
THE ENFORCEABILITY OF CROSS-BORDER CONTRACTS UNDER THE INDIAN CONTRACT ACT, 1872

Sudhishna Bose, Jindal Global Law School

ABSTRACT

This paper critically examines the enforceability of cross-border contracts under the Indian Contract Act, 1872. It evaluates central legal principles governing international agreements, jurisdictional challenges, and conflict-of-law issues, and analyzes how Indian courts interpret and apply the Act in disputes involving foreign parties. Particular attention is paid to choice-of-law clauses, the doctrine of privity, and the recognition and enforcement of foreign judgments. The study also assesses the influence of international conventions, bilateral treaties, and comparative legal frameworks on India's approach to transnational contractual disputes. Drawing on statutory provisions and key judicial precedents, the paper identifies practical obstacles faced by domestic and foreign parties when enforcing contractual obligations and highlights gaps in legal certainty and predictability. It concludes with targeted recommendations to enhance legal clarity, procedural efficiency, and enforceability of cross-border contracts within the Indian legal framework, thereby addressing the needs of an increasingly globalized commercial environment.

Introduction

In a globalized economy, it can be observed that the prevalence of cross-border commercial transactions is advancing. India, as a significant presence in international commerce, attracting rising levels of Foreign Direct Investment (FDI), requires a legal framework that can adequately support and enforce cross-border agreements. Cross-border contracts are defined as legally binding agreements between individuals or organizations, wherein the parties are from different countries. The contracts highlight the terms of one or multiple agreements made between the parties, and establish rights, obligations, and remedies. There are inherent complexities that arise in cross-border contractual relationships, specifically involving factors such as varied legal systems and logistical challenges in enforcement. In global commerce, these contracts are crucial in terms of providing a framework for international trade and investment. It is highly relevant to the economic affiliations of India, due to the fact that it determines the accessibility of the Indian markets to foreign parties, wherein the legal system determines the prospect of effectuating business with Indian parties. In international business dealings, it is crucial to maintain a system that is competitive with international standards, in order to facilitate economic and commercial activity in a manner that is suitable to both economic and public interest.

Objective

Foremost, this research paper will elaborate upon the statutory provisions of the Indian Contract Act, including additional relevant statutes such as the Civil Procedure Code and Arbitration and Conciliation Act. Furthermore, the study will assess the influence of international standards, conventions, and treaties upon the framework of India, in terms of the compatibility and acceptability with transnational parties. The role of the Indian judiciary and Alternate Dispute Resolution mechanisms in contractual disputes will be analyzed.

Conclusively, the research will propose recommendations to enhance legal certainty, predictability, and efficiency in enforcing cross-border contracts within the Indian legal framework.

LEGAL FRAMEWORK

Foremost, a contract is deemed to be considered as a cross-border agreement if the parties are

domiciled in different countries or if the performance of the contract is applicable across borders.

The commonly observed contracts of this kind include translational commercial contracts, such as international sales agreements, joint ventures, and service and distribution agreements. The characteristics of such contracts are often nuanced and complex, involving various economic and political factors.

Currency Fluctuations refer to the change in the value of the currency of a country, relative to another. This is relevant to international contracts due to the direct influence upon consideration, that is the monetary payment associated with a transaction. If a contract is priced in foreign currency, it may result in one party being in a disadvantageous position due to being obliged with higher amounts of payment as a result of fluctuating exchange rates. In FY 2001-2024, the FDI inflows to India have increased by 20x, following policy efforts to increase the efficacy of transnational commerce¹. Therefore, the increased investments lead to expanded cross-border contracts with Indian parties. Potential issues arising from this problem include potential for dispute in case of unfavourable fluctuations in currency for either party, and delays in payment.

Moreover, the potential for changes in the political climate of a country may affect the validity or enforceability of a contract. Government interference, through methods such as nationalization or expropriation may lead to the rights of foreign parties being significantly impacted². Consequently, this effect may lead to situations wherein there is occurrence of breach of contract. Additionally, there are various considerations regarding the choice of law.

Framework of the Indian Contract Act, 1872

The Indian Contract Act, 1872 (hereinafter referred to as 'ICA') applies to cross-border contracts, unless there is a conflict of law or express exemption. Thus, foreign parties are

¹ 'Foreign Direct Investment (FDI) in India, FDI Inflows | IBEF' (*India Brand Equity Foundation*) <[www.ibef.org/economy/foreign-direct-investment#:~:text=To%20reach%20this%20goal,%20the,US\\$%206.62%20in%20August%202024](http://www.ibef.org/economy/foreign-direct-investment#:~:text=To%20reach%20this%20goal,%20the,US$%206.62%20in%20August%202024)> accessed 9 May 2025.

