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PRIVATE INTERNATIONAL LAW AND CONSTITUTIONAL MORALITY IN INDIA

AUTHOR – SARAVANAN KUMAR & MANIKANDAN M

LLB (HONS) III YEAR, STUDENTS AT VINAYAKA MISSION'S LAW SCHOOL, CHENNAI

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Abstract

In recent decades, India's growing engagement with the global community through migration, international marriages, cross-border employment, education, and digital commerce has significantly increased the number of disputes involving foreign elements. Indian courts are now frequently confronted with questions relating to jurisdiction, choice of law, and recognition of foreign judgments in matters ranging from matrimonial disputes to international commercial transactions⁶⁰². Traditionally, private international law (conflict of laws) addressed such issues through structured and technical rules designed to promote certainty, uniformity, and international comity. These rules were largely viewed as neutral mechanisms that avoided engaging with substantive questions of justice.

However, this approach is undergoing a transformation. At the same time that cross-border disputes have become more common, Indian constitutional jurisprudence has expanded considerably, with courts increasingly emphasizing dignity, equality, liberty, and individual autonomy⁶⁰³. The doctrine of constitutional morality developed and clarified in decisions such as *Navtej Singh Johar v. Union of India*, *Indian Young Lawyers Association v. State of Kerala*, and *Joseph Shine v. Union of India* has reinforced the idea that constitutional values must prevail over discriminatory social practices and majoritarian norms⁶⁰⁴.

This paper examines whether and to what extent constitutional morality is reshaping Indian private international law. It argues that courts are increasingly testing foreign laws and judgments against constitutional principles, especially in areas such as family law, gender justice, and the public policy exception. In doing so, India appears to be gradually moving away from a purely formalistic conflict-of-laws model toward a rights-oriented framework. While this shift strengthens constitutional supremacy, it also raises important concerns about predictability and international comity in cross-border adjudication.

Keywords: Private International Law, Constitutional Morality, Conflict of Laws, Public Policy Exception, Fundamental Rights

⁶⁰² Tarasha Gupta & Saloni Khanderia, *Cross-Border Litigation and Comity of Courts: A Landmark Judgment from the Delhi High Court*, Conflict of Laws (Mar. 30, 2024), <https://conflictoflaws.net/2024/cross-border-litigation-and-comity-of-courts-a-landmark-judgment-from-the-delhi-high-court/>

⁶⁰³ Gaurav Pachnanda, *Is Arbitration Undergoing a Jurisprudential Transformation in India to Meet Our Unique Legal Requirements?*, Bar & Bench (July 27, 2025), <https://www.barandbench.com/columns/is-arbitration-undergoing-a-jurisprudential-transformation-in-india-to-meet-our-unique-legal-requirements>

⁶⁰⁴ Mazhar Khan & Dr. Anuradha Garg, *Constitutional Morality and Amendment Acts: A Critical Study of Judicial Responses to Constitutional Changes in India*, 11 Int'l J. of Law Iss. 9 24 (2025), <https://www.lawjournals.org/assets/archives/2025/vol11issue9/11199.pdf>

1. Introduction

1.1. Background of the Study

In the last few decades, India has witnessed a significant expansion of cross-border relationships. Globalisation, migration, international education, overseas employment, inter-country marriages, and digital commerce have increasingly connected Indian citizens with foreign legal systems⁶⁰⁵. Today, disputes frequently involve foreign elements whether in matrimonial conflicts between spouses residing in different jurisdictions, international child custody battles, cross-border commercial contracts, or online transactions that transcend territorial boundaries. As a result, courts are regularly required to address complex legal questions that do not fit neatly within domestic legal frameworks.

