

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 4

2022

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Domicile: Its Scope and Impact on the Indian Law System

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ABSTRACT

Domicile as a legal concept deals with the permanent abode of an individual and where he plans on staying for an indefinite time. Earlier it was used to determine jurisdiction to apply the law accordingly. But as society keeps changing, so does the law. And thus, there is now a need to understand domicile and its ideology, since it's carrying out more functions and has a key role in assuming the jurisdiction for various legislations and the decisions that led to them. Domicile is a wide-open concept that helps organise the laws of the land and keeps them separate from other places or jurisdictions. This in turn helps to administer and govern the land judiciously. Under Indian law, Domicile has been used and referred to in many legislations and statutes. But the most intricate details regarding this topic can be seen under the Indian Succession Act (1925) where a whole chapter has been dedicated to this topic. The Act basically talks about the application, kinds and other instances of territorial law and regulations that have been adapted for its implementation. But domicile is not just a concept or ideology that's of growing importance for administration and power in the state, it is of core importance to the basis of Private International Law and the Common Law System. The need and principles behind domicile helped to make legislations and laws that help figure out the jurisdictions, authorities that oversee it and their roles, which eases procedures for the administration of a place.

Keywords; *Domicile, Origin, Dependence, Choice, Residence, Citizenship, Legislation, Indian Succession Act.*

I. INTRODUCTION

Domicile establishes the permanent residence of a person. It's determined without considering the duration a person has lived in different states or jurisdictions, no matter how long it was. A basic principle that it normally adheres to is- one person, one legal domicile. This is to avoid any kind of complications that may come from having multiple jurisdictions governing a single legal entity, hence the aforementioned principle. The legislation has laid down ways one can acquire their domicile. Domicile as a concept doesn't involve the physical aspects of preserving a house, it's moreover concerned with the intentions of a person to stay in a particular place or

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state permanently, willingly. This will not change unless they wish to do so. Every individual needs to have a fixed and permanent abode and follow the *lex loci* of that state as it's been prescribed. Every state has the right to make its laws regarding matters that need to be controlled and organized to have balance and order in society. And for this, it's essential to establish the domicile of everyone living in that society or state.

(A) Research Questions

- Importance of establishing a single legal domicile and its scope in the legal system.
- General principles of domiciles and the laws about it
- Difference between Domicile, Nationality and Residence
- Private International Law lays the foundation for legislation concerning Domicile.

II. DOMICILE

Domicile conveys the permanent abode of a person and their intent to remain there or return to that place even if they leave for an indefinite period. That is, that if a person leaves their legal domicile, they intend to return or come back to it.

Domicile is an important legal concept. Through numerous enactments, it's evident how a person's domicile plays a very distinctive role in the process of determining jurisdiction and consequently, in determining the law.

Domicile under Indian Law is explained in *Chapter 2* of the *Indian Succession Act, 1925*. Legally, domicile plays a key role in the writing of a will and is also prominent for laws of succession, as according to Indian law, the distribution of the property of a deceased person domiciled to India will be conducted according to the Indian laws. The concept of domicile can be seen under various other legislations as well like the *Hindu Marriage Act (1955)*², *Indian Divorce Act(1869)*³ and so on. In *Chapter 2* of the *Indian Succession Act(1925)*, we can see around 15 sections; *section 4 to section 19*, that explain in detail the kinds of domicile and some other characteristics regarding it. *Section 4* precisely talks about its application, where it clarifies that this act and its provisions do not apply to deceased people who are *Hindus, Muslims, Buddhists and Jains*⁴. This is because the people who follow the said religions and beliefs have *customary laws* that prescribe how a succession of movable and immovable property should take place. This also implies that people who follow other religions, like *Christianity*, don't have

² Hindu Marriage Act, 1955, Section 1(2), No.25, Acts of Parliament, 1955 (India)

³ Indian Divorce Act, 1869, Section 2, No. 4, Acts of Parliament, 1869 (India)

⁴ Indian Succession Act, 1925, Section 4, No.39, Acts of Parliament, 1925 (India)

customary laws that have been prescribed.

