

India

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

Statutory framework for the enforcement of foreign judgments

India's Code of Civil Procedure, 1908 (Code) provides the statutory framework for the enforcement of foreign judgments in India. Section 13 of the Code specifies that a foreign judgment shall be conclusive as regards any matter which is directly adjudicated between the same parties or between parties under whom they or any of them claim litigating under the same title, subject to the following exceptions:

The judgment has not been pronounced by a court of competent jurisdiction

A foreign judgment to be binding and conclusive must be rendered by a court having sufficient jurisdiction, otherwise the judgment shall be held null and void. The Supreme Court of India (SCI) has held that until and unless the Court does not have jurisdiction, any matter delivered by it shall not be enforceable in India. (*Sankaran Govindan v Lakshmi Bharathi (1974 AIR 1764).*)

When any document purporting to be a certified copy of a foreign judgment is produced before an Indian court, it is presumed to be pronounced by a court of competent jurisdiction, unless the contrary appears on the record (s 14 of the Code).

The judgment has not been given on the merits of the case

A case is decided on the merits when the judge has considered and assessed all the arguments and evidences presented before it without any emotional or technical bias. The SCI has held that a decree and judgment granted by a foreign court can be said to be on merits only if such court has considered the case on merits by looking into the evidence and documents to prove it, as per its rules. (*International Woolen Mills v Standard Wool (UK) Ltd (2001) 5 SCC 265.*)

Prima facie the proceedings are founded on an incorrect view of international law or a refusal to recognise Indian law in cases where such law is applicable

Any judgment rendered by a foreign court that violates an applicable Indian legislation or forms an incorrect legal view would not be enforced in India. In the case of *I&G Investment Trust v Raja of Khalikote (AIR 1952 Cal 508)*, the issue involved an action initiated in England against an Indian subject on the basis of a contract which was governed by English Law.

The English court in *obiter dictum* observed that even though it is held that the contract is governed by English law, it could not be assumed to give jurisdiction in the international sense, although it may give rise to a cause of action. Based on this, the Calcutta High Court held that the decree was not executable in India.

The proceedings in which the judgment was obtained are opposed to natural justice

Section 13(d) of the Code specifies that any judgment rendered by the foreign court must adhere to and follow proper judicial procedure. In this sub-section, the term 'natural justice' refers to irregularities in the procedure adopted rather than the merits of the case. A decree will be considered null and void if it is in ignorance or violation of principles of natural justice.

The judgment has been obtained by fraud

It is a well-established principle of private international law that if a foreign judgment is obtained by fraud, it will not operate as *res judicata*. An action to set aside a foreign judgment cannot be brought on the ground that it has been decided wrongly on merits. However, it can be brought on the ground that the foreign court was imposed upon or tricked into giving the judgment. (*Sankaran v Lakshmi (AIR 1974 SC 1764)*.)

A mere concealment of fact is not sufficient to avoid a foreign judgment. While Indian courts cannot act as appeal courts for foreign judgments, they can refuse to enforce a judgment if it can be proved that such judgment was obtained by misleading the foreign court.

The judgment sustains a claim founded on a breach of any law in force in India

Any foreign judgment that is based on a violation of an Indian law would not be enforced in India. The rules of private international law cannot be adopted mechanically. A court in India is required to decide every matter in accordance with Indian law. In the case of *T Sundaram Pillai v Kandaswami Pillai (AIR 1941 Mad. 387)*, the defendant claimed that the judgment was obtained in breach of the Indian Contract Act, 1872, as the defendant was a minor at the time of contract. The court found the claim to be a breach of the Indian law and the judgment was not enforced.

Reciprocity with other countries

India is not currently part of any multilateral treaty including the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil Matters, 2019. However, India has executed bilateral treaties with certain countries based on reciprocity in enforcement of foreign judgments. The Code defines the term 'reciprocating territory' as any country or territory outside India, which the Indian government may by notification in the *Official Gazette*, declare to be a reciprocating territory. A few of the countries notified by India as reciprocating territories are, Fiji, Singapore, Malaysia, the United Kingdom, UAE, and New Zealand.

Once the foreign judgment is determined as conclusive under Section 13 of the Code, the process for enforcing such foreign judgment will differ, based on whether such judgment is pronounced by a court of a reciprocating territory or a non-reciprocating territory.

