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Navigating Cross-Border Legal Complexity: Overcoming Obstacles to Recognition and Enforcement of Foreign Court Judgements

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ABSTRACT:

The enforcement of foreign court judgments remains a significant challenge, with legal and business implications across borders. The current research investigates core difficulties in recognizing and enforcing foreign judgments stemming from divergent legal frameworks and jurisdictional conflicts. Through an analysis of case studies that apply different approaches, the study examines how these issues impact international trade, cooperation among judicial systems, and resolving cross-border disputes. The major findings indicate that variability in legal structures, procedural norms, and jurisdictional questions between nations compound the problems parties face enforcing judgments abroad. Complexity intensifies when disputes involve multiple jurisdictions or conflicting rulings, exacerbating uncertainty. The lack of consistent standards and processes creates tension for litigants and unease in the international legal order. To address these problems, the study proposes harmonizing recognition and enforcement regulations across signatory states. Establishing uniform rules could facilitate seamless judgment transfer among contracting jurisdictions, simplifying compliance and reducing reliance on disparate domestic laws. The current research contends that multilateral agreements providing a coordinated framework and utilizing neutral arbitral bodies offer solutions to enhance certainty, judicial comity, and fairness worldwide in cross-border dispute resolution.[1]

Keywords: Foreign Judgments, Jurisdictional Conflicts, Comity, Reciprocity, International Law

[1] World jurisprudence, https://worldjurisprudence.com/cross-border-dispute-resolution/, (last visited Jan. 8, 2025)

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1. INTRODUCTION:

A few decades ago, establishing a business in another country was a difficult process, primarily due to a lack of awareness and uncertainty regarding the rules and regulations of foreign jurisdictions. However, technological advancements have made the world more interconnected, simplifying communication and data collection. As a result, international trade has expanded, and major brands are now present across the globe. Cross-border projects have become essential for business growth, but what happens when disputes arise in a foreign country?

The judiciary has long faced jurisdictional conflicts across various areas of law and legal decisions. Foreign court judgments refer to decisions issued by courts in one country that involve parties from different jurisdictions. Enforcing foreign judgments involves recognizing and implementing those decisions within the jurisdiction of another country.[2].

Resolving a dispute in a foreign country depends on the terms agreed upon by the parties, typically outlined in a business contract. However, in some cases, parties may find themselves involved in litigation in foreign jurisdictions without a prior agreement. The process can become complex due to differences in legal systems, jurisdictional issues, and procedural requirements between countries. Regardless of the specific area of law, enforcing a foreign judgment can be challenging due to disparities in legal frameworks across jurisdictions.[3].

Properly enforcing foreign court judgments ensures that businesses engaged in cross-border transactions can operate confidently, free from legal uncertainties. It fosters economic growth and facilitates global commerce by reducing the risks and uncertainties for parties involved in international trade.[4]. Additionally, it safeguards property rights, enabling individuals and businesses to assert their legal interests across borders.[5]. It also clarifies the legal consequences

[2] Zoller, E. (2023). Enforcing International Law Through US Legislation. Martinus Nijhoff Publishers.
[3] Hasan, A. K. M., & Nasrin, K. (2021). Reforming the Dispute Settlement Mechanism of WTO: Challenges and Prospects. BILIA (Bangladesh Institute of Law and International Affairs) Journal of International Affairs, 23(2).
[4] Napitupulu, D. R. (2023). Crossing Border Transactions: Unraveling the Influence of E-Commerce On The Advancement Of Transnational Business Law. Transnational Business Law Journal, 4(1), 49-65.
[5] Lähteenmäki-Uutela, A., Lonkila, A., Huttunen, S., & Grmelová, N. (2021). Legal rights of private property owners vs. sustainability transitions?. Journal of Cleaner Production, 323, 129179.

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of actions in different jurisdictions, allowing parties to assess the risks of cross-border transactions or disputes.[6].

