

# Legal 500

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### India

## Enforcement of Judgments in Civil and Commercial Matters

### Contributor



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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in India.

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## India: Enforcement of Judgments in Civil and Commercial Matters

### 1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

India is not a party to any international convention on the enforcement of judgments. However, India has executed bilateral treaties with various countries regarding reciprocity in the enforcement of judgments and decrees. The United Kingdom, Aden, Fiji, the Republic of Singapore, the Federation of Malaya, Trinidad and Tobago, New Zealand, the Cook Islands (including Niue) and the Trust Territories of Western Samoa, Hong Kong, Papua and New Guinea, Bangladesh and the United Arab Emirates are declared as 'reciprocating territories'. In **Moloji Nar Singh Rao vs Shankar Saran** (AIR 1962 SC 1737), the Supreme Court of India held that a foreign judgment that does not arise from the order of a superior court of a reciprocating territory cannot be executed in India and a fresh suit will have to be instituted in India on the basis of the foreign judgement.

When it comes to enforcement, a foreign judgment must be final and not fall within the ambit of some special cases specified in Section 13 of the Code of Civil Procedure, 1908 (CPC). Indian law doesn't stipulate the kinds of judgments that may be implemented. Instead, Section 13 of CPC excludes those foreign judgments that fall within any of the clauses (a) to (f) of Section 13 as set out below:

According to Section 13 of CPC, a foreign judgment shall be definitive about any issue effectively decided between the same parties or between any parties under whom they, or any of them, claim to be pursuing the litigation under the same title, other than:

- a. where it has not been pronounced by a court of competent jurisdiction;
- b. where it has not been given on the merits of the case;
- c. where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- d. where the proceedings in which the judgment was obtained are opposed to natural justice;
- e. where it has been obtained by fraud; and

- f. where it sustains a claim founded on a breach of any law in force in India.'

The international judgment must be completely definitive in all its adjudicative parts. The party seeking compliance must ensure that the foreign judgment or decree does not fall under the exceptions referred to above before seeking to impose a foreign judgment or decree. If any of these exceptions are protected by a foreign judgment or order, they will not be considered conclusive and will, therefore, not be enforceable in India.

Indian courts have accepted injunctive decisions on charges, authority, divorce decrees, financial judgments, compulsory enforcement actions, and anti-suit enforcement actions as enforceable. Courts have also held that even *ex-parte* judgments are binding if the complete existing legal processes are implemented and the decision is based on the merits of the case. Default decisions, overview or specific procedure orders, statutory decisions, and judgments authorising compensatory damages and fines or quasi-judicial orders, on the other hand, have been found unenforceable in India.

There is no enforceability of a foreign judgment if it is open to challenge in a foreign jurisdiction. To be deemed enforceable, an international decision must be conclusive. The decision will not be considered definitive and binding for compliance in India if an appeal against it is pending in an international court of appeal.

### 2. What, if any, reservations has your jurisdiction made to such treaties?

As mentioned above, the foreign judgment should be final and not fall within the ambit of some special cases specified in Section 13 of the CPC. In case of foreign judgments emanating from reciprocating territories, those can be enforced under Section 44A of CPC without any reservations other than those that are already provided in the said provision. Under Section 44A, a foreign judgment can be enforced merely by the production of a certified copy of the judgement of the superior court of the reciprocating territory, along with a certificate from such superior court stating the extent, if any, to which the judgment has been satisfied or adjusted.

This has been recently confirmed in a decision of the Hon'ble High Court of Delhi in ***Peter Beck und Partner Vermögensverwaltung GmbH vs. Prakash Industries Limited & Ors.*** [2023/DHC/002986], in which a foreign judgment was enforced once a certified copy of the foreign judgment along with the certificate stating the extent of satisfaction of the judgment was filed. In that case, the respondents raised a plea that the court enforcing a foreign decree from a reciprocating territory must be a court that could otherwise have been competent to pass a decree in the first instance. However, this plea was rejected by the Court, and it was held that no extra reservations preclude enforcement of foreign judgements from reciprocating territories once requirements of Section 44A of CPC are fulfilled.

