

Doctrine Of RENVOI : A Hurdle In Disguise

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INTRODUCTION

Judiciary and its *modus operandi* have throughout the time unfolded as a competent mechanism for raising and establishing the standards of fairness and justness in the society. Any prevailing judicial system in the globe operates with decisive object of providing justice with equity and no discrimination based on who knocks the door of court. For furnishing this object it demands construction of principle of law in such a manner that, in majority case possible, it will lead to similar decision on similar question of law. This necessity of uniformity and consistency flows in every line of the law and it is demanded by any legal system in the globe to establish consistent and uniform *modus operandi* to meet the justice and equity.

Generally all legal systems around the globe have incorporated principle of equity and non-discrimination in their laws thus there are no hurdles in this aspect. However, the problem catches heat in those cases where there are requirements of rule of law to be applied which are foreign to that country's courts. Cases with such essence which associates with them the element of foreign jurisdiction raises the question of choice of law. It mandates to discuss the question as to whether court should reflect foreign rule of law in their decision and if yes then at what length.

Conflict of laws or Private international law constitutes the legal principles and rules governing international private relations. It thus gives rise to that branch of law which deals with cases where some relevant fact has a geographic connection creating a "foreign element", and that raises a question regarding jurisdiction and which law applies i.e. arises when there are one or more legally relevant foreign elements, resulting in two or more different laws competing relative

to a person, act or fact, or to a single thing and there is doubt about which law should apply.

WHAT IS RENVOI?

The word Renvoi is derived from the word "*renvoyer*" which means to send or refer back.² The doctrine of Renvoi arises when the forum court has adjudicated upon a subject according to their rules of conflict of law where it can be decided in foreign jurisdiction as well hence the subject is referred back. It refers to the application of rules of one state by the court or tribunal of another state, in order to solve a conflict of laws problem. The recognition of Renvoi theory signifies that the rule of conflict of law incorporates not only ordinary or domestic laws of the foreign state but also its rules of conflict of law as well.

The spring authority of this doctrine is *Collier v. Rivaz*³, where the issue pertaining to formal validity of the wills was raised and English court had not considered the English and applied Belgian Conflict of law. Sir H. Jenner remarked that "the court determining the issue at hand must consider itself sitting in Belgium in peculiar circumstances." Thus it was evoked as an escape route for avoiding rigid English conflict of laws at that time.

FORMS OF RENVOI

Before a judge resort to the doctrine of *Renvoi*, there is a solution of application of internal law only. But if there was no room for application of internal law, then judge may apply the proper type of *Renvoi*.

As it is well known, *Renvoi* has two types.

1. Partial or Single or First Degree *renvoi*

It is that form when the foreign law refers to the forum law, and if the *Renvoi* is accepted, the approached court shall apply its own domestic law. In other words, forum court refers its rule

of law to a foreign country but foreign country refers it back to forum court, the judge of forum court applies domestic laws, but after remission of foreign court.

The discussion on Single *Renvoi* was determined in *Forgo*⁴ case.

Forgone illegitimate Bavarian national, was born with a domicile in Bavaria, but lived most of his life in France without ever acquiring a “domicile” under French law. He left movable property in France but no relatives except for some remote collateral relatives of his mother. These could not succeed him under French law, and under French law the property, being ownerless, would go to the French state. Under Bavarian law they could succeed. The French court would determine the question by applying Bavarian law but the state argued that the Bavarian courts would apply French law, and the French courts should do otherwise.

2. Total or Double or Second Degree *Renvoi*

It is that form when forum court considers that it is sitting as the foreign court and would decide the matter as if the foreign court itself is adjudicating the matter. It will not only take the account of conflict rules of law but also its *Renvoi* doctrine. It is also called as “Foreign Court Theory”, which demands that a judge, who is referred by his own laws to the legal system of a foreign country, must apply whatever law a court in that foreign country would apply if it were hearing the case.

