

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 3

2026

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Comparative Approaches to Conflict of Laws: Indian, UK, EU and US Perspectives

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ABSTRACT

The clash of law or (private international law) plays a significant role to resolve the conflicts, which cover cross-border issues, as it provides the jurisdiction, law to applied, and recognition and enforcement of foreign judgments. The need to have the harmonious and efficient standards of conflict of laws has never been as relevant and important nowadays as the world is becoming more and more global in terms of trade, migration and online transactions. The paper will endeavor to make a comparison and contrast on how India, United Kingdom, the European Union, and the United States went about and resolved the conflict of laws issues. The analysis presupposes a comparative methodology to doctrines, i.e. it will examine both the statutory provision of the laws of both jurisdictions, and the judicial precedents and other legal principles established. The analysis describes what have been deemed to be significant differences in the nature of the legal system between the integrated, codified system of the European Union and the rule of thumb, flexibility of the rules by theory approach of the United States with the United Kingdom being a moderate variant and at India showing a still evolving system. It can be shown that the level of flexibility, predictability and recognition of party autonomy, and imposition of foreign judgments differ with results. The article contributes by highlighting the merits and demerits of each of these systems and proposing an alternative hybrid system which will fuse the components of clarity and flexibility and information on how each of their systems can be re-structured, particularly in developing jurisdictions like India.

Keywords: Conflict of Laws; Private International Law; Jurisdiction; Choice of Law; Comparative Law; Party Autonomy; Transnational Litigation.

I. INTRODUCTION

Conflict of laws or private international law is a significant aspect of legal studies and creates a conflict when there is an element of foreignness and more than one system may apply to the law. It provides a systematic pattern that controls the jurisdiction that is obligatory to give judgment on a dispute that what the legal framework has to be followed in the judgments of matters of substance and whether consideration of decision taken in one jurisdiction will be

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adapted and enforced in another jurisdiction or not¹. Contrary to the popular international law, conflict of laws, which governs inter state relations, determines the inter state dealings at the jurisdictions of nations but the law rules the cross border dealings at the practice of the law. It is not only adopted in civil litigation but commercial litigation encompasses contracts, tort litigation, family litigation, cross-border litigation among others and, hence, is an inevitable in an interconnected world.

This has brought a further significance to this problem of conflict of laws in this period of globalization. This indeed is a rush to occurrence of multi jurisdictional conflicts due to this speed of international trades, digital trades, investment across boundaries, caused by migration. Multinational corporations are executed systematically according to different legal views, individuals have a greater chance of traveling across borders and trading through the internet which is out of scope of geographical boundaries². The uncertainty and forum shopping, chance outcomes and increased litigation expenses may be caused by the lack of understandability and predictability of the rules of conflict of laws in such environment. “A balance of elasticity, and predictability in legal orders, and equity over litigants, should then be struck, which can be effected without inculcating ineffectiveness in cases resolution.

This is an interesting matter, but it is also a very important subject of the lack of uniformity in the jurisdictions. The difference in the selection of law and enforcing foreign judgements and the jurisdiction of legal systems of various countries also exists. Whereas in some jurisdictions codification and harmonization of the rules is more appropriate, in other jurisdictions judicial discretion and development of case law play an extremely significant role. This variation is prone to create conflicting outcome in such situations whereby there is a similarity and undermine predictability and deter cross-border transactions. In a case where the ground of party autonomy of choice of the governing law is used, some systems are run and in another case where the governing law is dominated, with the effects of the policy of the populace in mind. Similarly, the tactics of realising foreign judicial decisions are also very different, as they cannot be identical at various grades of exposure to foreign law.

In this regard, this research paper will seek to target a comparative analysis of conflict of laws in India, the United Kingdom, the European Union and the United States³. The main question

¹ Cuniberti G. Conflict of laws: a comparative approach: text and cases. Edward Elgar Publishing; 2022 Feb 18.

² Dhaiya K, “Yadav S. Mediation: A Comparative Study among India, USA and UK. Issue 4 Indian JL & Legal Rsch.. 2022;4:1.

³ Ganguli P. International Perspectives on Antitrust Laws: A Comparative Study of India, the US, and the EU. International Perspectives on Antitrust Laws: A Comparative Study of India, the US, and the EU (November 01, 2024). 2024 Nov 1.

of the study that will be answered in the paper is the absence of consistent and valid framework to rank transnational conflicts and how this absence will affect the law of certainty and justice. The research questions that will drive the research include the following; How do different jurisdictions understand and know how to apply conflict of laws principles? What is the predictability and malleability of such approaches? What is the most balanced, and better system to offer in order to resolve cross border disputes? What can such jurisdictions know yet as India learn, who are only yet in the primordial nursery in such a field?

The highest priority of this paper is to compare, critically analyse the laws of conflict of laws within the chosen jurisdictions⁴. It also tries to draw the broad similarities and differences, compare strong and weak sides of both regimes and recommend how the performances of both conflict of laws regimes can be improved, where the law systems are still in their immature stages. In giving an introduction of the four most prominent jurisdictions which espouse diversities of the legal tradition including the common law, the civil law and hybrid legal systems, the paper will provide a holistic perspective on the law on the creation and application of the international law of the privates.