² Wolfgang Keller and Ben Tomlin, 'Political Uncertainty and Cross-Border Acquisitions' (Harvard Law School Forum on Corporate Governance, 11 January 2018) <https://corpgov.law.harvard.edu/2018/01/11/political-uncertainty-and-cross-border-acquisitions/> accessed 9 May 2025.

subject to Indian law should the contract have substantial connection to an Indian party. Mandatorily, the contract must fulfill the fundamental requirements under Sections 2-25 of the ICA. Foremost, there must be a lawful proposal and acceptance, involving lawful consideration with an intention to create legal. The involved parties must be competent to contract and their consent must be obtained as free from undue influence, coercion, or any kind of fraud or misrepresentation.

Section 2A - Offer

An offer is a definite statement of willingness by the offeree to enter in a legally binding agreement with another party, subject to terms and conditions. In cross-border contracts, the nuances involved are concerned with the location and timing of the offer being made, including jurisdictional boundaries.

Section 2B - Acceptance

In order for an offer to be complete, clear and absolute acceptance of the offer is required. Methods of communication to convey the acceptance, particularly electronic means, may lead to ambiguity in terms of timing and place of acceptance, which are critical factors in determining the jurisdiction of the agreement. Particularly, there is potential for conflict regarding the applicability of the postal rule, stating that acceptance is complete when posted, and the rule of instantaneous communication, stating the completion of acceptance when it is received by the offeror.

Section D - Consideration

The ICA requires lawful consideration for a contract to be enforceable. Indian courts have generally recognized foreign consideration, provided that it is not unlawful or against Indian public policy³.

Section 11 - Capacity to Contract

This section determines the capacity of individuals to consent to a contract, often excluding individuals that are; minors, of unsound mind, etc. This may lead to conflict regarding choice

³ National Thermal Power Corporation v Singer Corporation, (1992) 3 SCC 551.

of law due to the fact that parameters of capacity may vary across jurisdictions, such as legal ages of attaining majority.

Section 23 - Lawful object and lawful consideration

This section states that agreements with unlawful object or consideration (forbidden by law, defeating provisions of any law, fraudulent, injurious to person/property, immoral, or opposed to public policy). In application, courts in India have taken a cautious approach in applying public policy standards, generally defined as conflicting with fundamental Indian laws, to international contracts.

Section 56 - Doctrine of Frustration

This is enforceable in application to international contexts, to respond to situations such as sanctions, armed conflict, or changes in public law. Thus, the earlier discussion regarding the external influences, such as political conditions of the countries involved, is reaffirmed by the applicability of this doctrine.

The Indian Contract Act does not explicitly address the enforcement of cross-border contracts, however the statutory principles are applicable in terms of general contractual principles. Through the application of provisions of the ICA, and reference to judicial precedent, the Indian courts are able to hear disputes involving foreign parties.

Jurisdiction and Enforceability of Cross-Border Contracts

In contractual disputes involving foreign parties, Indian courts resolve choice of law issues through the application of the Civil Procedure Code, 1908 (hereinafter referred to as CPC) as the statutory basis, developed through judicial precedents. In case foreign entities have existing business in India, Indian courts may assume jurisdiction through Section 20 of the CPC, which lays the foundational rules for territorial jurisdiction in India. Conflicts may arise regarding the choice of law, which refers to the legal principles that determine which laws are to be applied to the dispute. In order to resolve this issue, a choice of law clause is generally included in the agreement.

Impact and enforceability of jurisdiction clauses

- **Exclusive** : In the context of these clauses, the parties agree to select one court to have

exclusive jurisdiction to hear litigation pertinent to the agreement. This is legally binding in India provided that the chosen court has jurisdiction under Indian law and it is not violative of Indian public policy. However, the parties may decide to allocate the jurisdiction to one of the multiple courts⁴

- **Non-exclusive:** the parties permit more than one court to have jurisdiction. This provides additional flexibility, but increases the probability for parallel proceedings

Indian courts generally uphold party autonomy, thereby conferring the rights, to the concerned parties of the agreement, to decide upon the governing law and jurisdiction. This is recognized under private international law principles. In the case of NTPC Ltd. v. Singer Company, the supreme court held that in the case of the parties clearly selecting foreign courts, Indian courts must award effect to the same provided there is no strong reason to act otherwise.