The leading authority of total *Renvoi* was reflected in *re annesley*⁵,

An Englishwoman of British domicile of origin, died domiciled in France in the English sense, but not the French sense because she had not obtained authority to establish her domicile in France as required by Article 53 of the Civil Code [she failed to comply with registration formalities]. She left a will which purported to dispose of all her property. By French law, she

could only dispose of one-third of her property because she left two children surviving her. Evidence was given that a French court would refer to English law as her national law would accept the *Renvoi* back to French law. French domestic law was applied and her will was only effective to dispose of one-third of her property.

RENVOI : A HURDEL IN DISGUISE

The doctrine of *Renvoi* raises a simple yet complicated issue which goes like this: when *lex fori*⁶ lays down that a particular issue should be decided by forum court as the *lex situs*⁷, or the law of the domicile of that person, does it mean domestic or internal rules of that legal system or does it mean all the rules of law including the rules of conflict of law? If we take later as reference then results would be so strange where rules of conflict of law of a particular country are inconsistent from those of *lex fori*.

However, the issue of *Renvoi* may not arise if countries under an international convention decides to apply a foreign in given set of circumstances as that decision must mean foreign domestic law. But there are International Conventions which adopts a uniform rule of conflict of laws expressly provided that the chosen as applicable must mean the domestic law of that country.

Another problem what *Renvoi* creates is an Application of domestic law of foreign country. it could defeat reasonable expectations of person, constitute negation of policy underlying Private International Law rule; i.e. rule that interstate succession to movables governed by law of domicile based on view that application of law of person's home best fits reasonable expectation of individuals; if court applies *Renvoi*, which usually substitutes nationality as connecting factor, expectations of person who did not make will because he believed his property would devolved according to local rules governing interstate succession may be defeated.

In private international law there is a principle according to which the conflicting norm of the judicial forum is applied and not the one of the foreign law system, and if the *Renvoi* is accepted, it would mean that this principle is no longer endorsed, as the competent court for solving the case would guide itself by the foreign conflicting norm to determine the appropriate law. The admission of the *Renvoi* generates uncertainty regarding the legal solution. The *Renvoi* cannot be accepted because it increases the uncertainty in private international law and constitutes an exception to the normal cases of application of the foreign law. For these mentioned reasons several treaties and international conventions no longer allow the *Renvois*.g. Rome Convention.

Total *Renvoi* difficult to apply; requires that local court ascertain as facts the precise decision that foreign court would render; local court must obtain prevailing view in foreign country on doctrine of single *Renvoi*; it may be difficult to prove especially where the point may not yet be litigated; difficult to acquire info from reliable experts.

CONCLUSION

It is evident from the above discussion that *Doctrine of Renvoi* is not one which is completely constructed and has various gaps to be filled. Doctrine promotes the idea of individual rights which are vested on them must be bestowed by all foreign court. This doctrine sometimes reflects arbitrary judicial discretion of the court rather than strict and consistent application due to inefficient testimony of the expert and ultimate choice of the *Lex cause*.

On a broader sense, codification at international level may bring uniformity and harmony between national and international level. Such international uniformity will raise some degree of predictability which will help to curtail *Forum Shopping*. But unfortunately due to unwillingness of many countries to give away

or compromise their traditional rule of choice of law, various International Conventions on Private International Law have not been able to reach their purpose.

Doctrine have often been proved as an effective tool in past for arriving at a choice of law for a reason of policy rather than logic. The courts should refrain from such choice of law techniques and should make an attempt at formulating conflict rules in the interest of Socio-Economic reality. In this way, choice-influencing consideration will not be blocked by the *Doctrine of Renvoi*.

(Endnotes)

1. 4th Year BBA LLB Student at R N Patel Ipcowala School of Law & Justice, Gujarat.
2. David McClean, THE CONFLICTS OF LAW, 7th Edition, 2009 at p. 531
3. (1841) 2 Curt. 855.
4. B. Ancel and Y. Lequette, *Grands arrêts de la jurisprudence francais de droit privé*, 2nd ed., Paris, Sirey, 1992, pp. 53-60, 1878.
5. [1926] Ch 692
6. The law of the Forum
7. Law of the place where person or subject or property is situated