



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

ROLE OF PUBLIC POLICY IN REFUSING FOREIGN JUDGMENTS: INDIAN COURTS' APPROACH

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ABSTRACT: Cross border commerce expands very fast in recent decades, & parties litigate abroad more frequently for strategic or practical reasons. Indian courts therefore face growing number of suits & execution petitions based on foreign judgments. Code of Civil Procedure, 1908 gives statutory framework under Sections 13, 14 & 44A, but its public policy content remains contested. Section 13 adopts rule of conclusiveness subject to six exceptions, including clause (f) on breach of any law in force in India, which operates like broad public policy filter. Scholars describe this clause as “unsympathetic” because it allows refusal even for relatively technical violations of Indian law, rather than only for violations of fundamental norms. Indian courts, beginning with decisions such as *Brijlal Ramjidas v. Govindram Gordhandas Seksaria & Duggamma v/s Ganeshayya*, treated foreign judgments as conclusive only on matters directly adjudicated & within jurisdictional & natural justice limits. Later family law cases like *Satya v/s Teja Singh & Y. Narasimha Rao v/s Y. Venkata Lakshmi* linked refusal of recognition to deception of forum, lack of genuine jurisdiction & evasion of Indian matrimonial policy. More recent commercial decisions, including *TransAsia Private Capital Ltd. v/s Gaurav Dhawan*, show greater willingness to enforce foreign money decrees where due process & jurisdiction requirements are met. Parallel developments in arbitration law, from *Renusagar Power Co. Ltd. v/s General Electric Co.* through *Shri Lal Mahal Ltd. v/s Progetto Grano Spa & Ssangyong Engineering & Construction Co. Ltd. v/s National Highways Authority of India*, have narrowed notion of “public policy of India” for foreign awards. This article examines whether similar evolution is visible or desirable for foreign judgments, & proposes re reading of Section 13 that aligns with international best practices while preserving core Indian constitutional & statutory values.

Keywords: *Foreign judgments; public policy; Section 13 CPC; recognition & enforcement; Indian courts.*

INTRODUCTION

Background & Context

Growth of cross border trade, investment, & migration means parties now frequently choose foreign courts for dispute resolution.¹ Indian residents borrow abroad, sign personal guarantees, & hold assets in several jurisdictions, so foreign decrees regularly travel back into India for execution.² Commercial reports on enforcement show that judgment creditors increasingly treat India as important asset jurisdiction for recovery strategy.³ Indian legal system therefore cannot ignore foreign judgments, even when underlying dispute has weak territorial connection with India. Efficient enforcement regime reduces transaction costs & supports confidence of foreign counterparties, which indirectly benefits Indian economy also⁴ and at the same time, over generous enforcement can expose Indian defendants to unfair foreign proceedings or standards inconsistent with local law.⁵ Courts hence walk tight line between openness & protection. In this setting, predictable doctrine on conclusiveness & public policy becomes crucial for parties while structuring contracts & planning litigation risk.⁶ When guidance is unclear or seems too discretionary, rational actors either avoid India as enforcement forum or artificially increase contractual safeguards.⁷ That conduct ultimately burdens Indian commerce & may push sophisticated disputes to other legal hubs.⁸

Enforcement of Foreign Judgments & Role of Public Policy

Sections 13 & 14 of Code of Civil Procedure, 1908 create basic framework for foreign judgment enforcement in India.⁹ Section 13 lays down rule that foreign judgment is conclusive between same parties, subject to six well known exceptions on jurisdiction, merits, international law, natural justice, fraud, & breach of any law in force in India.¹⁰ Section 14 adds evidentiary presumption that certified copy of foreign judgment is from court of competent jurisdiction, unless contrary is shown.¹¹ Together, these provisions operationalise comity of nations & doctrine of obligation, by treating foreign judgment as creating duty on defendant to obey, while still preserving limited defences.¹² In practice however, clause (f) on “breach of any law in force in India” often acts as public policy gateway, even though text does not use that expression.¹³ Scholarly literature criticises breadth of this clause, arguing that it invites refusal even where violation concerns minor regulatory rule rather than core fundamental policy. In commercial practice, parties & counsel therefore frame objections under Section 13(f) CPC whenever enforcement touches exchange control statutes, tax rules, or sectoral regulations. Courts occasionally accept such objections without clearly

¹ Chandrawat & Partners, Enforcement of Foreign Judgements in India (Chandrawat & Partners, 2023) 2–3.

² *Ibid.* 2-3.

³ Enforcement of Foreign Judgments Laws & Regulations Report 2025: India (ICLG, 2025) 8–10.

⁴ *Ibid.* 10-12

⁵ Code of Civil Procedure 1908, ss 2(5), 2(6), 13.

⁶ *Ibid.* ss 13.

⁷ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 3–4, 8–12.

⁸ *Ibid.* 10-12.

⁹ Code of Civil Procedure 1908, ss 2(5), 2(6), 13.

¹⁰ *Ibid.* ss 13.

¹¹ Code of Civil Procedure 1908, s 14.

¹² Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 3–4, 8–12.