These developments have made the resolution of conflicts involving foreign elements far more intricate. Determining which court has jurisdiction, which country's law should apply, and whether foreign judgments should be recognised are no longer purely technical exercises. Instead, these decisions often have serious implications for individual rights, gender justice, and constitutional protections. Simultaneously, India has experienced a transformative phase in constitutional jurisprudence, marked by an expanding discourse on fundamental rights, dignity, and equality. Courts increasingly interpret laws both substantive and procedural through the lens of constitutional values⁶⁰⁶.

1.2. Meaning of Private International Law

Private International Law (PIL), also known as the "conflict of laws," governs legal disputes that contain a foreign element⁶⁰⁷. Unlike public

international law, which regulates relations between states, private international law deals with disputes between private individuals or entities that cross national borders. Its primary function⁶⁰⁸ is to provide rules that determine: (i) which court has jurisdiction to hear a dispute, (ii) which legal system's law is applicable to the issue, and (iii) whether a foreign judgment or decree should be recognised and enforced domestically. Traditionally, these rules have been considered neutral and technical, aimed at ensuring predictability and international comity rather than advancing substantive justice.

1.3. Meaning of Constitutional Morality

Constitutional morality refers to adherence to the core values embedded in the Indian Constitution, such as liberty, equality, dignity, secularism, and individual autonomy⁶⁰⁹. The Supreme Court has elaborated upon this doctrine in cases such as *Navtej Singh Johar v. Union of India*, *Indian Young Lawyers Association v. State of Kerala*, and *Joseph Shine v. Union of India*. In these decisions, the Court emphasized that constitutional morality must prevail over social morality, majoritarian beliefs, and discriminatory practices. It has become a guiding principle in assessing the validity of laws and practices that affect fundamental rights.

1.4. Research Questions

This study seeks to examine whether and how constitutional morality influences private international law in India. It asks whether constitutional values should override traditional conflict-of-law rules when foreign laws or judgments conflict with fundamental rights. Further, it explores whether India is gradually moving toward a rights-based conflict of laws regime rather than a purely formalistic one.

1.5. Thesis Statement

⁶⁰⁵ D. Arvindkumar Patel, *Impact of Globalisation on Indian Education*, Vol. 11, Iss. 4 International Journal of Creative Research Thoughts 501 (Apr. 2023), <https://ijcrt.org/papers/IJCRT2304299.pdf>

⁶⁰⁶ Dharmesh, *An Analysis of Transformative Constitutionalism in India and the Role Played by the Judiciary in Shaping the Constitution*, 5 *Int'l J.L. Pol'y & Soc. Rev.* 129 (2023), <https://www.lawjournals.net/assets/archives/2023/vol5issue1/6015.pdf>

⁶⁰⁷ Davy Karkason, *International Law: An In-Depth Comparison of Public vs. Private, Transnational Matters* (Nov. 21, 2024), <https://www.transnationalmatters.com/international-law-an-in-depth-comparison-of-public-vs-private/>

⁶⁰⁸ Cheshire, North & Fawcett: *Definition, Nature and Scope of Private International Law*, in *Private International Law 15th ed.* (Oxford Law Pro 2017), <https://academic.oup.com/oxford-law-pro/book/57739/chapter-abstract/470554050>

⁶⁰⁹ Doctrine of Constitutional Morality, *LawFoyer* (Dec. 26, 2024), <https://lawfoyer.in/doctrine-of-constitutional-morality/>

This paper argues that constitutional morality is increasingly shaping Indian private international law, particularly in areas such as family law, gender justice, and the public policy exception. While conflict-of-law rules were traditionally applied in a neutral and mechanical manner, Indian courts now appear more willing to test foreign laws and judgments against constitutional principles, signalling a shift toward a more rights-oriented framework.

2. Conceptual Foundations

2.1. Evolution of Private International Law in India

Private International Law (PIL) in India did not emerge through a single comprehensive legislative effort but evolved gradually through judicial practice⁶¹⁰. Its foundations can be traced back to the colonial period, when British courts in India applied principles of English conflict of laws to resolve disputes involving foreign parties or foreign elements. Since India was part of the British Empire, the courts naturally relied upon English common law doctrines concerning jurisdiction, choice of law, and recognition of foreign judgments⁶¹¹.