The scope of the study is narrowed down to India, the United Kingdom, the European Union and the United States. The jurisdictions are selected due to its perfection in the world laws, other types of conflict of law or its applicability in international law practice. In India, one might take it to mean an emerging juridical system at least when there is minimal codification of the concept, at least the United Kingdom may be taken to be the highly harmonised and codified paradigm, the European Union to be the highly harmonised, codified paradigm, whereas the United States may be a system with many evolutions of flexibility and theory.

The comparison is conducted using a research approach called comparative doctrinal approach. It relies on the analyses of such statutes, court rulings and/or texts in order to study the legal principles of conflict of laws in each jurisdiction⁵. This effort is done through a comparative analysis to identify patterns, deviations and new patterns. This method will guarantee a consistent evaluation of how different legal systems are able to address a comparable issue and consequently a more effective method of addressing the advantages and constraints of each resolution.

The paper layout is minimal, to ensure that the paper is logically organised and analysed. This

⁴ Sharma K, Dixit AK. The Comparative Analysis on Judicial System in Indian and UK. Issue 3 Int'l JL Mgmt. & Human.. 2024;7:4160.

⁵ Yephthomi A. A Comparative Analysis of Separation of Power in the USA, UK and India. Issue 6 Indian JL & Legal Rsch.. 2022;4:1.

introduction is preceded by the second part that elaborates the theory of the conflict of laws and how it evolved over the years, elementary aspects and theories of the laws. The legal system in India, the United Kingdom, the European Union and the United States are considered in the sections that follow respectively⁶. This is then carried further with some of the main differences and similarities outlined. The paper then discusses the current and new problems and finally conclusions and recommendations are given.

II. CONCEPTUAL FRAMEWORK OF CONFLICT OF LAWS

The development of conflict of laws has gone through the dramatic transformation over the course of history that has taken place as a result of alterations in legal philosophy, economic relations and the needs of the society. Traditionally, princely practices of conflict of laws have been based on the principles of territoriality, which revolved around the application of the law of the seat of dispute. This was gradually transformed into the doctrine of comity which perceived the need to respect and cooperate with each other among the sovereign states. The concept of comity does not involve normal fiat but, merely a dashboard recognition of international rules and decisions, which are based on fairness, expediency, and global peace.

Conflict of laws in modern world has become a less pronounced, yet versatile area, which has borrowed various strategies and styles. All these three are currently more likely to be used in combination with each other in modern law practices to arrive at just and fair conclusions of the territoriality, comity, and policy-based reasoning. The increasing abstraction in trans-national relationships has given rise to the necessity of formulating detailed rules and principles that are adequate to fit across the diverse legal environments and be reliable and predictable.

The conflict of laws is in its simplest form; it comprises of three main aspects, i.e. the jurisdiction, choice of law or choice of law and recognition and enforcement of foreign decisions. Jurisdiction can be defined as the jurisdiction that a court has to hear and decide on a case. The question remains the question of whether one should use a certain forum to resolve a dispute which can be defined as such things as place of parties, where one has contracted with a partner or where a tort has been committed⁷. Choice of law on the other hand concerns the decision of the legal system to be used over the substantive issues in the conflict. This is particularly relevant to the cases, in which one or more systems of law can be linked with the dispute. The establishment and acknowledgment of foreign judgments has the aim of ascertaining the degree of acceptance and enforcement of a court decision made in one

⁶ Dixit H, Ughade D. Conflict between IPR and Competition Law: A Comparative Analysis between US, EU and India. Issue 3 Int'l JL Mgmt. & Human.. 2021;4:6095.

⁷ Siems M. Comparative law. Cambridge University Press; 2022 Mar 24.

jurisdiction to another jurisdiction and therefore definiteness and efficiency of the court decision rendered.

That of conflict of laws is based on some major principles. We have already discussed comity earlier and this is one of the main aspects which affect the cooperation and respect between the jurisdictions⁸. The other serious rule is that of party autonomy particularly at the board level on contractual matters where parties are normally at liberty to decide on the law of contract and dispute resolution court. These and these are the factors of predictability and the ability of parties to create legal constructs that serve their purposes. Party autonomy is however not absolute and can be restrained as regards the public policy. The exclusion of the public policy allows the authorities to revoke the application of an international law or carrying out of an international decision in the event that they are incompatible with the key values or ideas of the state in which they are practiced.

Changes have also taken place in the theoretical approaches of conflict of laws as they suggest different opinions regarding how conflicts are resolved. The theory of the vested right was one of the oldest and it is assumed that rights obtained by the specific legal system can potentially be applied and used in a new context. This theory though emphasizing on certainty has been criticized to be hard. Recent models such as interest analysis, on the other hand, seek to establish the most interested jurisdiction in the dispute therefore, augment fairness and coherence of the policy. Similarly, the largest relationship test is geared towards determining the most legally related system and there is a row of other aspects like the party location, place of performance and type of the transaction are all involved.

These theoretical underpinnings provide the backdrop on how different jurisdictions approach conflict of laws⁹. Application of the principles is quite divergent yet contradictory of one another given that the underlying principles are essentially the same, yet each legal system applies them in a given manner.

III. CONFLICT OF LAWS IN INDIA

In India, a mixed tradition of statutory rules and judicial precedents of common law traditionally, governs the conflict of laws in India¹⁰. The Indian system is so fragmentary and is not similar to some other jurisdictions where this has not been the case and where there has

⁸ Sinha S. Harmonizing data privacy Laws: A comparative study of approaches in the EU, US and India. *Legal Spectrum J.* 2024;4:1.

