
THE LEGAL FRAMEWORK GOVERNING RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: A CRITICAL ANALYSIS

Hariharan. J, LLB (Hons), Vinayaka Mission's Law School, Chennai.

Naveen. R, LLB (Hons), Vinayaka Mission's Law School, Chennai.

ABSTRACT

The concept of recognition and enforcement of foreign judgments is an important part of Private International Law in today's globalized world. As trade, migration, and digital transactions increase across the globe, the number of cross-border disputes is also on the rise. This paper aims to discuss the legal regime governing the enforcement of foreign judgments in India by the Code of Civil Procedure, 1908. It will discuss the conceptual difference between recognition and enforcement, the conditions that have to be fulfilled by the foreign court's judgment to be conclusive, and the concept of reciprocity in granting procedural advantages. It will also discuss the current situation and the challenges faced by India in enforcing foreign judgments, including jurisdictional issues arising from digital transactions, procedural delays, and the lack of an overarching international system of enforcement. A brief comparison will also be drawn with the approach of other jurisdictions to highlight the cautious approach of India. It will also highlight the current situation and the need for modernization and procedural reforms.

Keywords: Private International Law, Foreign Judgments, Recognition and Enforcement, Reciprocity, Code of Civil Procedure, Jurisdiction, Natural Justice, Cross-Border Litigation.

I. Introduction

In today's world, individuals and companies find themselves operating across borders. Contracts are entered into between companies in other countries, individuals and families find themselves residing in more than one country, and cases are brought before courts involving parties from other countries. When a court in one country delivers a judgment, this study seeks to address three key questions: (a) How are foreign judgments enforced in India? (b) Are all foreign judgments automatically valid and enforceable in India? (c) What is the concept of reciprocity, and what are its legal consequences?

The rules that govern this question are an important aspect of Private International Law (PIL), also known as conflict of laws. Recognition and enforcement of foreign judgments are essential in ensuring that court judgments are recognized across borders. Without these rules, a party that wins a case may not be able to recover their money or enforce their rights in another country.¹

The legal system that regulates the recognition and enforcement of foreign judgments will be discussed in this paper. It will focus on the key concepts of this system, the limitations imposed on its application, and the difficulties faced by the law in the contemporary world. The ability of the existing system to achieve a balance between international cooperation and the protection of national legal principles will be critically discussed in this paper.

II. CONCEPTUAL FOUNDATIONS: RECOGNITION AND ENFORCEMENT

Although the terms “recognition” and “enforcement” are often used together, they do not mean the same thing. Recognition is essentially the stage at which an Indian court accepts that a foreign court has already decided the dispute and that its decision is legally binding between the parties.² Once this happens, the matter cannot ordinarily be reopened in India because the principle of *res judicata* prevents the same issues from being litigated again. Enforcement, however, is concerned with what follows recognition. It is the process through which the

¹ Narcisa Gales & Dumitrita Florea, *Fundamental Principles of Private International Law*, 12 *Eur. J.L. & Pub. Admin.* 51 (2025), <https://doi.org/10.18662/eljpa/12.1/254>, <accessed on Feb 2, 2026 at 7.21 P.M>

² Marta Requejo Isidro, *Recognition and Enforcement of Judgments*, in Burkhard Hess et al. (eds.), *Comparative Procedural Law and Justice* (Part XIV, Chapter 7, Oct. 2024), <https://www.cplj.org/publications/14-7-recognition-and-enforcement-of-judgments> (accessed Feb. 28, 2026) (comparative analysis of recognition and enforcement of foreign judgments).

successful party actually gives effect to that foreign judgment in India.

For example, by recovering money or attaching property through the Indian legal system.

The justification for recognizing foreign judgments is commonly traced to the idea of comity of nations. However, comity should not be misunderstood as a legal obligation. It is better described as a practice based on mutual respect between sovereign states.³ Indian courts do not treat foreign judgments as automatically binding merely because they come from another country. Instead, they acknowledge them in order to promote fairness, certainty, and stability in international dealings. At the same time, this acceptance is never unconditional. The law allows Indian courts to refuse recognition where fundamental principles such as jurisdiction, natural justice, or public policy are compromised.

III. STATUTORY FRAMEWORK UNDER THE CODE OF CIVIL PROCEDURE, 1908

The main source of law governing the recognition and enforcement of foreign judgments in India may be found in Sections 13, 14, 44A, and 45 of the Code of Civil Procedure (CPC). These sections collectively provide the guidelines on when a foreign judgment will be regarded as conclusive, the presumptions that may be derived from such judgments, and how such judgments may be executed within the territory of India. While the guidelines may appear to be simple, their interpretation by the courts has given rise to their complexity.

