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The doctrine of international comity: issues Law of Recognition and Enforcement of foreign Judgments in the context of Pakistan

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Abstract

The doctrine of international comity, which involves recognizing and respecting the laws and judgments of other countries, should be considered in this context. Private international law defines state sovereignty and allocates authority between public and private actors. This article explores the doctrine of international comity and its application in the context of recognizing and enforcing foreign judgments in Pakistan. Section 13 of the Code of Civil Procedure, 1908 prohibits the execution of foreign judgments or decrees unless it has been "recognized" for domestication purposes under the Code of civil procedure sections 14 and 44A. The article highlights the need to balance public policy and private rights when assessing the applicability of domestic and foreign law. The recognition and enforcement of foreign judgments should be allowed where comity principles are met and where such recognition would not violate public policy and provides practical recommendations for resolving the issues related to the recognition and enforcement of foreign judgments in Pakistan.

Keywords: Principle of Comity, Issues Recognition, Foreign Judgments, Enforceability, Pakistani laws, Pros and Cons

Introduction

International comity can be "a choice-of-law principle, a synonym for private international law, a rule of public international law, a moral obligation, expediency, courtesy, reciprocity, utility, or diplomacy." Experts say civility is natural, tradition, treaty, or domestic legislation. No one agrees that comity is a legal principle (Harten, 2007). Because it covers various guiding principles, the theory is described as "one of the more perplexing doctrines invoked in cases involving the interests

of foreign states. This is one of the reasons why this doctrine is regarded as so perplexing (Stephens et al., 2008). The concept of international comity was developed in the second half of the seventeenth century by a group of Dutch jurists led by Ulrich Huber (Yntema, 1966). Over a long period, Huber and others sought a solution to legal difficulties that would not jeopardize the concept of Westphalia sovereignty "Civility of nations," or the principle of *comitas gentium*, as articulated by Huber, necessitates the application of international law in certain circumstances. Why? "sovereigns so act out of comity that rights acquired within the borders of a government retain their force everywhere so long as they do not prejudice the powers or rights of such government or its subjects," he writes, explaining why domestically acquired rights are universally recognized. (Lorenzen, 1963). According to Mansfield, the application of comity was something that could be done at the judge's discretion, and he believed that courts should adopt foreign law "except to the extent that it conflicted with principles of natural justice or public policy (Eisenberg, 2008).

As Mansfield and earlier writers formulated it, the comity doctrine was explicitly rejected by Samuel Livermore, a Louisiana lawyer who published the first American treatise on the conflict of laws in 1828. Livermore argued that "courts were bound by international law to apply the same law that a foreign court would apply." One of the earliest examples of a clear rejection of the comity idea is thought to be Livermore's work. The public in the United States had access to Livermore's work (Dornis, 2017).

Justice Joseph Story of the Supreme Court, who concurred with Mansfield and Huber, wrote in his *Commentaries on the Conflict of Laws* that he did not endorse this idea and was not a fan of it. Story's perspective, which ultimately won out, was that voluntary or consensual application of the comity principle would increase interstate trust, "localize the effect of slavery," and lessen the likelihood of civil war. This was later demonstrated to be true (J. Paul, 1988). The 1895 decision of the United States Supreme Court in the case of *Hilton v. Guyot*, which determined that the administration of a foreign judgment was a question of comity, is considered the "classic" statement of comity in international law (Version, 2018). Justice Gray wrote "Comity, in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws" (159 US 113, 1895).

Pakistan is regarded as a signatory to the New York Convention because it is one of those nations. Unlike the Geneva Convention of 1927, the Convention does not require a confirmation judgment on the award before it may be considered final. The New York Convention's authors purposefully omitted the double *exequatur* idea. A court with jurisdiction must uphold an arbitral ruling if it is filed under section 62 of the Act of 2011, with few exceptions. If an arbitral award complies with the New York Convention's implementing laws, it may be enforced here. However, Pakistan's Code of Civil Procedure (CPC 1908) section 44-A (Procedure, 2016). Allows for the enforcement of a foreign judgment there if the party has access to both of these options, (Chishti, 2013). It is referred to as a "parallel entitlement approach" This strategy has been used by the USA since 1973. (Review & Roth, 2007).

