

New article on The Hague judgments project: assessing its plausible benefits for the development of the Indian Private International Law

Written by Saloni Khanderia

Associate Professor Saloni Khanderia (Jindal Global Law School, O.P. Jindal Global University, Sonapat, India) recently published a new paper in the Commonwealth Law Bulletin, titled The Hague judgments project: assessing its plausible benefits for the development of the Indian Private International Law.

The author talks about the two international instruments which come under the esteemed Hague judgments project: the Convention of 30 June 2005 on Choice of Court Agreements [the HCCA] and the recent Proposed Draft Text on the Recognition and Enforcement of Foreign Judgments [the Draft Convention], with specific reference to India. The question that the author raises is whether India should endorse the above two instruments. Even though India is a Member of the Hague Conference, it is a non-signatory to any treaty or Convention regarding the international jurisdiction of courts and the consequent recognition and enforcement of foreign verdicts. Thus it becomes interesting to see the stance India should take. Initially, the author provides an overview of the judgments project, followed by the role of the HCCA and the Draft Convention and their applicability and contribution to transnational trade. The article presents a position of India in the sphere of private international law. It further analyses the role of the two instruments on the development of India's private international law.

The author welcomes the freedom of choice of a forum that is granted to the parties in India in respect of civil and commercial transnational matters. However, there is a need for certainty in several matters. Looking at the jurisprudence it can be seen that the Indian courts have been dismissing cases

where the parties have not chosen them as a governing forum. Conversely, the courts have taken cognizance and assumed jurisdiction where the same has been conferred upon them by the agreement. Ratification to the HCCA tends to solve this problem as would subject the Indian private international law to a fixed and consistent set of rules on (dis)regarding the choice of court agreements. HCCA also lays down exceptions in cases on an exclusive choice of court agreements, therefore, its incorporation in the Indian laws would guide the court as to when to disregard the choice of court agreement. The ratification would also help in the holistic development of the private international law by easing the need the file fresh suits for recognition and enforcement.

Indian's archaic rules on private international law make it necessary for the country to endorse the Draft Convention as it would prevent the Indian courts from enforcing a foreign judgment that has been rendered in violation to such an agreement, on coming into effect. Like the HCCA it would ease the process of recognition and enforcement of foreign judgments as one would not have look

through the domestic laws before moving the courts. It would provide certainty to the litigants as would provide answers to inconsistent judgments and parallel proceedings. Although

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the ground of public policy is seemingly recognized in India, the Draft Convention would enhance the predictability with respect to enforcement as it explicitly confers the requested court with the right to deny the enforcement, for this reason. The above arguments by the author clearly lay out the conclusion that India should endorse the HCCA and the Draft Convention under the Hague's Judgment Project.