The influence of English common law continues to shape Indian PIL even today. Concepts such as *lex loci contractus*, *lex domicilii*, proper law of contract, and the doctrine of comity were judicially imported rather than legislatively enacted⁶¹². In the absence of a codified conflict-of-laws statute, Indian courts have consistently referred to English decisions as persuasive authority, particularly in cases involving transnational commercial disputes⁶¹³.

Unlike some civil law jurisdictions that have enacted detailed conflict-of-laws codes, India still does not have a consolidated statute

governing private international law⁶¹⁴. Instead, the field remains largely judge-made. This has resulted in flexibility, but also unpredictability. Different High Courts have occasionally taken divergent approaches, and doctrinal clarity has often depended on Supreme Court intervention. Thus, the evolution of PIL in India reflects continuity with colonial legal heritage combined with incremental judicial adaptation to modern cross-border realities⁶¹⁵.

2.2. Sources of Private International Law in India

The primary sources of private international law in India are statutory provisions, judicial precedents, and certain international conventions.

➤ Statutory Provisions

Although India lacks a comprehensive PIL code, specific provisions address conflict-of-laws situations. The most important among these are found in the Code of Civil Procedure, 1908 (CPC).

Section 13 of the CPC lays down conditions under which foreign judgments shall be recognized as conclusive⁶¹⁶. It also enumerates exceptions, such as lack of competent jurisdiction, fraud, breach of natural justice, or contravention of Indian public policy. Section 44A provides for execution of decrees passed by courts in reciprocating territories⁶¹⁷. These provisions form the backbone of India's approach to recognition and enforcement of foreign judgments.

➤ Judicial Precedents

In the absence of codification, case law plays a decisive role. The Supreme Court and High Courts have elaborated principles relating to jurisdiction, choice of law, and enforcement.

⁶¹⁰ Aditya Tripathi & Nancy Garg, *PIL and Judicial Activism in India: An Analysis* (JUSCHOLARS, Vol. 1, Issue 4) (Dec. 2020), <https://lawbhoomi.com/wp-content/uploads/2020/12/Aditya-Tripathi.pdf>

⁶¹¹ Keith Mack, *Jurisprudence in India: English Common Law Influence*, LawShun (June 29, 2025), <https://lawshun.com/article/does-jurisprudence-in-india-follow-english-common-law>

⁶¹² Stellina Jolly & Saloni Khanderia, *Indian Private International Law* (Bloomsbury Academic 2021).

⁶¹³ Burhan Majid, *Persuasive Role of Foreign Judgments: An Indian Context* (on file with author), https://www.jklaws.in/admin_panel/files/9201711035450.pdf

⁶¹⁴ Law Commission of India, *193rd Report on Transnational Litigation, Conflict of Laws & Law of Limitation* (June 7, 2005), available at <https://indiakanoon.org/doc/77614905/>

⁶¹⁵ Stellina Jolly & Saloni Khanderia, *Indian Private International Law* (1st ed., Hart Publishing 2021)

⁶¹⁶ Advocate (Dr.) Abhishek Gandhi, *Section 13 CPC: Foreign Judgments and Their Enforceability in India* (Sept. 19, 2025), <https://advocategandhi.com/section-13-cpc-foreign-judgments-and-their-enforceability-in-india/>

⁶¹⁷ *Execution of Decrees Passed by Courts in Reciprocating Territory*, THELAW CODES, <https://thelawcodes.com/article/execution-of-decrees-passed-by-courts-in-reciprocating-territory-cpc/>

Judicial creativity has filled legislative gaps, particularly in matters concerning international commercial arbitration and cross-border matrimonial disputes⁶¹⁸. Precedent therefore functions not merely as interpretation but as a primary source of PIL norms.

