

An Analysis of Recognition and Enforcement of Foreign Judgments in Bangladesh

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Abstract: The recognition and enforcement of foreign judgments is an aspect of private international law and concerns situations where a successful party to a case seeks to rely on a judgment obtained in a court of another jurisdiction. The most common example of recognition and enforcement of foreign judgments is where a party obtaining a favorable judgment in one state or country may seek to have the judgment recognized and enforced in another state or country. The goal of the study is to determine whether Bangladesh's current regulations regarding the recognition and execution of foreign judgments are consistent with the demands of contemporary business. This article would discuss the Recognition and enforcement process of a foreign judgment in Bangladesh. This article further reviewed the types of judgments that may be recognized and enforced in Bangladesh. A reciprocating agreement between states is necessary for the enforcement of a foreign judgment, which has also been legalized. Therefore, this paper will briefly go through those conditions for a foreign judgment's enforcement. This paper sought to discuss the court proceeding if the foreign judgment conflicts with a previous judgment in relation to the same dispute between the same parties. This paper determines to find the present proceeding of a foreign judgment in Bangladesh and also suggests a few important recommendations to make sure that foreign judgments are properly recognized and enforced.

Keywords: Foreign Judgments, Recognition and Enforcement, Bangladesh, Bangladesh Court.

1. Introduction

When a court in one nation or jurisdiction recognizes a judicial judgment made by courts in another country or jurisdiction and renders a judgment in nearly identical terms without revisiting the initial legal controversy, the issue of foreign judgment emerges. Where a direct trial is to be held between the same party or between the parties under which they or one of them claims the action under the same title, a foreign judgment will be final if it has not been uttered by a court of competent jurisdiction.

In English law, there is a dissimilation between both foreign judgment recognition and foreign judgment enforcement. Recognizing a claim involves treating it as if it had been decided in favor of one of the litigants (Hilton, 1895). This is known as *res judicata*, and it acknowledges foreign competence and the resolution of a dispute. Enforcement, on the other hand, is the act of carrying out the decision. Bangladesh's laws are based on English law. Bangladesh has a judicial hierarchy, with the High Court serving as the highest judicial entity and the Supreme Court serving as the country's highest court. Furthermore, all statutes are adopted by Parliament, and the interpretations and verdicts of courts contribute to the formation of law.

Each country has a natural propensity to safeguard itself against foreign judgments, to the detriment of creditors who are the beneficiaries of the decisions. Foreign decisions are deemed to have no direct effect due to the idea of territorial sovereignty (Castel, 1971). This attitude arises primarily from a lack of trust in other judicial systems. It may be challenging for the adjudicatory court to determine the foreign judge's impartiality and legal skill, as well as to appraise the foreign legal system (Castel, 1971). This problem is exacerbated when the countries involved have fundamentally distinct legal systems and, as a result, may have divergent ideas about government policy and judicial process. The adjudicatory court may find it difficult to assess the foreign judge's procedural fairness and legal talent, as well as the foreign legal system's trustworthiness.

Bangladeshi laws are based on English law. Similar to India, Bangladesh maintains a hierarchy of courts, with the Supreme Court serving as the highest court nationally and the High Court as the highest court within a state. Additionally, just like in India, the Parliament enacts all laws, and court rulings and interpretations help the law advance.

The recognition and enforcement of foreign judgments in personam and in rem in Bangladesh, both at common law and by statute, have been examined in this essay. This essay aims to discuss the legislative and regulatory provisions that govern the recognition and enforcement of foreign judgments in Bangladesh. This essay reviewed the types of judgments that may be recognized and enforced in Bangladesh. This essay would further discuss the Recognition and enforcement process of a foreign judgment in Bangladesh. This essay sought to discuss the court proceeding if the foreign judgment conflicts with a previous judgment in relation to the same dispute between the same parties. The study aims to balance two opposing goals: on the one hand, the sufficiency of protection to safeguard the recognition and enforcement proceedings, so that there would be no injustice or unfairness if a foreign judgment is recognized and enforced, and on the other, the notion of finality of litigation, which encourages courts to recognize and enforce judgments foreign to them.