¹³ *Ibid.* 10–12.

separating mere illegality from genuine public policy disagreement. This muddling leads to uncertainty about when Indian law should override foreign adjudication in cross border disputes.¹⁴

Nature of Foreign Judgments & Comity

CPC defines “foreign court” in Section 2(5) as court situated outside India & not established or continued by authority of Central Government.¹⁵ Section 2(6) defines “foreign judgment” as judgment of foreign court, thereby separating territorial & institutional elements clearly. These definitions determine when Section 13 & 44A regime applies, since decisions of domestic tribunals or Indian quasi-judicial bodies fall outside their scope.¹⁶ Classical common law bases recognition of foreign judgments on comity of nations & doctrine of obligation.¹⁷ Comity theory emphasises respect for sovereignty of foreign state & avoidance of conflicting adjudications in cross border matters.¹⁸ Doctrine of obligation views foreign judgment as creating duty on defendant to satisfy adjudicated liability, which forum court enforces as matter of justice. Indian courts, drawing on English precedents & conflict of laws treatises, accepted both strands & link them to fairness toward parties who already litigated elsewhere. At same time, Indian jurisprudence recognises that comity is not blind & cannot require enforcement of judgments that offend basic notions of justice or mandatory local laws. Scholars like H. L. Ho explain that comity is mediated by policies underlying enforcement, including efficiency, protection of reliance, & systemic harmony. Those considerations justify limited set of defences rather than wholesale re litigation, & they underpin Section 13 structure in CPC.¹⁹

Recognition, Enforcement & Conclusiveness

Recognition refers primarily to treating foreign judgment as *res judicata* or as establishing certain legal relationships, for example marital status or liability.²⁰ Enforcement involves using coercive mechanisms of Indian courts, such as attachment & sale of assets, to satisfy foreign money decrees.²¹ In practice, proceedings under Section 44A CPC combine both dimensions, because executing court must decide whether judgment is conclusive under Section 13 before allowing execution.²² Rule of conclusiveness under Section 13 aims to prevent re litigation of matters already adjudicated upon between same parties under same title.²³ Decisions such as *Brijlal Ramjidas v/s Govindram Gordhandas Seksaria & Duggamma v/s Ganeshayya* stress that conclusiveness attaches only to matters “directly adjudicated upon” not to incidental or collateral findings. Courts therefore examine pleadings & reasoning of foreign judgment to delimit precise issues covered, while still respecting its overall effect.²⁴ This approach also explains why foreign default judgments can sometimes qualify as being “on merits”, if court considered evidence & legal

¹⁴ *Ibid.* 10–12.

¹⁵ Code of Civil Procedure 1908, ss 2(5), 2(6), 13.

¹⁶ *Ibid.*

¹⁷ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 3–4, 8–12.

¹⁸ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 3–4, 8–12.

¹⁹ *Ibid.* 10–12.

²⁰ *Ibid.* 10–12.

²¹ *Y Narasimha Rao v Y Venkata Lakshmi* (1991) 3 SCC 451.

²² *Ibid.*

²³ Code of Civil Procedure 1908, ss 2(5), 2(6), 13.

²⁴ *Ibid.*

arguments rather than mechanically entering decree on non appearance.²⁵ Recent decision in *TransAsia Private Capital Ltd. v/s Gaurav Dhawan* illustrates this, where Delhi High Court treated ex parte English judgment as conclusive because service was proper, court had jurisdiction, & claim was examined on substance.²⁶ Such cases show that Indian courts do not automatically distrust foreign proceedings, but insist on basic procedural fairness.

Statutory Architecture in India

Section 13 CPC enumerates six situations where foreign judgment is not conclusive, covering jurisdiction, merits, international law errors, refusal to recognise applicable Indian law, natural justice, fraud, & breach of any law in force in India.²⁷ Supreme Court in *Raj Rajendra Sardar Moloji Nar Singh Rao Shitole v/s Shankar Saran* clarified that these rules are substantive law, not mere procedural directions, because they determine rights arising from foreign judgments.²⁸ This characterisation strengthens argument that Section 13 embodies India's public policy choices in private international law.²⁹

Section 14 CPC creates rebuttable presumption that foreign judgment produced in certified form is from court of competent jurisdiction.³⁰ Party resisting enforcement must adduce evidence to displace this presumption, for example by showing lack of territorial or subject matter jurisdiction under conflict of laws principles. This rule promotes efficiency because it avoids mini trials on foreign procedural law at threshold stage & encourages reliance on apparent regularity of foreign judgments.³¹

Section 44A CPC provides special execution mechanism for decrees of superior courts of reciprocating territories notified by Central Government, such as United Kingdom, Singapore, & United Arab Emirates.³² Such decrees may be executed as if passed by district court in India, subject still to Section 13 defences. Guidance from practice notes & commentary shows that for non-reciprocating territories, judgment creditor must file fresh suit on judgment, which slows enforcement significantly. Distinction between reciprocating & non reciprocating territories therefore has real impact on transaction structuring & choice of forum clauses.³³

Public Policy as Legal Concept

Public policy, in private international law sense, refers to fundamental principles of justice, morality, or public order that forum state considers non-negotiable.³⁴ *Renusagar Power Co. Ltd. v/s General Electric Co.*, dealing with enforcement of foreign arbitral awards under 1961 Act, famously narrowed public policy to

²⁵ *Duggamma v Ganeshayya* AIR 1965 Kant 97.