➤ **International Conventions**

India is a signatory to certain international conventions, but its adoption has been selective and often limited to specific subject areas such as arbitration. Unlike some jurisdictions, India has not ratified many multilateral conventions dealing broadly with private international law⁶¹⁹. As a result, international instruments influence Indian PIL only in limited domains, and domestic courts continue to rely predominantly on municipal law and judicial reasoning.

2.3. Constitutional Morality: Judicial Development

A relatively recent conceptual development affecting private international law is the doctrine of constitutional morality⁶²⁰. The phrase finds its intellectual roots in Dr. B.R. Ambedkar's remarks during the Constituent Assembly debates and in his earlier work, *Constitutional Government in India*. Ambedkar emphasized that constitutional morality requires respect for constitutional values over majoritarian impulses.

In modern jurisprudence, the Supreme Court has expanded this concept significantly. In *Navtej Singh Johar v. Union of India*⁶²¹, the Court invoked constitutional morality to strike down Section 377 of the IPC insofar as it criminalized consensual same-sex relations. Similarly, in

⁶¹⁸ Inder Jain, *The Doctrine of Casus Omissus in Indian Statutory Interpretation: Judicial Restraint, Legislative Supremacy, and Evolving Jurisprudence*, Legal Service India (Dec. 18, 2025), <https://www.legalserviceindia.com/Legal-Articles/the-doctrine-of-casus-omissus-in-indian-statutory-interpretation-judicial-restraint-legislative-supremacy-and-evolving-jurisprudence/>

⁶¹⁹ Abul Kalam Azad Sulthan, *Are International Treaties Entered into by India Binding on Our Country? How Can the Obligations Be Enforced?*, Spicy Law (Aug. 7, 2016), <https://spicylaw.com/are-international-treaties-entered-into-by-india-binding-on-our-country-how-can-the-obligations-be-enforced/>

⁶²⁰ Vivek Sehrawat, *Implementation of International Law in Indian Legal System*, 31 *Florida Journal of International Law* 97 (2019), https://fjil.org/wp-content/uploads/2020/07/4_Sehrawat_NC.pdf

⁶²¹ Chhayanshi Goyal, Case Comment: *Navtej Singh Johar & Ors. v. Union of India*, Lawctopus Academic (Aug. 19, 2024), <https://www.lawctopus.com/academic/case-comment-navtej-singh-johar-and-ors-v-union-of-india/>

*Shafin Jahan v. Asokan K.M.*⁶²², the Court upheld an adult woman's right to choose her partner, emphasizing autonomy and dignity as constitutional guarantees.

While these cases are not strictly PIL disputes, their emphasis on fundamental rights and constitutional supremacy has implications for private international law. When Indian courts are asked to recognize foreign judgments or apply foreign law, they must now evaluate compatibility with constitutional values, not merely statutory public policy. Constitutional morality thus strengthens the normative filter through which foreign laws are assessed.

2.4. Tension Between Comity of Nations and Constitutional Supremacy

Private international law operates on the doctrine of comity of nations a principle that courts should respect foreign laws and judgments out of mutual deference and international harmony⁶²³. Comity facilitates predictability in cross-border transactions and supports global cooperation.

However, comity is not absolute. Indian law incorporates a public policy exception, particularly under Section 13 of the CPC and in arbitration jurisprudence. If a foreign judgment or law is contrary to Indian public policy, it may be refused recognition. Traditionally, public policy was interpreted narrowly, focusing on fundamental principles of justice and morality.

