



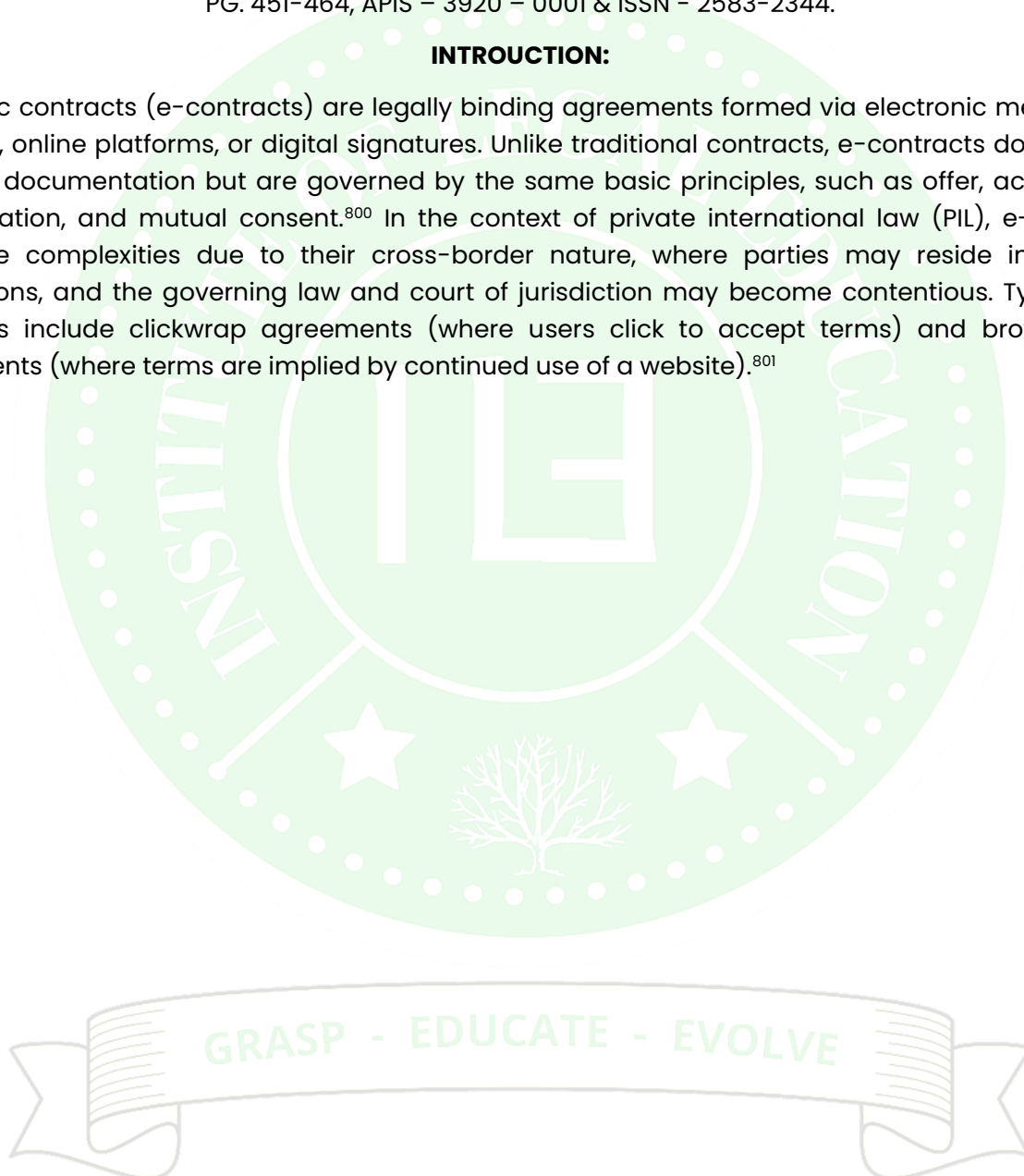
## ELECTRONIC CONTRACTS AND TORTS IN UK AND INDIA'S PRIVATE INTERNATIONAL LAW – A COMPARATIVE STUDY

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### INTRODUCTION:

Electronic contracts (e-contracts) are legally binding agreements formed via electronic means such as email, online platforms, or digital signatures. Unlike traditional contracts, e-contracts don't rely on physical documentation but are governed by the same basic principles, such as offer, acceptance, consideration, and mutual consent.<sup>800</sup> In the context of private international law (PIL), e-contracts introduce complexities due to their cross-border nature, where parties may reside in different jurisdictions, and the governing law and court of jurisdiction may become contentious. Types of e-contracts include clickwrap agreements (where users click to accept terms) and browse wrap agreements (where terms are implied by continued use of a website).<sup>801</sup>



<sup>800</sup> CHOICE-OF-LAW AGREEMENTS IN INTERNATIONAL CONTRACTS Gary Born\* and Cem Kalelioglu (P49-72)

<sup>801</sup> CHOICE-OF-LAW AGREEMENTS IN INTERNATIONAL CONTRACTS. (2021). In GA. J. INT'L & COMPAR. L. (Vol. 50, pp. 44-118)

Electronic torts, on the other hand, include online defamation, cyber fraud, unauthorized use of personal data, and intellectual property infringement, all of which are facilitated through digital platforms. A significant example is cyber defamation, where defamatory content spreads rapidly across borders via the internet, causing harm to a person or entity's reputation in multiple jurisdictions.