²⁶ *Duggamma v Ganeshayya* AIR 1965 Kant 97.

²⁷ Code of Civil Procedure 1908, ss 2(5), 2(6), 13.

²⁸ *Raj Rajendra Sardar Moloji Nar Singh Rao Shitole v Shankar Saran* AIR 1962 SC 1737.

²⁹ *Ibid.*

³⁰ Code of Civil Procedure 1908, s 14.

³¹ *Ibid.*

³² *Chandrawat & Partners* (supra) 4–6.

³³ *Ibid.*

³⁴ Siddharth Peter Lall, 'Introducing "Public Policy" to Enforcement of Foreign Judgments: Lessons from Law of Arbitration' (2019) SSRN Working Paper 3–4, 8–12.

three heads public policy of India, interests of India, & justice or morality.³⁵ Supreme Court borrowed from *Parsons & Whittemore Overseas Co. v/s Societe Generale de l'Industrie du Papier*, where United States court spoke of “most basic notions of morality & justice”.³⁶

Arbitration jurisprudence later developed dual standards, with *ONGC v/s Saw Pipes Ltd.* introducing broad “patent illegality” test for domestic awards, & *Shri Lal Mahal Ltd. v/s Progetto Grano Spa* re affirming *Renusagar’s* narrow standard for foreign awards.³⁷ *Ssangyong Engineering & Vijay Karia* further confirmed that interference with foreign awards is permissible only in extremely limited situations, & that New York Convention requires internationalist approach to public policy.^{38,39} Recent decision in *Avitel Post Studios Ltd. v/s HPEIF Holdings 1 Ltd.* applies these principles while discussing bias & due process objections.⁴⁰

Scholars like Kshama Loya argue that this calibrated approach recognises difference between municipal & international spheres, & avoids treating every statutory breach as public policy violation.⁴¹ SSRN study on “Introducing ‘Public Policy’ to Enforcement of Foreign Judgments” criticises Section 13(f) CPC for equating any breach of Indian law with ground to refuse foreign judgment, unlike *Renusagar* style analysis that asks whether breached norm itself embodies public policy.⁴² If Indian courts continue to apply Section 13(f) literally, they risk expanding public policy to cover virtually any illegality, which would be inconsistent with trends in arbitration & comparative foreign judgment regimes.⁴³

For foreign judgments, therefore, key conceptual challenge is to distinguish between substantive public policy, procedural public policy, & what some commentators call “international public policy”, meaning only those principles essential to India’s constitutional & legal identity.⁴⁴ Comparative materials, including Asian principles & regional conventions, generally endorse use of narrow international public policy test for refusal of recognition.⁴⁵ Whether Indian courts will recalibrate Section 13 interpretation in that direction remains central question that this research seeks to address.

Text & Structure of Section 13

Section 13 of Code of Civil Procedure, 1908 lays down rule that foreign judgment is conclusive between parties, but then immediately carves out six exceptions in clauses (a) to (f).⁴⁶ These exceptions concern lack of competent jurisdiction, judgment not on merits, incorrect view of international law or refusal to recognise Indian law, proceedings opposed to natural justice, fraud, & judgment sustaining claim founded on breach of

³⁵ *Algemene Bank Nederland NV v Satish Dayalal Choksi* AIR 1990 Bom 170.

³⁶ *Vijay Karia v Prysmian Cavi e Sistemi SRL* (2020) 11 SCC 1.

³⁷ *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705.

³⁸ *Ssangyong Engineering & Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131.

³⁹ *Vijay Karia v Prysmian Cavi e Sistemi SRL* (2020) 11 SCC 1.

⁴⁰ *Avitel Post Studios Ltd v HPEIF Holdings 1 Ltd* 2024 SCC OnLine SC 345.

⁴¹ *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644.

⁴² Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 3–4, 8–12.

⁴³ *Ibid.*

⁴⁴ *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644.

⁴⁵ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 3–4, 8–12.

⁴⁶ Code of Civil Procedure 1908, s 13.

any law in force in India.⁴⁷ Courts & commentators repeatedly describe these clauses as exhaustive code on when foreign judgment loses its conclusive character in India.⁴⁸

Structure of Section 13 reflects layered concerns of Indian public policy, although section never uses that label expressly.⁴⁹ Clause (a) & clause (b) relate to jurisdiction & merits, which protect integrity of adjudication & ensure that only considered decisions bind parties.⁵⁰ Clause (c) & clause (d) address international law & natural justice, so they safeguard India's place in transnational legal order & also fairness of procedure.⁵¹ Clause (e) & clause (f) deal with fraud & illegality under Indian law, which carry clear moral & regulatory policy content, though their precise reach still contested.⁵²