2. Literature Review

A judgment that is given in a foreign court is considered a foreign judgment. To put it another way, a foreign judgment refers to a decision made by a foreign court on a case before it (Vaidya and Raghuvanshi, 2010). It is necessary to ascertain the content and character of the foreign document placed before the court. The primary question is whether the foreign document seems to the court that is called upon to bring clarity to it to be a foreign decision in its basic character and effect, regardless of where it originated (Castel, 1971). The enforcing court will adopt its own rules and notions in ascertaining this aspect, the court will also look into the foreign country's domestic law. A foreign judgment is a final decision, decree, or sentence issued by a judicial body or tribunal that is regularly formed and practices the jurisdiction attained on it by the legislation of the country in which it was established, and that defines the corresponding rights and claims of the parties to the suit therein litigated (Hilton, 1895). Oppong (2006) stated *McFarlane v. Derbshire* (1851), foreign judgments are those that are pronounced outside of a country's jurisdiction. One of the three major components of conflict of laws is the recognition and enforcement of foreign judgments.

Foreign judgment recognition and enforcement is a relatively new topic. In the past times, foreigners were subjected to local law, and foreign decisions had no legal standing outside of their jurisdictions. In contrast, the *ius commune* made no distinction between foreign and local judgments; foreign verdicts were freely recognized and enforced. With the growth of the sense of sovereignty, this liberal mentality shifted (Ralf, 2009). The necessity of implementing foreign judgments has been disregarded as an onerous burden on sovereignty. The adoption of foreign judgments among sovereign Countries had to be constructed on new grounds since concepts of sovereignty restricted the power of judgments to State borders (Ralf, 2009).

There are two principles of recognition of foreign judgment that have been developed by Voet and Huber. One of these two doctrines is called “comity” which is defined in a decision refusing acknowledgment to a French judgment, the U.S. Supreme Court narrated that this is “Neither a subject of enforceable agreement on the one hand, nor a question of ordinary courtesy and benevolence, on the other hand, it is the acceptance of another nation's legislative, executive, or judicial acts on its territory by one nation” the other doctrine is called “reciprocity” (Hilton, 1895). This doctrine holds that countries will and should acknowledge judicial decisions made by others only if and to the degree that their own decisions are recognized (Ralf, 2009).

3. Recognition and Enforcement of Foreign Judgments in Bangladesh

Recognition and enforcement of foreign judgments in Bangladesh have been regulated by (The Code of Civil Procedure of, 1908). There are different sections in The Code of Civil Procedure, 1908 that describe the legal and judicial framework along with Requirements for enforcement of the foreign judgment, Recognition and enforcement process, Enforcement of the foreign judgment, Limitation period, Defense, Arbitration, etc.

3.2. Recognition and Enforcement Process

Foreign decrees can be enforced in Bangladesh courts if the foreign state and Bangladesh have reciprocal agreements in the matter (Rao, 2016). The District Judge oversees the execution of the foreign

decree. The decree should have been issued by the foreign country's superior court. According to section 2(2) of the Code of Civil Procedure, 1908, a 'decree' is the formal expression of an adjudication that, as far as the court expressing it is concerned, conclusively defines the interests of the parties with respect to all or any of the issues in dispute in the suit, the decree can be either preliminary or final. Section 2(6) of the Code of Civil Procedure, 1908, defines a "foreign judgment" as a decision announced or ordered by a foreign court. According to Section 2(9) of the Code of Civil Procedure, 1908, "judgment" is the proclamation that is provided by the judge on the basis of a decree or order. Section 2(14) of the Code of Civil Procedure, 1908, defines an 'order' as a formal expression of any Civil Court decision that is not a 'decree'. As a result, a judgment issued by a foreign court should be conclusive and made on its merits.

A certified copy of the judgment is needed in favor of a petition for recognition and enforcement of a foreign judgment, according to section 14 of the Code of Civil Procedure, 1908. The court fees would've been determined by the value of the enforcement suit, and the fees would have to be computed based on the value in every case. The security of the cost is usually determined by a court order. If the court decides to issue such an order in response to an application, cost security may be required. However, providing security for expenditures is not a mandatory or automatic condition for an applicant. The time it takes to get a declaration of applicability isn't set in stone. Due to the rarity of this type of situation in Bangladesh, the time necessary may differ from case to case (Anwar, 2022).

A. Foreign Litigants

If the defendant resides and performs his business in Bangladesh, foreign plaintiffs can launch a lawsuit there. Foreign litigants can also approach Bangladeshi courts if the cause of action arises within the jurisdiction of Bangladeshi courts. **Error! Bookmark not defined.** Suits for specific performance of a contract to sell an asset in Bangladesh can be filed in Bangladesh against a non-resident foreigner. **Error! Bookmark not defined.** It makes no difference where the agreement was executed (Rao, 2016).

B. Execution of a Foreign Judgment through District Court

According to section 13 of the Code of Civil Procedure, 1908 the District Court may execute a foreign judgment, if

- The foreign judgment was issued by a competent court;
- The foreign judgment should have been issued on the merits of the case;
- The foreign judgment should have to be based on a correct understanding of international law;
- It has to be ensured that the foreign judgment was not gained via deception; and
- The foreign judgment should not uphold a claim against any Bangladeshi law.