Conflict of laws, or private international law (PIL), is the governing body for legal issues involving foreign parties. Its purpose is to determine which legal system and jurisdiction apply to a specific case when more than one country is involved.<sup>802</sup> This is particularly important in electronic contracts and torts, where the international nature of the internet blurs traditional territorial boundaries. For instance, an e-contract may be concluded between a buyer in India and a seller in the UK, or a cyber defamation claim may involve a defamatory post made in one country and viewed globally.<sup>803</sup>

PIL helps resolve such issues by determining the applicable law (which country's legal system should apply) and the forum (which court should have jurisdiction). The central principles of PIL, including *lex loci contractus* (the law of the place where the contract is made), *lex loci delicti* (the law of the place where the tort occurred), and the doctrine of *forum non conveniens* (the discretionary power of a court to decline jurisdiction if another forum is more appropriate), play crucial roles in deciding cases involving e-contracts and e-torts.

The purpose of this study is to compare the legal frameworks governing electronic contracts and torts under the private international law regimes of the UK and India. Both countries have developed legislative and

judicial responses to the growing importance of e-commerce and the digital economy. However, the approach they take towards regulating cross-border electronic disputes differs in key respects.<sup>804</sup>

This comparative analysis will explore the fundamental differences and similarities between the two jurisdictions. It will examine how the UK, as a member of the European Union until 2020, incorporated the EU's e-commerce and conflict-of-laws regulations, and how its PIL framework has evolved post-Brexit. The study will also analyze India's legal response to electronic contracts and torts, including its approach to cross-border jurisdictional issues in the absence of a comprehensive PIL statute.<sup>805</sup>

#### **Jurisdiction and Choice of Law in E-Contracts:**

How the UK and India address cross-border e-contract disputes, including the role of forum selection clauses, online consumer protections, and international treaties like the Hague Convention.<sup>806</sup>

#### **Jurisdiction in E-Torts (Cyber Defamation and Data Breaches):**

How courts in both countries decide which legal system applies to torts that occur online. This includes analyzing landmark cases in the UK such as *Berezovsky v. Michaels*,<sup>807</sup> which dealt with jurisdiction in defamation suits, and similar judgments from Indian courts, including cases involving Section 75 of the Indian Information Technology Act (which grants Indian court's jurisdiction over foreign cyber offenses).

#### **Recognition and Enforcement of Foreign Judgments:**

A critical aspect of PIL, the recognition and enforcement of foreign judgments presents unique challenges in electronic contracts and torts. The UK's

<sup>802</sup> Private International Law | Peace Palace Library. (n.d.).

<sup>803</sup> Karthibun, A. (n.d.). TORTIOUS LIABILITY OF STATE: A COMPARATIVE STUDY ON INDIAN, THE UK, AND THE US LAW. In Indian Journal of Integrated Research in Law, Indian Journal of Integrated Research in Law: Vol. III (Issue I, pp. 1–4). TORTIOUS-LIABILITY-OF-STATE-A-COMPARATIVE-STUDY-ON-INDIAN-THE-UK-AND-THE-US-LAW.pdf

<sup>804</sup> Morse CGJ. Torts in Private International Law: A New Statutory Framework. *International and Comparative Law Quarterly*. 1996;45(4):888-902. doi:10.1017/S0020589300059741

<sup>805</sup> Dryland, C. (2022, October 27). Jurisdiction and choice of law clauses in international contracts. Pinsent Masons.

<sup>806</sup> Govindaraj, V.C., "The Law of Obligations: Foreign Contracts and Foreign Torts", *Private International Law: A Case Study* (Delhi, 2018; online edn, Oxford Academic, 24 Jan. 2019),

<sup>807</sup> *Berezovsky v Forbes Inc & Michaels* [2000] UKHL 25; [2000] 1 WLR 1004; [2000] 2 All ER 986; [2000] EMLR 643

common law framework, shaped by European Union regulations pre-Brexit and the Brussels Regulation, offers one approach, while India's position is largely guided by bilateral treaties and the principles of reciprocity under the Code of Civil Procedure (CPC).

**Role of International Instruments:** Both the UK and India are influenced by international instruments such as the United Nations Convention on the Use of Electronic Communications in International Contracts (UNECIC) and, in the case of the UK, the General Data Protection Regulation (GDPR). India has its own internal regulatory measures such as the Information Technology Act, 2000 and the developing data privacy system under the Digital Personal Data Protection Act, 2023, even though it is not a party to UNECIC or GDPR.

This comparative study will provide a comprehensive understanding of how the UK and India approach the resolution of cross-border disputes arising out of electronic contracts and torts. Given the ever-increasing reliance on digital transactions and the growing importance of data protection in the global economy, this analysis will offer insights into how both countries can further refine their legal frameworks to ensure fairness, certainty, and enforceability in the digital age.

#### **UK LAW ON ELECTRONIC CONTRACTS:**

The legal framework governing electronic contracts in the UK comprises several key statutes that collectively address the challenges posed by digital transactions.

The Electronic Communications Act 2000 serves as a foundational statute for electronic signatures and communications in the UK. It establishes that electronic signatures can be admissible in legal proceedings if they meet specific criteria. This act aims to promote the use of electronic communications while ensuring that such communications are treated equally with traditional paper-based methods.

While not exclusively focused on electronic contracts, the Consumer Rights Act 2015

includes provisions related to distance selling and online transactions. It mandates that businesses must clearly inform consumers about their rights when entering into contracts at a distance. This act enhances consumer protection by ensuring transparency in online transactions.

The E-commerce Directive, implemented in the UK through the Electronic Commerce (EC Directive) Regulations 2002, sets out rules for information society services provided electronically. It covers areas such as transparency requirements for online traders, the formation of electronic contracts, and liability limitations for service providers. This directive aims to create a safe and predictable environment for e-commerce within the EU framework.