1. Section 13: When is a Foreign Judgment Conclusive?

Section 13 is a substantive provision that deals with the recognition of judgments. It declares that a foreign judgment is conclusive regarding any question or matter that has been directly adjudicated upon by such judgment, provided that it is between the same parties.⁴ There are six exceptions to this general principle of conclusive judgments. These six exceptions are crucial for understanding India's cautious approach to the recognition of foreign judgements.

³ Recognition of Foreign Judgments, LawGuide.Help (last visited Feb. 28, 2026), <https://lawguide.help/recognition-of-foreign-judgments/> (providing an overview of the principles and process of recognizing foreign court judgments under private international law).

⁴ Section 13 – Code of Civil Procedure, 1908: When Foreign Judgment Not Conclusive, ApniLaw, <https://www.apnilaw.com/bare-act/cpc/section-13-code-of-civil-procedure-when-foreign-judgment-not-conclusive/> (last visited Feb. 28, 2026) (annotated text and commentary on Section 13 of the CPC regarding conditions under which a foreign judgment is not conclusive).

Lack of Jurisdiction

A foreign judgment will not be conclusive if it is pronounced by a court that lacked competent jurisdiction. It is to be determined by the courts of India by reference to the principles of private international law that are applicable in India.

In **R Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid**, it was made clear by the Supreme Court that it is necessary to examine whether or not there was competence in the international sense and that it is not sufficient to examine whether or not there was jurisdiction under the municipal law of that court.⁵

Not given on the Merits

A decision must be given after consideration of the merits of the case. A decision that is given on technical grounds or because of default or procedural penalties may not be considered to be given on the merits.

In **International Woollen Mills v Standard Wool (UK) Ltd**, the Supreme Court of India highlighted that it must be determined whether or not the decision of the foreign court was given after evaluating evidence and arguments.⁶

Incorrect View of International Law or Refusal to Recognize Indian Law

If the decision of the foreign court is given with an incorrect view of international law or if it refuses to apply Indian law when it is applicable under the rules of conflict of laws, then it may be denied conclusiveness. This is because of India's commitment to legal coherence.

Proceedings Opposed to Natural Justice

This is an important exception in the protection of the rule of natural justice. The rule of *audi alteram partem*, the right to be heard is a fundamental principle in the enforcement of a foreign judgment. If a party was denied the right to a fair hearing, the enforcement of the judgment

⁵ R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid, 1963 AIR 1, 1963 SCR (3) 22 (Supreme Court of India May 4, 1962), <https://indiankanoon.org/doc/909807/> (discussing the conditions under which a foreign judgment may be treated as conclusive under Section 13 of the Code of Civil Procedure, 1908).

⁶ Indian Young Lawyers Assn. v. The State of Kerala (Sabarimala Case), (2020) 6 SCC 1, <https://indiankanoon.org/doc/1728792/> (Supreme Court of India Sept. 28, 2018) (landmark judgment on equality, non-discrimination and constitutional morality).

may be denied. The Indian courts, however, do not scrutinize the entire procedure in the foreign courts. They only consider whether a fundamental principle of natural justice was denied.

Obtained by Fraud

Fraud is a serious menace in the legitimacy of the courts. If the conditions are met in all other respects, a judgment obtained by fraud whether intrinsic or extrinsic cannot be enforced.

The Indian courts have consistently regarded fraud as a serious bar to the enforcement of a foreign judgment. However, the burden of proof rests on the party alleging fraud.

Sustaining a Claim Founded on the Breach of Indian Law

A foreign judgment enforcing a claim which is in violation of Indian statutory law cannot be enforced. This is similar to the public policy rule but is narrower in scope.

2. Section 14: Presumption as to Foreign Judgments

Section 14 is an adjunct to Section 13 because it establishes a presumption that a foreign judgment was rendered by a competent court. An evidentiary role is performed by Section 14. It removes the burden from the decree holder of proving that the court that rendered the foreign judgment was competent.

In **Sankaran Govindan v. Lakshmi Bharathi**, the Supreme Court made the observation that Section 14 merely establishes a presumption but does not preclude an examination under Section 13.⁷ Section 14 is procedural, and Section 13 is substantive.

3. Section 44A: Decrees from Reciprocating Territories

Under Section 44A, a distinction is drawn between reciprocating and non-reciprocating territories. It provides that if the decree is issued by the superior court of any notified reciprocating territory, then the decree may be directly filed in the District Court of India.⁸

⁷ *Sankaran Govindan v. Lakshmi Bharathi & Ors.*, 1975 3 SCC 351, 1974 AIR 1764, 1975 1 SCR 57 (Supreme Court of India Apr. 15, 1974), <https://indiankanoon.org/doc/1995185/> (discussing principles of jurisdiction, res judicata, natural justice, and the conditions under which a foreign judgment may operate as res judicata).