The question of whether choices made in other countries can be applied in Pakistan after they have been made. The existing legal system distinguishes between judgments issued by courts in states that participate in a reciprocity agreement and those issued by courts in states that do not participate in the reciprocity agreement. To enforce a judgment in a state that does not have a reciprocity agreement with other states, the creditor must first file a case in that state's highest court. Judgments from states with an established reciprocity agreement are instantly enforceable in those states

(Sekhri, 2009). Pakistan is acknowledged as a signatory to the New York Convention and a party to it.

Research Methodology

The doctrinal research approach is used in this research study to analyze legal documents related to the doctrine of international comity and the Law of Recognition and Enforcement of Foreign Judgments, including legislation, case law, and scholarly papers. Due to the researcher's suggested solutions, this method aids in providing a descriptive response to the research problem.

Foreign Court and Foreign Judgment

“Foreign Court means a Court situated outside Pakistan and not established or continued by the authority of the Central Government” (Khan., 2010) “Foreign judgment” means the judgment of a foreign Court”(Khan., 2010). A foreign judgment is legally binding on any subject that was directly decided between the same parties or between parties under whom those parties or any of them claim to litigate under the same title, with the exception of the situations described in the following paragraphs. This holds true for any case in which a decision was reached directly between the parties involved or between parties with whom they or any of them claim to be in a joint action. It has not been granted on the basis of the case's merits: (a) in circumstances where a court with appropriate authority has not reached a decision; (b) where it appears from the proceedings that it is based on an incorrect view; (c) where If one were to read provision 13 of the Code, they would discover that a foreign judgment is legally enforceable in Pakistan provided that it satisfies the circumstances that are indicated in that particular provision of the Code. It is the case only if the foreign verdict satisfies the conditions that are mentioned in that provision. Section 13 of the Code contains the stipulations that apply to this situation. The rule established in Section 13 is not just a rule of procedure; it is also a rule of the substantive law that applies to the situation. If the conditions listed in (a) to (f) of Section 13 of the Code are met, the Pakistani Court is not allowed to question the legality of the same, and the verdict is binding on both parties if the exceptions that were described above are met. The Pakistani Court is not authorized to contest the legality of the same. The Pakistani Court is not permitted to contest the legality of the same (Shakoor, 2019).

There are three options available to the plaintiff in the event of a foreign judgment. If the foreign decree was issued by the United Kingdom or any reciprocating territory, he is eligible to acquire execution of the foreign judgment using processes under Section 44-A of the Pakistani Code of Civil Procedure. In this instance, the plaintiff might simply have the District Court of the appropriate District in Pakistan carry out the decree without filing suit or appearing in court. The plaintiff has three choices accessible to them after receiving a ruling in another nation. Second, the plaintiff retains the right to file the lawsuit in Pakistan based on the foreign judgment, which the Pakistani legal system will treat as a foundation for action. Suppose the parties decide to pursue the second course of action. In that case, the judgment will be conclusive between the parties and binding on both if the conditions outlined in Section 13 of the Code of Civil Procedure are satisfied; otherwise, it will be regarded as *res judicata*, and Pakistani courts will be required to follow its rulings. If the circumstances provided in Section 13 of the Code of Civil Procedure are satisfied and the parties decide on the first option, the judgment will be binding on both of them (PLD 2011 Karachi 257, n.d.).

The most important part of the rule that was decided in all of these cases is that (i) execution can be obtained by proceeding under Section 44-A of the CPC, as long as the country from which the decree was passed in the United Kingdom or any reciprocating territory (underlined for emphasis); (ii) a foreign judgment can be enforced by using it as a cause of action through a suit, subject to the conditions stated in Section 13 of the CPC, although such suit would not proceed like an ordinary

suit(iii) a lawsuit can be brought on the initial cause of action as long as it has not been fulfilled; (iv) foreign judgments are considered to have been given by a court of competent jurisdiction if they adhere to the conditions stated in Section 14 of the Code of Civil Procedure. (Appeals et al., 2015).