#### **Jurisdiction and Choice of Law**

In the UK, jurisdictional issues related to electronic contracts are primarily governed by the Rome I Regulation:

**Rome I Regulation:** This regulation applies to contractual obligations arising from civil and commercial matters within EU member states. It allows parties to choose the applicable law for their contract, providing flexibility in cross-border transactions. For consumer contracts specifically, there are protections under this regulation that generally subject them to the law of the country where the consumer has their habitual residence unless otherwise agreed.

#### **Case Law Examples**

Several landmark cases have shaped the interpretation of electronic contracts within UK law:

1. *Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd* [2012]<sup>808</sup>

In this case, the court held that an exchange of emails could constitute a binding contract even if there was no explicit intention to create legal

<sup>808</sup> [2012] EWCA Civ 265 • [2012] 3 All ER 842 • [2012] 2 All ER (Comm) | 978 • [2012] 1 WLR 3674 • [2012] WLR(D) 70 • [2012] 1 CLC 497 • [2012] 1 Lloyd's Rep 542

relations through email alone. This ruling underscore the importance of recognizing electronic communications as valid forms of contract formation.

2. *St Albans City and District Council v International Computers Ltd [1996]*<sup>809</sup>

Although not exclusively about electronic contracts, this case set important precedents for software licensing agreements often conducted electronically. The court's decision emphasized that parties must adhere to agreed-upon terms within software licenses.

3. *Balmoral Group Limited v Borealis (UK) Limited [2006]*

This case dealt with interpreting electronic communications in contract formation. The court highlighted that clear communication is crucial in digital transactions and emphasized that ambiguity could lead to disputes regarding contract terms.

India's legal framework governing electronic contracts is defined by several key statutes that address various aspects of digital transactions. The Information Technology Act 2000 is the primary legislation governing electronic governance in India. It recognizes electronic records and digital signatures as legally valid under Section 10A, which states that contracts formed electronically are enforceable just like traditional paper-based contracts. This act also provides guidelines for secure electronic transactions and establishes penalties for cybercrimes.

Although enacted long before digital technology became prevalent, the Indian Contract Act 1872 remains relevant for principles such as offer, acceptance, consideration, and capacity to contract. The act provides a foundation for understanding contractual obligations within an Indian context.

While not specifically targeting e-contracts, the Consumer Protection Act 1986 safeguards

consumer rights during online transactions. It establishes mechanisms for addressing grievances related to unfair trade practices and ensures consumers receive adequate information about products and services offered online.

### Jurisdiction and Choice of Law in India

The Information Technology Act 2000 allows for establishing cyber courts to handle disputes arising from electronic transactions. For cross-border electronic contracts, Indian courts typically apply *lex loci contractus* (the law of the place where the contract is made). However, parties may agree on a governing law clause within their contracts.

1. *Trimex International FZE Ltd vs Vedanta Aluminium Ltd [2010]*<sup>810</sup>

In this Supreme Court judgment, it was established that emails could constitute valid communication for contract formation under Indian law. The court affirmed that once an agreement has been reached through email exchanges, it is enforceable regardless of whether a formal contract has been executed.

2. *HDFC Bank Ltd vs Satpal Singh Bakshi [2013]*

This case addressed the validity of electronic records and digital signatures in banking transactions. The court ruled that digital signatures hold legal validity under Indian law when used in financial sector e-contracts.

3. *Sify Technologies Ltd vs Infomedia 18 Ltd [2004]*

This case dealt with issues of jurisdiction concerning online defamation cases but has implications for disputes arising from electronic contracts involving online content.

### COMPARATIVE ANALYSIS: UK VS INDIA

#### Similarities

Both jurisdictions recognize the validity of electronic contracts through specific statutes: Both countries have enacted laws

<sup>809</sup> *St Albans City and District Council v International Computers Ltd [1996]* 4 All ER 481

<sup>810</sup> *Trimex International Fze Limited v. Vedanta Aluminium Limited 2010 (1) SCALE 574*

acknowledging digital signatures' legality. The principle of freedom to choose applicable law is upheld in both jurisdictions. Consumer protection laws exist to safeguard consumers engaging in online transactions.

### **Differences**

Despite these similarities, significant differences exist between UK and Indian laws regarding e-contracts: **Legislative Framework:** The UK has a more developed legislative framework surrounding e-commerce due to its long-standing participation in EU regulations like the E-commerce Directive. **Judicial Precedents:** The UK courts have established more extensive case law addressing various aspects of e-contracting compared to India. **Consumer Protection:** While both jurisdictions protect consumers engaging in online transactions, India's Consumer Protection Act provides more comprehensive mechanisms specifically tailored for consumer grievances related to e-commerce. **Cyber Courts:** India has provisions for establishing cyber courts under its IT Act to address disputes arising from electronic transactions; such specialized courts do not exist in the UK.

### **Implications for Businesses and Consumers**

For Businesses Understanding these legal frameworks is crucial for businesses operating across borders: **Compliance:** Companies must ensure compliance with local laws regarding e-contracts when engaging with consumers or other businesses. **Risk Management:** Businesses should implement robust risk management strategies to mitigate potential disputes arising from jurisdictional issues or ambiguities in contract terms. **Consumer Trust:** By adhering to consumer protection laws and ensuring transparent communication regarding rights and obligations under e-contracts, businesses can foster trust among consumers. **Consumers should be aware of their rights when entering into e-contracts:** **Awareness:** Understanding local consumer protection laws can empower consumers when engaging with businesses online.