### 3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

The procedure made for 'non-reciprocating territories' will be followed.

Judgments emanating from courts of non-reciprocating territories may be enforced by filing a new suit in which the original judgment only has persuasive value. Therefore, issues of enforcement and appeal do not arise with respect to such judgments until they have been affirmed by the domestic civil court.

The judgment of a foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needs to be enforced. The rules of private international law of each state differ in many respects, but by the comity of nations, certain rules are recognised as common to civilised jurisdictions. Through part of the judicial system of each state, these common rules have been adopted to adjudicate upon disputes involving a foreign element and to enforce judgments of foreign courts or as a result of international conventions. Such recognition is accorded not as an act of courtesy but on consideration of basic principles of justice, equity and good conscience. An awareness of foreign law in the parallel jurisdiction would be a useful guideline in determining our notions of justice and public policy. We are a sovereign nation within our territory, but 'it is not derogation of sovereignty to take accounts of foreign law'.

In a recent case titled ***Pratap Raj Pandey and Ors. vs. Investor Education and Protection Fund Authority and***

***Ors.*** [19.04.2023 DELHC], the Delhi High Court, under writ jurisdiction and not as a court enforcing a foreign judgment, accepted a certified copy of the foreign judgment as an evidentiary document and gave effect to the arrangement agreed between the parties in that judgment. In this case, a compromise decree was passed by a district court in Kathmandu, Nepal, whereby some shares left behind by a father were to be distributed amongst his sons. A certified copy of the compromise decree, legalised by the Indian embassy in Kathmandu, was obtained by the sons, and they filed a writ petition in the Delhi High Court seeking the transfer of shares based on said decree. The respondent, Investor Education and Protection Fund Authority & Anr., who were holding the shares, were not transferring the shares based on the Nepalese judgment as they found it non-executable in India, being a decree arising from a non-reciprocating territory.

The sons filed a writ petition in the Delhi High Court for directing the respondent to transfer the shares to them based on the foreign judgment. The Court agreed with the petitioners/sons and held that the question of reciprocating or non-reciprocating territory would apply only when the execution of foreign judgments or orders is being sought. The Court held that Nepalese judgment is being produced only for the purposes of the same to be taken on record by the authority to recognise the rights of the petitioners in the shares. It was held that this was not a case that involved the execution of a decree by a foreign court.

### 4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

As mentioned in the answer to the first question, the foreign judgments should be conclusive and not fall within any of the exceptions set out in Section 13 of CPC. The said criteria are not limited to money-related foreign judgements but to all sorts of foreign judgements.

### 5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

There is no formal process for recognition of a foreign judgment.

In the case of reciprocating territories, to be deemed enforceable, an international decision must be conclusive. It must first satisfy the requirements of

Section 13 of CPC. The mechanism for executing decrees passed by courts in reciprocating territories is set out in Section 44-A of the CPC.

The decree holder must file an application for execution of the foreign judgment or decree in the competent Indian court. A certified copy of the decree and a certificate from the superior court of the foreign country stating the amount, if any that has been satisfied under the decree must also be submitted.

Following the application, the executing court will call on the judgment debtor to show cause against the execution of the decree. At this stage, the judgment debtor has the right to object to enforcement on the ground that the judgment offends any of the conditions specified in Section 13 of CPC. The various stages in an execution proceeding instituted in India in order to enforce a decree under Section 44A of the CPC are as follows:

**Application for execution:** The decree holder must file an application for execution of the decree before the competent court.

**Notice to show cause:** The court will then issue notice to the person against which execution is sought, requiring it to show cause as to why the decree should not be executed.

**No contest:** If the person against whom the decree is to be executed does not appear or show cause as to why the decree should not be executed, the court will recognise and enforce the foreign decree as if it were a judgment of the Indian court and will allow the decree-holder to execute the judgment against the assets of the judgment debtor.

