAL LAW

Although Public International Law and Private International Law are distinct, their areas increasingly overlap due to cross-border legal activities.

International Commercial Arbitration: Arbitration may involve private parties, international contracts, foreign seats and governing laws, national arbitration legislation, and enforcement in another country. International conventions such as the New York Convention²⁴ can influence the enforcement process.

Human Rights: Private actors, particularly multinational corporations, may be influenced by international human rights, labor, environmental, and business responsibility standards.

International Investment: Private companies may bring investment disputes based on rights created by treaties between States, creating a combination of private interests and Public International Law.

Environmental Harm: Transboundary environmental damage may involve both State responsibility under Public International Law and private claims under domestic Private International Law.

International Family Relations: Cross-border matters involving marriage, divorce, adoption, child custody, and succession involve private parties but may also be influenced by international conventions and human rights principles.

CRITICAL ANALYSIS OF THE TRADITIONAL DISTINCTION

The traditional distinction between Public International Law and Private International Law remains useful, but it is not sufficient to explain the modern international legal system.

Key developments show increasing overlap:

Subjects: Public International Law is no longer limited to States; individuals and other actors can also possess international rights and obligations.

Private actors and international law: Private corporations may directly invoke international law, particularly through international investment arbitration.

Treaties and private relationships: International conventions on matters such as child abduction, commercial transactions, arbitration, and foreign judgments directly affect private parties.

Domestic courts: National courts increasingly interpret treaties, apply customary international

²⁴ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, 330 UNTS 3.*

law, and consider international human rights standards.

Regulation of private conduct: Areas such as international criminal law, business and human rights, environmental obligations, and sanctions demonstrate that international law can directly affect private actors.

FUNDAMENTAL DIFFERENCES

The core distinction between the two branches can be understood through three key questions:
Public International Law: Focuses on what legal obligations international law imposes on States and other international actors.

Private International Law: Determines which national court has jurisdiction, which law applies to a cross-border private dispute, and whether a foreign judgment should be recognized and enforced. Thus, Public International Law concerns international obligations, while Private International Law concerns the resolution of private disputes involving a foreign element.

CONTEMPORARY RELEVANCE

Globalization has increased the importance of distinguishing Public and Private International Law because cross-border disputes are becoming more common due to Expansion of international trade and investment, Growth of multinational enterprises, Increased migration and international marriages, Growth of digital and cross-border transactions, Expansion of international arbitration, need to recognize and enforce foreign judgments, Increasing international business activities.

As a result, courts increasingly need to apply both international and domestic legal principles. The distinction helps determine whether a dispute involves international obligations, domestic conflict-of-laws rules, jurisdiction, choice of law, treaty implementation, or recognition and enforcement of foreign judgments.

MAJOR CHALLENGES

The increasing volume and complexity of cross-border legal relationships have created several challenges for both Public International Law and Private International Law. Some of the major difficulties are as follows:

Fragmented Nature of Private International Law: India does not presently have a single, comprehensive legislation that consolidates and governs all aspects of Private International Law. As a result, relevant principles are found across different statutes, judicial decisions, and

legal rules.

Conflicting Jurisdiction: A single dispute may have connections with several countries, allowing the courts of more than one jurisdiction to potentially claim authority over the matter. This can create uncertainty regarding which court should ultimately hear and decide the dispute.

Forum Shopping: Parties may deliberately approach the courts of a particular jurisdiction because they consider its laws or procedures more favorable to their interests. Such practices can create concerns regarding fairness and the proper administration of justice.

Differences in Public Policy: Different States may adopt substantially different legal rules and social values, particularly in areas such as marriage, family law, contractual obligations, insolvency, taxation, and human rights. These differences can create difficulties when a court is required to apply or recognize foreign law.

Digital Transactions: The rapid development of digital commerce, online transactions, and digital assets has made traditional concepts of territorial jurisdiction increasingly difficult to apply. Determining where an online activity occurred and which country's law should govern it can be particularly challenging when parties, servers, and transactions are located across different jurisdictions.

Difficulties in Enforcement: Securing a favorable judgment in one country does not necessarily ensure that the successful party will obtain effective relief. The recognition and enforcement of foreign judgments and arbitral awards may involve additional legal requirements, procedural obstacles, and questions of public policy in the country where enforcement is sought.

SUGGESTIONS

India can strengthen its framework for cross-border disputes through legislative reform, judicial development, and international cooperation.

Comprehensive Private International Law Legislation: India should consider a unified legal framework covering jurisdiction, choice of law, foreign judgments and arbitral awards, matrimonial matters, succession, contracts, and torts. This would reduce uncertainty and provide greater clarity.

Greater Harmonization: India should engage with relevant Hague Conference conventions and other international instruments to promote consistency between different legal systems and facilitate the resolution of international disputes.

Consistency in Judicial Approach: Courts should develop clear rules for determining connecting factors such as domicile, habitual residence, nationality, place of contracting, place

of performance, and closest connection. This would improve predictability and legal certainty. Protection of Public Policy: The public-policy exception should protect fundamental principles of Indian law, but it should be applied narrowly and cautiously to avoid unnecessary interference with international commerce and comity.

Recognition of International Commercial Practices: Indian courts should support jurisdiction clauses, arbitration agreements, and cross-border enforcement mechanisms, while ensuring that such practices remain consistent with mandatory provisions and fundamental principles of Indian law.

CONCLUSION

Public International Law and Private International Law are separate branches of the legal system, each having its own scope and purpose. However, the growing complexity of cross-border relationships has brought the two disciplines into increasingly close interaction within the contemporary international legal framework. Public International Law primarily governs relations at the international level and establishes rights and obligations for States and other recognized participants in the international legal system. Over time, its scope has developed considerably beyond the traditional concept of the law of nations. Today, it covers a broad range of areas, including human rights, international humanitarian law, international criminal law, environmental protection, international economic relations, foreign investment, the law of the sea, diplomatic relations, and mechanisms for the peaceful settlement of international disputes. Private International Law, in contrast, is generally regarded as a branch of domestic or municipal law that deals with private legal relationships involving a foreign element. Its primary purpose is to resolve conflicts that arise between different legal systems. Traditionally, it focuses on three central issues: determining the appropriate jurisdiction to hear a dispute, identifying the law applicable to the matter, and deciding whether a foreign judgment or arbitral award should be recognized and enforced.

The decision of the Supreme Court of India in *R. Viswanathan* provides a clear basis for understanding the nature of Private International Law. The Court explained that Private International Law is not a body of rules governing relations between sovereign States; rather, it forms part of the civil law of the State whose courts are dealing with the dispute. The decision in *Y. Narasimha Rao* further illustrates the application of conflict-of-laws principles by Indian courts in matrimonial matters. Similarly, *Modi Entertainment* highlights the significance of issues such as jurisdiction, forum conveniens, and international comity when courts deal with commercial disputes involving multiple jurisdictions.