Recourse Options: Familiarity with grievance redressal mechanisms available under local laws can help consumers address potential disputes effectively.

### **LEGAL FRAMEWORK FOR ELECTRONIC CONTRACTS:**

In the United Kingdom, the legal framework governing electronic contracts includes several key statutes and directives that address the formation, validity, and enforcement of contracts conducted through digital means. Among the pivotal laws is the *Electronic Communications Act 2000*, which was introduced to promote electronic communication and commerce by recognizing electronic signatures as legally valid. This act plays a crucial role in ensuring the legitimacy of electronic contracts, as it enables individuals and businesses to execute contracts electronically without the need for physical signatures.<sup>811</sup>

The *Consumer Rights Act 2015* provides additional protection for consumers engaging in electronic transactions. It ensures that contracts formed digitally maintain the same legal standing as those formed through traditional means, emphasizing the consumer's right to receive goods and services as per agreed terms. The legislation also addresses issues related to unfair terms and liability in digital purchases.<sup>812</sup>

The *E-commerce Directive (2000/31/EC)*, incorporated into UK law through the *Electronic Commerce (EC Directive) Regulations 2002*, regulates electronic commerce activities across EU member states, which until Brexit included the UK.<sup>813</sup> This directive establishes basic rules for online contracts, particularly regarding the requirements for information disclosure by service providers and the mechanisms for forming contracts electronically.

<sup>811</sup> Sachdeva, H., Shenoy, P., & Badhwar, S. (2023, September 29). At a glance: electronic contracts in India. Lexology.

<sup>812</sup> Concord. (2020, February 26). Electronic Contracts in India's Information Technology Act 2000. <https://www.concord.app/blog/electronic-contracts-indias-technology-act-2000/>

<sup>813</sup> E-commerce Directive (2000/31/EC), incorporated into UK law through the Electronic Commerce (EC Directive) Regulations 2002

In terms of jurisdiction and choice of law, the *Rome I Regulation* (Regulation (EC) No 593/2008) plays a critical role in determining which country's laws apply to cross-border electronic contracts. Under this regulation, parties to a contract can choose the applicable law, and in the absence of an agreement, the law of the country most closely connected to the contract will apply. This regulation ensures legal clarity in disputes involving electronic contracts with international elements.<sup>814</sup>

Several landmark cases illustrate the application of these statutes. For example, in *Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd* (2012),<sup>815</sup> the court confirmed that electronic communications, such as emails, can suffice to form binding contracts. This ruling aligns with the principles established in the Electronic Communications Act, affirming the validity of digital correspondence in contract formation.

India's legal framework for electronic contracts is primarily governed by the *Information Technology Act 2000* (IT Act), which mirrors global developments in recognizing the validity of electronic contracts. Section 10A of the IT Act explicitly states that contracts formed through electronic means are legally enforceable, thus establishing the foundation for e-commerce in India. The IT Act also recognizes digital signatures, providing a secure method for authentication in online transactions.

Additionally, the *Indian Contract Act 1872* lays down the general principles of contract formation, including offer, acceptance, consideration, and the capacity to contract. These principles apply equally to electronic contracts, ensuring their validity under the same legal framework that governs traditional contracts. However, the Indian legal system has had to adapt certain provisions of the Contract Act to suit the unique challenges posed by digital contracts, particularly in relation to

consent and the authenticity of electronic communications.

Jurisdiction in Indian law concerning electronic contracts is determined under the Code of Civil Procedure (CPC) 1908. Section 20 of the CPC states that a suit can be filed where the defendant resides, where the cause of action arises, or where the contract was executed. In the context of electronic contracts, this raises complexities as the location of contract formation can be difficult to ascertain. Indian courts have, in some cases, applied the doctrine of "place of business" or "residence of the server" to establish jurisdiction in disputes involving digital contracts.

Case law in India demonstrates the judiciary's evolving approach to electronic contracts. In *Trimex International FZE Limited v Vedanta Aluminium Limited* (2010),<sup>816</sup> the Supreme Court of India upheld that agreements concluded over emails could constitute binding contracts, provided they meet the essential elements of contract formation. This aligns with the provisions of the IT Act, emphasizing the legal recognition of electronic means of communication in contractual dealings.

A comparative analysis of the legal frameworks for electronic contracts in the UK and India reveals both similarities and differences in their approach. Both jurisdictions recognize the validity of electronic contracts and electronic signatures, ensuring that such contracts are as enforceable as traditional ones. The UK's *Electronic Communications Act* and India's *Information Technology Act*<sup>817</sup> form the backbone of legal provisions enabling electronic commerce in their respective countries.

However, a key difference lies in the clarity and detail of statutory frameworks. The UK's laws, particularly the Consumer Rights Act and the E-commerce Directive, provide comprehensive consumer protections and clearer mechanisms

<sup>814</sup> Rome I Regulation (Regulation (EC) No 593/2008)

<sup>815</sup> [2012] EWCA Civ 265 • [2012] 3 All ER 842 • [2012] 2 All ER (Comm) | 978 • [2012] 1 WLR 3674 • [2012] WLR(D) 70 • [2012] 1 CLC 497 • [2012] 1 Lloyd's Rep 542

<sup>816</sup> *Trimex International Fze Limited v. Vedanta Aluminium Limited* 2010 (1) SCALE 574

<sup>817</sup> THE INFORMATION TECHNOLOGY ACT, 2000 (No. 21 OF 2000)

for cross-border transactions. In contrast, India's framework under the IT Act is more focused on the technical aspects of electronic contracts, such as digital signatures, with less emphasis on consumer protection in electronic commerce.