The expansion of constitutional morality introduces a deeper normative layer. A critical question arises: Should Indian courts refuse to recognize foreign laws that violate fundamental rights guaranteed under Part III of the Constitution⁶²⁴? If constitutional supremacy is paramount, then comity must yield where

⁶²² *Shafin Jahan v. Asokan K.M.*: A Milestone in Individual Liberty and Marital Autonomy, *Advocate Gandhi* (Mar. 8, 2018), <https://advocategandhi.com/shafin-jahan-v-asokan-k-m-2018-a-milestone-in-individual-liberty-and-marital-autonomy/>

⁶²³ Tarasha Gupta & Saloni Khandaria, *Cross-Border Litigation and Comity of Courts: A Landmark Judgment from the Delhi High Court*, *Conflict of Laws* (Mar. 30, 2024), <https://conflictoflaws.net/2024/cross-border-litigation-and-comity-of-courts-a-landmark-judgment-from-the-delhi-high-court/>

⁶²⁴ Amritesh Panda, *Analyzing the Rights of Foreigners Under the Constitution of India*, LawLex (Oct. 15, 2020), <https://lawlex.org/lex-pedia/analyzing-the-rights-of-foreigners-under-the-constitution-of-india/25331>

foreign norms undermine basic constitutional guarantees such as equality, liberty, and dignity.

This tension reflects a broader balancing exercise. On one hand, excessive reliance on constitutional review may weaken international cooperation and undermine predictability. On the other hand, blind acceptance of foreign judgments could compromise constitutional identity. Indian courts increasingly attempt to reconcile these values by adopting a restrained but principled application of the public policy exception.

The conceptual foundations of private international law in India are shaped by colonial legacy, judicial innovation, limited statutory guidance, and an evolving constitutional ethos⁶²⁵. The interplay between comity and constitutional supremacy remains central to understanding how Indian courts navigate transnational disputes in a constitutional democracy.

3. Jurisdiction and Constitutional Values

The question of jurisdiction in private international law is not merely technical. In the Indian context, it is deeply intertwined with constitutional values such as equality, dignity, and access to justice. Particularly in matrimonial disputes involving foreign courts, Indian courts have moved beyond mechanical application of jurisdictional rules and have increasingly examined whether recognition of foreign judgments aligns with constitutional morality⁶²⁶. This section explores how traditional jurisdictional principles operate and how constitutional guarantees shape their application.

3.1. Traditional Jurisdictional Rules

Under classical private international law, jurisdiction is determined on well-recognized connecting factors such as residence, domicile, and cause of action. The Civil Procedure Code,

1908 (CPC) reflects these principles, especially in Sections 13 and 20.

First, residence and domicile serve as primary grounds of jurisdiction⁶²⁷. Domicile, in particular, has historically been regarded as the most stable connecting factor in matrimonial matters because it reflects a permanent legal relationship between an individual and a legal system. Residence, while more flexible, may be temporary and therefore less reliable as a basis for adjudicating marital status.

Second, jurisdiction may arise where the cause of action arises wholly or in part. This principle ensures fairness by connecting the dispute to a territory where relevant facts occurred⁶²⁸. However, in matrimonial disputes, determining the “cause of action” can be complex because marriage is a continuing relationship rather than a single transaction.

Third, courts sometimes apply the doctrine of forum conveniens⁶²⁹, which allows a court to decline jurisdiction if another forum is more appropriate for adjudication. Although more developed in common law jurisdictions like the UK, Indian courts have occasionally invoked similar reasoning, especially when parallel proceedings exist abroad.

While these rules appear neutral and procedural, their application in cross-border matrimonial disputes often affects substantive rights, especially those of economically or socially vulnerable spouses. This is where constitutional values begin to influence jurisdictional analysis.

3.2. Jurisdiction in Matrimonial Disputes

The Supreme Court’s landmark decision in *Y. Narasimha Rao v. Y. Venkata Lakshmi*⁶³⁰

⁶²⁵ *Handbook on Private International Law, Academic Law Book* (2022)

⁶²⁶ Duvva Pavan Kumar, *Foreign Judgments on Matrimonial Disputes and Their Enforceability in India*, LiveLaw (Oct. 8, 2020), <https://www.livelaw.in/law-firms/articles/foreign-judgments-on-matrimonial-disputes-and-their-enforceability-in-india-164166>