Nature and Scope of Foreign Judgments

Section 13 affects the *res judicata* legal principle in situations involving verdicts handed down in other countries. It is a principle of private international law that a ruling issued by a court in a country with a legal system equivalent to Pakistan can be executed and upheld in Pakistan. This principle gives effect to the idea of private international law (Briggs et al., n.d.).

The Object of Recognizing Foreign Judgments

When a claim is decided upon by a foreign court that has the authority to do so, a legal responsibility arises to satisfy that claim in the nation where the verdict must be carried out to be valid. This principle is the foundation for the legal requirement that makes it possible for a judgment handed down by a court in another nation to be upheld in that country. However, specific rules are accepted as applicable across all civilized jurisdictions because of the comity of states. The norms of private international law that apply in each state are diverse from one another in many different ways. As a result of international agreements or the judicial systems of other states, these universal principles have been incorporated into the legal systems of all states to facilitate the adjudication of cases involving a foreign element and the enforcement of the decisions rendered by courts located in other countries. Recognition of this nature is not granted as a sign of civility but instead based on fundamental ideals such as fairness, equity, and having a good conscience when deciding to do so. When deciding our concepts of justice and public policy, knowing the foreign law utilized in the parallel jurisdiction could be a helpful guide and serve as a valuable point of reference. We are a sovereign nation so long as we remain inside the borders of our territory, yet, complying with international legal norms does not constitute a breach of our sovereignty. "We are not so provincial as to argue that every solution to the problem is bad simply because we deal with it in a different way at home," the author adds. "We are not so provincial as to argue that every solution to the problem is bad." Consequently, we would never disregard the legal systems of other countries unless doing so "would violate some fundamental principle of justice and deeply-rooted traditions of common weal."

Jurisdiction of Foreign Courts

According to the principles of Private International Law, a judgment handed down by a foreign court would only be recognized in Pakistan if that court has jurisdiction in the sense that it is used internationally. However, it only considers the court's jurisdiction over the defendant and the subject matter in its geographic area. The court in this country does not consider the competence or jurisdiction of the organisations in any other way to be relevant to the case (Nussbaum, 1941).

Pakistan's Legal Approach for Recognition and Enforcement of Foreign Judgment

Background

Enforcement will now be done under the Code of Civil Procedure (CPC) rather than the Act of 2011 regulations (Tapper, 1967). A foreign judgment may be executed in Pakistan under the rules stated in section 44-A of the Criminal Procedure Code (Chishti, 2013). However, this section only applies to foreign judgments rendered by the higher courts of the United Kingdom, and it only gives those judgments force. It is because this section only applies to foreign judgments issued by the higher courts of the United Kingdom. This only applies to decisions rendered by higher UK courts

that were made in other nations (Bankowski et al., 2016). Or any other courts of cooperating countries that Pakistan's Federal Government has formally identified through the notification process.

In addition, this clause expressly excludes the execution of an arbitral award from its scope. The clause does not cover the execution of an arbitral award, which brings up another difficulty. It is true even if the award can be implemented as a decree or judgment. Because it will only recognize judgments and decrees issued in the United Kingdom or in any other countries that the Federal Government has informed, this provision's territorial scope is severely constrained. It is because, up to this point, only a very small number of nations and territories have been notified by the federal government that they are reciprocating territories. It is the cause of the current circumstance. The government of Pakistan has declared that the following territories are reciprocating territories: (i) Fiji; (ii) The Colony of Singapore; (iii) The Austrian Capital; (iv) New Zealand, which includes the Cook Islands (including Niue) and the Trust Territory of West Somoa; and (v) The Northern Territory of Australia. (Uoll, n.d.) Section 44-A of the Code of civil procedure 1908 states that these territories' Supreme Courts are the Superior Courts.

However, examining the Act of 2011's breadth is rather extensive. It can be inferred from the fact that it was adopted in 2011. It is because it recognizes not only awards made in other non-contracting States but also awards made in any of the Contracting States of the New York Convention that the Federal Government has been notified about. It is because it recognizes all awards made in any of the New York Convention's contracting states. According to the most recent information, 149 nations have ratified the New York Convention. Even if Pakistan does allow a parallel road, it is more likely that the Act 2011 will be applied to execute a foreign arbitral award. It is the case even if Pakistan does provide a parallel path. It is because the Act of 2011 was passed later than the CPC.