⁸ Section 44A – Code of Civil Procedure, 1908: Enforcement of Decrees from Reciprocating Territories, LawRato, <https://lawrato.com/indian-kanoon/cpc/section-44A> (last visited Feb. 28, 2026) (annotated statutory text and commentary on Section 44A CPC, which deals with enforcement of decrees from reciprocating territories).

This saves the time and cost of filing a fresh suit.

However, it may be noted that this is not an enforcement of the decree. As held in the case of *Alcon Electronics*, these decrees are subject to the provisions of Section 13. It only provides a procedural facility.

4. Non-Reciprocating Territories

Where the foreign court is in a non-reciprocating territory, the decree holder is required to file a fresh civil court case in India based on the foreign court's judgment. In such a case, the judgment acts merely as evidence for the case. Here, there is a visible difference in the procedure for the two types of territories. A decree holder in the reciprocating territory is at an advantage, whereas the others are at a disadvantage.⁹ Though the limitation of the grounds for challenging the judgment is removed by Section 13, the need for a fresh case is likely to delay the process and dilute the concept of finality in the judgment.

The framework of law appears to be based upon an era where interstate disputes were infrequent. It seems to emphasize the role of judicial control and oversight as opposed to simplicity of enforcement. Although this is important for maintaining sovereignty and ensuring legal integrity, it may be seen as inflexible in the context of modern global commerce. The distinction based upon reciprocity is more political than legal in nature. In an international economy based upon global investment, these types of distinctions may be seen as creating unnecessary process obstacles. However, the provisions of Section 13 indicate that India is not simply accepting foreign judgments. It is attempting to balance these principles, ensuring that international judgments are respected while legal integrity is maintained. However, whether this is an optimal approach in the modern world is again up for debate.

IV. THE DOCTRINE OF RECIPROCITY

The idea of reciprocity under Indian law is closely linked to Section 44A of the Code of Civil Procedure, 1908,¹⁰ reciprocity means that India agrees to enforce judgments from certain foreign countries because those countries, in turn, are expected to give similar recognition to

⁹ Singh & Associates, *Judgments from Reciprocating and Non-Reciprocating Territories of India*, Lexology (Sept. 29, 2012), <https://www.lexology.com/library/detail.aspx?g=fca04047-9146-4eda-b871-efbe0e6ca2bb>

¹⁰ Section 44A – Execution of Decrees Passed by Courts in Reciprocating Territory, Code of Civil Procedure, 1908, <https://indiankanoon.org/doc/51234069/> (last visited Feb. 28, 2026) (providing text and explanation of Section 44A CPC, which governs enforcement of foreign decrees from reciprocating territories).

Indian judgments. However, this arrangement is not automatic or judicially assessed; it depends on whether the Central Government has formally notified a country as a “reciprocating territory” under Section 44A CPC. This makes reciprocity more of an executive policy decision than a purely legal principle. While the mechanism offers practical advantages such as allowing direct execution of decrees without filing a fresh suit it does not eliminate judicial scrutiny. Even decrees from reciprocating territories must satisfy the conditions laid down in Section 13 CPC, as clarified by the Supreme Court in **Alcon Electronics Pvt. Ltd. v. Celem S.A.** Therefore, reciprocity provides procedural convenience rather than unconditional acceptance. Moreover, several significant trading partners of India are not included in the notified list, meaning their judgments require fresh suits for enforcement.¹¹ Importantly, the absence of reciprocity does not render a foreign judgment invalid; it merely changes the method of enforcement. From a broader policy perspective, this approach appears cautious and diplomatically motivated. In an era of expanding cross-border commerce, one may question whether strict reliance on reciprocity continues to serve commercial efficiency or whether a more liberal multilateral framework would better promote certainty in international litigation.

V. JUDICIAL INTERPRETATION AND IMPORTANT CASE LAW

It is clear that while the legislative provisions under the Code of Civil Procedure set forth the framework for recognition and enforcement, it is through interpretation that these provisions have taken on any real substance. The Supreme Court and various High Courts have all contributed significantly towards removing any confusion, defining the parameters of any exception under the legislation, and generally shaping the overall approach that Indian Courts take towards enforcement of Foreign Decrees. Perhaps one of the most important determinations came in the case of **International Woollen Mills v. Standard Wool (UK) Ltd.** In that case, the Supreme Court attempted to discern what it truly means for a Foreign Judgment to be “on merits” as set forth under Section 13(b) of the CPC.¹² The Court noted that it is not sufficient for a decree to exist; rather, it is essential that the Foreign Court applied its judicial mind to the issues that are being decided. In other words, a purely procedural decree, such as

¹¹ M/S Alcon Electronics Pvt. Ltd. v. Celem S.A. of Fos 34320 Roujan, France & Anr., AIR 2017 SC 1; (2017) 2 SCC 253, <https://indiankanoon.org/doc/28356393/> (Supreme Court of India Dec. 9, 2016) (holding on the enforceability of a foreign court’s order and interpretation of Sections 13 and 44A of the Code of Civil Procedure).