⁹ Arthur MM. *Law and justice around the world: a comparative approach*. University of California Press; 2020 Feb 25.

¹⁰ Fredman S. *Comparative human rights law*. Oxford University Press; 2018 Nov 8.

been the growth of a codified system which is interspersed with statutes with an air of acceptance of the case law. Code of Civil Procedure, 1908, Indian Contract Act, 1872, the acts, which are used in family law and commercial products are the major acts of law. But no one or rather a single statute governs the clash of laws and this has added to consistency and ambiguity to some degree.

Due to the Code of Civil Procedure, the main legislation of jurisdiction prevails in India. Indian courts tend to use the basis of residence of the defendant or locus of causation of action or simple location of property which is in dispute to determine the jurisdiction. Although they have already created a simplest rule, these rules fail to heed the difficulties on transnational transactions, especially those involving digital transactions and multinational accord. The Indian courts have however proved the compromise of the application of the traditional concepts to the current situation where the application of the concepts is usually exercised through judicial interpretation of application of gaps in legislation.

In the framework of the choice of law, historically, common law principles of focusing on the intention of parties in any contractual situation have informed Indian courts. In cases where parties make an express selection of a governing law, the court generally give deference to the selections, as long as it does not conflict with the public policy¹¹. Where an express choice is missing, the courts seek to find the correct law of the contract by considering testing factors reintroduced in replace performance, by looking at place of performance, and intendment implied by the circumstances prevailing. The rule of *lex loci delicti* or the rule of law or the law of the seat of delict has been adhered to by the Indians courts in tort cases, but more recently they have adhered to a more liberal rule.

India The proceedings The Code of civil procedure regulates the effects of foreign judgment in India. The direct application of foreign judgments of recipient states can be applicable in some situations. Its enforcement is justifiable however on those instances where the adjudication has not taken place on the merits, acquired either by fraud or contrary to the principles of natural justice or adjudged against the Indian public policy¹². As much as the above stipulations do in giving a vehicle in which international enforcement will be executed, a procedural issue and the caprice of the court sometimes serves as a bit of a detriment to their application.

Lack of a detailed codification is one of the key weaknesses of the Indian method of conflict of

¹¹ Burgess JP, Richmond OP, Samaddar R. Introduction: Cultures of governance and conflict resolution in the EU and India. In *Cultures of governance and peace* 2016 Sep 10 (pp. 1-18). Manchester University Press.

¹² Shandilya S. A comparative study of the notion of legal and political pluralism in India and the Western world: Challenges and way ahead. *International Journal of Health Sciences*. 2022;6(S4):3804-18.

laws. That has culminated to the need to go as far as the judicial interpretation, which is, however, elastic can bring about inconsistency and unpredictability. Litigants are likely to be confused due to the difference in the approaches that the courts in diverse jurisdictions can assume the same issue. Besides, the absence of proper statutory sign in the others like electronic commerce and international arbitration makes the legal situation even more difficult.

Regardless of these disappointments, Indian courts have made a lot in the name of creating conflict of laws landmark court rulings by issue cases. They have assisted in the clarification of the doctrine of jurisdiction and selection of law and enforcement of a foreign judgment and have over the years evolved towards a more standard formulation. A better organised and predictable system, which will help in meeting the requirement of the globalization more efficiently is urgently required however and this can be attained by a legislative change.

IV. CONFLICT OF LAWS IN THE UNITED KINGDOM

In the United Kingdom, conflict of laws regime is also a highly traditional aspect of common law tradition that includes the system of judicial precedent, and statutory intervention. The courts of England have traditionally had a significant place in the formulation of principles of the law of private international law both in the quantity and quality of the case law they have issued, in the issuance of doctrines which that have since become jurisdictional in other parts of the world. Justification of judiciary, flexibility and evolutionary development are some characteristic features of a common law school¹³. However, the framework over the years has been complemented and in a sense significantly reformulated by the machineries of law especially in the context of the United Kingdom, when it was a member of the European Union.

The domination of the European Union laws over the conflict of law regime in the UK was also influential in the pre-Brexit UK and had been aimed at harmonizing the UK of the private international law, among the member states. Consistency and predictability Laws like Rome I Regulation on laws applicable to obligations in a contract, Rome II Regulation on obligations not applicable to a contract and Brussels I Regulation on jurisdiction and recognition and enforcement of judgments brought are very consistent and predictable¹⁴. This was to be directly applicable in the UK and override domestic law as it is otherwise known as traditional common law rules were diluted.

UK left the European Union and this became a significant rift in the UK two-legislation arena.

¹³ Mishra A. The Reciprocity between Consumer Protection and Competition Law: Comparative Analysis of Indian Law with US & UK. Issue 2 Indian JL & Legal Rsch.. 2023;5:1.

¹⁴ De Cruz P. Comparative law in a changing world. Routledge-Cavendish; 2024 Nov 1.

Instead, instead of fully leaving the EU framework, the UK opted to keep the same legal framework, although, to some extent, on the basis of the European Union (Withdrawal) Act 2018. This has seen the continuity and stability instruments like Rome I and Rome II, include within the domestic law as retained EU law. This project is an effective application of the need to have uniformity of the cross border law more especially in the areas of the business where certainty is an important consideration.

