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**JURISDICTION IN CROSS-BORDER DISPUTES FORUM
NON CONVENIENS IN INDIAN COURTS – LESSONS
FROM SPILIADA MARITIME CORP V CANSULEX LTD**

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ABSTRACT:

The incidence of disputes involving parties from several jurisdictions has increased due to the rapid expansion of international commerce. As a result, choosing the proper venue for resolving such conflicts has emerged as a key concern in private international law. The doctrine of forum non conveniens, which permits courts to refuse jurisdiction when another forum is more suitable for settling the dispute, is one of the most significant theories addressing this issue. The seminal ruling in **Spiliada Maritime Corp v. Cansulex Ltd.** provided the present formulation of this approach. A systematic two-stage test was adopted by the Spiliada judgment, which requires courts to first decide if a different forum is obviously more suitable for the trial and, second, whether fairness still demands that the case be tried in the original forum. While Although this framework has had a big impact on common law jurisdictions, the reality of contemporary international trade, especially digital transactions and multinational corporate structures, have shown that depending solely on geographic relationships to establish jurisdiction has limitations.

This article looks at how the forum non conveniens concept evolved as a result of the Spiliada ruling and the legal interpretation that followed. It also assesses the applicability of the Spiliada test in the Indian legal system and examines how Indian courts handle jurisdictional difficulties in cross-border disputes. The essay makes the point that access to justice is becoming more important in modern litigation than pure territorial considerations by looking at important instances like **Connelly v. RTZ Corp plc**, **Lubbe v. Cape plc**, and **AK Investment CJSC v. Kyrgyz Mobil Tel Ltd.** The article's conclusion states that although the Spiliada framework provides helpful guidelines, Indian courts should take a more systematic approach to finding jurisdiction in cross-border issues, taking into account factors including procedural fairness, access to justice, and the realities of internet commerce.

INTRODUCTION:

International trade has changed as a result of globalization. These days, corporations operate in several jurisdictions, participate in intricate contractual agreements, and carry out transactions via digital platforms that cut across national borders. Because of this, conflicts resulting from such activities frequently include parties, evidence, and legal systems that are located in various nations.

Determining the proper forum for litigation becomes a crucial legal issue in these situations. Procedural rights, evidence access, litigation expenses, and even the case's substantive outcome can all be impacted by the venue selection. The rights of the parties concerned may be greatly impacted by the various jurisdictions' application of differing procedural rules, statutes of limitations, and enforcement strategies. To overcome these jurisdictional issues, common law jurisdictions created the theory of forum non conveniens. According to the idea, a court that has jurisdiction over a dispute may choose not to use its jurisdiction if a different forum is more appropriate for resolving the issue.

The House of Lords' ruling in *Spiliada Maritime Corp v. Cansulex Ltd.* produced the most significant expression of this theory. In this instance, Lord Goff developed a methodical framework for figuring out when a court ought to halt proceedings in favor of another jurisdiction. The *Spiliada* test has been frequently used in common law jurisdictions, although there has been much discussion about how to apply it. Subsequent court rulings show that when choosing the proper forum, justice considerations frequently take precedence over geographic ties.

India is especially affected by this issue. India is a significant player in international trade and has one of the fastest-growing economies. encounters disagreements concerning international businesses and cross-border transactions more frequently. Indian courts must thus strike a compromise between the necessity to guarantee plaintiffs' access to justice and the ideals of international comity. Using the *Spiliada* framework, this essay examines the theory of forum non conveniens and assesses its applicability to Indian courts handling international disputes.

THE FORUM NON CONVENIENS DOCTRINE

Originating in Scottish law, the forum non conveniens theory ultimately became a fundamental tenet of English private international law. The idea acknowledges that even if a court may have legal jurisdiction over a dispute, it may choose not to exercise such jurisdiction if a different forum is better appropriate for settling the issue. The theory aims to eliminate needless annoyance to the parties and guarantee that litigation takes place in the forum most directly associated with the dispute.

When adopting the concept, courts usually take into account a number of considerations, such as:

- < The location of the action's origin
- < where witnesses and evidence are located, as well as the dispute's governing legislation
- < The parties' residence or place of business
- < The presence of a substitute forum the pursuit of justice.

These elements provide judges a great deal of discretion, but they also offer a flexible framework. As a result, the absence of strict regulations may lead to variable results in various situations.

In the historic ruling of *Spiliada Maritime Corp v. Cansulex Ltd*, the House of Lords confirmed the doctrine's current form.

THE SPILIADA TEST:

The dispute in *Spiliada Maritime Corp v Cansulex Ltd* arose when a Liberian shipping company brought proceedings in England against a Canadian sulphur supplier for damage caused to a vessel by improperly stored cargo. Although English law governed the contract, the defendant argued that Canada was the more appropriate forum because most of the evidence and witnesses were located there.

The House of Lords formulated a two-stage test to determine whether proceedings should be stayed.

First Limb: Identification of the Natural Forum:

The first stage requires the defendant to establish that another forum is clearly more appropriate for the trial. This forum is often referred to as the “natural forum”.