Jurisdiction and choice of law pose challenges in both countries, though the UK's adherence to the *Rome I Regulation* offers clearer guidance for international electronic contracts. In contrast, Indian law relies on more traditional jurisdictional principles, which can create ambiguity in cross-border electronic disputes. Additionally, case law in both countries demonstrates a growing judicial willingness to adapt to the challenges posed by electronic contracts, as seen in rulings like *Golden Ocean* in the UK and *Trimex* in India.

In conclusion, while both the UK and India have robust legal frameworks supporting electronic contracts, the UK offers a more consumer-centric approach with clearer guidelines for international contracts, whereas India's legal framework focuses more on the enforceability of electronic transactions within its borders. Both jurisdictions face ongoing challenges in adapting to the rapid evolution of digital commerce, particularly in relation to jurisdiction and consumer protection in cross-border transactions.

#### **ELECTRONIC CONTRACTS AND TORTS IN UK AND INDIA'S PRIVATE INTERNATIONAL LAW – A COMPARATIVE STUDY:**

The United Kingdom's approach to jurisdiction in cross-border disputes has evolved significantly, particularly in light of its exit from the European Union (Brexit). Pre-Brexit, the UK adhered to the Brussels I Regulation, which set clear rules for determining jurisdiction in civil and commercial matters. This regulation aimed to ensure that disputes were heard in the courts best placed to resolve them, often those of the defendant's

domicile, and sought to prevent conflicting judgments in multiple jurisdictions.<sup>818</sup>

Under the Brussels I Regulation, the general rule was that a defendant should be sued in the courts of their domicile, with exceptions for matters such as consumer contracts, insurance, and employment, where the party with less power may choose to use its local government. In cases of cross-border torts, jurisdiction may also be established by the location of the detrimental incident.

After the United Kingdom withdrew from the European Union, the Brussels I Regulation was terminated. Common law standards, on the other hand, are now the mainstay in the UK and are less predictable, giving courts more latitude. In situations where the parties have clearly agreed upon the choice of court, the Hague Convention on Choice of Court Agreements from 2005 also offers some assistance for disputes arising from contracts. This does not, however, apply to tort claims, where jurisdiction must be shown through alternative methods.<sup>819</sup>

One key common law principle that has gained prominence post-Brexit is the *forum non conveniens* doctrine. This theory allows a UK court to deny jurisdiction if it determines that another nation provides a more suitable forum. The convenience of the parties, the availability of witnesses, and the relevant law are among the many considerations that the court takes into account. Notwithstanding the inconvenience to one side, the UK courts may continue to have jurisdiction in situations where no other court has a sufficiently direct link to the dispute.<sup>820</sup>

India's approach to cross-border jurisdiction in private international law is mostly based on statutory provisions—such as the Civil Procedure Code, 1908 (CPC)—and court decisions. In India, jurisdictional principles are

<sup>818</sup> Soede, H. (2020, October 30). Jurisdiction and the Forum (Non) Conveniens Enquiry. Lexology.

<sup>819</sup> FOCUS JURISDICTION AND ENFORCEMENT The UK landscape beyond Brexit

<sup>820</sup> Stewarts. (2023, February 6). *Jurisdiction, Brexit and Brownlie – what is happening on the ground?* - Stewarts.

determined by the defendant's place of residency, the location of the cause of action's emergence, and the site of the contract's performance.

If the defendant resides within the court's territorial borders or if the cause of action originates within the court's jurisdiction, jurisdiction may be established under Indian law. Given that parties to electronic contracts may be located all over the world, the place of performance might be read flexibly in this context. Indian courts have acknowledged that for determining jurisdiction in cross-border e-contract issues, the location of the server or the area where the contract is accepted may be significant factors.

India has evolved its approach to cross-border issues through a number of historic cases. The Supreme Court of India established criteria for establishing jurisdiction in the **Modi Entertainment Network v. WSG Cricket** case, placing particular emphasis on the venue of performance, relevant legislation, and the convenience of the parties. In a similar vein, the Bombay High Court decided in *Tata Sons Ltd. v. Advanced Information Technologies* that jurisdiction in cross-border e-contract disputes might be determined by the defendant's residency or the location of the server.

Indian courts have taken a more limited stance when it comes to tort cases. Usually, jurisdiction is determined by the place where the tortious act was performed or where the act's effects materialised. A comparison of the UK and Indian approaches reveals key differences in how jurisdiction is established in cross-border disputes involving electronic contracts and torts.

In the United Kingdom, common law rules that emerged after Brexit, including *forum non conveniens*, provide courts more latitude when it comes to reducing jurisdiction. In Indian jurisprudence, where legislative guidelines predominate, this principle is essentially absent. Indian courts strictly adhere to the established statutory criteria, placing more emphasis on the

defendant's place of residence and the location of the cause of action than do UK courts, which also take into account convenience and the parties' connection to the forum.<sup>821</sup>

In cross-border e-contract disputes, the UK has traditionally relied on the principle of domicile, with a growing emphasis on choice of court agreements under the Hague Convention post-Brexit. In contrast, Indian courts have adopted a more pragmatic approach, considering factors like the location of the server or the place of contract acceptance. This flexibility allows Indian courts to adapt to the complexities of e-contracts, where geographical boundaries are often blurred.

In tort matters, both jurisdictions allow for jurisdiction to be established at the location where the harm occurred. However, the UK's doctrine of *forum non conveniens* again offers more flexibility, allowing courts to defer jurisdiction if they believe another forum is better suited to hear the case. India, in contrast, focuses more on the location of the tortious act or its consequences.