Effective enforcement promotes judicial cooperation and mutual respect among countries with differing legal systems, fostering comity and reciprocity. It encourages courts to recognize and enforce each other's decisions in the interest of justice and international cooperation.[7]. It also strengthens international relations by promoting trust and goodwill between nations, upholding international commitments, and respecting other states' sovereignty and judicial independence. Proper enforcement of foreign court judgments ultimately promotes fairness and equity in resolving cross-border disputes.[8]. Though the study outlined many benefits of enforcing foreign court judgments seamlessly in another jurisdiction, the reality is far more complex. The question remains: are foreign judgments truly embraced with such ease in another jurisdiction? Cases have been observed where these issues created significant unease between the parties, raising numerous questions on the "Challenges of Enforcing Judgments in Another Jurisdiction."

This study examined the challenges and complexities of enforcing foreign court judgments across different jurisdictions, focusing on understanding the impact of jurisdictional conflicts, disparities in legal systems, procedural hurdles, and public policy considerations. The study aims to explore how these factors affect the recognition and execution of foreign judgments and to propose potential improvements to unify standards and procedures to enhance international judicial cooperation and legal certainty.[9]

2. Challenges in Jurisdictional Conflicts and the Enforcement of Foreign Judgments

A conflict of jurisdiction occurs when a dispute can be fully or partially brought before two or more different courts or tribunals. In contrast, a conflict of law arises when two or more legal

[6] Igbinenikaro, E., & Adewusi, A. O. (2024). Developing international policy guidelines for managing cross-border insolvencies in the digital economy. International Journal of Management & Entrepreneurship Research, 6(4), 1034-1048.

[7] Perlingeiro, R. (2024). International Judicial Cooperation in Times of Crisis. In Are Legal Systems Converging or Diverging? Lessons from Contemporary Crises (pp. 277-295). Cham: Springer International Publishing.

[8] Zokaei, S. (2022). Dispute Resolution Commercial Transactions along the Belt and Road: Creating Fair and Consistent Judgments. Hastings LJ, 73, 559.

[9] ICRC, https://www.icrc.org/sites/default/files/external/doc/en/assets/files/2014/cooperation-in-extradition-and-judicial-assistance-in-criminal-matters-icrc-eng.pdf, (last visited Jan. 8, 2025)

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norms, differing in substance but applicable to the same or similar facts, result in conflicting decisions, necessitating a choice between them.[10]. Such conflicts typically arise when the parties in a dispute belong to different jurisdictions. The main issues surrounding the enforcement of foreign judgments stem from differences in legal systems, which vary in their principles, procedures, and standards for recognizing and enforcing court decisions. Disagreements may occur when one party challenges the foreign Court's jurisdiction, leading to prolonged legal battles and uncertainty regarding the enforceability of the judgment.[11].

Another challenge is the complexity of the legal process required to enforce such judgments, often involving extensive documentation, differing evidentiary standards, bureaucratic hurdles, language barriers, and unfamiliar legal concepts.[12]. In some cases, a domestic court may refuse to enforce a foreign judgment if it conflicts with public policy, domestic laws, or fundamental principles of justice.[13].

When multiple jurisdictions are involved, the legal issues become even more complex, and diverse parties can further complicate the process. Enforcing foreign judgments in such cases demands extensive legal research, strategic planning, and coordination among legal professionals from different jurisdictions.[14].

A party that has secured a favorable judgment in one state or country may need to have that judgment recognized and enforced in another jurisdiction to execute it without re-litigating the case. For instance, a party may go through an extensive and expensive legal process in one state, successfully obtaining a favorable judgment, only to discover that it cannot be recognized or enforced in the state where the assets are located. It can happen if the second state does not recognize or enforce foreign judgments.

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[10] The international law commission report of the study group of the international law commission on fragmentation of international law; difficulties arising from diversification and expansion of international law 23 -25 UN Doc A/c N 4/L 682 (Apr 13 2006).

[11] Avraham-Giller, S. (2022). The court's discretionary power to enforce valid jurisdiction clauses: time for a change?. Journal of Private International Law, 18(2), 209-237.