In the area of choice of law, the postulates that were enshrined in the Rome I and Rome II Regulations are still used in the UK. In Rome I, a contracting party has options in which law to be used, although this is limited by many restrictions which aim not only to rescue the disadvantaged contracting party, but also to initiate a binding principle. The rule has default regulations that do not provide specific selection and it depends on nature of the contract and place of characteristic execution. Rome II also provides an example of the applicability of law to apply in cases of tort where it depends upon both the law of the place where the damage is caused, but exceptions may be made in the cases where the conflict has a certain proximity to a particular country¹⁵. These rules demonstrate certain degree of security that can be withstood and the courts can adjust details of a case without distorting their shapes.

UK is a hybrid system of jurisdiction that is made up of common law principles and statutory provisions. The common law principles used by the English courts to establish the jurisdiction of a case are in the situation where a specific instrument in the legislature is not applicable in a case. That rule typically allows the courts to take jurisdiction, when the defendant is found to be under its jurisdiction, or when the defendant has a substantive connection to England. This situation is anchored in doctrine of forum non conveniens that enables the court to protect against the jurisdiction of the case where a different forum just occurs to be most suitable in providing solution to a dispute¹⁶. When such discretionary process is increased in flexibility, it introduces a capability of winding the case on a path through the most suitable sheds.

Meanwhile, statutory frameworks remain significant to the jurisdiction regulation especially with reference to international agreements, as well as the retained EU law. As an example, to retain the UK, the fact that it has retained part of its rules of jurisdiction under the regime of Brussels would ensure that there is a degree of conformity to European rules though already there are some cases of divergence that have started to take shape after Brexit. The co-existence of the common law and statutory approach has established a flexible system and a holistic

¹⁵ Kischel U. Comparative law. Oxford University Press; 2019 Feb 21.

¹⁶ Hirschl R. Comparative matters: the renaissance of comparative constitutional law. OUP Oxford; 2014 Aug 15.

approach to the law provided it needs to be violated by the legal authority.

An amalgamation of the common law and the statutory provisions also regulate the recognition and enforcement of foreign judgments in the UK. Common law And foreign judgments Generally a foreign judgment is admitted, and as long as it can satisfy certain conditions, the most important being that it is final, the competency of the foreign court is observed and it enforced. UK possesses numerous international conventions and bilateral agreements as well that enable mutual enforcement of judgments. The post-brexite arrangement, however, has been accompanied by certain novelties, at least in being that there is no single framework, which would cause procedural challenges to arise between the UK and the countries of the EU, as the former.

The predictability and richness of the conflict of laws regime of the UK is one of its strengths. The wide-ranging case law which is formulated over centuries offers a guide in all the aspects of problem-solving which may be used by the court and the practitioners to steer them towards their difficult conflicts with a high level of certainty¹⁷. It has helped to improve predictability as well by introducing some form of homogeneity of practice with regard to such critical variables as the selection of law and jurisdiction by inculcating EU-based rules. Meanwhile, the fact that the common law principles were increasingly becoming applicable provided the system with the necessary adjustment capability in that it could enable it to keep pace with the changing forces of legal as well as business life.

However, the path of the course followed by the UK does not lie easy either¹⁸. The possibility of several sources of law exercising which laws are deposited through the assistance of the EU, home and common law may cause some complications and misunderstanding especially at the transitional point after the Brexit. The widening gap in UK and EU regimes could also translate into more litigation and child shopping of forums in which the parties would be anxious to exploit the amicable legal best suited regimes. But, the conflict of laws system of the UK is one of the most advanced and strongest systems in the world that provides the most suitable blend of certainty, flexibility and an exhaustive system.

V. CONFLICT OF LAWS IN THE EUROPEAN UNION

EU is a very codified and harmonised conflict of laws system, which is amongst the most advanced and elaborate systems of conflict of law in the world. In contrast to the traditional

¹⁷ Ronghangpi M, Kumar N. Exploring the Cross-Border Insolvency Laws: A Comparative Study of India and International Perspectives. *PRAWO i WIEŻ*. 2025 Jul 16;54(1).

¹⁸ Roberts A, Stephan PB, Verdier PH, Versteeg M, editors. *Comparative international law*. Oxford University Press; 2018.

common law jurisdiction tradition where conflict of laws have been triggered at least via the case law the EU has been using a legislative approach to the conflict, through the establishment of common countries rules¹⁹. Harmonization is a determinant factor in the operation of the internal market because it makes trade between states more predictable, legal, and minimizes any form of impediment to free movement of goods, services, capital and people across national borders.

Delivery of clashes of legislations of the EU is largely articulated in a code of rules that deliberates the influential provisions of the personal international law. It is the most vital—the Rome I Regulation (also relating to the law of contractual obligations), the Rome II Regulation (relating to non-contractual obligations (torts)) and the Brussels I Regulation (recast) covering jurisdiction and recognition and enforcement of judgments. These tools can be directly adopted at member state level whereby a uniform and consistent approach towards cross border disputes is the benchmark.

Rome I Regulation provides an all-inclusive answer to the creation of the law, which would fit into a contractual situation²⁰. It puts an extreme emphasis on party autonomy in which parties are left at liberty in managing their contract. This freedom is not absolute and has some restrictions that seek to help weaker parties like consumers and employees as well as making them reliant on being over-ruled to creation of compulsory conditions. Non-specified rule has complete regulations according to the contents of the contract which, needless to say, increases predictability and reducing uncertainty.