The decree-holder can apply to the court to provide directions to the judgment debtor, instructing it to disclose any assets and liabilities. If these assets are disclosed, the court will proceed with the attachment and sale of such assets.

**Non-reciprocating territory:** The judgment holder must file suit on the foreign judgment or decree. Only once the suit is allowed and decreed can it be executed as a domestic decree in terms of Order 21 of CPC.

## 6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

The procedure would be the same as the one answered in the previous question. Judgments emanating from courts

of non-reciprocating territories may be enforced by filing a new suit in which the original judgment only has persuasive value. Therefore, issues of enforcement and appeal do not arise with respect to such judgments until they have been affirmed by the domestic civil court.

## 7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

Section 13 of the CPC provides the criteria with the code for recognition of a foreign judgment and is a pre-condition to any enforcement proceedings. Unless a foreign judgment passes the conclusiveness test under Section 13, it cannot be enforced.

The apostille is a certificate that verifies the origin of an official document (for example, birth, marriage, or death certificates, adoption certificates, affidavits, contracts, diplomas and titles, divorce decrees, founding documents, patent applications, power of attorney, and transcripts). Apostilles can only be issued for documents issued in a country that is a party to the Apostille Convention and used in another country that is also a party to the Convention.

The landmark judgment in *Moloji Rao NarSingh Rao v Sankar Saran* AIR 1955 All 490 reads that a foreign judgment not emanating from a superior court of a reciprocating territory cannot be executed in India without the filing of a new suit in which the judgment has only evidentiary value.

## 8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

If the foreign judgement or decree is not contested, the entire process may take about one to two years.

## 9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Where a suit is filed to declare that a decree in an earlier suit is vitiated by fraud, an interim injunction to restrain execution can be granted on prima facie proof of fraud.

Under Section 9 of the Arbitration and Conciliation Act, 1996, the court has wide powers to grant interim

measures of protection as may appear to the court to be just and convenient, including for preservation, interim custody or sale of goods which are the subject matter of arbitration, for securing the amount in dispute, interim injunction, appointment of a receiver or guardian, etc.

In *Leighton India Contractors Private Ltd. v DLF Ltd.*, decided on May 13, 2020, the Delhi High Court reiterated that the scope of Section 9 of the Act is very broad, and it is an expansive provision that does not curtail the powers of the court. However, though the court has wide powers, its authority is not unbridled, and the 'well-recognised principles' that govern the court in the grant of interim orders would apply to petitions under Section 9.

## 10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

A suit for the foreign judgment must be filed within 3 years from the date of the judgment. A judgment obtained from a non-reciprocating territory can be enforced by filing a new suit in an Indian court for which a limitation period of 3 years has been specified under the Limitation Act, 1963, commencing from the date of the said judgment passed by a foreign court.

## 11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

Sections 13 and 14 enact a rule of res judicata in case of foreign judgments. These provisions embody the principle of private international law that a judgment delivered by a foreign court of competent jurisdiction can be enforced by an Indian court and will operate as res judicata between the parties thereto except in the cases mentioned in Section 13.

In some cases, a court's decision on the conclusiveness of a foreign judgment or decree may be challenged by way of a review or appeal under the CPC. As per Section 13 of the CPC, the absence of fraud is one of the essential requirements for a foreign judgment to be conclusive and enforceable in India. The Supreme Court has observed that under Section 13(e) of the CPC, the foreign judgment is open to challenge where it has been obtained by fraud.

## 12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

No; however, in the case of non-reciprocating countries, if the court is determining the issues in a similar way to the

foreign judgment, the merits may be considered by the court.

Article 137 of the Constitution of India, 1950, provides that subject to provisions of any law and rules made under Article 145, the Supreme Court has the power to review any judgment pronounced or order made by it. Under Supreme Court Rules, 1966 such a petition is to be filed within thirty days from the date of judgment or order, and as far as practicable, it is to be circulated, without oral arguments, to the same Bench of Judges who delivered the judgment or order sought to be reviewed.