Enforcement Mechanisms for Cross-Border Contracts

Litigation in cross-border proceedings often presents several procedural complications. There are possible delays associated with the process, such as the processes of summons or processing on foreign defendants, transfer of evidence abroad, and problems related to non-cooperative jurisdictions. Effectively, it associates significant time and cost implications to the litigation of cross border issues in India.

Alternative Dispute Resolution, particularly Arbitration, is perceived as a more favourable and efficient approach. In India, it is governed by the Arbitration and Conciliation Act, 1996, (Hereinafter referred to as Arbitration Act) which is amended to align with UNCITRAL Model Law. This is applicable to both domestic and international arbitration. Indian courts generally uphold valid arbitration clauses, issuing injunctions in selective cases involving lack of jurisdiction or fraud. The Arbitration Act governs the procedural aspects, in liaison with the ICA, which is pertinent to governing substantive contract validity⁵.

Recognition of Foreign Judgements under CPC

Section 44-A: Reciprocating Territories

⁴ Hakam Singh v. Gammon India Ltd., AIR 1971 SC 740

⁵ Giambrone Law, 'Arbitration in Cross Border Disputes' (Giambrone Law)

<https://www.giambronelaw.com/site/advice/dispute-resolution/commercial-cross-border-disputes/arbitration-in-cross-border-disputes/> accessed 9 May 2025.

A decree passed by a superior court in a reciprocating territory is treated as a decree passed by an Indian District Court.

Section 13: Foreign judgments can be enforced in India unless they are against public policy. Indian courts may refuse the judgement on grounds such as; non-jurisdiction, violation of public policy, obtained by fraud, etc. The absolute nature of the clauses is necessary. In such a case, the courts may re-examine the judgement to be used as evidence⁶.

Section 14: Presumption of correctness and validity of foreign judgments, with limitations on recognition.

According to Section II of the Arbitration Act, based on the New York and Geneva Conventions, an award is enforceable if it is final, from a reciprocating territory, and subject to refusal of enforcement on grounds of public policy.

These provisions are functional but not comprehensively adapted to international contracts or contemporary cross-border trade. The efficacy of this framework may be enhanced by including the specific nuances that accompany the complexities of transnational transactions.

Comparative Analysis to Foreign Jurisdictions

The application of foreign law in determining issues in courts of different countries is a key aspect of Private International Law. The varying laws of each country can lead to different outcomes in cross-border contractual disputes.

United Kingdom:

- **Party Autonomy:** Due to the common law tradition of the legal framework of the UK, Party Autonomy is observed with importance. This enables considerable flexibility in terms of the decisions, taken by the parties, regarding the applicability of jurisdiction and choice of law.
- Post-Brexit, the approach of the UK towards foreign judgements is governed by the Judgements regulation and bilateral treaties

⁶ British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries, 1990(3) SCC 481

European Union:

- The EU utilizes the Rome I Regulation to determine the applicable law for cross-border contracts, focusing on consumer protection and party autonomy, while ensuring that the chosen law does not conflict with EU regulations.
- Prior to Brexit, the EU's Brussels I Recast regulation governed the recognition and enforcement of judgments in Member States. This was generally considered an effective process due to the mitigation of legal uncertainty.

Singapore:

- ADR in Singapore is governed by the Singapore International Arbitration Act, which incorporates the UNCITRAL Model Law. This ensures that international commercial arbitration is predictable and protective of the interests of parties. The systematic and efficacious approach of Singapore results in it being recognized as a commercially friendly jurisdiction.

Comparison to India

Indian contract law, governed by the ICA establishes a foundation for governing domestic and international agreements. However, the areas of improvement, as identified by the analysis of international legal systems, would require the modernization and advancement of the current system for enforcing cross border contracts. Certain prominent issues include the procedural mechanisms for enforcement , and the limited codification for principles pertinent to party autonomy.

The Convention on Contracts for the International Sale of Goods (CISG) is a multilateral treaty that standardizes rules for international sales contracts. This promotes and enhances uniformity in legal processes. The principles of this framework can ameliorate India's legal framework on cross-border contract enforcement, particularly in standardizing contract terms and dispute resolution procedures.

Analysis and Normative Recommendations

Foremost, a critical issue in Indian contract law governing cross-border contracts is the lack of

codified party autonomy. Despite Indian courts extending efforts to protect the interests of affiliated parties, the absence of express codification leads to unpredictability and an absence of uniformity. This change can be effectuated by amendments to the ICA itself, or through the introduction of a specialized legislative framework, in order to offer greater clarity and predictability. Cross-border litigation in India often experiences delays due to outdated procedural mechanisms, involving insufficient technological means and bureaucratic obstructions in the reception and enforcement of foreign judgements. The clause of public policy may be used as an overtly vague and ambiguous parameter in Indian courts, which may lead to the arbitrary denial of relief in cases of contractual disputes. Conclusively, The ICA requires improvement in addressing modern legal concepts e-contracting, capacity across jurisdictions, or global digital commerce. It remains predominantly domestic in applicability, despite the rapidly expanding international economic affiliations of India⁷.