3.1. Requirements for Enforcement of the Foreign Judgment

The prohibition of the implementation of a foreign judgment if it is appealable in that jurisdiction is not specified in the Code of Civil Procedure, 1908. There appears to be no requirement that the decision is issued by a court of last resort, while it is possible that such a ruling will be questioned or even revoked in the future, impacting the result of the enforcement actions in Bangladesh (Anwar, 2022). If no appeal is filed against the court of the first instance's decision and decree, it will be considered final adjudication. No law in Bangladesh outlines the categories of judgments that can be executed. For a foreign judgment to be conclusive in Bangladesh, it must meet the six conditions outlined in Section 13 of the Code of Civil Procedure, 1908. If the judgment meets any of these six criteria it is not regarded conclusive and, as a result, is not legally effective or binding. Section 13 of the Code of Civil Procedure, 1908, prohibits foreign judgments that fall within any of the provisions (a) to (f) of Section 13 as mentioned below:

Section 13 of the Code of The Civil Procedure, 1908:

*When foreign judgment not conclusive- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim to litigate under the same title except, **Error! Bookmark not defined.***—

- (a) Where it has not been pronounced by a Court of competent jurisdiction;
- (b) Where it has not been given on the merits of the case;
- (c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Bangladesh in cases in which such law is applicable;

- (d) Where the proceedings in which the judgment was obtained are opposed to natural justice;*
- (e) Where it has been obtained by fraud; and*
- (f) Where it sustains a claim founded on a breach of any law in force in Bangladesh.*

The foreign judgment's adjudicative parts must all be equally conclusive (Singh and Sharma, 2022). Before attempting to enforce a foreign judgment or conviction, the party requesting enforcement must ensure that the foreign judgment or verdict does not fall within the exceptions (Singh and Sharma, 2022). If a foreign judgment or decree falls under these exceptions, it will not be considered conclusive and thus not enforceable in Bangladesh. Default judgments, summary or special procedure judgments, formal judgments, and judgments enforcing injunctive relief and sanctions or quasi-judicial orders, on the other hand, have been declared unenforceable in Bangladesh.

3.3. Enforcement of the Foreign Judgment

According to Section 44A of the Code of Civil Procedure, 1908, a foreign judgment may be enforced in the same way as a decree issued by a local court. According to Section 51 of the Code of Civil Procedure, 1908, the court has the authority to require that a decree be carried out:

- by the surrender of any specially decreed property;
- by attachment of sale or sale without attachment of any property;
- by arrest and imprisonment in prison;
- by appointing a receiver; or
- in any other manner required by the nature of the relief given.

The executing court may also order the judgment debtor to deposit the ordered sum with the court and then remit the money to the decree-holder. Because the principles of agency and alter ego cannot be used to enforce a foreign judgment against anybody other than the designated judgment debtor or a party who has not been presented in the hearings, enforcement against a third party is exceedingly unlikely (Anwar, 2022).

3.4. Limitation period

According to Article 117 of the Limitation Act, 1908, the period of limitation for filing suit on a foreign judgment as stated in the law is six years from the date of the judgment.

3.5. Defense

Under Section 13 of the Code of Civil Procedure, 1908, the defendant can appeal the matter's conclusiveness as well as the recognition and enforcement of the foreign decision. Following the start of the proceedings, the court will usually issue a notice that specifies a deadline by which the complaint must be lodged. Local courts, on the other hand, are usually generous in giving extensions of time to file a written statement disputing enforcement. Because the court has discretion, it is more probable that any delay in filing an objection to enforcement action will be tolerated (Anwar, 2022).

4. Legal and Judicial Frameworks of the Foreign Judgment

The Code of Civil Procedure, 1908 regulates the process regarding recognition and enforcement of foreign judgments and decrees in Bangladesh. Section 13 and Section 44-A, of the Code of Civil Procedure 1908, mentioned relevant provisions that are responsible for the regulating process of recognition and enforcement of foreign judgments and decrees in Bangladesh. In the absence of a reciprocating agreement, a foreign country's judgment cannot be implemented in Bangladesh.