Judicial decisions recognise that these exceptions operate cumulatively & sometimes overlap, so same factual situation may trigger more than one clause.⁵³ For example, deliberate concealment of summons may violate natural justice & also amount to fraud on foreign court.⁵⁴ Courts therefore examine pleadings, evidence, & reasoning of foreign judgment, & then test each relevant clause of Section 13 instead of treating them as watertight separate compartments.⁵⁵

Locating Public Policy within Section 13

Section 13 does not mention expression "public policy of India", unlike Sections 34 & 48 of Arbitration & Conciliation Act which use that phrase explicitly.⁵⁶ Yet scholars widely treat several exceptions in Section 13 as functional equivalents of public policy defences, especially where they embody non-negotiable values of Indian legal system.⁵⁷ Clause (c), clause (d), clause (e) & clause (f) are usually grouped under this umbrella, while clause (a) & clause (b) are seen more as technical jurisdiction & merits requirements.⁵⁸

Judicial writing also uses public policy language when interpreting Section 13, even though statutory text remains silent.⁵⁹ In *R Viswanathan v Rukn Ul Mulk Syed Abdul Wajid* Supreme Court emphasised that foreign judgment is enforced only so far as it is consonant with justice, equity & good conscience, which are classical markers of public policy reasoning.⁶⁰ Later in *Satya v Teja Singh*, court described Section 13 as expression of India's public policy for recognition of foreign matrimonial decrees, tying statutory clauses with broader protective purpose.⁶¹

⁴⁷ *Ibid.*

⁴⁸ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

⁴⁹ *Enforcement-of-Foreign-judgement-in-India* (SCC Online Articles, 2022) 3–6.

⁵⁰ Code of Civil Procedure 1908, s 13.

⁵¹ *Enforcement-of-Foreign-judgement-in-India* (SCC Online Articles, 2022) 3–6.

⁵² Siddharth Peter Lall, 'Introducing "Public Policy" to Enforcement of Foreign Judgments: Lessons from Law of Arbitration' (2019) SSRN Working Paper 8–15.

⁵³ *Brijlal Ramjidas v Govindram Gordhandas Seksaria* (1943) 45 BOMLR 358 (PC).

⁵⁴ *Ibid.*

⁵⁵ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

⁵⁶ Arbitration & Conciliation Act 1996, ss 34, 48.

⁵⁷ Siddharth Peter Lall, 'Introducing "Public Policy" to Enforcement of Foreign Judgments: Lessons from Law of Arbitration' (2019) SSRN Working Paper 8–15.

⁵⁸ *Enforcement-of-Foreign-judgement-in-India* (SCC Online Articles, 2022) 3–6.

⁵⁹ Conclusive foreign judgment enforceable in India: Delhi High Court (SCC Blog, 2023).

⁶⁰ *R Viswanathan v Rukn Ul Mulk Syed Abdul Wajid* AIR 1963 SC 1.

⁶¹ *Satya v Teja Singh* (1975) 1 SCC 120.

Scholars like Siddharth Peter Lall argue that clause (f) of Section 13, by speaking of claim founded on “breach of any law in force in India”, operates as sweeping public policy filter.⁶² It allows Indian court to reopen foreign judgment whenever underlying transaction or right would be illegal if governed by Indian law, even if that illegality relates to relatively minor regulatory rule.⁶³ This reading contrasts with modern international approach where only violation of fundamental principles, not every statutory breach, justifies refusal of recognition.⁶⁴

Section 13(f) CPC as De facto Public Policy Clause

Clause (f) of Section 13 has attracted strongest criticism in recent literature, because it seems to equate public policy with any breach of Indian law.⁶⁵ Wording does not qualify type of law, so it potentially covers everything from exchange control & tax rules to sectoral regulations & even minor procedural prescriptions.⁶⁶ Such breadth gives wide discretion to judgment debtor to object to enforcement by pointing at some violation in underlying transaction, even if foreign court already considered & rejected that argument.⁶⁷

Commentators point out that this design undermines predictability of enforcement & may incentivise strategic behaviour by defendants.⁶⁸ Foreign creditors may hesitate to rely on Indian enforcement if they fear that almost any regulatory non-compliance will become ground to deny recognition, regardless of fair & competent adjudication abroad.⁶⁹ Law firm guides & ICLG report note that clients often seek advice on this specific risk when choosing governing law & forum clauses for contracts with Indian counterparties.⁷⁰

International instruments generally adopt much narrower formula, permitting refusal only where recognition would be manifestly incompatible with public policy of forum state.⁷¹ Asian Principles for Recognition & Enforcement of Foreign Judgments, discussed in Nishitani volume, adopt language based on “manifest incompatibility with fundamental principles of public policy”.⁷² Hague Judgments Convention 2019 similarly provides public policy exception as last resort ground, to be applied restrictively & with eye on international cooperation.⁷³ Seen against these standards, Section 13(f) appears unusually broad, & Indian

⁶² Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁶³ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁶⁴ Yuko Nishitani (ed), *The Recognition & Enforcement of Foreign Judgments in Civil & Commercial Matters in Asia* (Springer 2021) 25–32.

⁶⁵ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁶⁶ *Ibid.*

⁶⁷ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

⁶⁸ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁶⁹ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

⁷⁰ *Ibid.*

⁷¹ Yuko Nishitani (ed), *The Recognition & Enforcement of Foreign Judgments in Civil & Commercial Matters in Asia* (Springer 2021) 25–32.

