

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 2

2022

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Domicile

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ABSTRACT

In all the nations all around the world that follow the Common Law principle or tradition, the criterion employed to connect a person with a particular legal system in matters of personal status and succession is the criterion of Domicile. The term "Domicile" is a concept that comes under the ambit of conflict of laws or comes under the ambit of private international law. Domicile is a general legal concept, which describes the country in which you consider your 'roots' are or where you have your permanent home. Domicile plays a very important role in the conflict of laws as a connector. It plays a very significant role in taxation laws, matrimonial laws, and property laws and helps a lot if any contradictory situation arises. It calculates the capacity of the contracting parties to the contract under these areas of law. Domicile of origin is imperishable. Even if a domicile of choice is acquired by a person, the domicile of origin will always be there to fill in any gaps if at a later stage domicile of choice is abandoned by the individual. Every individual is born with the domicile of origin and stays for life (if only in abeyance). Hence understanding the concept of domicile is very important under private international law or as a matter of fact in every area of law.

Keywords: Private International Law, Domicile, Individual, Residence, Nationality

I. INTRODUCTION

Domicile is a Private International law or conflict of laws concept that recognizes a person. It is one of the entities that describe the person, in cases of having a foreign element, or with a territorial subject, which is considered as his personal law. Domicile in India is a significant requirement essential for acquiring Indian citizenship.

The term 'Domicile' is not specifically defined in the Indian constitution. It means a permanent home where a person lives with the intention of staying there for an unspecified period of time. Domicile is not analogous to Residence. Residence means the fact of residing in a particular place. But domicile is a combination of residence with intention of living permanently in the place.

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(A) Definition of Domicile

Domicile means permanent home. It is significant to identify an individual's personal law, which dictates questions concerning the personal and proprietary relationship between the family members. The birthplace is an insufficient criterion to identify an individual's personal law. Domicile thus helps an individual residing in that country in which he either has or is deemed by law to have permanent residence/home.

(B) Importance of Domicile

Domicile acts not only as a connecting factor but also has an extended role to play. It can be used as a jurisdictional link which is a vital requirement for the assumption of jurisdiction by the forum or required for recognising and assumption of a foreign court's jurisdiction. Domicile also verifies a person's right to vote, right to handle public office, the privilege to support in respect various needs including health or unemployment as well as his liabilities to various forms of taxation. Thus, there is no single individual without a domicile because it is essential to connect an individual with some legal systems to govern his legal relationships.

(C) Principle Governing laws of Domicile

The main priority of the law of domicile is to assign an individual with a particular set or system of laws to which the individual pertains. Under both Private International Law System and the Indian Law System, there are majorly five basic principles that regulate the law of domicile in any country.

These are:

- **First Principle:**

Nobody should lack a domicile. The law allocates a domicile of origin to every individual at the time of its birth. This means, to a legitimate child the domicile of the father, to an illegitimate child domicile of the mother is assigned, and to a foundling/orphan, the domicile of the place where he is found is assigned by the law. This domicile of origin continues until a new domicile which means the domicile of choice is owned.

- **Second Principle:**

An individual cannot have two domiciles at a single time.

- **Third Principle:**

Domicile unites a person with a single system of territorial law but it does not inevitably denote a system that specifies the same principles for all the classes of an individual.

P.S. In India, different rules are applied to different categories of the population according to their religion, caste, or race.

- **Fourth Principle:**

There are certain assumptions in favour of the continuance of an existing domicile.

- **Fifth Principle:**

The final principle of governing laws of domicile is that the domicile of a person is to be decided according to English and not according to the foreign concept of domicile.

II. DOMICILE, NATIONALITY, AND RESIDENCE

Domicile, Nationality, and Residence all have different concepts of laws. Let's understand the differences between these three.

(A) Difference between Domicile and Nationality

“Nationality” is defined as a particular status of membership that is given formally or officially to an individual by a nation-state. It is a bond that connects a person to a given state which represents his membership in a specific state, which gives him a claim to the protection of that state and which abides him to follow all the rules and regulations created by the laws of that state.

On the other hand, Domicile is a relationship between an individual and his or her place of residence which can also be called a permanent home. Domicile may still continue even if the person or an individual has left his or her home. Moreover, Nationality can be termed as a relationship between a person and a country.

(B) Difference between Domicile and Residence

Domicile describes the permanent home of an individual and it is a legal relationship between an individual and a locality. The residence is something neutral. Domicile usually consists of or is based upon two primary factors: the aim of living and residence.

A residence is more like of temporary nature, while domicile is more permanent. An individual or a person can have only ONE domicile while he/she can have many residences.

III. KINDS OF DOMICILE

(A) Domicile of Origin

One of the fundamental principles that regularize the law of domicile is that no person can stay or exist without a domicile. To regulate this principle practically, the law of domicile imparts

a domicile right at the birth of every individual. This is known as the domicile of origin. Though, it is always not essential that the domicile of origin is always the person's country of birth. It is generally the person's father's domicile that is assigned in a case of a legitimate child whereas; the mother's domicile is assigned in the case of an illegitimate child. A domicile of origin is significant and is preserved until a specific time till it is clear evidence that another domicile has been given to the person.

(B) Domicile of Choice

It is mentioned as a rule of Private International Law that an independent individual or a person can change his or her domicile at any time. Here the term 'Independent' means an individual of 16 years or above. This is called a domicile of choice. It can be taken for a temporary period of time. To set up a domicile of choice a person must complete all the ties with his domicile of origin and settle in a country in which he/she wishes to establish a domicile as well as with the clear aim of making his/her home in that country permanently. If an individual desire to set up a domicile of choice, he/she has the responsibility of proving the occurrence of the situation, and that in consequence the domicile of origin has been relocated.