Practical challenges in cross-border e-contracts and torts arise from the inherently global nature of online transactions and activities. In both the UK and India, determining the appropriate jurisdiction can be difficult when parties are located in different countries, and the contract's performance may occur across multiple jurisdictions. For e-contracts, the primary challenge lies in identifying the place of performance or acceptance, particularly in cases where the server or the contracting parties are located in different jurisdictions. For torts, the challenge is determining where the harm occurred, especially when the tortious act happens online, potentially affecting multiple jurisdictions simultaneously.<sup>822</sup>

<sup>821</sup> Ensuring Efficient Cooperation with the UK in civil law matters Situation after Brexit and Options for Future Cooperation Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies PE 743.340 – March 2023 S

<sup>822</sup> Rostrum's Law Review | ISSN: 2321-3787 E-Contracts: Mail Box rule and Legal Impact of the Information Technology Act, 2000 Authored by - Atul Kumar Pandey Issue - RLR (2014) Volume I Issue IV



In conclusion, while both the UK and India offer established frameworks for determining jurisdiction in cross-border disputes, their approaches differ significantly. The UK's reliance on forum non conveniens post-Brexit contrasts with India's more rigid statutory guidelines. However, both jurisdictions face similar practical challenges in adapting their legal frameworks to the realities of electronic contracts and tortious acts in the digital age.

### CHOICE OF LAW AND CONFLICT OF LAWS

Determining which legal system to apply in cases with cross-border aspects is a critical aspect of private international law. Known as "conflict of laws," this field of law addresses issues with jurisdiction, recognition of foreign judgements, and relevant law. Different countries have different techniques to settling problems arising from tort law and contract law. The application of the Rome I and II Regulations in the UK and the analogous laws under Indian law will be the main topics of comparison between the approaches taken by the UK and India to choice-of-law concerns in this section.

The UK historically applied common law principles for resolving conflict-of-law issues. However, EU regulations introduced a more structured and harmonized approach. Despite Brexit, the UK's courts continue to refer to the Rome I Regulation (Regulation (EC) No 593/2008) for contracts and the Rome II Regulation (Regulation (EC) No 864/2007) for torts, which were retained in domestic law following the European Union (Withdrawal) Act 2018.

The Rome I Regulation controls which law applies to contractual duties in civil and business contexts. Party autonomy, which gives the parties the freedom to select the appropriate law, is its core tenet. However, if no choice is made, the regulation provides default rules based on the nature of the contract. For example, in a contract for the sale of goods, the law of the seller's habitual residence applies. In employment contracts, the law of the country where the employee habitually works governs

unless a closer connection to another jurisdiction exists.

Rome I also include mandatory rules, such as consumer protection provisions, that cannot be derogated from even by agreement. This ensures that weaker parties, such as consumers or employees, are not disadvantaged by choice-of-law clauses.

The Rome II Regulation applies to non-contractual obligations, such as torts or delicts. Its default rule is that the law of the country where the damage occurs governs the tort. However, if both parties have a closer connection to another country, that country's law may apply. Rome II also includes specific rules for particular areas of law, such as product liability and environmental damage. Importantly, it allows the parties to agree on the applicable law post-incident, though this is subject to limitations, particularly in cases involving public interest.

Rome II provides flexibility while maintaining predictability, and both regulations reflect the EU's broader goal of harmonizing private international law within its member states.

India's conflict-of-laws regime, particularly in the areas of contracts and torts, is rooted in common law principles derived from British law. However, unlike the UK, India has not codified its rules into a comprehensive statute equivalent to the Rome I and Rome II Regulations. In the absence of a codified statute on choice-of-law rules for contracts, Indian courts generally follow the doctrine of party autonomy. Indian courts uphold the principle that parties to a contract are free to choose the governing law. This principle has been consistently applied in both domestic and international contracts. However, if no law is chosen, the Indian courts determine the applicable law based on the closest and most real connection to the dispute. A number of variables could be taken into account, including the location of the contract's execution and performance as well as the parties' habitual residence or domicile.

In certain cases, Indian courts have refused to apply foreign law if it conflicts with Indian public policy, particularly in cases where fundamental rights or public morality are at stake. India also follows the doctrine of "mandatory rules" similar to Rome I, where certain statutory provisions, especially in labor law, may apply irrespective of the parties' choice of law. India lacks a specific statute addressing the choice of law for torts, but Indian courts typically apply the principle of *lex loci delicti*, meaning the law of the place where the tort occurred. This is similar to the approach under Rome II. However, Indian courts may deviate from this rule if the case has a closer and more significant connection to another jurisdiction. For example, in cases involving cross-border defamation or multi-jurisdictional environmental damage, the court may assess the broader context to determine the applicable law.

Indian courts are also guided by the principles of justice, equity, and good conscience, particularly in cases where the foreign law may appear inequitable or unjust in the Indian context. Public policy considerations play a significant role in such cases, allowing Indian courts the flexibility to apply Indian law when necessary. While both the UK and India uphold the principle of party autonomy in contract law, their approaches differ significantly in terms of codification and structure. The UK's application of the Rome I Regulation provides a clear and predictable framework, while India's reliance on common law principles offers more judicial discretion. In the UK, the parties' choice of law is generally respected unless it contravenes mandatory EU or UK laws, such as consumer protection or employment rights. In India, although party autonomy is similarly respected, public policy exceptions are broader, providing Indian courts with the ability to override foreign law more frequently when it conflicts with fundamental Indian values.