¹² Indian Young Lawyers Assn. v. The State of Kerala (Sabarimala Case), (2020) 6 SCC 1, <https://indiankanoon.org/doc/1728792/> (Supreme Court of India Sept. 28, 2018) (landmark judgment on equality, non-discrimination and constitutional morality).

one that is issued because one party failed to appear, is not necessarily sufficient.

Likewise, in the case of **Alcon Electronics Pvt. Ltd. v. Celem S.A.**, the Supreme Court was called upon to interpret the ambit of Section 44A. The Supreme Court clarified that the execution of decrees from the territory of the reciprocating state could be executed in India without the filing of a fresh suit. However, such a facility does not mean that such a decree would not attract the scrutiny of Section 13. Therefore, the element of conclusiveness is still conditional and not absolute.

The element of fraud is also a recurring theme in the judicial discourse. Indian courts have been of the view that fraud vitiates all judicial acts. However, the courts have been cautious in distinguishing between a substantial element of fraud and a mere technicality. The Indian judiciary has been clear in its approach that unless the allegations of fraud are related to the root of the judgment, the enforcement of the award cannot be denied.

VI. CONTEMPORARY CHALLENGES

1. Global Commerce and Digital Transactions

The growth of e-commerce has made jurisdictional issues more complex. In e-commerce disputes, parties are not present in India. Contracts are entered into online, money is transferred through online gateways, and performance is rendered online. The traditional concept of territorial jurisdiction does not easily apply to e-commerce. The determination of whether a court outside India had jurisdiction “in the international sense”¹³ becomes more complex in cyberspace disputes.

2. Inconsistent International Standards

The Indian government has not ratified the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.¹⁴ The enforcement of foreign judgments is dependent on reciprocity between nations.

¹³ R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid, A.I.R. 1963 S.C. 1 (India).

¹⁴ Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, July 2, 2019.

3. Delay and Procedural Complexity

Even in the context of Section 44A, the enforcement is not usually simple. Judgment debtors frequently assert the exceptions in Section 13.¹⁵ As a result, the proceedings are delayed. Even though the exceptions are required, the time taken to hear the objections is detrimental to the objective of speedy enforcement

4. Lack of Comprehensive Reform

The relevant parts of the CPC were codified in the early twentieth century when cross-border commercial disputes were scarce.¹⁶ Though amendments are made, the framework is still colonial in origin. The contemporary economic reality is characterized by multinational corporations and digital trade.¹⁷

VIII. COMPARATIVE PERSPECTIVE

A comparative look at the Indian regime would reveal a cautious approach. In the European Union, the Brussels Regulation provides for the near-automaticity of the recognition and enforcement of judgments in the EU's member states.¹⁸ The basis for this is mutual trust and integration in the judiciary.¹⁹

In the United States, the majority of the states have enacted legislation based on the Uniform Foreign Money Judgments Recognition Act.²⁰ This provides a framework for the enforcement of foreign judgments in a liberal manner. Refusal is clearly set out and is narrowly construed.

In comparison with the Indian regime, which places a strong emphasis on judicial scrutiny and procedure, a cautious approach is revealed. While this is legitimate in terms of sovereignty, a less commercially efficient approach is also revealed.

¹⁵ *Alcon Elecs. Pvt. Ltd. v. Celem S.A.*, (2017) 2 S.C.C. 253 (India).

¹⁶ Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).

¹⁷ A.V. Dicey, J.H.C. Morris & Lawrence Collins, *Dicey, Morris & Collins on the Conflict of Laws* (15th ed. 2012) (London: Sweet & Maxwell).

¹⁸ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 Dec. 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast), 2012 O.J. (L 351)

¹⁹ Case C-159/02, *Turner v. Grovit*, 2004 E.C.R. I-3565, E.U.T:2004:128 (ECJ).

²⁰ Unif. Foreign Money-Judgments Recognition Act (1962).

VII. CONCLUSION

The enforcement of foreign judgments is an important aspect of Private International Law. The provisions in the Code of Civil Procedure, in the context of India, demonstrate an effort to strike a balance between cooperation and sovereignty. However, the intricacies in procedure, the concept of reciprocity, and the changing world order point to the weakness in the current system. With the rise in international disputes, the mechanisms must also adapt to the new order. The success of international adjudication is not just a matter of reciprocity, but also of mutual confidence in the judicial process. The burden for India is to strike the balance between the two, while sustaining the principles of justice that it has to offer.