⁷² *Ibid.*

⁷³ Convention on Recognition & Enforcement of Foreign Judgments in Civil or Commercial Matters (adopted 2 July 1919, not yet in force) art 7.

scholars therefore suggest replacing it with express “public policy of India” clause modelled on arbitration law.⁷⁴

Other Section 13 Grounds as Expressions of Public Policy

Clause (c) of Section 13 covers cases where foreign judgment proceeds on incorrect view of international law or refuses to recognise Indian law where applicable.⁷⁵ This protects India’s sovereign interest in having its mandatory rules respected when they properly govern dispute, & embodies what some authors call external public policy or *lois de police*.⁷⁶ Refusal to recognise applicable Indian law is treated as affront to India’s legal order, & therefore justifies denial of conclusiveness even if other aspects of judgment remain unobjectionable.⁷⁷

Clause (d) speaks of “proceedings opposed to natural justice”, which reflects procedural branch of public policy.⁷⁸ Indian courts have read this to cover absence of proper service, denial of real opportunity to present case, or biased adjudicator, rather than mere technical irregularities.⁷⁹ In *Sankaran Govindan v Lakshmi Bharathi* Supreme Court stressed that non observance of “minimum requirement of natural justice” will render foreign judgment inconclusive, aligning with international insistence on due process as core public policy value.⁸⁰

Clause (e) treats foreign judgment obtained by fraud as non conclusive, capturing classic common law maxim that fraud unravels all.⁸¹ Fraud here includes fraud on competent jurisdiction as well as fraud in procurement of decree, such as tampering with evidence or deliberate suppression of material facts.⁸² Courts often note that such fraud not only injures private parties, but also undermines integrity of judicial process, which is central component of public policy in any legal system.⁸³ These clauses show that even without express phrase, Section 13 already encodes several dimensions of public policy, though their calibration remains in debate.

JUDICIAL APPROACH OF INDIAN COURTS

Early Supreme Court Foundations

In *R Viswanathan v Rukn Ul Mulk Syed Abdul Wajid* Supreme Court provided detailed exposition of Section 13 while dealing with Persian judgment concerning succession to jagir.⁸⁴ Court affirmed that foreign judgment from competent court, delivered after contested hearing, is generally conclusive, & Indian courts cannot re-examine merits except within narrow statutory exceptions. At same time, it stressed that,

⁷⁴ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁷⁵ Code of Civil Procedure 1908, s 13.

⁷⁶ Enforcement-of-Foreign-judgement-in-India (SCC Online Articles, 2022) 3–6.

⁷⁷ *Ibid.*

⁷⁸ Code of Civil Procedure 1908, s 13.

⁷⁹ *Sankaran Govindan v Lakshmi Bharathi* (1975) 3 SCC 351.

⁸⁰ *Ibid.*

⁸¹ Code of Civil Procedure 1908, s 13.

⁸² *Algemene Bank Nederland NV v Satish Dayalal Choksi* AIR 1990 Bom 170.

⁸³ *Ibid.*

⁸⁴ *R Viswanathan v Rukn Ul Mulk Syed Abdul Wajid* AIR 1963 SC 1.

principles of private international law & fairness guide interpretation of Section 13, signalling strong public policy undertone.⁸⁵

In *Satya v Teja Singh* issue concerned recognition of Nevada divorce decree obtained through misrepresentation of domicile by Indian husband.⁸⁶ Supreme Court refused recognition, holding that decree was product of fraud on foreign court & also violated Indian concept of marriage & jurisdiction. Court explicitly invoked public policy language & observed that recognition of such “quickie” divorce would be “an affront to Indian law & Indian conscience”.⁸⁷

Y Narasimha Rao v Y Venkata Lakshmi refined this approach by laying down specific rules for recognition of foreign matrimonial judgments, linked to domicile, residence, & choice of law.⁸⁸ Court clarified that decrees granted by court without proper jurisdiction or without applying correct law will not be recognised, since such recognition would breach Indian public policy on family relations & gender justice.⁸⁹ Although these cases lie in family law field, they strongly influence general reading of Section 13 & its policy content.

Public Policy through Natural Justice & Fraud

Natural justice objections often appear as first line of defence for judgment debtor resisting foreign decree.⁹⁰ Courts insist on adequate service of process, reasonable opportunity to be heard, & impartial tribunal, but they do not treat every procedural defect as fatal.⁹¹ In *Sankaran Govindan v Lakshmi Bharathi* Supreme Court held that foreign judgment based on unilateral divorce proceedings without genuine notice to wife could not be recognised, since such proceeding offended minimum standards of fair hearing.⁹² Reasoning clearly blends clause (d) language with broader notions of fairness & public policy.

Fraud plays parallel role, sometimes overlapping with natural justice, sometimes standing distinct.⁹³ In *Algemene Bank Nederland NV v Satish Dayalal Choksi* Bombay High Court declined to treat foreign default judgment as fraudulent merely because debtor alleged suppression of certain correspondence, emphasising that fraud must be clearly pleaded & strictly proved. Pattern across cases shows that Indian courts see fraud as serious public policy concern, but they also wary of allowing loose allegations to derail otherwise valid foreign judgments.⁹⁴ This calibrated approach tries to prevent misuse of fraud defence as backdoor appeal on merits.