In tort law, both jurisdictions generally apply the principle of *lex loci delicti*, but the UK's Rome II Regulation offers a more detailed and nuanced approach to resolving tort-based conflicts. For

example, Rome II provides specific provisions for environmental torts, defamation, and product liability, areas where Indian law remains less developed. The UK also allows for more party autonomy in post-tort agreements on the applicable law, whereas Indian law is more restrictive, prioritizing public interest and justice.

In conclusion, while both the UK and India share common-law roots, their approaches to conflict of laws in contracts and torts have evolved differently. The UK's adoption of the Rome I and II Regulations reflects a move towards harmonization and predictability, whereas India's approach remains more flexible and case-specific, guided by broader principles of equity and public policy.

#### **RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS:**

The recognition and enforcement of foreign judgments refer to the process by which a court in one jurisdiction acknowledges and gives effect to a judgment issued by a court in another jurisdiction. This legal concept is pivotal in ensuring cross-border enforcement of rights, especially in the increasingly globalized world where disputes often span multiple jurisdictions. Both the UK and India have legal frameworks for recognizing and enforcing foreign judgments, but there are differences in their approaches, particularly regarding reciprocity, conflict-of-law principles, and the treatment of judgments in electronic cases. This essay will explore the laws of the UK and India in these areas.

In the United Kingdom, the recognition and enforcement of foreign judgments are governed by a combination of statutory and common law principles. One of the key statutes is the Foreign Judgments (Reciprocal Enforcement) Act 1933, which allows for the registration of judgments from countries with reciprocal enforcement agreements. However, the UK's approach to recognizing foreign judgments in electronic or digital cases is a developing area of law. As electronic transactions and online business have grown, so has the need for clarity on how judgments in

such cases should be recognized across borders.

In general, the UK courts require that a foreign judgment must be final, conclusive, and not contrary to public policy. In electronic cases, especially those involving online defamation or e-commerce disputes, courts have become more flexible in accepting judgments rendered in online or virtual settings. The Lugano Convention (for non-EU European Free Trade Association (EFTA) states) and the Brussels Recast Regulation (for EU member states prior to Brexit) both contained comprehensive procedures for the acceptance of rulings, including those involving digital platforms. The UK is handling these situations more and more through domestic law and bilateral agreements since Brexit.

The UK has reciprocal enforcement treaties with numerous countries, allowing for the easier enforcement of judgments. These treaties provide mechanisms whereby judgments rendered in one jurisdiction can be recognized and enforced in the other without a complete rehearing of the case. For example, the UK's reciprocal agreements with Australia, Canada, and several Commonwealth countries allow for streamlined enforcement.

In the absence of a reciprocal treaty, judgments can still be recognized under common law, but the process becomes more cumbersome. The judgment creditor must initiate new legal proceedings in the UK, and the foreign judgment is treated as evidence of a debt. This is more time-consuming and costly than recognition under a treaty.

The recognition and enforcement of foreign judgments in India are governed by Section 13 and Section 44A of the Code of Civil Procedure, 1908 (CPC). According to Section 13, a foreign judgment is conclusive unless it falls under specific exceptions, such as being obtained by fraud, lacking jurisdiction, or going against Indian public policy. Section 44A provides for the enforcement of foreign judgments from reciprocating territories, meaning that

judgments from these territories can be enforced in India as if they were domestic judgments.

The procedure generally involves filing an execution petition before an Indian court, along with the foreign judgment, to seek enforcement. The court will examine the judgment to ensure that it meets the requirements under Section 13, including that it was not obtained under duress, through a faulty judicial process, or in violation of natural justice principles.

In India, the idea of reciprocity is essential to the enforcement of foreign judgements. A foreign judgement that emanates from a "reciprocating territory"—as designated by the Indian government—can only be executed in India. For example, Section 44A of the CPC recognises the UK as a reciprocating territory. Non-reciprocating territory judgements must be sued upon in an Indian court, where the foreign judgement acts as prima facie evidence of a claim, rather than being directly enforced in India.

In practice, this means that judgments from countries with which India does not have a reciprocal arrangement must undergo a full trial in India. The Indian court will consider the merits of the case anew, although the foreign judgment may influence the court's decision. One of the key differences between UK and Indian law on foreign judgments lies in their conflict-of-law principles. In the UK, the courts apply a more flexible, pragmatic approach to conflict-of-law issues, especially in commercial and electronic cases. The UK's legal system has evolved to accommodate the complexities of digital commerce and transnational disputes. British courts are increasingly using forum selection clauses and choice of law agreements to resolve conflict-of-law issues in cross-border disputes.

In contrast, Indian courts tend to adhere more strictly to traditional principles of private international law. For example, in India, a foreign judgment may be refused recognition if it violates Indian statutory law or public policy.

This approach is more conservative than the UK's, particularly in cases involving intellectual property or e-commerce disputes where the application of foreign law might lead to outcomes that are inconsistent with Indian law or values.

Moreover, Indian courts are more cautious in recognizing judgments from jurisdictions where Indian parties may have been disadvantaged, particularly in cases involving weaker negotiating power or lack of representation. This cautious stance reflects India's protective approach to safeguarding its citizens from the imposition of foreign judgments that may not align with domestic standards of justice.

The recognition and enforcement of foreign judgments in both the UK and India are shaped by their respective legal traditions and priorities. While the UK emphasizes flexibility and efficiency, particularly in commercial and electronic disputes, India adopts a more cautious, sovereignty-conscious approach, requiring greater scrutiny of foreign judgments. Reciprocity remains a central theme in both jurisdictions, but the UK's broader network of reciprocal treaties facilitates the smoother enforcement of foreign judgments, while India's narrower focus on reciprocating territories reflects its measured approach to the global legal order.