Presumption as to Foreign Judgments in Pakistan

The Pakistani Code of Civil Procedure, Section 14 of CPC, specifies the presumption that a Pakistani court is required to make if it is supplied with a document that is believed to be a certified copy of a verdict from another country (BRASIL, 2011). This provision applies only in situations where the Pakistani court is presented with a document deemed to be a certified copy of a verdict from another country. In the absence of evidence to the contrary, the Pakistani courts operate under the presumption that the decision in question was rendered by a court of competent jurisdiction located outside of Pakistan. On the other hand, a party can reject this presumption by establishing that the Pakistani court in question does not have the authority to issue the judgment in dispute. The presumption of legitimacy afforded to judgments handed down in other nations is broken down and explained in Section 14. If a document that purports to be a certified copy of a foreign judgment is presented to the court, the court will operate under the presumption that a court of competent jurisdiction issued the judgment in question unless the court finds evidence to the contrary in the record (Chong, 2020). Suppose the court does find evidence to the contrary in the record. In that case, the court will not be under the presumption that a court of competent jurisdiction issued the judgment. However, this presumption can be disproved if it can be shown that the foreign court did not have the authority to issue the verdict in dispute (2009 CLD 451, n.d.).

Issues for recognition and enforceability

Under Section 44-A of the CPC, the court must decline to execute a decree if it can be shown that the judgment: is not from a court of competent jurisdiction; is not based on the merits of the case; is presumptively founded on a mistaken understanding of international law; or declined to recognize Pakistani law when it was applicable law; or when the proceedings leading up to it are "opposed to

natural justice"; or "has been obtained by fraud"; However, the Act of 2011 places severe limitations on the kinds of defences that may be brought up to prevent the enforcement of an arbitral verdict. These defences might be created by contesting the validity of the outcome itself. These defences are strictly limited to those that are grounds for the court to reject the enforcement of an arbitral decision. Only those defences meet the criteria. Article V of the New York Convention offers more permissible grounds for refusal than the CPC does, in comparison to the CPC. It leads the recipient of the award to the conclusion that it is in their best interests to follow the course of action recommended by the CPC rather than the one suggested by the Act of 2011. The Act of 2011 expands the number of reasons that can be given to reject the application. However, because this Act defines a wider variety of possible justifications, using this route can harm the losing party.

Even if an award violates any of the reasons enumerated in Article V (1) of the New York Convention, the court has the discretion to decide whether or not to uphold it. Article V (1) of the New York Convention lists these grounds for rejection. The Act of 2011 gives the court the authority to do so. As stated in section 44-A of the CPC, the court does not have this choice. It is required by law to refuse the execution of the decree or judgment if it has proven that it falls under one of the exceptions to refusal that has been outlined in the previous paragraphs. The preceding paragraphs looked at instances in which a refusal could be justified.

Conclusiveness of Foreign Judgments

In Section 13, the fundamental guidelines that no foreign court shall violate while issuing a decree or verdict are outlined. These guidelines should be followed by all foreign courts. A court in another country should not violate these standards under any circumstances. If, on the other hand, the decree or verdict of the foreign court falls within any of the exceptions stated in clauses (a) to (f) of Section 13, it will not be binding on the parties involved in the case.

Exceptions to the binding effect that a judgments rendered in another country has Any matter that was directly adjudicated upon between the same parties or between parties under whom they or any of them claim that they are entitled to litigate under the same title shall be conclusive about a verdict that was rendered in a foreign country, except the following cases: (Mazhar et al., 2016).

- (a) Where a Court of competent jurisdiction has not pronounced it.
- (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 Pakistan 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.
- (f) Were it sustained a claim founded on a breach of any law in force in Pakistan?

Foreign Judgments when cannot be Enforced in Pakistan

Before moving forward with the enforcement of a foreign judgments or decree, the party that is going to be responsible for doing so needs to be certain that the judgment or decree does not fit into any of these six categories.(Chishti, 2013).Only then can they move forward with the enforcement. If any of these conditions are met, the foreign decision or decree will not be regarded as definitive,

and as a consequence, it will not be enforceable in Pakistan. According to Section 13, there are six scenarios in which a judgment handed down in another nation will not be decisive. Following this, there will be a discussion of six other tests.

