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## Overview of Jurisdictional Law of India

Laws in India are straight forward and give limited freedom for forum selection. Parties cannot decide their choice of court arbitrarily. Laws regarding personal jurisdiction are codified in India.

### When contract specify forum

In India, forum selection agreements are enforceable only if selected forum is one of the forums given by Indian law in face of the facts. Otherwise no prorogated agreements are enforceable. To understand that you will need to look into two laws, (1) Section 28 of Indian Contract Act, 1872 and (2) section 20 of Code of Civil Procedure of India.

Indian Contract Act, 1872, Section 28 "Agreements in restraint of legal proceedings void) - "Every agreement, - (a) \* \* \*(b) Which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent. "

Indian Code of Civil Procedure 1908, Section 20 - "Every suit shall be instituted in a Court within the local limits of whose jurisdiction – (a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or(b) Any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or(c) The cause of action, wholly or in part, arises".

If contract have forum selection agreement on such forum and it is one of the forum given by the law only then and then such agreement is enforceable. If forum selection agreement is of the third forum, then it is not enforceable.

Any person may contract, either expressly or impliedly, to submit to the jurisdiction of a court to which he would not otherwise be subject. In case of an international contract it is common practice for the parties, to agree that any dispute arising between them shall be settled by the courts of another country even though both the parties are not resident of that country. In such a case having consented to the jurisdiction one cannot afterwards contest the binding effect of the judgment. The defendant out of the jurisdiction of the country may be deemed to have been

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served by the service on his agent within the jurisdiction, however, parties cannot by submission confer jurisdiction on the court to entertain proceedings beyond its authority.

## **When contract does not specify forum**

Primarily, Indian Code of Civil Procedure 1908, (C. P. C) which is applicable to whole of India, governs the Jurisdictional Law. The laws in India says that any person has to go to the court of jurisdiction in which either (1) opposite party or defendant is doing business or in absent of place of business, a residence or(2) where the cause of action arises. The place of business includes any branch of the business entity.

The cause of action arises where the exchange of goods took place or where the services to be provided. In India plaintiff have to choose where he wants to sue defendant from the options given by Code of Civil Procedure, in lieu of contrary agreement.

There is a tremendous variety in the bases of jurisdiction adopted in different states. The jurisdiction law may contain in codified statute, case laws, bilateral or multilateral treaties or international conventions.

In deciding jurisdiction, in the common law States like Britain and United States where bases of the law is case laws, the courts may take into consideration the doctrine of forum convenience or forum non convenience. Forum convenience can be defined as a court taking jurisdiction on the ground that the local forum is the appropriate forum for trial or that the forum abroad is inappropriate. It is a positive doctrine, unlike the doctrine of forum non convenience which is negative doctrine concerned with declining jurisdiction. Forum non convenience can be defined as a general discretionary power for a court to decline jurisdiction on the basis that the appropriate forum for trial is abroad or that the local forum is inappropriate. There is not a single doctrine of forum convenience or forum non convenience. The States which have adopted the doctrines have their own version of it. In exceptional cases like Quebec and The Netherlands, doctrine of forum non convenience is codified under the State law. There are States who have not recognized the doctrine of forum convenience or forum non convenience. There are number of reasons why they did not adopt the doctrines. One is the closed system, under which the law of procedure strictly defines the cases in which the courts have jurisdiction, in principle leaving no room for judicial discretion. This is the system to be found in civil law jurisdictions but India is an exception to this statement. India, being a common law country, the law of jurisdiction is codified in Code of Civil Procedure leaving no room for judicial discretion. But it gives certainty and predictability. Second is in many States forum shopping is not seen as being a problem. Like in Argentina the bases of jurisdiction normally goes with the domicile of the defendant, which prevents persons from bringing actions in Argentina which have no connection with the state. In Finland, it is accepted that a person will have good reasons if that person sues in

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Finland. In India the bases of jurisdiction is either domicile of the defendant in India or cause of action arises in India. Third is the position of judges. In civil law countries the power of judges has been limited and has no discretionary power as against wide discretionary power of judge in common law countries. The fourth is Absence of cases. The fifth is constitutional problems, like Germany where constitutional provision bared application of doctrine of forum convenience or forum non convenience.

The other situation the jurisdiction law encounter is when the contract has forum selection clause. There is a very clear difference between common law jurisdiction and other states when it comes to the effect given to an agreement conferring jurisdiction on the courts of a foreign state. In common law jurisdiction the court has discretion to decline jurisdiction or accept jurisdiction over the dispute, despite the parties prior agreement on trial abroad. In other States the declining of jurisdiction is compulsory or even more fundamentally, the state may have no jurisdiction.

When both forum selection clause and choice of law clause is included in transaction:- If dispute raised and case goes to Indian court, the court will recognize choice of law clause subject to lawfulness of contract under Indian laws. That includes, but not limited, to make sure that the contract is not forced, there is no fraud; object of contract is lawful according to Indian law etc. Indian Contract Act, 1872, Section 10 defines what agreements are contracts. Section 11 of the act defines who are competent to contract, Section 13 of the act defines what consent is, and Section 14 of the act defines free consent that further pointing to section 15 to 22 defining what is not included in free consent, Section 23 defines what consideration and objects are lawful and further from section 24 to 30 of the act defines void contracts. There is not law exists in India that bars enforcement of foreign law so parties can choose what law will govern any dispute between them for that contract. The Indian court will enforce forum selection clause if the selected forum is in accordance with Indian law.

Forum selection clause is included but choice of law clause is not included in transaction: - In such a case, the court will enforce forum selection clause provided forum selection was complying with Indian law. Indian Contract Act, 1872, Section 10 defines what agreements are contracts. Section 11 to 30 helps defining enforceable contract under Indian Laws. The Indian court will enforce forum selection clause if the selected forum is in accordance with Section 20 of Indian Code of Civil Procedure, 1908 and Section 28 of Indian Contract Act, 1872. In absence of agreed choice of law, if Indian court retain jurisdiction, the court will apply Indian law.

Forum selection clause is not included but choice of law clause is included in transaction: - If dispute raised and case goes to Indian court, the court will decide if that court have jurisdiction or not. Section 20 of Indian Code of Civil Procedure, 1908 has provision for law of jurisdiction. If

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Indian court retain jurisdiction then it will enforce choice of law clause provided lawfulness of contract under Indian law. Indian Contract Act, 1872, Section 10 defines what agreements are contracts. Section 11 to 30 helps defining enforceable contract under Indian Laws. There is no law exists in India that bars enforcement of foreign law so parties can choose what law will govern any dispute between them for that contract.

None of forum selection clause or choice of law clause is included in transaction: -The court will decide if that court have jurisdiction or not. Indian code of civil procedure has provision for law of jurisdiction. If Indian court retain jurisdiction, Indian law applies.

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