'Reciprocating territory' refers to nations or territories that the government may declare reciprocating territories for this section by publication in the Official Gazette from time to time. According to Section 74 of the Evidence Act 1872, a judgment made by a court in a non-reciprocating country may be deemed as "public document" evidence. A foreign judgment can be enacted by filing a new lawsuit and using the foreign judgment as evidence of liability; the court will then overturn the decision as a summary action (Anwar, 2022). A superior court decree from any reciprocating jurisdiction can be carried out in Bangladesh by issuing a certified copy at a district court. The term "district court" refers to the court of the district judge. The district judge court has the authority to hear requests to recognize and enforce foreign judgments. Each District Judge has the authority to hear a petition for the

enforcement of a foreign judgment against a defendant whose business entity is in his or her jurisdiction (Anwar, 2022).

4.1. Arbitration

The process of Arbitration has been regulated by section 89B of The Code of Civil Procedure, 1908. **Error! Bookmark not defined.** According to Section 89C of the Code of Civil Procedure, 1908, allows for early-stage mediation in civil cases. Although, debt collection lawsuits brought by financial institutions cannot be resolved by arbitration. A written arbitration clause should be included in the contract. Application and proceedings of Arbitration have been followed by The Arbitration Act 2001. The case must be brought before the Bangladesh Council of Arbitration, which is an arm of the Bangladesh Chambers of Commerce and Industry. According to the commencement of section 38 of The Arbitration Act 2001, the date and sign must of the arbitrators have to be written in the award. According to section 40(6) of the Arbitration Act 2001, after sixty days from the date of the award, the award can be enforced like any other decree, because a party can ask the court to set aside the award.

4.2. Appeals

When a district court receives a certified copy of a superior court decision from any reciprocating region, the decision may be executed in Bangladesh as if it had been made by the district court. The judgment might be contested by filing a revision with a higher court.

A stay on the judgment's enforcement would most likely be requested if the local defendant filed the appeal. The applicant will have enough chance to request injunctive relief to safeguard the interest of the judgment debtor because such an order may negatively affect future money enforcement and recovery.

5. Analysis

Recognition and enforcement of foreign judgments in Bangladesh have been regulated by The Code of Civil Procedure, 1908. The local court will consider that a foreign judgment is final and conclusive when enforcing it. However, if the defendant/respondent can show that the service of the process was not done properly under the law, the court may refuse to enforce the judgment on the basis of natural justice. The courts in Bangladesh adhere to the principle of *res judicata*, as established by Section 11 of the Code of Civil Procedure, 1908, and will not consider a foreign judgment if there is a contradictory local judgment involving the same parties and a similar subject. The district court by way of execution of the foreign judgment is the competent court for enforcement of a foreign judgment, according to Section 44-A of the code. Foreign judgments must be enforced by bringing a civil action before a court of the first instance with territorial and pecuniary jurisdiction to obtain a decree based on the verdict. The court has the authority to give injunctive relief while a foreign decision is being enforced. The grounds that may constitute a foreign judgment inconclusive under the Code of Civil Procedure should be considered. A plaintiff in a foreign court should try to prevent any prospective objections that could render a foreign judgment unenforceable in Bangladesh in the future.

If a foreign judgment is issued by a court in a reciprocating country, the local court will accept that the judgment is final and conclusive among the parties and that it cannot be challenged based on facts or law or service of the process except on the limited grounds outlined in Section 13 of the Code. Therefore, if the defendant/respondent can show that the service of process was not done properly under the law, the court may abdicate to enact the judgment based on natural justice. Except where it has not been proclaimed by a court of competent jurisdiction, a foreign decision is conclusive as to any subject immediately adjudicated among the same parties or in between parties under which they or any of them seek suit under the same title. Unless the contrary appears on the record, the court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction; however, such presumption may be overcome by proving lack of jurisdiction.

The justifications listed in Section 13 of the Code of Civil Procedure, 1908, include a situation where the proceedings appear to be based on an inaccurate understanding of international law or a reluctance to recognize Bangladeshi law in circumstances where it is applicable. It is a well-established concept in Bangladeshi law that a court of law may decline to execute a foreign ruling if doing so would be contrary to national policy. The conditions and grounds of each case will determine whether or not a foreign judgment will be partially recognized and enforced. There does not appear to be any explicit prohibition against such recognition and enforcement. The court has the authority to award costs; but, in the vast majority of cases, no costs are awarded. Because the principles of agency and alter ego cannot be

used to enforce a foreign judgment against anybody other than the designated judgment debtor or a party who has not been addressed in the proceedings, enforcement against a third party is exceedingly unlikely. If a third party is holding property owned by the defendant against whom enforcement of the judgment is sought, the court may issue an order of attachment and a mandatory injunction requiring the third party to make the property available for the proceedings to be completed.