Foreign Judgment not by a Competent Court

A fundamental principle of the law stipulates that any judgment or order rendered by a court that lacks the necessary authority is invalid and, therefore, null and void. As a result, a judgment rendered by a court in another nation must have been issued by a court there with the authority to do so for it to be binding on the parties. For a case to be deemed settled, it must have been decided by a court with domestic and international jurisdiction. The court must have immediately decided on the issue cited as *Res judicata*.

When judgment not on Merit of the Case under Section 13(b) of CPC

It is possible that a decree or judgment handed down by a foreign court against a Pakistani defendant who has been allowed to remain *ex-parte* will not be enforceable against the defendant if it cannot be demonstrated that the decree or judgment was handed down following an investigation into the plaintiff's claim. It is the case if it cannot be demonstrated that the decree or judgment was handed down following an investigation into the plaintiff's claim.

Foreign Judgments against International or Pakistani Law

It is not feasible to get a conclusive finding from a decision that either violates the most fundamental principles of international law or that refuses to accept the law of Pakistan in circumstances in which Pakistan's law is pertinent. Both of these things are examples of violations of international law. This clause protects the ruling of the English court because the court committed an error in its application of English law to a case in which the suit was launched in England based on a contract executed in Pakistan. It is because the general concept of Private International Law is that the rights and liabilities of parties to a contract are regulated by the place where the contract is made (known as the *lex loci contractus*). The reason for this is that the location where the contract is made governs the rights and liabilities of parties to a contract (Nisar et al., 2016). A verdict that was handed down by a court that is situated outside of Pakistan regarding a claim for immovable property that is situated inside Pakistan's borders may not be able to be implemented because it violates international law. In that case, a decision or judgments that a foreign court gave in a circumstance where a competing Pakistani law had been proven but the court had refused to accept such legislation may not be enforceable. It would be the case even if a foreign court decided or judged. In this scenario, the decree or decision might continue to be enforced. (*THE CODE OF CIVIL PROCEDURE, 1908 Section 13(C)*, n.d.).

Foreign Judgments Opposed to the Principle of Natural Justice

The legal system must be followed for a court to render a judgment. The judge must follow natural justice. Court judgments must have it. It must provide each side reasonable notice and an equal chance to present their argument. It must be made up of people who are not biased, who must behave fairly and justifiably, without showing any favoritism and in good faith. In addition, it is required to provide reasonable notice to the parties involved in the dispute. If a judge reaches a verdict that contains such errors, the verdict itself will be overturned, and the case will be regarded as "*coram non iudice*." (*AIR 1971 SC 974*, n.d.).

Principle of Natural Justice

The international court must follow the principle of natural justice to reach a decision that conforms to the law. In addition, proper notification of starting the legal procedures should be supplied to the parties involved in the dispute. The decision that the judge makes must be unbiased and presented objectively. Equal opportunity is to state their case to avoid any claims of not following the principles of natural justice if the judgment or decree comes before the Pakistani court for enforcement purposes. It is if the judgment or decree comes before the Pakistani court for enforcement purposes. If this is not carried out, the verdict or decree that an international court issued may be in breach of the Principles of Natural Justice(*CPC 13(D)*, n.d.)

Foreign Judgment Obtained by Fraud

If a foreign judgment was obtained through deception, then it will not function as *res judicata*, as this is a well-established principle in the field of private international law (Naidu, 1994). It has been said that "fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*), and that "fraud and deceit ought to benefit none" (*fraus et dolus nemi in patrocinaridebent*) (*AIR 1975 SC 105*, n.d.).