Under Article 145(e), the Supreme Court is authorised to make rules as to the conditions subject to which the court may review any judgment or order. In the exercise of this power, Order XL has been framed. The word "Review" in legal parlance connotes a judicial re-examination of the case; therefore, in order to rectify an error and prevent the gross miscarriage of justice, a provision for review has been laid down under Section 114 of CPC which gives a substantive right of review and Order XLVII thereunder provides for the procedure.

Review Petition is dealt with under Section 114 and Order 47 of the CPC. Any party aggrieved by an order or judgment may apply for reviewing the said order or judgment to the same court. It can be filed where no appeal is preferred or in case there is no provision for appeal. A Review Petition is a discretionary right of the court and is filed in the same court. Further, the grounds for review are limited.

## 13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

In India, a judgment delivered by a foreign court considers only the territorial competence of the court over the subject matter and the defendant. Its competence or jurisdiction in any other sense is not regarded as material by the court in this country.

## 14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

No, there are no specific requirements for that, and foreign judgements in default cannot be enforced in India anyhow.

An individual defendant can be served with process under the law of the state in which the court is located. Service of process upon an individual is achieved by delivery of the summons and complaint to the individual, by leaving the documents at the individual's dwelling house or usual place of abode with a person of suitable age and discretion, or by delivering the documents to an agent authorised by appointment or by law.

### 15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

No. Foreign judgments are recognised only if they are conclusive and do not fall within any of the exceptions set out in Section 13 of CPC. The judgment of a foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needs to be enforced.

The 'recognition' of a foreign judgment occurs when the court of one country or jurisdiction accepts a judicial decision made by the courts of another 'foreign' country or jurisdiction and issues a judgment in substantially identical terms without rehearing the substance of the original lawsuit.

### 16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

It is a fundamental principle of law that the judgment or order passed by the court which has no jurisdiction is void. Thus, a judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a court of competent jurisdiction. Such judgment must be by a court competent both by the law of the state which has constituted it and in an international sense, and it must have directly adjudicated upon the matter pleaded as *res judicata*.

Default judgments, judgments from summary or special procedures, formal judgments and judgments imposing punitive damages and penalties or quasi-judicial orders have been held to be unenforceable in India.

### 17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in

### the foreign jurisdiction?

No, a foreign judgment is not enforceable if it is subject to appeal in a foreign jurisdiction. A foreign judgment must be conclusive in order to be rendered enforceable. If an appeal is pending against the judgment in the foreign court of appeal, it will not be deemed final and conclusive for the purposes of enforcement in India.

### 18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

A right to appeal such judgments exists in the same manner as the right to appeal the judgment of an Indian court. Judgments emanating from courts of non-reciprocating territories may be enforced by filing a new suit in which the original judgment only has persuasive value. Therefore, issues of enforcement and appeal do not arise with respect to such judgments until they have been affirmed by the domestic civil court.

The judgment debtor has the right to appeal to compliance at this point on the basis that the judgment violates any of the provisions set out in Section 13 of CPC. The following are the steps of such an execution case in India launched to execute a decree through Section 44A of CPC:

Application for compliance: The holder of the decree shall file an appeal with the appropriate court for enforcement of the decree.

Notice to show cause: The court would then send a notice to the person against whom the execution is requested, asking him to show cause for the failure to enforce the order.

No contest: If the individual against whom the decree is now to be imposed does not demonstrate or show reason how the decree should not be enforced, the court will accept and impose the international decree as if it were a judgment of the Indian court and will authorise the holder of the decree to enforce the judgment against the debtor's estate.

The holder of the decree may ask the court to provide the judgment debtor with orders, instructing it to report any assets and liabilities. The court shall comply with.

### 19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Once judgment is granted by the civil court, every judgment creditor shall be entitled to interest on the judgment sum. If the rate of interest has not been contractually agreed upon by the parties, then the judgment creditor is entitled to claim the interest rate as prescribed by the Court.

The Chief Justice has a fixed interest rate of 5% per annum. However, if the parties have already agreed to an interest higher than 5% per annum, the court will allow the claim for a higher interest rate as agreed by the parties.