⁸⁵ *Ibid.*

⁸⁶ *Satya v Teja Singh* (1975) 1 SCC 120.

⁸⁷ *Ibid.*

⁸⁸ Convention on Recognition & Enforcement of Foreign Judgments in Civil or Commercial Matters (adopted 2 July 1919, not yet in force) art 7.

⁸⁹ *Ibid.*

⁹⁰ *Sankaran Govindan v Lakshmi Bharathi* (1975) 3 SCC 351.

⁹¹ *Sankaran Govindan v Lakshmi Bharathi* (1975) 3 SCC 351.

⁹² *Ibid.*

⁹³ *Algemene Bank Nederland NV v Satish Dayalal Choksi* AIR 1990 Bom 170.

⁹⁴ *Ibid.*

Use of Section 13(f): Breach of Indian Law Ground

Direct case law applying clause (f) is relatively sparse, yet commentary shows that parties frequently invoke it in commercial disputes.⁹⁵ Creditors often sue on English or Singapore judgments enforcing guarantees or loans, while debtors argue that transaction violated Indian exchange control or securities regulations & therefore falls foul of Section 13(f).⁹⁶ ICLG report notes that Indian courts examine whether claim truly rests on prohibited act under Indian law, or whether regulatory non compliance is only tangential.⁹⁷

Scholars criticise potential breadth of clause (f), warning that it may encourage provincialism in cross border commercial litigation.⁹⁸ If Indian courts refuse recognition whenever foreign judgment upholds right that Indian law would not grant, foreign counterparties will perceive India as hostile to enforcement, & may price that risk into contracts or avoid Indian parties.⁹⁹ This concern becomes particularly acute where Indian regulatory landscape is complex & evolves rapidly, as with foreign exchange, tax, & foreign investment regimes.¹⁰⁰ Some authors argue that functional public policy test should focus on fundamental principles, not technical illegality, to avoid such chilling effect on international commerce.¹⁰¹

Recent High Court Practice on Reciprocating Territories

Delhi High Court jurisprudence on execution of English High Court money judgments under Section 44A illustrates current trends.¹⁰² In *TransAsia Private Capital Ltd v Gaurav Dhawan* court treated certified copy of English Commercial Court judgment as decree of district court in India, but still examined Section 13 objections in detail.¹⁰³ It rejected contentions on jurisdiction & natural justice, holding that defendant had proper notice, chose not to appear, & English court decided claim on merits after reviewing evidence.¹⁰⁴

Court also considered whether enforcement would violate Indian law or public policy, but found no material to suggest that underlying loan transaction offended any Indian mandatory statute.¹⁰⁵ Decision emphasises that ex parte character of foreign judgment is not by itself bar to recognition, if service is valid & issues are judicially examined.¹⁰⁶ SCC Blog note titled “Conclusive foreign judgment enforceable in India: Delhi High Court” highlights that such approach strengthens India’s image as enforcement friendly jurisdiction while still respecting safeguards in Section 13.¹⁰⁷

⁹⁵ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁹⁶ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

⁹⁷ *Ibid.*

⁹⁸ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

⁹⁹ *Ibid.*

¹⁰⁰ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

¹⁰¹ Yuko Nishitani (ed), *The Recognition & Enforcement of Foreign Judgments in Civil & Commercial Matters in Asia* (Springer 2021) 25–32.

¹⁰² *Conclusive foreign judgment enforceable in India: Delhi High Court* (SCC Blog, 2023).

¹⁰³ *Convention on Recognition & Enforcement of Foreign Judgments in Civil or Commercial Matters* (adopted 2 July 1919, not yet in force) art 7.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Conclusive foreign judgment enforceable in India: Delhi High Court* (SCC Blog, 2023).

¹⁰⁷ *Ibid.*

Balancing interest of judgment debtor with authority of foreign court emerges as central theme in these decisions.¹⁰⁸ Courts protect Indian assets from unfair or collusive foreign decrees by scrutinising jurisdiction, notice, & legality, yet they avoid re trying dispute or substituting domestic view of merits for foreign court's determination.¹⁰⁹ This equilibrium approach mirrors global movement towards limited review standard in foreign judgment enforcement.

Hierarchy between Local & Foreign Judgments

ICLG chapter on India explains that if foreign judgment conflicts with earlier Indian judgment between same parties on same cause, domestic judgment will normally prevail due to *res judicata* & hierarchy of sources.¹¹⁰ Similarly, where foreign judgment rests on proposition directly contrary to Indian statute with mandatory effect, courts may invoke Section 13(c) or (f) to deny conclusiveness.¹¹¹ This reflects public policy choice that Indian constitutional norms & peremptory legislation cannot be displaced by foreign adjudications.¹¹²

At same time, commentators stress that this hierarchy should not translate into automatic preference for Indian rules whenever difference exists.¹¹³ Modern private international law expects forum to respect foreign determinations unless they strike at fundamental principles or statutory provisions with clear overriding intent.¹¹⁴ If Indian courts treat every variation from domestic law as ground to reject foreign judgment, they risk isolating Indian system from transnational judicial cooperation & undermining comity.¹¹⁵ Suitable balancing therefore requires nuanced understanding of which Indian norms truly deserve public policy status.