Misleads the Foreign

If the plaintiff deceives the foreign court and the Judgment or decree is acquired on that basis, the said Judgment may not be enforceable; however, if there is any error in the Judgment, then the Pakistani courts will not sit as a Court of appeal to repair the mistake or error. It is because the Pakistani courts do not recognize the jurisdiction of foreign courts. It is because the courts in Pakistan do not acknowledge the jurisdiction of other countries courts. If it is discovered that the plaintiff intentionally deceived the foreign court throughout the proceedings, and the Judgment or decree is obtained as a result of this, then the Judgment in question may not be enforceable in the country where it was issued (*Civil Procedure Code 1908,13(E)*, n.d.).

Foreign Judgments Founded on Breach of Pakistan Law

Suppose a law that is currently in effect in Pakistan is misconstrued in such a way as to provide the basis for the logic behind a judgment that a foreign court handed down. In that case, the feasibility of implementing the foreign judgment in Pakistani courts will be questioned. It is because a law currently in effect in Pakistan can only be interpreted in one of two ways: whether it is interpreted correctly or not. The incorrect interpretation of the law could become the foundation for the basis for the rationale behind the verdict that the foreign court handed down.

Violation Law Enforced in Pakistan 13(f) of CPC

Suppose a verdict that a foreign court gave violates any legislation that is currently in existence in Pakistan. In that case, the judgment might not be enforceable unless it is based on a contract with a different "proper law of the contract." In such a case, the judgment would be enforceable. Under these circumstances, the judgment could not be carried out.

Conjecture as to Foreign Judgments

Under Section 14 of the CPC, courts in Pakistan are required to, upon the production of a certified copy of the foreign judgment; presume that a court of competent jurisdiction has given it unless it appears from the record that it has been given by a court that lacks such jurisdiction. It is the case even if it appears that a court of competent jurisdiction gave the foreign judgment. It is the case even though a court with the requisite authority handed down the foreign judgment. Whoever makes the allegation that the foreign court was not a court of competent jurisdiction in the country

where the case was heard is the one who will be responsible for presenting evidence to support their claim in the nation where the case was heard.

Submission to Jurisdiction of Foreign Court

It is a well-known fact that one of the criteria determining whether or not a foreign court is considered to have global competence is whether or not a party willingly submits itself to the jurisdiction of the particular foreign court. This principle is one of the grounds that determine whether or not a foreign court has the authority to hear cases involving international law. Suppose a party submits to the jurisdiction of a court, taking the chance that the court will rule in his favour. In that case, it is not permissible for that party to later claim that the court did not have the authority to make the decision that went against him and argue that the court lacked the authority to do so. It is the logic that underpins this principle.

There are two methods to demonstrate acquiescence to the jurisdiction of a foreign court: expressly or implicitly. Both of these ways are possible. To evaluate whether or not a defendant has consented to the jurisdiction of a foreign court, it is necessary to look at the particular facts and circumstances of each case to answer the question of whether or not the defendant has submitted to the jurisdiction of the foreign court (*AIR 1967 SC 739*, n.d.).

Methods of Enforcement of Foreign Judgments

A foreign judgment which is conclusive under Section 13 of the Code can be enforced in India in the following ways:

- By instituting a suit on such foreign judgment, or
- By instituting execution proceedings.

When specific conditions, as outlined in Section 44-A of the CPC, are met, a foreign judgment can be made legally binding by beginning the processes of execution that are required to put it into effect. These preconditions are outlined in Section 44-A of the document. The Act's Section 44A specifies the procedures that must be followed to implement decrees handed down by courts located in territories that participate in reciprocity agreements.

(1) If a certified copy of a decree from any of the superior courts of a reciprocating territory has been filed with a District Court, then the decree may be enforced in Pakistan as if the District Court had passed it. Pakistan's legal system recognizes decrees from superior courts of territories with reciprocal legal systems. It is because Pakistan's legal system acknowledges decrees issued by higher courts in territories that have legal systems that are reciprocal with Pakistan's. Because Pakistan recognizes the higher courts of all of the territories that are parties to the reciprocation agreement, this is the result (Hussain et al., 2017).

(2) You are required to file, in addition to the certified copy of the decree, a certificate from the Superior Court that specifies the degree, if any, to which the decree has been complied or altered. The requirement applies if the decision has been changed. This certificate is required to be submitted along with a copy of the decree that has been certified. Regarding the legal actions that can be taken according to this section, such a certificate will be considered irrefutable evidence of the sum to which such satisfaction or adjustment has been made. In addition to the notarized copy of the decree that must be filed, this certificate must also be submitted.