Holistically, a solution to several issues in the existing legal framework would be the codification of laws pertinent to cross-border contracts and enforcement. An initial attempt to establish this would introduce statutory clarity on the enforceability of choice of law and jurisdiction clauses in accordance with international standards. Additionally, specification regarding the scope of public policy in arbitration may be effective to prevent excessive judicial intervention, allowing the arbitrators absolute and complete authority to take decisions regarding the legal proceedings. Furthermore, increased clarification regarding the scope of public policy, and the instances that constitute violations, would prevent the arbitrary usage of the clause to deter the enforcement of contracts, thus enhancing the accessibility of judicial relief in cross-border contracts. Moreover, the recognition of foreign judgements can be streamlined through the efficient application of technology, especially for digital filing and transnational filing of procedures. In order to improve consistency, judicial training may improve the systematic processes of legal systems in India. Conclusively, the amendment of the relevant statutes to incorporate provisions addressing cross-border contract formation, digital agreements, and international commercial standards would enhance the efficiency of the Indian legal framework in global contractual relations. In addition, the CISG is a viable framework that India may consider ascension in, which would lead to India being aligned with international standards for cross-border sales contracts, thereby enhancing predictability and

⁷ Saloni Khanderia & Sagi Peari (2020) Party autonomy in the choice of law under Indian and Australian private international law: some reciprocal lessons, *Commonwealth Law Bulletin*, 46:4, 711-740, DOI: 10.1080/03050718.2020.1804420

providing advantages to Indian businesses abroad.

Furthermore, ADR is a globally accepted solution for cross-border contractual disputes, due to the flexible processes that are applicable under international treaties. The efficacious processes of arbitration and conciliation allow the concerned parties of the contract to avoid delays and costs of international litigation, thereby rendering it as a favourable choice to maximize efficiency and cost. In order to improve the ADR system, the engagement with international bodies to internalize globally recognized practices in arbitration and contract enforcement would establish a more robust legal environment for cross-border transactions.

Conclusion

In conclusion, As India continues to enhance its presence in the global marketplace, the necessity for a legal framework that can effectively support and enforce these agreements becomes paramount.

The existing legal framework that governs contracts in India, primarily the Indian Contract Act, 1872, along with the Civil Procedure Code and the Arbitration and Conciliation Act, offers a foundational structure for contractual obligations. However, the statutory provisions are often limited by an inability to address the nuanced challenges established by cross-border transactions. Notably, the lack of clarity and predictability regarding the enforceability of foreign judgments and arbitral awards, which is exacerbated by procedural complexities that create additional costs, leads to legal uncertainty for both domestic and international parties. This uncertainty may inhibit the ability of India to be competitive with international standards of governing transnational commercial exchanges.

Moreover, Alternative Dispute Resolution has emerged as an efficacious alternate route to resolve contractual disputes. It is a preferred solution due to the advantages compared to the rigid and costly process of cross-border litigation in India. Despite the efficient reforms to provide alternative means to seek legal relief, the Indian legal framework may benefit to streamline enforcement processes. The procedural rigidity and the potential for judicial intervention can significantly prolong dispute resolution, thereby undermining the efficiency that arbitration is intended to provide.

In advanced jurisdictions, this study has observed that the legal frameworks exhibit more

sophisticated and commercially supportive frameworks for the enforcement of cross-border contracts. These systems generally prioritize party autonomy and a clear mechanism to address choice of law, including jurisdiction. Therefore, these processes provide streamlined mechanisms for the recognition and enforcement of foreign judgments and arbitral awards. A common observance is the integration of modern statutory amendments that facilitate predictability in contractual relationships. There are clearer definitions on public policy as well, which prevent arbitrary awards and interference of courts where it is redundant. The jurisdictions that have been analyzed in this study, with clearly codified statutory principles, have experienced a more effective and globally recognized legal system.

In conclusion, the foundation of the Indian legal framework to address cross-border contracts is well structured, however its efficacy is limited by several areas of improvement in applicability. The issues may be resolved through amendments to existing statutory frameworks, or ascension to international systems to facilitate unified international legal systems. Through addressing these challenges through legislative and procedural reforms, India can cultivate a more favorable environment for international trade and investment.