REFORMING THE ROLE OF PUBLIC POLICY IN REFUSING FOREIGN JUDGMENTS

Interpretive Reforms within Existing CPC Framework

Even without legislative amendment, Indian courts can re interpret clause (f) in light of constitutional values & comparative practice.¹¹⁶ One interpretive route reads “breach of any law in force in India” as confined to violation of mandatory norms that embody fundamental public policy, not every statutory rule.¹¹⁷ Courts could ask whether breached law expresses core economic, social, or moral policy of State, similar to *Renusagar* analysis for awards.¹¹⁸ Another interpretive reform involves adopting “manifestly contrary to

¹⁰⁸ Chandrawat & Partners, *Enforcement of Foreign Judgements in India* (Chandrawat & Partners, 2023) 2–5.

¹⁰⁹ Conclusive foreign judgment enforceable in India: Delhi High Court (SCC Blog, 2023).

¹¹⁰ *Brijlal Ramjidas v Govindram Gordhandas Seksaria* (1943) 45 BOMLR 358 (PC).

¹¹¹ Code of Civil Procedure 1908, s 13.

¹¹² *Brijlal Ramjidas v Govindram Gordhandas Seksaria* (1943) 45 BOMLR 358 (PC).

¹¹³ Yuko Nishitani (ed), *The Recognition & Enforcement of Foreign Judgments in Civil & Commercial Matters in Asia* (Springer 2021) 25–32.

¹¹⁴ *Ibid.*

¹¹⁵ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–15.

¹¹⁶ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–18.

¹¹⁷ *Ibid.*

¹¹⁸ *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644.

public policy” threshold through judicial gloss.¹¹⁹ While Section 13 does not use word “manifestly”, courts may still insist that refusal under clause (f) is justified only where enforcement would obviously & seriously undermine foundational legal principles.¹²⁰ This approach aligns with Asian Principles & Hague Judgments Convention standards, without rewriting statutory text.¹²¹ Over time, consistent decisions applying such narrowed reading can effectively transform Section 13 practice & enhance predictability for foreign litigants.¹²² Judicial training & detailed reasoning in written opinions will be crucial for success of this strategy.¹²³

Legislative Reform Options

More durable solution is targeted amendment of Section 13 & connected provisions.¹²⁴ Legislature could replace clause (f) with language stating that foreign judgment is not conclusive where “enforcement would be contrary to public policy of India”, defined in explanation on lines of Arbitration Act.¹²⁵ This would explicitly shift focus from mere illegality to fundamental policy, & courts could draw directly on *Renusagar & Shri Lal Mahal* jurisprudence.¹²⁶ Parliament might also introduce discretionary formulation similar to Section 48, providing that enforcement “may be refused” on specified grounds.¹²⁷ Such drafting conveys that even when technical ground exists, court should consider comity, reliance, & proportionality before denying recognition.¹²⁸ Discretion, if structured with guidance, can foster more balanced, context sensitive outcomes. Finally, some commentators support enactment of dedicated Indian statute or model law on recognition & enforcement of foreign judgments, harmonised with Hague Convention framework.¹²⁹ Such instrument could address non monetary judgments, choice of court agreements, & list of defences in coherent way, rather than leaving them scattered across CPC & case law.¹³⁰

Harmonising with Global & Regional Standards

Aligning Indian law with Hague Judgments Convention & Asian Principles would signal serious commitment to cross border judicial cooperation.¹³¹ Even if India does not immediately ratify Hague Convention, Parliament can still borrow its carefully negotiated public policy clause & jurisdictional filters.¹³² Asian Principles encourage participating states to permit recognition of non monetary judgments,

¹¹⁹ Yuko Nishitani (ed), *The Recognition & Enforcement of Foreign Judgments in Civil & Commercial Matters in Asia* (Springer 2021) 25–35.

¹²⁰ *Ibid.*

¹²¹ Asian Principles for Recognition & Enforcement of Foreign Judgments, art 9, discussed in Nishitani (supra).

¹²² Lall (supra) 12–16.

¹²³ Convention on Recognition & Enforcement of Foreign Judgments in Civil or Commercial Matters (adopted 2 July 1919, not yet in force) art 7.

¹²⁴ Siddharth Peter Lall, ‘Introducing “Public Policy” to Enforcement of Foreign Judgments: Lessons from Law of Arbitration’ (2019) SSRN Working Paper 8–18.

¹²⁵ Arbitration & Conciliation (Amendment) Act 2015, ss 2, 3.

¹²⁶ *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644.

¹²⁷ Code of Civil Procedure 1908, s 13(f).

¹²⁸ Kshama A Loya & Bhavan A Loya, ‘Demystifying Public Policy to Enable Enforcement of Foreign Awards: Indian Perspective’ (2020) *Indian Review of International Arbitration* 45–60.