(3) The requirements of section 47 shall apply to the proceedings of a District Court executing a decree under this section as of the date of the filing of the certified copy of the decree, and this shall

be the case regardless of when the certified copy of the decree was initially filed. Despite this, the District Court is required to refuse to execute any such decree if it is demonstrated to the satisfaction of the Court that the decree comes within any of the exceptions stated in clauses (a) to (f) of section 13; in such a case, the execution of the decree is required to be stopped.

Superior Courts" applies, about any such territory, to such courts as may be indicated in the notification mentioned above. This is explained further in Explanation Number Two. The term "reciprocating territory" refers to any nation or territory located outside of Pakistan that the Central Government of Pakistan may proclaim to be a reciprocating territory for this section by publishing a notification in the Official Gazette. This declaration may take place at any time. Any nation or territory not Pakistan is called "reciprocating territory" in this article.

When referring to a court with superior jurisdiction, the word "decree" can refer to any judgment or decree issued by that Court that requires a particular amount of money to be paid out. It is explained further in Explanation Number Two. In addition, this does not include an arbitration award, even if such an award is enforceable as a decree or judgment. It does not include a sum payable for taxes, similar charges, fines, or penalties. A decision arrived at through the arbitration process is not encompassed by this phrase.

Suppose a judgment or decree was issued by a court not part of a superior court in an area that reciprocates. In that case, a suit against such a foreign decision must be launched in a court of competent jurisdiction in Pakistan. It is because a suit against a foreign decision can only be brought in Pakistan. It is the case regardless of whether or not the foreign Court was located inside a territory that practices reciprocity. Unless the judgment was enshrined in a decree that was issued by a court that is located in the country in question, a judgment that was made by a court, tribunal, or other quasi-judicial institution that is based in another nation is not enforceable in the country in which the decision was made. It would be the case even if the entity that made the decision were established in the same country. This fundamental idea of the law guides the process by which judgments are arrived at within the framework of the legal system. In a circumstance such as this one, the judge is precluded from delving into the particulars of the first claim, and the result of any matter immediately agreed upon between the same parties is held to be conclusive. A claim of this kind must be submitted within the period of no more than three years following the date on which the judgment was issued (RAUTRAY, 2009).

Pros

Promoting international cooperation: Countries are obligated to recognize and abide by rulings rendered by tribunals situated in other nations under the principle of international comity. This promotes international cooperation, facilitates cross-border trade, and fosters goodwill among various countries.

Facilitating access to justice: If judgments that have been handed down in other countries are accepted and executed in Pakistan, it may be simpler for individuals and corporations in Pakistan to have access to justice in Pakistan. People are able to collect their claims and enforce their rights without having to begin new legal actions in Pakistan as a result of this provision. This is something that will be of great benefit to the nation (Zeynalova, 2013).

Efficient resolution of disputes: Recognizing and enforcing foreign judgments can lead to the efficient resolution of disputes. It saves time and resources by avoiding duplicative litigation and prevents parties from being subjected to multiple legal proceedings in different jurisdictions.

Strengthening the rule of law: By recognizing and enforcing foreign judgments, Pakistan demonstrates its commitment to the rule of law and the principles of fairness and justice. It

contributes to the development of a predictable legal environment, which in turn encourages foreign investment and economic growth.

Enhanced international reputation: By recognizing and enforcing foreign judgments, Pakistan can enhance its international reputation as a country that respects the rule of law and honors its obligations under international treaties and agreements. This can attract foreign investment and strengthen diplomatic relations.

Avoiding forum shopping: Recognition and enforcement of foreign judgments can help prevent forum shopping, where parties seek a more favorable jurisdiction to litigate their disputes. This promotes fairness and prevents the abuse of legal systems for strategic purposes.

Consistency with international standards: Recognizing and enforcing foreign judgments aligns Pakistan's legal system with international standards and practices, contributing to the country's compliance with international obligations and commitments.