Similarly under Rome II Regulations, non-contractual acts are also governed including torts, unjustable enrichment and liability of products. In Rome II it is a general rule that the laws of the country where the damage is caused must be followed, and not the place of the occurrence which causes the damage. Nevertheless, there are still exceptions to this rule, in the situations where the relationship to the controversy is significantly closer in another country. Such equilibrium provides a glimpse of how cautious certainty and adaptability are incorporated concurrently in a manner that the equilibrium of the judicial habitat expresses what is referred to as fair in the consistent set up.

Questions addressed by the Brussels I Regulation (recast) are its jurisdiction and the recognition and enforcement of the judgment. It lays down unprecedented rules of jurisdiction in the establishment of the courts which have jurisdiction in any civil or commercial action, basing on

¹⁹ Doyle J. Indian approaches to security and conflict resolution.

²⁰ Siems M, Yap PJ, editors. *The Cambridge handbook of comparative law*. Cambridge University Press; 2024 Feb 1.

areas like the seat of a defendant, the locality of performance of a contract or an assurance of a contract²¹. The rule equally offers, mechanisms of automatic identification and delivery of judgment among member states, which goes a long way in preventing procedural delays and enhancing judicial uniformity. Such degree of integration fails to coincide with the rest of the world, and is so incredibly fruitful in bringing privacy international law to a level of uniformity.

The homogeneity is perceived as being one of the key characteristics of the conflict of the laws system of the EU. The EU, the member states get the same eras as to comparable cases, and reduce the likelihood of contradiction, which boosts the certainty of law by incorporating directly applicable rules. This homogeneity applies especially in its light to the internal market where parties and individuals should be in a position of undertaking consistent legal results in the cross-border transactions. Moreover, the chances of the forums being shopped are also reduced since the range of rules that may be relevant is virtually comparable across the jurisdictions.

The other attribute is that of placing a great concern on the autonomy of the parties specifically in contractual issues. Allowing parties to decide what rules they will be subjected to, and in some instances which dispute resolution method to apply the EU framework is flexible, preserving the freedom of those parties involved²². This particularly applies in business in which players would prefer tailoring their legal set-ups to their needs.

Although this model is somehow implied by the conflict of laws system of the EU, there are various limitations to this kind of system. Complexity is one of the critiques. The regulations are technical and prescriptive in character, and therefore could be cumbersome and complex to interpret and apply especially in situations when the practitioners do not practise in the area of private international law. Also a problem may be coherence and consistency in the multiplicity of instruments each dealing with a different problem on conflict of laws.

A weak scope of the framework is another weakness. Although the rules are extremely predictable, they might be difficult to adapt at certain times of the need to be individual or unpredictable. Underlining of the same ideals may limit the possibilities of the courts to adapt to certain situations and provide the results of technical character but of unacceptable character²³. In addition, its laws, instruments also tend to imply that any change in the

²¹ D'Souza C, editor. *Civil Law Studies: An Indian Perspective*. Cambridge Scholars Publishing; 2020 Jul 24.

²² Venkatesan M. *Enforceability of Smart Contracts: A Comparative Study of India, the United Kingdom, and the European Union*. Available at SSRN 5703602. 2025 Sep 21.

²³ Jose J, George T, Thomas AM. Regulation of stem cell-based research in India in comparison with the US, EU and other Asian countries: current issues and future perspectives. *Current stem cell research & therapy*. 2020 Aug 1;15(6):492-508.

framework may take a long time and be time consuming and that the changes must be agreed on by a number of member states.

Moreover, the EU is regional, which is naturally non-permeable to be a part of the nontemporaneous legal systems without facing any challenges at all. It might be challenging when it comes to cases involving parties or elements that are not EU members where instances of conflicting rules of law being applied on occasions arise. The interplay of EU rules and national laws and the interplay of the system with the international conventions is also a further aspect of complexity to the system.

To sum it up, there is a completely elaborated and integrated conflict of laws policy that has a wide codification, uniformity in its application of the law and very high considerations to the legal order and party freedom developed in the European Union²⁴. Although this type of framework has a veritable predictability and integrations benefits, it has also an even more challenging and rigidity issue. The EU framework is a convenient template on which other jurisdictions interested in enhancing the conflict of laws framework in their jurisdiction can retaliate some insights on the advantages as well as the innate trade-offs of a harmonized and codified model of conflict of laws systems.

VI. CONFLICT OF LAWS IN THE UNITED STATES

The system of conflict of the laws is unique in the United States because the special form of this country consisting of the federal system that divided legislative and judicial authorities of the federal government and the states. This is not the case in the United States because the country does not use a single, codified, rule of conflict of laws that applies to the whole country (as opposed to the jurisdictions, where a system is rule-bound). Quite to the contrary, they shape their personal postulates and it leads to a tremendous divide in the patterns of cross border conflict conceptualization. A petition can be filed to the federal court about the diversity jurisdiction or federal question, but in general, is subject to the rule of conflict of laws of the states in which that court is situated. The decentralizing form creates a law that is amorphous though it appears not to be homogenous where the repercussions may be different depending on the venue²⁵.

A classical American doctrine of conflict of laws was founded on the notion that there was great territoriality and more precisely, on the principle of *lex loci*. This traditional set-up relied on the

²⁴ Cherry MA. A global system of work, a global system of regulation: Crowdwork and conflicts of law. *Tul. L. Rev.* 2019;94:183.