¹²⁹ Nishitani (supra) 60–85.

¹³⁰ *Ibid.*

¹³¹ Asian Principles for Recognition & Enforcement of Foreign Judgments, art 9, discussed in Nishitani (supra).

¹³² Convention on Recognition & Enforcement of Foreign Judgments in Civil or Commercial Matters (adopted 2 July 1919, not yet in force) art 7.

including injunctions & declaratory orders, subject only to narrow public policy checks.¹³³ Learning from Singapore, EU, & some East Asian jurisdictions, India could gradually expand scope of foreign judgments recognised, while maintaining strong due process safeguards.¹³⁴ That would reduce pressure on arbitration system, which currently bears heavy load because parties distrust court judgment enforcement. Harmonisation does not mean copying foreign models mechanically, but adapting them to Indian constitutional context & federal structure.¹³⁵ Still, comparative dialogue offers concrete templates for narrowing public policy & for defining genuine mandatory rules that justify refusal.

Guidelines for Courts in Future Cases

Courts can develop practical checklist for invoking public policy to refuse foreign judgments, even before any legislative change.¹³⁶ Checklist could include questions on competence & connection of foreign court, adequacy of notice, opportunity to be heard, absence of fraud, & whether impugned norm truly reflects fundamental policy of India.¹³⁷ Emphasis should remain on comity, proportionality, & minimal interference with foreign adjudications, particularly when parties are sophisticated commercial actors who freely selected forum.¹³⁸ Courts may record reasons explaining why particular Indian statute or constitutional provision qualifies as public policy, instead of relying on broad rhetoric.¹³⁹ Such detailed reasoning will assist lower courts & improve transparency of enforcement decisions. Consistent use of well reasoned judgments can gradually create stable body of precedent, guiding both domestic litigants & foreign investors.¹⁴⁰ Over time, this jurisprudence will shape perception of India as jurisdiction that is protective yet cooperative, principled yet pragmatic in its treatment of foreign judgments.¹⁴¹

CONCLUSION

Indian courts interpret several Section 13 grounds, particularly clauses (c), (d), (e), & (f), as surrogates for public policy, even though statute does not use that term.¹⁴² Analysis of cases & commentary shows that clause (f) in present form is over broad & problematic, because it equates any statutory breach with public policy objection.¹⁴³ Arbitration law reforms, driven by *Renusagar*, *Shri Lal Mahal*, & subsequent amendments, demonstrate workable path for narrowing public policy defences without sacrificing core values.¹⁴⁴

¹³³ Asian Principles for Recognition & Enforcement of Foreign Judgments, art 9, discussed in Nishitani (supra).

¹³⁴ Nishitani (supra) 60–85.

¹³⁵ *Ibid.*

¹³⁶ Siddharth Peter Lall, 'Introducing "Public Policy" to Enforcement of Foreign Judgments: Lessons from Law of Arbitration' (2019) SSRN Working Paper 8–18.

¹³⁷ Code of Civil Procedure 1908, s 13.

¹³⁸ Kshama A Loya & Bhavan A Loya, 'Demystifying Public Policy to Enable Enforcement of Foreign Awards: Indian Perspective' (2020) Indian Review of International Arbitration 45–60.

¹³⁹ Siddharth Peter Lall, 'Introducing "Public Policy" to Enforcement of Foreign Judgments: Lessons from Law of Arbitration' (2019) SSRN Working Paper 8–18.

¹⁴⁰ Lall (supra) 12–16.

¹⁴¹ *Sankaran Govindan v Lakshmi Bharathi* (1975) 3 SCC 351.

¹⁴² Enforcement-of-Foreign-judgement-in-India (SCC Online Articles, 2022) 3–7.

¹⁴³ Siddharth Peter Lall, 'Introducing "Public Policy" to Enforcement of Foreign Judgments: Lessons from Law of Arbitration' (2019) SSRN Working Paper 8–18.

¹⁴⁴ *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644.

Judicial practice reveals mixture of principled & ad hoc approaches, but overall trend slightly favours cautious enforcement with strong due process review.¹⁴⁵ Current framework, especially clause (f), is only partially compatible with international trends that insist on “manifest incompatibility” standard & restricted public policy grounds.¹⁴⁶ Commercial needs of cross border trade & investment therefore argue for recalibration of Section 13 interpretation and, ideally, its text.

Improved clarity on public policy defences will influence drafting of jurisdiction clauses, security arrangements, & choice of dispute resolution mechanisms in cross border contracts involving Indian parties.¹⁴⁷ Greater certainty & perceived fairness should enhance investor confidence & support India’s aspiration to be robust enforcement jurisdiction, not only attractive seat for arbitration.¹⁴⁸ Ongoing scholarly analysis & judicial engagement will remain crucial as new types of foreign judgments, digital assets disputes, & human rights arguments emerge in coming decades.¹⁴⁹

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¹⁴⁶ Yuko Nishitani (ed), *The Recognition & Enforcement of Foreign Judgments in Civil & Commercial Matters in Asia* (Springer 2021) 25–35.

¹⁴⁷ *Ibid.* 11–12.

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