## 20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

In a decree passed by a foreign court, the amount awarded is generally in a foreign currency. Therefore, while enforcing the foreign decree in India, the amount has to be converted into Indian currency. In *Forasol v ONGC*, it was held that the date of the decree should be used for the calculation.

## 21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

If any legal action or other proceeding is brought for the enforcement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

The common thread running through all these cases is the reiteration of three salutary principles: (i) costs should ordinarily follow the event; (ii) realistic costs ought to be awarded keeping in view the ever-increasing litigation expenses; and (iii) the cost should serve the purpose of curbing frivolous and vexatious litigation. It is worth quoting Justice Bowen in *Copper v Smith* (1884). He said: "I have found in my experience that there is one panacea which heals every sore in litigation, and that is costs".

## 22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any

## restrictions on this and can third party funders be made liable for the costs incurred by the other side?

There is no express statutory or regulatory bar to third-party funding (TPF) of litigation in India. However, no formal legislation expressly legalises or regulates TPF in India. Based on the decisions of the Indian courts, there are certain restrictions made for TPF:

- quantum of the share plays a crucial role in determining the validity of a funding agreement.
- the agreement pertaining to the role, rights and responsibilities of the litigant and the funder.
- disclosure of confidential information to the funder.
- full disclosure about the existence of such agreements in a proceeding to the court or the tribunal.

## 23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

The Commercial Courts Act requires compulsory pre-institution mediation and case management hearings and provides for expedited conduct of litigation in commercial disputes in a way that is distinct from the regular civil procedure. However, in most states, these provisions are yet to be effectively implemented in practice. Most large commercial contracts, however, tend to have an arbitration clause, with parties preferring arbitration to the lengthier court process. Arbitration in India is a 12-month time-bound process (extendable to 18 months with the parties' consent). A recent amendment to the arbitration regime provides for the establishment of the Arbitration Council of India (although the section concerning its establishment is yet to be notified). This will exercise the powers of grading, issue guidelines for arbitral institutions, and recognise professional institutes that provide accreditation to arbitrators.

I feel that arbitration is a great way of solving cases and something which is just coming up and yet to be explored further. In the next 5 years, a shift from the courts to the halls will somehow do better for society.

Suggestions for more significant developments for the enforcement in India can be the following:

- There should be more fast-track courts in India to provide speedy justice to many pending cases in a specified time.

- The Judges should be appointed on an ad hoc basis, and retired judges should be eligible for the selection.
- Merely making laws is not enough; the government should ensure that these laws are properly implemented and enforced.
- The laws made should be capable of protecting the weak from the strong.
- To dispose of the pending cases there should be a fixed time frame for each stage of a case in court.
- Specialised courts should be established, that may decide the matter based on the knowledge without involving too much in arguments and procedural hassles.

The laws in India are very clear with respect to the enforcement of foreign judgments, and with an increase in international trade, the number of cases on enforcement of foreign judgments is increasing manifold. Thus, the Courts are trying to expedite such enforcement even under general law where possible. For example, in *Pratap Raj Pandey and others vs. Investor Education and Protection Fund Authority and others* [2023/DHC/002917], discussed above, the Court gave effect to a foreign judgment under writ jurisdiction and relying on Section 3(2) of Diplomatic and Consular Officers (Oaths and Fees) Act, 1948. This demonstrates that courts are more inclined towards recognition of

foreign judgments than against making enforcement difficult under procedural requirements.

#### 24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

India has neither signed nor ratified the Hague Choice of Courts Convention 2005.

The Hague Choice of Courts Convention 2005 gives choice-of-court agreements the same enforceability and effect as arbitration agreements. Under this, the parties to a choice-of-court agreement can only choose the country or the court from which the judges are drawn.

If the parties are left to choose the country, it is likely that there will be increased instances of forum shopping and judicial corruption. Hence, India might not ratify the same in the foreseeable future.

#### 25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

India to date has neither signed nor ratified the Hague Judgements Convention, 2019. India might ratify the same in the foreseeable future.

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