[12] Campbell, J. R. (2020). Interrogating the role and value of cultural expertise in Law. Laws, 9(4), 29.

[13] Terry, P. C. (2020). Enforcing US foreign policy by imposing unilateral secondary sanctions: Is might right in public international law?. Wash. Int'l LJ, 30, 1.

[14] Malskyy, M. (2022). Legal regulations of enforcement procedure in selected foreign jurisdictions. Comparative Law Review, 28(1), 393-409.

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In monetary damages cases, the party may be forced to initiate new legal proceedings in the state where the assets are located to collect the debt. It undermines the principle of finality in litigation and introduces various negative consequences, such as escalating litigation costs, which may deter parties from engaging in cross-border transactions.[15] Additionally, requiring parties to re-litigate substantive issues to secure their rights and remedies abroad wastes judicial resources. When disputes cross international borders, examining the relevant rules and regulations and evaluating their effectiveness becomes essential.[16]

3. Territorial and Extraterritorial Jurisdiction

Territorial jurisdiction refers to a court's authority to bind the parties involved in a legal action within its geographical boundaries, while extraterritorial jurisdiction occurs when a state extends its legal power beyond its territory.[17] The application of extraterritorial jurisdiction is particularly contentious in business and human rights, often raising concerns about conflicts with international law. International law governs the legal obligations of states in their interactions with one another and their treatment of individuals within their borders.[18]. In international business transactions, navigating this intricate legal landscape is complex.

A combination of international legal elements, including conventions, treaties, domestic laws, international customs, general principles of law, and judicial decisions, influences foreign judgments' enforcement. Treaties, binding agreements between states, play a significant role in this process. Many countries participate in bilateral or multilateral treaties, such as the Hague Convention on the Recognition and Enforcement of Foreign Judgments, or regional agreements like the European Union's Brussels Regulation, which create mechanisms for mutual recognition and enforcement of foreign judgments[19]. These treaties aim to standardize procedures across jurisdictions, promoting international cooperation. However, many bilateral

[15] Astha Sinha, Cross-border payments for Indian businesses – Impact of RBI's new guidelines, LKS (Jan. 8, 2025, 8:30 P.M.), https://www.lakshmisri.com/insights/articles/cross-border-payments-for-indian-businesses-impact-of-rbi-s-new-guidelines/#.

[16] Bhat, P.I. (2021). Peaceful resolution of international boundary disputes: drawing lessons from the Indian experiences. Indian Journal of International Law 59, 1–42.

[17] Globalnaps, https://globalnaps.org/issue/extraterritorial-jurisdiction/ (last visited Jan 8, 2025).

[18] United Nations. (2011). *Fact Sheet 1: International law and justice*.

[19] Wikipedia, https://en.wikipedia.org/wiki/Hague_Convention_on_Foreign_Judgments_in_Civil_and_Commercial_Matters (last visited Jan 8, 2025).

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extradition treaties and international conventions include exceptions for political offenses. These exceptions are designed to protect individuals from political persecution and to ensure fair trials. Therefore, any effective framework for regulating international offenses must account for the exception of political offenses or find a way to accommodate them. While the exception is crucial for safeguarding legitimate state interests, balancing it with efforts to address indiscriminate violence remains a challenge[20].

3.1. Case Studies

The Lockerbie case[21] Is a prominent example involving the jurisdictional interests of three nations: the United Kingdom, the United States, and Libya. It revolved around the bombing of a flight from Frankfurt to New York, which exploded over Scotland on December 21, 1988, killing 259 passengers and crew, along with 11 people on the ground in the town of Lockerbie. The victims were from twenty-one different nationalities, primarily from the US and the UK. The two suspects accused of planting the bomb were Libyan nationals. The plane was registered in the US, the crash occurred in Scotland, and Libya held custody of the accused. This case, which underscored cross-jurisdictional conflicts, highlighted the significant challenges of prosecuting terrorist offenses under bilateral extradition treaties and multilateral conventions.[22].