²⁵ Jiménez MJ. Conflict of laws and the return of indigenous peoples' cultural property: a Latin American perspective. *International Journal of Cultural Property*. 2019 Nov;26(4):437-56.

geographical place of the incident under consideration to have law that should be adhered to. In the courts there was then a tendency to apply the *lex loci contractus* (the law of the place of the contract making); and the *lex loci delicti* (the law of the place of the wrong done), to contracts and torts, respectively. This compliance and predictability approach was anchored on objective and concrete connection factors which made it compliance and predictability oriented. But little by little we began to recognize how the strictness of laying down territorial principles may lead to unfair decision making or quaintly arbitration of the outcome in those multijurisdictional and complicated cases with the outcome being predetermined by the accomplishment of a precondition.

The latter were countered by the mid-twentieth century with more policy-oriented and flexible solutions. One of such developments was the development of interest analysis whose purposes were to determine most interested jurisdiction in the field where their law would be applied to a particular dispute. This method has been linked with both Brainerd Currie as well as other legal theorists who have attempted to look at the policies that form the basis of the two rival legal regimes and tries to instrumentalise the law the interests of which would best enjoy the fruits of such action taken. Break is an interest analysis approach that led to the resolution of conflicts in a nuanced and contextualized manner.

The other significant step required was the addition of the test of the most significant relationship which is carried into the Restatement (Second) of Conflict of Laws. Released in 1971, the Restatement (Second) by the American Law Institute has aimed to provide a coherent and coherent structure that was possible to apply to produce regulations working under the specifics of a case in hand. Contrary to compliance with strict principles on meaning across territories that it recommends the courts to examine numerous meaningful regions including locality of the injury, locality of the activity which causes injury, location of the parties and location of the relationship between the parties. These are interpreted as being in conflict with the larger principles, such as the requirement of the interstate system and the international system, the requirements of the policies of the forum and the legitimate expectations of parties.

The Restatement (Second) is a document of very high power and many other states have adopted it in all its entirety, or in part.²⁶ But it was not taking and there is still a lot of discretion as to how one should read it and apply to the state. Nevertheless, it is possible to find a number of states that normally adhere to a slightly altered set of traditional specifications as well as various

²⁶ Navneet A. Regulatory approach towards GM technology in India, USA and EU: a comparative analysis. *Indian Journal of Public Administration*. 2019 Dec;65(4):869-84.

states that had an opportunity to create a hybrid which burns the components of both the logics: territorial and policy-based. This heterogeneity represents something more of the U.S. model, legal pluralism is to talk and to reform, but is an element of inconsistency.

Flexibility or predictability vs. predictability is another feature of American approach to conflict of laws which may be a source of conflict. On the one hand, the interest analysis is the most crucial test of relationship and modern methodology in which the results provided to the courts can be more sensible, situation-specific. By attending to the contextuality of this or that case, and the overall policies of the rival legal systems, the courts are able to stymate the unfairness and unnatural rudeness that somberly succeeds the timeless rules. On the ill side, there can be a sense of vagueness in the absence of rules that apply universally, and the use of judicial discretion. Courts can also arrive at various decisions in situations whereby like cases are presented to it and parties to a case may not be in a position to determine on which side of the law a case is applied.

The same ratio of innovation and uncertainty is believed to lend itself to the process of the US courts. The courts involved in most of the cases will be undergoing a very arduous policy assessment process that will consider the aspects such as fairness, efficiency and party expectations. In the different circumstances, the courts will be obligated to use by default the forum law, particularly in such cases when the interest of the state of forum are deemed priority. They are also able to carry out a comparative analysis with other jurisdictions in other jurisdictions to determine which legal framework would best suit them. The other still is more complex in terms of the doctrine of , also referred to as *de* phenomenon and may be in a position of varying issues in a case to be dealt with as subject to different laws.

In conclusion, the conflict of laws approach of the United States may be described as the approach that tends to be decentralized in its nature, theoretically diverse, and flexible oriented²⁷. Despite offering a chance to choose more specifically and take a vast amount of situations into account, the given methodology suffers a lot because it is impossible to predict and is not unified. It is possible to explain the achievement of the hard-territory standards advancement to more modernistic policy oriented position by the transition to the more subtle approach to antagonistically oriented interests by the U.S in which their model is creative, and now absolutely unpredictable.

²⁷ Karayanni M. The Extraterritorial Reach of American Class Actions: A Conflict-of-Laws Approach. *The American Journal of Comparative Law*. 2024;72(4):845-91.

VII. COMPARATIVE ANALYSIS

Comparative analysis of the conflicts of laws conducted in the country of India, the United Kingdom, the European Union and the United States, shows that the relationship between institutional design and policy preferences and the legal tradition is complex. Even though the four jurisdictions are yet nearly identical in certain inquiries and questions, which they strive to answer, such as; the jurisdiction, which law ought to be applied and which foreign judgments should be extended and enforced, they are all different in terms of structure, strategy and philosophy. All that, however, is beyond the technical, but is suggestive of some broader choices, both of more relative weight of certainty and of indignation, and of the extent to which we should go in nurturing a kind of deference of individual autonomy in transnational legal relationship. This will be by comparison of critical dimensions analytically, where convergence and divergence is articulated across the selected jurisdictions.