Process adopted for a reciprocating country

A certified copy of a decree pronounced by the superior courts of any reciprocating territory may be filed in a district court in India, and such decree will be executed as if it had been passed by such district court (s 44-A of the Code). If a foreign decree has been partially satisfied or adjusted to any extent, then a certificate of satisfaction or adjustment must be filed.

Only money decrees or judgments are enforceable. Certain categories of decrees or judgments are unenforceable, that is, decrees or judgments for the payment of taxes or charges of a similar nature, or decrees or judgments for the payment of a fine or other penalties.

Process adopted for a non-reciprocating country

If the foreign judgment is not pronounced by a superior court of a reciprocating territory, in such cases a judgment cannot be executed in the territory of India. (*Moloji Nar Singh Rao v Shankar Saran (AIR 1962 SC 1737)*). In such instances, a fresh suit will have to be instituted in a competent court in India based on the foreign judgment or the underlying cause of action, or both. Such foreign judgment can be used as evidence in the suit and the resulting judgment will be a domestic decree to be executed under Order 21 of the Code.

Based on the above, the Indian courts will investigate into the merits of the case in respect of judgments passed by courts in a non-reciprocating territory. Consequently, disposal of judgments from non-reciprocating territories can be time consuming in comparison to enforcement of judgments from reciprocating territories.

Under Section 44-A of the Code, a judgment holder from a 'reciprocating territory' must adhere to the follow stages for execution of a foreign judgment:

1. To file an application for execution of the foreign judgment.
2. Thereafter, the court must issue a show cause notice to the judgment debtor seeking a reasoning as to why such foreign judgment should not be executed.
3. If the judgment holder fails to appear before the court, the court will recognise and enforce the foreign judgment as if it was passed by a competent court in India, and the court will give the judgment holder an opportunity to enforce the judgment against the assets of the judgment debtor.
4. The judgment holder may even seek directions from the court to compel the judgment debtor to disclose all its assets and liabilities and then proceed for attachment and sale of such assets.

<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?</p>
	<p>The Code does not specify any considerations with respect to serving of formal notice or any other intimation before commencing an enforcement of foreign judgment against the State in India. However, as discussed in the response to Question 1, above, the judgment holder must satisfy the criteria set down in Section 13 of the Code. The execution court in India needs to satisfy itself that the State was served with reasonable notice of the original action. The issuance of notice prior to the State before institution of the suit would be an essential component of the principles of natural justice for the foreign judgment to be conclusive. Also, it is essential to note that various agreements on judicial cooperation, both, in civil and commercial matters, for the service of summons, judicial documents, commissions, execution of judgments (including foreign arbitral awards) between India and other reciprocating countries express that issuance of notices and summons must be in consonance with the domestic laws of the country.</p> <p>On a relative note, Section 80 of the Code makes it mandatory to serve a statutory notice on the government entity before any party files a suit against such government entity. Similarly, Section 82 of the Code provides that a domestic decree cannot be executed against the government within three months from the date of pronouncement of the decree. However, there are no judicial precedents available to support that the statutory notice provision under Section 80 of the Code shall apply to enforcement of foreign judgment against an Indian State.</p>
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</p>
	<p>Jurisdictional state immunity precludes the judiciary of one state from exercising jurisdiction in a legal claim to which another sovereign state is a party. The primary rule or the concept of sovereign immunity in international law or state immunity is that a state cannot be tried in the jurisdiction of foreign courts. However, there is no specific provision under the Code that provides sovereign immunity or other defences to the Indian government during enforcement of foreign judgments in India except for the exceptions specified under Section 13 of the Code.</p> <p>India is a signatory and party to the Diplomatic Relations (Vienna Convention) Act of 1972 (Vienna Convention) and has enacted the Vienna Convention on Diplomatic Relations of 1961. The properties and assets listed under the Vienna Convention are exempt from enforcement or execution under the Vienna Convention. The properties and assets exempted are the premises of the diplomatic mission, including the furnishings and other property thereon, the means of transport of the mission and the private residence of a diplomatic agent, including the furnishings and other property thereon. India is also a signatory of the United Nations Convention on Jurisdictional Immunities of States and their Property, 2004 which provides immunity to a state and its property from the jurisdiction of the courts of another state, however the convention has not yet come into force.</p>