States that sponsor terrorism may refuse to sign or honor extradition agreements or manipulate legal exceptions, such as the non-extradition of nationals or the political offense exemption. Consequently, terrorists can evade justice unless the requesting state takes extraordinary steps to capture these individuals. In the Italian Marines Case[23], a jurisdictional dispute led to the rejection of India's claim to prosecute Italian soldiers in Indian courts, ceasing all criminal proceedings against them. This decision sparked a prolonged diplomatic freeze between India and Italy. The incident occurred in 2012 when Indian authorities detained two Italian marines from the oil tanker Enrica Lexie after they shot two Indian fishermen, mistaking them for pirates near the Kerala coast. Although the tribunal found that the marines' actions infringed

[20] Alfred H Novotne, Random Bombing of Public Places; Extradition and punishment of indiscriminate violence against innocent parties, 6BU INT'L LJ 219, 230 (1988) at 230

[21] Libyan Arab Jamahiriya v United Kingdom and United States of America

[22] Oxford Public International Law (opil.ouplaw.com)

[23] Republic of Italy v Union of India (2013) 9 SC 89, (2013) 2 RCR (civil) 1054, (2013) 6 SCALE 422, [2013] 4 SCR 595, MANU/SC/0478/2013

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on India's freedom of navigation under Articles 87(1) and 90 of UNCLOS, the final judgment in 2020, following an eight-year legal battle, ruled in favor of Italy[24]. The Court concluded that India could not exercise criminal jurisdiction over the marines due to their entitlement to functional immunity for the acts committed on February 15, 2012. In this case, mere financial compensation was deemed inadequate, as criminal law principles dictate that punishment is necessary in addition to financial redress. The lack of jurisdiction was a major factor in the perceived injustice of the case.

In Neilson v. Overseas[25], a tort claim highlighted a conflict over the limitation period between two jurisdictions. An Australian resident in the People's Republic of China was injured in a fall at an apartment provided by an Australian company. Five years after the accident, the plaintiff filed a negligence suit against the Australian company in the Supreme Court of Western Australia. The central issue was whether Australian or Chinese law should determine the limitation period for the tort claim. The complexity increased if the foreign choice-of-law rule referred back to Australian law or pointed to a third jurisdiction, potentially leading to further litigation and appeals. Generally, jurisdiction is determined by the connecting factors relevant to the case, which vary based on the nature of the action. For instance, location is typically the connecting factor in immovable property cases. When a case involves a foreign element under Private International Law (PIL), the Court must determine whether to apply its own or another state's law due to the dispute's foreign aspect.

4. Private International Law

PIL comprises rules and principles established by various nation-states to address legal relationships of a private nature involving foreign elements, whether between individuals or corporations[26]. For a case to fall under PIL, it must include a foreign element. PIL addresses jurisdictional issues, which involve determining whether a court has the authority to hear and resolve a dispute. This authority includes both subject matter jurisdiction and personal

[24] Carina Julig, Judge sides with city in 8-year battle over cell tower, saying owner needs approval, Santa Fe New Mexican (Jan. 8, 2025, 8:40 P.M.), https://www.santafenewmexican.com/news/local_news/judge-sides-with-city-in-8-year-battle-over-cell-tower-saying-owner-needs-approval/article_3c3bff72-f81e-11ee-a122-2fc1787583bf.html.

[25] Neilson v Overseas Project Corporation of Victoria Ltd (2005) 223 CLR 331

[26] Reid Mortensen, Richard Garnett and Mary Keyes, Private International law in Australia, (Lexis Nexis Butterworths 2nd ed. 2011 3 (11)]

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jurisdiction. Subject matter jurisdiction refers to a court's ability to adjudicate the specific type of claim at hand[27]. In Australia, personal jurisdiction focuses on whether a defendant is subject to the Court's authority. According to the High Court of Australia in Laurie v Caroll[28], a court has the jurisdiction to hear a dispute if the defendant is physically present within the Court's territory and has been served with a writ.