A. The System is such that

It is possible to comprehend the working of each jurisdiction of the conflict of laws systems depending on the nature of the jurisdiction conflict of laws system. It is possible to say that the Indian organization is partized and fragmented. It lacks a written law to govern the private international law but has recourse to a mix-up of statutory acts and judicial precedents. A mixed format is likely to cause different inconsistencies as various courts vary in their interpretation and application of principles and there is no overriding body of legislation based on which these are developed and administered²⁸. On one hand, it renders it flexible, whereas on the other hand, it obscures it and makes it not very coherent.

United Kingdom can be, on the other hand, explained as a more sophisticated regime of common law which obtained the aid of statutory intervention. It has a centuries-old system of conflict of laws, and is lavish in jurisprudence as-of-today. At the same time, legislative (in this case especially due to its previous belonging to the European Union) the capacity to codify and homogenize. The UK regime is rather pragmatic and balanced as they co-exist in two aspects commonly law flexibility, and statute certainty.

European Union is quite a harmonised and coded system. This type of EU policies Rome I, Rome II, Brussels I (recast) has led to the uniformities in taxes of the states involved. This is a way of law making that minimizes the variations and gives consistency through which international disputes are resolved. and there is the EU paradigm which is an indicative decision

²⁸ Staudt K. Border politics in a global era: Comparative perspectives. Bloomsbury Publishing PLC; 2017 Jun 16.

at the cost of the loss of judicial discretion to retain an internal market of integration and predictability.

This is unlike the case in the United States which is a theory based and decentralized system. It is individual and therefore federal hence the fact that conflict of laws rules are developed by individual states rendering it highly diverse. The absence of a single codification has favored the development of various theoretical views, one of which is the analysis of interest and the most valid test of the relationships. Though this will facilitate innovation and flexibility, it will lead to the segregation and inconsistency.

India and the US fall behind accordingly due to incomplete codification and the UK and the EU are not judged in the same way- evolution and harmonized legislation incomplete in the former and in the latter respectively.

B. Law Choice Approach.

One of the most important differences between the jurisdictions is the law treatment. The laws rules have always been based on doctrinaire territorial and the newer denser is the doctrinaire of flexibility and policy-based reasoning has been a given doctrine²⁹. There is also an uneven distribution of information in regards to the extent to which the single jurisdiction has surrendered the reliance upon the traditional rules.

India, to a significant extent, nevertheless, adheres to the doctrine of traditional common law particularly in a case where it fails to provide the statutory directions exhaustively. Courts of dispute refer to the will of the parties in the courts-of-contracts and draw their attention to several rules such as proper law of the contract. the rule of *lex loci delicti* has long ruled in the tort cases, but is some tendency beginning to move towards softer treatment? However, legislation is still yet to have a definite direction, which constrains the capabilities of an organized and updated system of law-choosing.

A better-planned less strain policy would be the one of the UK which is subject to the EU regulations. Both Regulations of Rome I and Rome II proposals share the following recommendations: certainty and minimal flexibility, and specification of rules by which special rules that must fall under to ascertain the applicable law. When parties are free to select the governing law, default rule governing rules may apply, otherwise, there is no alternative but to select a governing law. This is because the rules are normally considered the closest to the dispute hence the balancing factor of predictability and fairness.

²⁹ Okoli CS, Yekini A. Implied jurisdiction agreements in international commercial contracts”: a global comparative perspective. *Journal of Private International Law*. 2023 Sep 2;19(3):321-61.

The most unanimous option of law approach is the one put forward by European Union. The Rome Regulations offer very general and uniform wage of regulations with very little leeway of trying out the judiciary. Exception may exist, but there exist general principles of coherence and clarity which are normally regulated by the overall structure with the profile dominating where the interrelationship between two jurisdictions is evidently more eminent³⁰. This assists not only in restraining the indirect outcome with the member states but it also assists in restricting the freedom of the judicial system to make complex decisions.

The United States on the contrary is highly lax and policy-minded. The reason is that a lesser degree of control as territory shifts to interest prongs and most important relationship inquiry so then, the courts can answer extensively a wide range of questions including the question of policy or interests of the litigators. It will enable contextualised decision to be reached but there will be elements of uncertainty in that depending on how it is interpreted by the judiciary the same will yield different results.

This is not the case in the EU, the UK and the US where one has become decentralized and arranged and the other flexible and adaptive.

C. Party Autonomy

The party autonomy is a potent principle in the conflict of laws particularly in the contractual and legal issues where a consideration is given to the right of party to choose the law to be used and the courts which would be utilized to solve a conflict. This difference in the magnitude of implementation and recognition of this principle varies according to jurisdiction.

European Union would be the most renowned party autonomy. The Rome I Regulation gives the contract parties the option of the law to be applied to the contract in general, and certain protection against weaker parties, and certain enforceable obligatory terms. This will increase predictability and ease of doing business with other parties outside the country since they can customize their legal contracts.

The U.K. is not an exception to this rule, the United Kingdom is governed by an autonomy of parties either by the retained EU law, or according to the principle of common law. To the English judicial system it has never been unhesitant to abide by the law which the sides have decided to comply unless it takes a contrary course to that law and to the extent it is a good faith. This extensive emphasis on autonomy is one of those reasons that would make the UK a desirable international business arbiter.

³⁰ Magnier V. Comparative corporate governance: legal perspectives. Edward Elgar Publishing; 2017.

Here, the party autonomy is also taken into consideration in the United States but the rules and regulations that are established under the state level and the considerations that are given by the common policy may come in the way³¹. Commercial Contracts Commercial courts frequently will invoke choice of law provisions, although may refuse to do so in cases where such an option on the choice of law does not have substantial contact with the transaction, or with the basic policies of the host country.