	<p>Not many cases have been reported concerning enforcement proceedings of foreign judgments against the State in India as majority of execution proceedings are tried in district courts, where the judgments are rarely reported. Moreover, there is a lack of official data regarding the number of foreign judgments successfully enforced against a State in India.</p>
4.	What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?
	<p>There are no specific provisions, or exceptions to sovereign immunity in India’s legislation which specifically apply where the claim results from improper actions of the defendant State per se, including war of aggression.</p>
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	<p>Section 14 of the Code establishes a presumption that a foreign judgment is issued by a competent court having jurisdiction. It places the burden of proof on the defendant to refute and provide evidence to the contrary. As discussed earlier, judgment obtained from superior courts of reciprocating territories can be enforced if it complies with the due standards provided under Section 13 of the Code. Similarly, foreign judgments from courts of non-reciprocating territories are not directly enforceable in India and require the filing of a fresh civil suit in India, where the foreign judgment will carry evidentiary weight to be assessed according to the Indian Evidence Act, 1872.</p>
5a.	What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?
	<p>There are no prescribed standards which Indian courts assess during enforcement proceedings as regards the compliance of service requirements in the original proceedings against a state.</p> <p>The Ministry of Home Affairs in India has entered into Mutual Legal Assistance Treaties or Agreements (MLAT) with 22 countries. In relation to countries with MLATs, there is an obligation to consider service of documents. However, for non-MLAT countries, there is no obligation to consider such requests for service of documents. Moreover, India has also acceded to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965 (Hague Service Convention), which provides for a procedure for the transmission of judicial and extrajudicial documents from one signatory country to the other signatory country. According to Article 13 of the Hague Service Convention, it is open to a country to refuse to comply with the service of summons where the compliance with the request for service is in infringement to its sovereignty or security.</p>

5b.	What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?
	As described in the response to Question 5b, above, India is a signatory to, and follows the Hague Service Convention. Also, there are few general provisions in the Code which must be considered for issuance of a service of summons or proceedings on a State in India. However, there are no specific provisions in India which deal with compliance of service on account of lack of diplomatic relations.
5c.	What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?
	<p>India upholds the right to representation as an important factor for determining compliance with principles of natural justice. As discussed above, compliance with principles of natural justice is a tenet of Section 13 of the Code, which is the first step for recognition and enforcement of a foreign judgment in India. In light of these principles, the standard of availability of representation for due process in deciding the enforcement of judgments against the State typically involves ensuring that the State has had a reasonable opportunity to present its case and defend its interests in the original proceedings. Such a standard aims to uphold principles of fairness and procedural justice.</p> <p>The Indian courts will assess the following requirements in relation to the enforcement of foreign judgments against a state in India:</p> <ol style="list-style-type: none"> 1. <i>Notice and opportunity to be heard</i>: – Whether the state was properly and duly notified of the foreign proceedings and was given sufficient time and opportunity to participate in the legal process. 2. <i>Legal representation</i> – Whether the state had the right to legal representation or the option to appoint legal representatives to present its case and protect its interests. 3. <i>Adequate legal assistance</i> – Whether the state had access to competent and effective legal counsel who could provide appropriate legal advice and representation throughout the original proceedings. 4. <i>Procedural fairness</i> – Whether the procedures followed in the original proceedings against the state were fair, transparent, and in accordance with the principles of natural justice. 5. <i>Due consideration of arguments</i> – Whether the arguments and defences presented by the state were duly considered and addressed in the original proceedings.
5d.	What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?
	As stated above, Section 13 of the Code provides that a foreign judgment should have been passed on merits and must be pronounced in accordance with the principles of natural justice. This principle mandates that the state was adequately represented in the original proceedings.

	<p>In view of the above, where it is established that the defendant state could not find appropriate legal representation then the courts in India may consider such foreign judgment as inconclusive. If the state, deliberately or otherwise precludes from making a legal representation of its case in the original proceedings, especially, after having been served, then the court shall assess why the state chose not to make a legal representation, before the court decides on the fate of the foreign judgment.</p>
<p>6.</p>	<p>What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?</p>
	<p>The Code is silent about execution of assets owned by the State during enforcement of a foreign judgment. As discussed in the response to Question 3, India is a signatory to the Vienna Convention, whereby, certain assets listed under the Vienna Convention are exempt from enforcement or execution. The properties and assets so excluded are the premises of the diplomatic mission, including the furnishings and other property thereon, the means of transport of the mission and the private residence of a diplomatic agent, including the furnishings and other property thereon.</p>