III. GENERAL PRINCIPLES- COMMON LAW SYSTEM

Lord Cranworth in Whicker v. Hume (1858)⁵, domicile was described as "home, permanent home, and if you do not understand your permanent home, I'm afraid that no illustration drawn from foreign writers will very much help you to it"

Domicile isn't specifically defined in any of our law books but the ideology behind it has let us form ways to regulate and apply the law as it's been prescribed, enhancing the *Indian Law System*. Even though the scope is wide and complex, domicile still organises law. While the subject has many perspectives for its applications it's also based on certain principles, like:

1. A person can have only *one legal domicile*
2. Every person *must have a domicile* and cannot live without one
3. Domicile can be *acquired by will and desire*
4. Domicile connects people with *territorial law*

The growing scope and need for domicile have led to a more *codified society*. This was done by enacting legislation and laws so that there is *growth and development* within the society and its people.

IV. FORMS OF DOMICILE

According to the Succession Act, domicile is of three kinds;

(A) Domicile By Origin

Sections 6,7 and 8 of the Act discuss the domicile by origin which is the domicile of a person *by birth*. This is when a child acquires a domicile after their birth. Place of birth is not to be confused with the domicile of the newborn. Domicile is determined by the domicile of the parents. There are three cases that we can observe under this-

*For legitimate children*⁶; if the child is born within a marital relationship, then the child's domicile will be that of the father at the time of birth.

*For illegitimate children*⁷; if the child is born out of wedlock then his/ her domicile will be the mother's domicile at the time of birth.

⁵ Lord Cranworth in *Whicker v. Hume*, (1858) 7 HLC 124 (160)

⁶ Indian Succession Act, 1925, Section 7, No. 39, Acts of Parliament, 1925 (India)

⁷ Indian Succession Act, 1925, Section 8, No. 39, Acts of Parliament, 1925 (India)

For posthumous children⁸; the child will have the domicile of the father at the time of his death. Since this way of acquiring domicile is by birth it can also be considered as the most common way a person acquires domicile and they continue with it till they decide to change it.

(B) Domicile By Choice

When an individual reaches the majority age group (18 and above) he can acquire a new domicile by moving away from their domicile by origin with no intention of returning back to it⁹. His/her new habitation will be recognised by the government if he/she follows the prescribed procedure given to establish their new domicile voluntarily. If a person wants to acquire the domicile they desire then they will have to express this in writing to the government to declare or prove their intentions beyond doubt. They will have that place as their domicile until and unless they resume the domicile of origin or they acquire a new domicile.

For acquiring domicile in India it's compulsory to make sure they were *residing in India for the past year* at least. Only if this condition is satisfied then they can provide their declaration to the government expressing the will to acquire India as their domicile¹⁰.

Another instance the act mentions is when a Government Official of another country is assigned to work in India, like an Ambassador or Representative, they won't be acquiring domicile in India¹¹. This is because they are residing in India at the time only because of their work or appointment.

The sections covering these instances are *Sections 10,11,12 and 13* of the Act.

(C) Domicile By Operation Of Law

This form of acquiring domicile is also called *Domicile by Dependence* as well, that is, the domicile of a person is dependent on the domicile of another. The Act further recognised three categories where this can be seen. They are:

1. *Minors*: Children up until they attain the majority age, including adopted children, have the same domicile as their parents¹². This is as similar to the domicile by origin that was

⁸ Indian Succession Act, 1925, Section 7, No. 39, Acts of Parliament, 1925 (India)

⁹ Indian Succession Act, 1925, Section 10, No. 39, Acts of Parliament, 1925 (India)

¹⁰ Indian Succession Act, 1925, Section 11, No. 39, Acts of Parliament, 1925 (India)

¹¹ Indian Succession Act, 1925, Section 12, No. 39, Acts of Parliament, 1925 (India)

¹² Indian Succession Act, 1925, Section 14, No. 39, Acts of Parliament, 1925 (India)

mentioned earlier. But a few exceptions¹³ have also been discussed for the same. These are;

- a) If he/she is married
- b) If he/she is working for the government
- c) If he/she has set up a business with the consent of parents

1. *Married women*: This section explains how married women acquire the domicile of their husbands after marriage if their domiciles weren't the same before¹⁴. If the court grants for the dissolution of the marriage, then the wife won't be dependent on the husband anymore. Another instance where the dependence ceases to exist is when the husband is in prison. But the wife will regain her husband's domicile if and when he's released from prison.
2. *People with disability and unsound mind*: This part of the act explains how a lunatic acquires their domicile. This section makes it clear that a lunatic's domicile is always dependent on another¹⁵. The others mentioned in the previous sentence can be a guardian, parent or even their spouse if they're married.