The writing is not so thick and turgid as India. Even though courts are still most likely to continue to agree on the choice of law by the parties more so in a contract, which is narrow in many aspects particularly some matters concerning the aspect of a public policy or even a law. Also complicating this is avoidance of eloquent legislative instructions on how party autonomy should be exercised that will result in an unequal outcome of judicial administration of cases.

So party autonomy could be a common expression in all countries, but it is the most powerful and the furthest to India, moderate to the US and restricted to the UK.

D. Chances of foreseeability vs Adaptability.

A system of conflict of laws is possibly an antipathy between predictability and flexibility. The priorities given to each of these values vary by jurisdiction and it is an expression of not only the policy aspirations, but also the legal culture of the jurisdiction.

The European Union is the best system that can be predicted to possess uniform regulations which have been written. Providing concise and straightforward rules in the EU, doubts are eliminated and the EU provides uniformity among the European nations. This predictability is particularly beneficial in a situation where the law touches on some business whose predictability is highly crucial. Obstacles to the responsiveness of the courts to the unique can however be due to the inflexibility of the structure.

The UK is on a thin line of predictability and flexibilities³². The flexibility enables the guided method or the presentation of at least EU determined guidelines and discretion of the courts is grounded on the permanence of the common law principles. This assortment puts the courts in a situation where they can make an equitable conclusion and not readability compromising.

On its part, Flexibility is an American priority. Contemporary techniques which necessitate interest analysis and most of the appropriate test of relationships may help the courts to get a

³¹ Symeonides SC. Private International Law Bibliography 2022: US and Foreign Sources in English. The American Journal of Comparative Law. 2023 Jun 1;71(2):500-12.

³² Menski WF. Rethinking legal theory in the light of South-North migration. In Migration, diasporas and legal systems in Europe 2020 Sep 10 (pp. 13-28). Routledge-Cavendish.

glimpse at exceptional circumstances of a case.

The middle one is India which is uncertain because they did not give any word and had no reliance on what the judiciary considered right to do. It is to some degree flexible, but it does not always determine principles that will guide it and therefore divergent in their results.

They raise the question on one of the most crucial trade-offs between: To be less flexible and predictable system, on the one hand; and: To be more flexible and less predictable system, on the other hand.

E. Foreign Judgments.

Identification and application of foreign judgment in the courts is highly significant when it comes to imposing efficacy in the dispute settlement in the cross-boundary. This disparity has implied that there is disparity in the receptiveness to foreign legal regimes.

Most of the improvements of the Brussels I Regulation (recast) judgment recognition and enforcement model have been made by the European Union, which enables the recognition and enforcement of judgment to and between member states with minimum procedural restrictions as possible. There will be such an extent of integration that will enable cross border litigation and ensure there is certainty in law.

Even though, in the past, the United Kingdom was Russia in such an arrangement, at present, it is also moving towards an arrangement of EU laws in conjunction with international treaties and simple common law³³. The foreign judgments are generally accepted as long as they meet the requirements such as finality and state competence in which the ruling is pronounced though; can contain more requirements of the procedure as compared to EU mechanism.

US adheres to state-based model and the recognition of the same is pegged on legislations of the states and rules of courtesy. Most states have, too, enacted homogenous acts to allow easy application but this has been variable but still remains at the court where the court may dissinculate the application of the homogenous act due to numerous reasons such as state policies or the due-processes.

The jurisdiction in the context of India is to statutory provisions of the Code of Civil Procedure that is largely founded on non- and reciprocating territories. This can be a process, but there is the risk of subjecting the natural justice of specific to the formulation of the public policy, which is created through proceduralism and jurisprudence of the natural justice.

³³ Biju PR, Gayathri O. The Indian approach to Artificial Intelligence: an analysis of policy discussions, constitutional values, and regulation. *AI & SOCIETY*. 2024 Oct;39(5):2321-35.

The enforcement regime in EU is the clearest among the countries and UK, US and India have a greater number of procedures that are more elaborate.

VIII. CHALLENGES AND EMERGING ISSUES

The massive globalization rates and development of digital transactions have thus rendered conflict of laws application very cumbersome. The presence of e-commerce cases usually adds a scenario to the point that the litigant on either side can be located in different jurisdictions and thus it may be hard to relay the law to rely on and the competent courts. In addition, forum shopping has increasingly become predominant whereby the litigants are also choosing to seek favorable jurisdictions in order to provide them with an upper hand in litigation. These issues put the inconsistencies between multiple legal systems into the spotlight and paint a picture of a pressing need to further harmonize with the existing international situations to achieve a sense of predictability, reduce legal ambiguity, and more effectively resolve cross-border conflict situations in the digital economy of the modern world.

IX. CONCLUSION

The paper has disclosed that conflict of laws system in India, the UK, the EU and US have colossal disparities in their structure, approaches and philosophy. EU is leaning towards uniformity and predictable as compared to USA, which are flexible and the UK is moderating and India is partially developed. The work reveals the necessity of harmonization and reform particularly in the emerging area of digital disputes. The transparency and flexibility may form the future solution in the form of a hybrid model. Future studies may be guided to the particular cases of application and the role of the evolution of technologies in the phenomena of the evolution of the law of the privat sphere and relations between the countries.