In determining the natural forum, courts examine factors such as:

- the place where the relevant events occurred
- the location of witnesses and documentary evidence
- the governing law of the dispute\
- the residence of the parties.

If the defendant successfully proves that another forum has stronger connections to the dispute, the court may grant a stay of proceedings.

Second Limb: Interests of Justice:

If the defendant satisfies the first limb, the burden shifts to the claimant. The claimant must demonstrate that justice nevertheless requires the case to proceed in the original forum.

This may arise if the alternative forum cannot provide a fair trial due to reasons such as:

- lack of legal representation or funding
- procedural disadvantages
- political instability or corruption
- inability to obtain necessary evidence.

The second limb therefore acts as a safeguard to ensure that the doctrine does not prevent claimants from accessing justice.

THE DOCTRINE'S DEVELOPMENT IN SUBSEQUENT CASE LAW:

The second limb of the Spiliada test has increasingly emerged as the crucial component, as evidenced by subsequent court rulings.

A Namibian miner with throat cancer filed a lawsuit in England against the mining corporation's British parent firm in *Connelly v. RTZ Corp plc*. Because the claimant lacked the funds to pursue suit in Namibia, the House of Lords permitted the case to continue in England even though Namibia seemed to be the ideal forum.

In a similar vein, thousands of South African workers with asbestos-related illnesses filed lawsuits against an English parent business in *Lubbe v. Cape plc*. Despite South Africa's closest

ties to the conflict, the court determined that the lack of legal assistance and the The claimants would not be able to attain justice due to the practical challenges of pursuing extensive litigation there.

Another significant ruling is *AK Investment CJSC v. Kyrgyz Mobil Tel Ltd*, in which the Privy Council determined that procedural restrictions requiring a criminal conviction before pursuing civil remedies prevented the claimants from realistically obtaining justice in Kyrgyzstan.

These rulings demonstrate a change from a purely geographic perspective to a more comprehensive evaluation of justice and fairness.

Indian Jurisprudence's Forum Non Conveniens

The forum non conveniens doctrine is not expressly codified in Indian law. Nonetheless, through judicial interpretation and constitutional reasoning, Indian courts have acknowledged comparable ideas.

Modi Entertainment Network v. WSG Cricket Pte Ltd is one significant ruling. The Supreme Court ruled that when proceedings in foreign courts will be oppressive or unfair, Indian courts have the power to issue anti-suit injunctions.

The Court emphasized that jurisdictional determinations must strike a balance between international comity standards and the objectives of justice.

The Supreme Court acknowledged that parties to an international contract may select a specific country for dispute resolution in *British India Steam Navigation Co Ltd v. Shanmughavilas Cashew Industries*, another noteworthy decision.

Additionally, Indian courts have emphasized that the use of jurisdiction shouldn't cause parties to suffer unfairly or excessively.

Judicial rulings show that Indian courts take similar elements into account when assessing jurisdiction in cross-border cases, even if the notion of forum non conveniens is not expressly incorporated in Indian statutory law.

DIFFICULTIES IN USING THE DOCTRINE IN CONTEMPORARY LITIGATION:

Applying the Spiliada test to modern international disputes presents a number of difficulties.

Online Shopping

Online platforms are becoming more and more common in modern business dealings. Parties may only converse digitally, and evidence may be kept on servers in various jurisdictions.

Finding a single natural venue becomes quite challenging in these situations.

Obtaining Justice

In foreign countries, claimants may encounter financial obstacles, procedural disadvantages, or a lack of legal counsel. Therefore, courts must strike a compromise between the requirement to guarantee effective access to justice and respect for foreign legal systems.

Judicial Discretion

Judges have a great deal of discretion under the Spiliada test. Although flexibility enables courts to address particular situations, it can also result in uneven decisions.

REFORM IS NECESSARY:

The Spiliada test's conventional two-stage structure may need to be improved given the growing complexity of international trade.

Courts should place greater emphasis on substantive justice rather than purely territorial connections. Factors such as the availability of legal representation, procedural fairness and the enforceability of judgments should be considered systematically.

Additionally, courts must recognise the growing importance of digital transactions and multinational corporate structures when determining jurisdiction.

A more structured framework that integrates these considerations would enhance predictability while preserving judicial flexibility.

CONCLUSION

In international litigation, the forum non conveniens doctrine continues to be a crucial tool for resolving jurisdictional disputes. Courts around the common law globe are still influenced by the two-stage system established in *Spiliada Maritime Corp v. Cansulex Ltd.*

However, later rulings like *Connelly v. RTZ Corp plc* and *Lubbe v. Cape plc* show that contemporary courts are progressively giving access to justice precedence over practicality.

The principles established in *Spiliada* provide useful advice for Indian courts handling cross-border issues, but they must be modified to take into account both local procedural law and the realities of contemporary international trade.

In the end, a revised strategy that strikes a balance between substantive justice and geographical ties would better meet the demands of modern international litigation.

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