V. DOMICILE CERTIFICATE

A domicile certificate is a legal document that is issued or provided by the state government declaring that the person to whom this has been issued is domiciled of that particular *State* or Union Territory. The *eligibility* and the *documents* required for this will vary from state to state. A person can apply for this online, through the online portal of the State they wish to obtain the domicile certificate. Or they can directly go to the local authority's office (District Collector's office, Tahsildar's office, Revenue Department's office and so on) and apply for it.

This certificate can act as proof of domicile or residence of a person in any matters that demand for it. It can also be used while applying for jobs or educational institutions that have '*resident quotas*', a reservation that's been heavily debated over the years. This is because many argue that such reservations are unconstitutional as certain articles of the Constitution state that no one should be discriminated against based on residence for any employment positions¹⁶. Whereas some point out the logic behind it is for the betterment of the region.

¹³ Indian Succession Act, 1925, Section 14, Exceptions, No. 39, Acts of Parliament, 1925 (India)

¹⁴ Indian Succession Act, 1925, Sections 15 & 16, No. 39, Acts of Parliament, 1925 (India)

¹⁵ Indian Succession Act, 1925, Section 18, No. 39, Acts of Parliament, 1925 (India)

¹⁶ India Const. art 16(2)

VI. IMPORTANCE OF DOMICILE

Having a *single domicile* is mandatory since it determines legal issues and also makes it easier for the state to have balance in their agendas and policies. No doubt ensuring order between the state and its public is key to a more cooperative and collaborative society. From matters regarding wills, succession, marriage, divorce and taxes to always having the option to live anywhere, the domicile provides many provisions that seem beneficial and accommodating. It's also mandatory to have a single legal domicile for *Citizenship in India* as mentioned in the *Act*. Jurisdiction and domicile have always been interconnected and interrelated. We can see in many case laws how the latter determined the former. Domicile makes it easier to proceed with legal matters regarding aspects that are interwoven with Citizenship as well. *Article 14 and 15* of the *Indian Constitution* talk about how everyone should be treated equally and shouldn't be discriminated against based on certain aspects which includes *place of birth*¹⁷; and who all have India as their domicile since the commencement of the Constitution and what the conditions applied to it¹⁸.

In the landmark judgement of *DP Joshi Vs State of Madhya Bharat (1955)*¹⁹, many legal concepts linked to domicile were questioned. When a previously Private College that the State bought gave an order that the students who were born and lived in *Madhya Bharat* didn't need to pay a fee. The petition was filed against this order stating that it was violating *Articles 14 and 15* of the constitution which clearly states that no one should be discriminated against based on their "*place of birth*" and it emphasised the importance of *Citizenship*. The petition was rejected and the Supreme Court held that *Fundamental Rights* were not violated based on domicile in this case. It further explained the difference between "*place of residence*" and "*place of birth*" and how they can't be read the same. The judgement of the case was focused on the former. Domicile law here didn't violate *Article 14* and the order given by the college was to promote and enhance education in their State.

Many legislations and laws of India have elements of domicile. They include succession laws, marriage laws, divorce laws, and legislation made for widows, which helps determine jurisdiction and also how it affects *Private International Law* which also uses jurisdiction for many purposes.

¹⁷ India Const. art 14

¹⁸ India Const. art 15

¹⁹ DP Joshi Vs State of Madhya Bharat AIR 1955 SC 334

VII. PRIVATE INTERNATIONAL LAW- THE FOUNDATION FOR INDIAN LAW CONCERNING DOMICILE

The importance domicile, as a concept, has in the *common law jurisdictions* is mainly because domicile is a basic concept in *Private International Law*. Under Indian law, the competence of Indian courts to grant the divorce and even the law applicable to succession are some of the cases that observe *Private International Law* concerning domicile, which is paramount by statute. The principle of domicile plays a key role in the system of private international law. In the present day, the plaintiff's or petitioner's domicile or residence is the *basis of jurisdiction in most countries*. These are examples relevant to the application of Indian law or the jurisdiction of Indian Courts. Indian court system recognises that certain matters governed by the law are based on the concept and ideology of domicile. For example, in a case that was heard in the *Privy Council*, where a Hindu widow, domiciled in *Pondicherry* (then in *French India*), adopted a boy. It was held by the *Privy Council* that the widow's ability to adopt a son and the status of the child so adopted as her adoptive son, are matters to be determined according to French Law- *the law of domicile*.²⁰

VIII. DOMICILE, NATIONALITY AND RESIDENCE

Even though these three words have similar meanings, have different understandings. Legally, they are not the same even though it they are all territorial and jurisdictional terms.