Cultural and legal incompatibility: Foreign judgments may be based on legal principles and cultural norms that are inconsistent with those of Pakistan. Recognizing and enforcing such judgments may lead to conflicts with domestic laws and values, raising concerns about the integrity and sovereignty of the legal system.

Language and translation challenges: It may be difficult for Pakistani courts and legal practitioners to comprehend and make sense of the content of foreign judgments since those judgments may be written in languages not commonly spoken in Pakistan.

Disparity in legal systems: The rules, evidentiary standards, and burdens of proof may differ significantly between legal systems. Decisions made in other nations may result in unfair rulings that violate the rights of the parties involved if these distinctions are ignored.

Limited scope of recognition: Only certain kinds of foreign rulings, such as monetary judgments or judgments from specific countries, can be accepted and enforced by the courts in Pakistan. These include judgments. Among them are decisions on monetary matters. Because of the restricted nature of the procedure, there is a possibility of inconsistency, in addition to concerns regarding the fairness and predictability of the mechanism by which recognition and enforcement are carried out.

Cons

Lack of a comprehensive legal framework: The recognition and execution of judgments handed down in foreign countries by courts located outside of Pakistan are not particularly governed by local law. Due to the fact that courts commonly rely on unclear common law and case law precedents, this can result in ambiguity and contradictions in the application of comity principles.

Potential conflicts with public policy: It is possible for a Pakistani court to refuse to recognize and implement a foreign court's ruling if it conflicts with Pakistani national policy or the underlying principles of Pakistan's legal system. Due to the discretion involved, the law enforcement procedure can be fraught with uncertainty and subject to varying interpretations of the law.

Challenges in ensuring reciprocity: Pakistan's willingness to recognize and enforce foreign judgments is often contingent on the existence of reciprocal arrangements with the foreign jurisdiction. Lack of reciprocity can hinder the enforcement process and create hurdles for individuals seeking redress.

Procedural complexities and delays: Foreign judgments might be difficult and time-consuming to recognize and enforce in Pakistan. To acquire new judgments from Pakistani courts, the parties may need to launch new legal actions, which could add time, money, and the risk of forum shopping.

Cultural and legal incompatibility: Judgments rendered outside of Pakistan may adhere to legal principles and cultural values that are at odds with those of Pakistan. Concerns have been raised concerning the independence and legitimacy of the judicial system if such judgments are recognized and enforced, as they may conflict with domestic laws and principles.

Language and translation challenges: Foreign judgments may be written in languages that Pakistani courts and legal professionals are unfamiliar with, making it difficult to understand and interpret their content. Translation errors or disparities may have an impact on the enforcement process and the fairness of outcomes.

Disparity in legal systems: Different legal systems have varying approaches to legal principles, burdens of proof, and evidentiary standards. Enforcing foreign judgments without considering these differences can result in unjust outcomes or undermine the rights of the parties involved.

Limited scope of recognition: Pakistani courts may only recognize and enforce certain types of foreign judgments, such as money judgments or judgments from certain jurisdictions. This limited scope may create inconsistencies and raise questions about the fairness and predictability of the recognition and enforcement process.

Conclusion

The underlying belief that sovereigns owe one another respect gave rise to the idea of comity. It indicates that the courts may now assume what the comity has previously considered to be the sole province of the sovereign. The courts should use their jurisdiction as intended by lawmakers out of respect for the separation of powers and out of respect for foreign sovereigns, and they should leave the balancing of interests to the political process. It is well known that a foreign judgment or decree only has legal significance if it is persuasive and admissible. As inferred from the facts above, Section 13 of the CPC may prevent a decree from being enforceable against a defendant even though a court in another nation issues it. Section 13 clarifies what criteria and criteria an Indian court must follow to allow the enforceability of a foreign decree in the appropriate circumstances when read in connection with Section 44A of the CPC. It is noteworthy that when carrying out the implementation of judgments rendered by foreign courts, Pakistani courts adopt a manner that is both deliberate and cautious. Pakistani court is friendly to the execution of foreign judgments according to the verdict of honorable Justice Gray Wrote on the basis of mutual respect. However, getting a professional's opinion to get favorable outcomes would be advantageous while applying for Pakistan to execute a foreign verdict or decree.

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