5. Recognition and Enforcement Complications

The recognition and enforcement of foreign judgments occur when a party with a favorable judgment from one jurisdiction seeks to have that judgment recognized and enforced in another jurisdiction. This situation typically arises when a plaintiff wins a judgment in one state but finds that the defendant lacks sufficient assets to satisfy the judgment. In such cases, the plaintiff may seek to enforce the judgment in a foreign state where the defendant does have assets[29]. When dealing with cases involving a foreign element under PIL, the Court must determine whether to apply its or another state's law due to the dispute's foreign aspect. Recognition and enforcement of foreign judgments arise when a defendant invokes a judgment from one jurisdiction to counter an action brought against them in another state's Court for the same issue.[30]. For instance, if a plaintiff has already obtained and satisfied a judgment, the defendant may use this as a defense to prevent the plaintiff from re-litigating the same claim in a different jurisdiction.

Recognition and enforcement of foreign judgments are key to conflict of laws, jurisdiction, and PIL. Enforcement is not limited to monetary judgments; most countries also recognize non-monetary orders, and there is significant legal precedent regarding recognizing status decisions. However, enforcement is typically confined to civil and commercial matters. [31].

There are three primary effects of foreign judgments that must be considered:

[27] Legal Brief AI, https://www.legalbriefai.com/legal-terms/subject-matter-jurisdiction (last visited Jan. 8, 2025).
[28] Laurie v Carroll (1958) CLR 310, 323
[29] Aishwarya Agrawal, Enforcement of Foreign Judgements under CPC, law bhoomi (Jan. 8, 2025, 8:50 P.M.), https://lawbhoomi.com/enforcement-of-foreign-judgements-under-cpc/.
[30] Hogan Lovells. (2024). *Enforcement of judgments: Overview - United States*.
[31] Taylor v Hollard (1902) 1KB 676, 681

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i. Recognition as a Fact: A foreign judgment is treated as a fact regardless of whether it is officially recognized[32].

ii. Preclusion of Re-litigation: Recognizing a foreign judgment prevents the same issues from being re-litigated in domestic courts. The extent of this preclusive effect may vary depending on the state's laws where the judgment was rendered or where recognition is sought, potentially limited to what is recognized by both legal systems or extended per either system.

iii. Enforcement: Recognition is a prerequisite for enforcement, but enforcement allows the successful party to pursue the judgment in another country. Domestic laws govern the enforcement process and can differ significantly between legal systems[33].

Domestic laws often specify requirements for initiating enforcement proceedings, including time limits, filing procedures, and necessary documentation. They also define grounds for refusing enforcement, such as public policy considerations, lack of due process, or conflicting judgments.[34].

6. Comity and Reciprocity in the Recognition and Enforcement of Foreign Court Judgments

Comity refers to the respect and recognition that courts give to judgments and legal processes from other jurisdictions, motivated by courtesy and mutual respect. In both public and PIL, comity encourages institutions to consider other jurisdictions' interests when rendering legal decisions. Comity is invoked when it becomes part of enforceable law, requiring legal decision-makers to account for foreign interests in specific situations.[35].

Reciprocity involves mutual recognition and enforcement of judgments between countries based on the expectation of receiving similar treatment in return. The principles of comity and reciprocity form the foundation of the legal framework for enforcing foreign court judgments and are integral to many international agreements and domestic laws governing the recognition

[32] Art. 14 Convention on the Civil Aspects of International Child Abduction

[33] Art. 6 (II) Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children ('Child Maintenance Convention'

[34] Kahraman, F., Kalyanpur, N., & Newman, A. L. (2020). Domestic courts, transnational law, and international order. *European Journal of International Relations*, *26*(1_suppl), 184-208.

[35] Edelman, J., & Salinger, M. (2021). Comity in private international law and fundamental principles of justice. *A conflict of laws companion*.