6. Findings

The findings of the study are as follows. In the process of enforcing a foreign judgment, the local court will presume that the judgment was rendered by a court of a country that reciprocates and that it is final and conclusive between the parties and cannot be challenged on the basis of facts or law or service of process outside of the specific grounds outlined in section 13 of the Code. However, the court may decline to enforce the judgment on the grounds of breach of natural justice if the defendant/respondent can show that the serving of process was not done in conformity with the relevant statute.

Unless it has not been issued by a court with sufficient authority, a foreign decision shall be final as to any matter thereby directly decided between the same parties or between parties under which they or any of them seek suit under the same title. Unless the record shows otherwise, the court shall presume, upon the production of any document claiming to be a certified copy of a foreign judgment, that such judgment was rendered by a court of competent jurisdiction. However, this presumption may be overcome by demonstrating a lack of jurisdiction.

Except for specific reasons outlined in Section 13 of the Code of Civil Procedure, a foreign decision that has been rendered final and conclusive between the parties cannot be challenged based on either fact, law, or the delivery of the process. These grounds include instances when it appears from the circumstances of the proceedings that international law was not applied correctly or a reluctance to recognize Bangladeshi law where it is appropriate. The judgment was gained through deception, the methods in which it was obtained were against natural justice, and the judgment upholds a claim based on a violation of any law in effect in Bangladesh. These are the other grounds for appeal. As a result, it appears that the court will examine the foreign ruling to see if it complies with relevant legal standards. As well as, the local court won't have a lot of room to review the verdict on merit.

It is accepted practice that a Bangladeshi court may decline to uphold a foreign ruling if doing so would be against public interests.

The courts in Bangladesh adhere to the *res judicata* principle, which is described in Section 11 of the Code of Civil Procedure and will not consider a foreign judgment when a local judgment between the same parties regarding the same matter has already been decided in contradiction.

However, in the vast majority of situations, there is no award of costs, even though the court has the option to do so.

7. Recommendations

The study ends with a few suggestions for enhancing the procedures used in the chosen jurisdictions to recognize and enforce foreign judgments in Bangladesh.

The Code of Civil Procedure's grounds for declaring a foreign judgment inconclusive should be taken into consideration. Where's the parties that engaged in litigation in a foreign court should make every effort to prevent any potential issues that could ultimately make a foreign ruling in Bangladesh unenforceable.

To ensure easy and proper enforcement of foreign judgments the Commonwealth introduced a Model Law. The goal of this Model Law is to help member nations update their policies regarding the acceptance and enforcement of foreign judgments. It is complemented by Explanatory Notes and includes provisions for the enforcement of both monetary and non-monetary judgments. Bangladesh should also follow the Commonwealth Model Law for the recognition and enforcement of foreign judgments.

Bangladesh needs to reform its laws governing foreign judgments, including adopting the real and substantial connection test as the new jurisdictional basis for purposes of recognition and enforcement, liberalizing the current defenses to ensure the real and substantial connection test's application, and passing a specific law for foreign judgments that cover at least its major trading partners to make sure that foreign judgments are properly recognized and enforced.

Bangladesh should introduce a convention on jurisdiction and the recognition and enforcement of foreign judgments. The Convention would be a double Convention, providing uniform standards for the rules of jurisdiction a court in a Contracting State must exercise when rendering a judgment, and a set of provisions for the recognition and enforcement of resulting judgments.

8. Conclusion

The decisions of the courts of one State are not binding on the courts of another State on their own. This frequently falls short. The general public has an interest in avoiding resources spent on re-litigation and in international decisional harmony, while States share a common interest in promoting inter-State transactions. Parties are interested in transnational legal certainty and in avoiding repeated litigation and conflicting decisions. States may, however, have good grounds for refusing to give foreign verdicts the same weight as their own judgments because the foreign system may be deemed inadequate or the outcome of the international lawsuit may be deemed objectionable. The requesting court will typically not review the foreign judgment using its own law or under any other legislation (no "révision au base"), which is a key tenet of the law of recognition and enforcement. As a result, even when a domestic court would have reached a different conclusion, international judgments are respected.

In the commercial arena, demands for enforcement of foreign judgments have been made fewer day by day due to the greater use of arbitration and other forms of alternative dispute resolution. Foreign judgments are rarely enforced in Bangladesh, and foreign parties seeking to execute a judgment must normally file a lawsuit in a local court. The Code of Civil Procedure, 1908 offer the scope of arbitration, and The Arbitration Act 2001 governs the process of arbitration. At an early point of the hearing, the CPC allows for mediation in litigation.

Conflicts of Interest

The authors declare no conflicts of interest. The corresponding author reserves all the rights regarding the article.

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