'Nationality' can be described as the country or nation a person belongs to or has ties with. It is also considered a synonym for **'Citizenship'** as citizenship is defined as the status of an individual under the law and their recognition before the state as a *legal member* of the society.

'Residence' is the place a person lives and stays. It's focused on the *physical aspect* of staying somewhere. A house or residence is said to be where a person stays; whether they've been staying there since birth, whether it's a family home or a guest house they stay at from time to time, or if it's the residence you're currently staying at for work, the list can go on.

As has been discussed, **'Domicile'** is the *legal concept* regarding the permanent place a person intends to stay for an *indefinite time*. They carry out many functions such as jurisdiction and regulation; matters like *succession, estate planning, tax, divorce and marriage laws and so on*.

²⁰ Nataraja v. Subbaraya, AIR 1950 PC 34

IX. POWER OF DOMICILE- CASE ANALYSIS

*Bestolov V Povarenkin*²¹

Mr Bertolov and Mr Povarenkin were both Russians and were doing business together. All of their meetings and negotiations regarding this took place in Russia as well. Later on, due to a money-related dispute, their relationship deteriorated. When *Mr Povarenkin* got to London to meet his family who was settled there, he was personally served with the claim form. He applied for a stay of the proceedings in *England* claiming that since he's a resident of Russia the court in England had no jurisdiction over this. *Mr Bertolov* argued that *Mr Povarenkin* was domiciled in *England* according to *Article 4(1) of the Brussels Regulation* (recast).

This *Article* states how a person can be sued in the Member State (in this case London), even if they are of another nationality if the said person is domiciled to the Member State. It also explains how people of other nationalities, who are domiciled in the Member State, should follow the rules of jurisdiction of that place as well.

The Civil Jurisdiction and Judgments Order(2001) clarifies the conditions as to how a person's domicile is being characterized. It expressed that a person is domiciled in *England* if it's ascertained that they have some kind of “*substantial connection*” that links or attaches them to England.

This can also mean that in certain situations a person can have *two domiciles*, unlike the general rule of one person with one domicile.

This is precisely what happens in this case. It was proved in court that *Mr Povarenkin* was domiciled in England due to his family living there and his constant visits for the same reason. Hence, even though *Mr Povarenkin* lived his whole life, worked and even *paid taxes* in Russia, he was still considered domiciled in England. The Court thus had jurisdiction to dismiss the challenge which it obliged to it.

This decision and the legislation that steered it created a lot of conversation and concern, especially among the foreign nationals, since this consequently meant that even if they are a tax-paying resident of another country, they will be considered domiciled in England for *jurisdiction*. Following this, it was clearly understood that for such matters, courts will observe and examine to what degree the person is *associated or connected with England* and *comprehend the nature of that relationship to determine the person's residence*.

²¹ Domicile, Sweet Domicile: Bestolov -v-Povarenkin [2017] EWHC 1968 (Comm)

X. CONCLUSION

Domicile as a concept is an *ideology* that has grown to be a *necessity for determining jurisdiction* and other legal aspects about it. The principles of domicile illustrate the importance of *establishing one's domicile*. This helps to address issues regarding legislations that rely on domicile for assuming jurisdiction and resolving the legal issues at hand. Every person should only have a single domicile unless it is caused as a result of legislation as seen in the case law discussed. But that's an exception, considering how more than one can cause unnecessary complications and confusion in every aspect. Misusing or taking advantage of the *territorial laws* is not okay and so having a definitive domicile ensures there is no foul play on issues with a *jurisdictional background* to it. This also assures that no one should be discriminated against or given any kind of privilege and advantage over their *domicile/birthplace* as according to the *Constitution*.

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