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and enforcement process. They reflect a spirit of mutual cooperation and respect for other country's sovereignty and legal systems.[36]

Comity acknowledges each country's sovereign authority to regulate its affairs and administer justice according to its laws and traditions. It respects sovereignty by avoiding undue interference in a country's internal legal processes and allows courts to exercise discretion in recognizing and enforcing foreign judgments guided by fairness, justice, and international courtesy. However, the doctrine of comity has limitations. Federal courts have ruled that a foreign judgment may not be recognized under comity if the foreign Court did not adhere to procedural due process[37]. Similarly, if a judgment from a sister state, not covered by the Full Faith and Credit Clause, is based on grounds similar to that of a foreign judgment, the requirement for procedural due process also applies. The United States Supreme Court has affirmed this view, as reflected in the evolution of related case law[38].

6.1. Case studies involving Comity, Due Process, and Reciprocity in Cross-Border Judgment Enforcement

In National Exchange Bank v. Wiley[39], the Supreme Court ruled that judgments obtained in violation of procedural due process are not entitled to full faith and credit when enforced in another jurisdiction. This principle was reinforced in Old Wayne Natural Life Association v. McDonough.[40], where the Court found it a due process violation to permit service on the Pennsylvania Commissioner of Insurance instead of the defendant's insurance company, according to a Pennsylvania statute that allowed such service when the company had failed to appoint a statutory agent. The Supreme Court held that this statute could not be applied when the contract was made with a Pennsylvania citizen who was not in the state then. Applying the statute in this case would violate the Fourteenth Amendment. Thus, an Illinois court was not required to grant full faith and credit to the Pennsylvania judgment.

[36] Manisha Singh, Enforcement of Foreign Judgments Laws and Regulations India 2024-2025, ICLG (Jan. 8, 2025, 8:45 P.M.), https://iclg.com/practice-areas/enforcement-of-foreign-judgments-laws-and-regulations/india
[37] Campagnie Du Port De Rio De Janeiro v Mead Morrison MFG Co., 19 F 2d 163 (D. Maine 1927)
[38] Cornell Law School. (n.d.). *Current doctrine on the Full Faith and Credit Clause*. In *Constitution of the United States of America: Analysis and Interpretation*.
[39] 18 195 U.S. 257 (1904)
[40] 204 U.S. 8 (1907); see Wuchter v Pizzutti, 276 U.S. 13 (1928)

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In Simon v. Southern Ry Co.[41], the Supreme Court determined that a US District Court could enjoin the enforcement of a state court judgment if it had been obtained without valid notice to the debtor. Justice Lamar, writing for the Court, explained that such judgments, while not erroneous or voidable, are considered void based on principles of natural justice and the due process clause of the Fourteenth Amendment.

In Griffin v. Griffin (1946)[42], the Supreme Court asserted that due process requires no jurisdiction to recognize or enforce a judgment obtained elsewhere without due process, even as a matter of comity. This case has confirmed that judicial comity is contingent upon adherence to due process.

In Harmeeta Singh v. Rajat Taneja[43], the High Court of India addressed a case where the wife, who had been abandoned by her husband within six months of marriage and compelled to leave the matrimonial home shortly after arriving in the US, sought maintenance under the Hindu Adoptions and Maintenance Act in India. The High Court issued an interim order restraining the husband from pursuing his divorce petition in the US and required him to present a copy of the High Court's order to the US court. The Court noted that even if the husband obtained a divorce decree in the US, that decree would likely not be recognized in India unless the jurisdiction of the US courts was established under Section 13 of the Civil Procedure Code (CPC). Until the US decree was recognized in India, the husband would be considered guilty of bigamy in India and could face criminal charges.[44] The Court also noted that, given the wife's brief stay in the US and her potential financial inability to pursue litigation there, the Delhi courts would be a more convenient forum. Consequently, the US divorce decree could not be recognized within Indian jurisdiction.

Reciprocity involves the mutual recognition and enforcement of judgments between countries based on the expectation of similar treatment. It reflects the principle of "do unto others as you would have them do unto you" and underpins many international agreements and treaties concerning the recognition and enforcement of foreign judgments.