Now if an individual or a person wants to get a domicile of choice, he or she has to meet the following two conditions for it:

- The person should be a resident of the nation for which he or she is trying to get the domicile of choice.
- The person should have an exact intention of living permanently in the state for getting the domicile of choice.

(C) Domicile of Dependency

The domicile of dependency is issued to those who are dependent on the domicile of others, since these people are incapable of selecting their own domicile, like:

- (i) Infants
- (ii) Married Women
- (iii) Mentally disabled

The law suggests that dependents, that is married women, infants, minors, and mentally disabled persons who cannot choose their domicile on their own, should have been assigned the domicile of dependents. The common law rule suggests that wives are dependent on their husbands; minors are dependent on their parents. It was also proposed that a child should have a dependent domicile assigned to his /her parents but where the connection with the parents

gets weakened, he/she can opt for an independent domicile.

Three rules were suggested for determining the domicile of children as follows-

Firstly, if the child lives with both parents, his domicile would be the same as that of the parents and it will alter with the change of parents' domicile. But if the domicile of both parents is not the same then the child will be assigned the domicile of the mother.

Secondly, if the child is living with a single parent, he/she will have the domicile of that parent and it will change accordingly.

Thirdly, the child should be domiciled in a country with which he is more closely in connection. If the domicile of the father (or, where appropriate, mother) changed while a person is under the age of 16, then they will get a domicile of dependency based on the father's (or mother's) new domicile. The rules are more complex where parents separate or die while their children are under 16.

If a person or an individual gets a domicile of dependency while under the age of 16 (for example, because the parents immigrated permanently to a new country, with no aim of ever returning to the old country) that person's or individual's domicile of dependency will continue until that person chooses to leave that country. On departure, the domicile of origin will renew until a person or an individual gets a new domicile of choice.

(D) Domicile of Married Women

The law suggests that the domicile of a married woman was the same as and altered with the domicile of her husband after marriage. This rule was considered as perfect without exceptions, whatever the situation may be. This rule was based on the ancient maxim of common law that says husband and wife are one and the same person in the eye of the law.

(E) Domicile of Mentally Disabled Persons

The common law says that a person or an individual who is mentally disabled cannot hold any domicile of choice, and continues the domicile he/she had before he/she began to be treated insane legally. If an individual is born disabled or becomes disabled as when child then, he/she has to be treated as a dependent child.

(F) Domicile of Adopted child

Few questions come to mind while thinking of the domicile of dependence on an adopted child. Will the domicile of the minor child change to that of the adopting parent? Well, there is a bit of a dicey decision that the domicile of an adopted kid is the same and can be changed with the

domicile of the adopting parents. This agrees with the principle that on adoption, the legal situations of the natural relationships of the parent and child are destroyed and re-established as between the adopting couple and the child. In Indian law, the Madras High Court decision suggests that the domicile of an adopted child is the same as the domicile of the adopting parents.

Merits of Domicile

- Domicile is the only fitting casual factor in nations formed by a union of states, or federal form of nations such as the United Kingdom, Australia and the United States of America
- It is more natural and appropriate, as a factor of personal law, domicile is useful in the sense that, if a person has decided to leave his country “of origin”, he has also automatically forgone the laws of that country.
- Domicile requires only practical tests in certain political units such as the UK, the US where persons of the same nationality but different legal systems can acquire domicile.

Demerits of Domicile

- Irrational results may assure that the long residence is not equal to domicile if accompanied by thinking of some specific event that can cause a termination of residence.
- There might be some legal or social fluctuations that arise and can cause one’s permanent home to be terminated, expiry of living permits, and the outbreak of civil wars which may cause termination of domicile.
- The domicile is hardly identifiable, an individual should clearly state his intention in order to determine domicile whereas; the practical intention of litigants is difficult to describe thus making it difficult to identify with clarity. It is for the court to decide after thoroughly going through the facts.

Merits of Nationality

- It is easily discoverable; there are ambiguous proofs of nationality that can be understood without the application of complex legal functionalities. Nationality depends on birthplace and registration. The courts, therefore, fulfil the advantage of nationality by way of easy identification.
- Nationality is more balanced than domicile because nationality cannot be changed without the formal consent of the state thus, making the nationality balanced and stable.

Demerits of Nationality

- While applying the test of nationality, it may point to a country in which an individual or a person has lost all his connections or perhaps he has never been connected there.
- Nationality is difficult or misleading sometime in the eyes of laws. NO person can have more than one domicile at the same time; no person can be without a domicile, on the other hand, an individual may be stateless or can have citizenship of two or more countries.
- Nationality is not useful in political sets as in some instances there is no law applicable in some situations.

IV. CONCLUSION

Domicile plays a very significant role in the conflict of laws as a connector. There has been a lot of hue and complex confusion in the meaning of the terms domicile, Nationality, and residence while studying Private International Law. The law of domicile in India is very clear and is free from any loopholes. The same is significant for resolving the 'conflict of laws' in India. There seems to be a lack of knowledge of the concept in its real perspective in India. Hence, the special need of spreading awareness is required on an urgent basis regarding the laws of domicile. Specifically, in India, there seems a lack of provision regarding domicile. Domicile of origin cannot be destroyed easily. Even if a domicile of choice is taken by an individual or a person, the domicile of origin will always stay forever to fill the gaps if any. Every individual is born with the domicile of origin. When a person or an individual leaves their domicile of choice by discontinuing to stay in that country, a new domicile of choice takes over or the domicile of origin again comes back into the picture as per suggested by the law.