#### COMPARATIVE SUMMARY:

The fields of contract law, tort law, and jurisdictional approaches reveal significant similarities across legal systems, especially in common law and civil law jurisdictions. These shared principles serve as the foundational bedrock for legal interactions in commercial and civil matters globally, fostering both predictability and fairness.

1. **Contract Law:** Across various legal systems, the core principles of contract law remain largely uniform. Contracts are governed by the principles of offer, acceptance, and consideration. Whether within civil or common law traditions, the

aim is to ensure that agreements are legally binding and enforceable. A contract requires mutual consent, clarity in terms, and lawful consideration. Parties to a contract have the freedom to negotiate terms as long as they abide by statutory regulations and public policy. This principle of autonomy in contract formation is a cornerstone shared by most jurisdictions.

2. **Tort Law:** In tort law, the concept of negligence is a common thread binding different legal systems. Whether in the United States, the United Kingdom, or within European civil law systems, the concept that an individual owes a duty of care to others and that a breach of this duty resulting in harm warrants legal remedy is well-established. Furthermore, compensatory damages are universally recognized as a remedy for losses suffered as a result of another's negligence or wrongful act. This commonality in addressing civil wrongs helps provide a framework for ensuring that individuals and businesses are held accountable for their actions.
3. **Jurisdictional Approaches:** When it comes to jurisdiction, both common law and civil law systems exhibit a shared commitment to principles of territoriality and personal jurisdiction. Courts must establish that they have the appropriate authority to hear a case, which is determined based on where the harm occurred, the residence or nationality of the parties, or where the contract was executed. International treaties, such as the Hague Convention on Choice of Court Agreements, also play a role in promoting uniformity in jurisdictional determinations. These common jurisdictional principles help in addressing cross-border legal disputes effectively, fostering cooperation between countries in legal matters. Despite these shared principles,

differences in statutory frameworks, enforcement mechanisms, and choice of law rules across jurisdictions present challenges for individuals and businesses operating internationally.

1. **Statutory Frameworks:** One of the key areas of divergence lies in the statutory frameworks governing contracts and torts. Common law jurisdictions, such as the United States and the United Kingdom, rely heavily on case law or judicial precedents to interpret and apply legal principles. In contrast, civil law countries, such as Germany and France, are governed by comprehensive statutory codes that provide detailed guidance on the rights and obligations of parties. For example, the French Civil Code provides precise statutory regulations on contract formation, whereas the common law system leaves room for judicial interpretation.
2. **Enforcement Mechanisms:** Enforcement of judgments differs significantly between common law and civil law systems. In common law jurisdictions, enforcement mechanisms often involve judicial discretion, with courts having the authority to issue judgments that are enforceable domestically. However, in civil law jurisdictions, enforcement is more codified and structured, often requiring formal processes such as garnishment orders or liens. Additionally, cross-border enforcement can be particularly challenging due to the lack of harmonization in enforcement procedures between countries.
3. **Choice of Law Rules:** When disputes arise across borders, the choice of law becomes a critical issue. Legal systems differ in their approach to determining which law applies to a particular case. Common law jurisdictions may prioritize the principle of party autonomy, allowing parties to choose the governing law in

contractual agreements, while civil law countries often place greater emphasis on statutory rules and public policy considerations. Furthermore, the application of foreign laws in domestic courts is often met with varying degrees of acceptance, depending on the jurisdiction.

#### CONCLUSION AND RECOMMENDATIONS:

Given these differences, there are several challenges in ensuring the smooth functioning of legal principles across borders. Some of the most pressing challenges relate to cross-border enforcement, regulatory fragmentation, and harmonization of legal standards.

1. **Cross-border Enforcement:** One of the most significant challenges is the enforcement of judgments across different jurisdictions. Variations in legal systems mean that a judgment obtained in one country may not be recognized or enforceable in another. This creates a significant barrier to the efficient resolution of international disputes. For instance, in contract disputes, parties may find it difficult to enforce judgments in foreign courts without going through time-consuming and costly legal procedures.

**Recommendation:** International treaties such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Hague Convention on the Recognition and Enforcement of Foreign Judgments should be strengthened and expanded. This would help streamline enforcement processes and ensure that judgments are honored across borders with minimal bureaucratic hurdles.

2. **Harmonization of Legal Standards:** The fragmentation of legal standards across jurisdictions complicates cross-border transactions and dispute resolution. Different interpretations of contract terms, varying tort liabilities, and inconsistent regulatory frameworks

increase uncertainty for businesses and individuals operating internationally.

**Recommendation:** Efforts to harmonize legal standards through regional organizations, such as the European Union's attempt to unify contract laws under the Common European Sales Law (CESL), should be supported. Additionally, the promotion of model laws, like the UNCITRAL Model Law on International Commercial Arbitration, can provide a template for legal harmonization in areas such as arbitration and contract law.

3. **Legal Reforms:** As legal systems evolve, there is a need for continuous reforms to address emerging challenges in cross-border legal disputes, particularly with the rise of digital commerce and global supply chains. Statutory reforms aimed at clarifying the application of domestic laws in international contexts are necessary.

**Recommendation:** Countries should undertake periodic legal reforms to modernize their statutory frameworks and address gaps in cross-border enforcement. Legislatures should also consider adopting uniform legal provisions that cater to emerging sectors such as e-commerce, intellectual property, and international arbitration.

In conclusion, while the similarities in contract and tort law principles provide a degree of commonality across legal systems, differences in statutory frameworks, enforcement mechanisms, and choice of law rules present significant challenges. By addressing these challenges through reforms and increased international cooperation, the global legal landscape can become more predictable and conducive to cross-border interactions.

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