[41] 236 U.S. 115 (1915)
[42] 328 U.S. 876 (1946)
[43] 102 (2003) DLT 822
[44] NCM, http://ncw.nic.in/ncw-cells/nri-cell/important-case-laws, (Last Visited Jan. 8, 2025).

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Critics argue that reciprocity unfairly penalizes litigants for governmental policies over which they have no control[45], as noted by William G. Southard[46] in "The Reciprocity Rule and Enforcement of Foreign Judgments."[47] Conversely, reciprocity can be viewed as a strategy to encourage reciprocal agreements for recognizing and enforcing judgments, supported by the game theory concept known as the "prisoner's dilemma." In this context, states can cooperate by enforcing each other's judgments, unilaterally enforcing judgments, or refusing cooperation[48]. Often, the dominant strategy for both states is to withhold recognition and enforcement.

In Shiju Jacob Varghese v. Tower Vision Limited[49], the Court deemed an appeal before an Indian civil court futile due to a consent order issued by the Tel Aviv District Court on the same cause of action.[50] The Court considered the suit before the Indian courts an attempt to re-litigate the same matter and an abuse of process, violating the principle of comity of courts. This case clarified the application of Section 10 of the Civil Procedure Code (CPC) and the parties' right to choose court agreements and forum non-convenience. According to the Delhi High Court, Indian courts should stay proceedings if the same cause of action has already been

[45] Friedrich K Juenger, 'The recognition of Money Judgments in Civil and Commercial Matters' (1988) 36 (1) American Journal of Comparative Law 1,6 (under the notion of territorial sovereignty, judgments came to be regarded as governmental acts whose compulsory effect was limited to the sovereign's territory, it seems unfair to penalise private litigants, who are neither to blame nor in a position to change matters, for the rendition state's lack of comity'

[46] (1977) 16 Columbia Journal of International Law 327, 348-9

[47] Memoire, https://www.memoireonline.com/12/08/1678/m_The-role-of-the-reciprocity-requirement-in-the-harmonization-of-standards-for-the-recognition-and-en32.html, (last Visited 8, 2025).

[48] The prisoner's dilemma is a game of two players, each suspected of committing a crime. If both suspects confess, each suspect will receive, say, a two-year sentence. If neither suspect confesses, each suspect will receive a one-year sentence. If one suspect confesses and the other remains silent, the one who confesses will receive no sentence while the one remains silent will receive a three-year sentence. Therefore, the two suspects will avoid extended sentences if both cooperate and either confess or not confess. However, if one does not confess and the other confesses, the non-confessing will receive an extremely long sentence while the confessing will benefit from it by receiving the shortest possible sentence. See Michael Whincop, 'The Recognition Scene; Game Theoretic Issues in the Recognition of Foreign Judgments' (1999) 23 Melbourne University Law Review 416; Susan L Stevens, 'Commanding International Judicial Respect; Reciprocity and the Recognition and Enforcement of Foreign Judgments' (2002) 26 Hastings International and Comparative Law Review 115

[49] CM APPL, 39987/2017, the Delhi High Court ("HC") Shiju Jacob Varghese & Anr. vs Tower Vision Limited & Ors. on 17 October, 2023

[50] Saloni, Cross-Border Litigation and Comity of Courts: A Landmark Judgment from the Delhi High Court, Conflict of laws (Jan. 8, 2025, 8:50 P.M.), https://conflictoflaws.net/2024/cross-border-litigation-and-comity-of-courts-a-landmark-judgment-from-the-delhi-high-court/.

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litigated in foreign courts.[51] However, India's approach to PIL remains uncertain due to the absence of comprehensive cross-border dispute legislation, leading to reliance on domestic rules and judicial interpretation.

In certain jurisdictions, a judgment may be immediately enforceable. For example, judgments from jurisdictions bound by the Hague Convention on Choice of Court Agreements 2005 can be enforced without serving the responding party.[52]. In other cases, where enforcement requires initiating a claim, various defenses may be raised, and the recognition process and potential defenses will vary depending on the specific approach to recognition.

7. Enhancing the Recognition and Enforcement of Foreign Judgments: Challenges and Solutions

This study explored various methods for recognizing and enforcing foreign judgments alongside the conflicts and challenges inherent in these processes. The current system often lacks clarity, creating uncertainty in international disputes and tension among foreign litigants. Recognizing and enforcing foreign judgments remains a complex and inconsistent task despite global conventions. To address these issues, several improvements can be considered:

Firstly, unifying the standards and procedures for recognizing and enforcing foreign judgments across different countries could simplify the process and facilitate smoother enforcement among contracting states. Establishing uniform standards would enhance cross-border transactions by reducing reliance on disparate national laws, which can vary significantly from country to country and even within different states. Secondly, multilateral conventions could standardize the laws on recognition and enforcement among signatory countries, providing greater certainty to foreign investors and individuals involved in international commercial contracts. Consistent cross-border dispute resolution and enforcement of judgments could be achieved through greater uniformity in PIL and more effective treaties. A final alternative is relying on a neutral jurisdiction to resolve disputes involving conflicting jurisdictions, such as the International Chamber of Commerce (ICC). The ICC's arbitration rules, administered by the ICC International Court of Arbitration—the world's leading arbitral institution—offer a

[51] Id. At 50.

[52] Hague Conference on Private International Law. (2005). *Convention on the law applicable to contractual obligations (Rome Convention)*.

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neutral framework for cross-border dispute resolution. These institutions assist parties in complying with formalities and implementing arbitration decisions.

By adopting these suggestions, it is anticipated that some of the challenges posed by the complexities of the global legal system can be alleviated.

8. CONCLUSION:

The enforcement of foreign court judgments is fraught with challenges that stem from jurisdictional conflicts, procedural discrepancies, and the principles of comity and reciprocity. This study has examined these issues comprehensively, revealing the intricate dynamics between national sovereignty, international legal principles, and practical enforcement mechanisms. At the core of these challenges is the principle of comity, which acknowledges the sovereignty of nations and respects their legal processes while allowing for discretionary recognition of foreign judgments. However, this principle is not without limitations. As demonstrated by case law such as National Exchange Bank v. Wiley, Old Wayne Natural Life Association v. McDonough, and Simon v. Southern Ry Co., the doctrine of comity is constrained by the requirement for procedural due process. Foreign judgments that fail to adhere to procedural fairness may not be recognized, reflecting a commitment to basic principles of justice and fairness. Similarly, the principle of reciprocity, which underpins many international agreements and treaties, facilitates mutual recognition and enforcement of judgments based on the expectation of equivalent treatment. Despite encouraging cooperation, reciprocity can also lead to inequitable outcomes if it penalizes litigants for policies beyond their control. Cases such as Shiju Jacob Varghese v. Tower Vision Limited highlight the complexities of forum non-convenience and the impact of existing international conventions on judgment enforcement. The study reveals that the current system of recognizing and enforcing foreign judgments is often inconsistent and complex. The lack of uniform standards and procedures can create uncertainty and tension in international disputes. To address these issues, several improvements are recommended. Establishing unified standards for recognizing and enforcing foreign judgments across jurisdictions could streamline the process and reduce discrepancies. Multilateral conventions and treaties could enhance cross-border dispute resolution by providing a consistent framework. Additionally, utilizing neutral jurisdictions, such as the ICC, for arbitration could offer a more reliable mechanism for resolving cross-border disputes. In essence, advancements have been made in foreign judgment enforcement,

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but further efforts are needed to address the existing challenges. By adopting uniform standards, enhancing international cooperation through treaties, and leveraging neutral arbitration mechanisms, the legal system can better manage the complexities of cross-border disputes and ensure fair and effective enforcement of foreign judgments.[53]

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[53] Ijlra, https://www.ijlra.com/paper-details.php?isuur=2037 (Last visited Jan. 8, 2025).