⁶²⁷ APURVA, *Law Related to Domicile in India*, Law Column (May 25, 2021), <https://lawcolumn.in/law-related-to-domicile-in-india/>

⁶²⁸ Hires Choudhary & Surbhi Sharma, *High Courts’ Territorial Jurisdiction Under Articles 226 and 227 Over Orders Passed by Appellate Tribunals: A Need for Course Correction*, SCC Times [link](https://www.sccjournal.in/) (Apr. 10, 2025)

⁶²⁹ Kabir Hathi, *Doctrine of “Forum Non-Conveniens” and Tort Claims: A Comparative Analysis Between India and United States*, LiveLaw (Mar. 4, 2025), <https://www.livelaw.in/articles/doctrine-of-forum-non-conveniens-comparative-analysis-between-india-and-united-states-285577>

⁶³⁰ *Y. Narasimha Rao & Ors. v. Y. Venkata Lakshmi & Anr.*, (1991) 3 S.C.C. 451 (India), *Case Study: Y. Narasimha Rao and Ors v. Y. Venkata Lakshmi and*

significantly shaped Indian law on recognition of foreign divorce decrees. The case involved a foreign divorce obtained by a husband in the United States, which the wife challenged in India.

The Court laid down clear principles regarding when foreign matrimonial judgments would be recognized. It held that a foreign decree would be valid in India only if the court granting it had jurisdiction according to matrimonial law recognized by Indian law. Specifically, jurisdiction must be based on:

1. The domicile of the parties, or
2. The matrimonial home, or
3. Consent of both parties to submit to the foreign court.

The Court rejected the idea that mere physical presence or unilateral submission could confer valid jurisdiction. Importantly, it emphasized that foreign decrees granted on grounds not recognized under Indian matrimonial law would not be enforceable.

This judgment reflects a protective approach. The Court recognized that one spouse often the husband could obtain an ex parte divorce in a foreign jurisdiction with liberal grounds for dissolution, thereby leaving the other spouse without remedy. Thus, jurisdiction in matrimonial cases cannot be assessed solely on technical territorial grounds; it must consider fairness and substantive justice.

3.3. Gender Justice and Equality

Recognition of foreign judgments has a direct impact on gender justice⁶³¹. Many foreign divorce systems permit “no-fault” divorces or recognize grounds unavailable under certain Indian personal laws. If such decrees are automatically enforced, women who were not properly heard or who lacked the resources to

contest proceedings abroad may be severely disadvantaged.

In this context, Articles 14 and 21 of the Constitution assume central importance⁶³². Article 14 guarantees equality before the law and prohibits arbitrary state action. Enforcing a foreign decree that was obtained without proper notice, fair hearing, or on discriminatory grounds may violate this guarantee.

Article 21 protects the right to life and personal liberty, which has been expansively interpreted to include the right to live with dignity⁶³³. Marital status directly affects a person’s social identity, financial security, and personal autonomy. Therefore, recognition of a foreign divorce that undermines a woman’s dignity or economic rights may conflict with constitutional protections.

Indian courts have thus increasingly scrutinized foreign decrees to ensure that they do not perpetuate inequality or procedural injustice. This rights-based approach transforms jurisdiction from a procedural gateway into a constitutional filter.

3.4. Constitutional Morality as a Limitation on Jurisdiction

The concept of constitutional morality, developed in recent constitutional jurisprudence, reinforces the idea that all state action including judicial recognition of foreign judgments must conform to constitutional values. Courts are no longer confined to rigid conflict-of-law rules; they assess whether enforcing a foreign decree would violate fundamental rights or basic principles of justice.

This evolving approach reflects a broader shift in Indian jurisprudence. Rather than treating private international law as a neutral, technical discipline, courts now view it as operating within

Ors, Legal-Wires (Oct. 4, 2024), <https://legal-wires.com/case-study/case-study-y-narasimha-rao-and-ors-v-y-venkata-lakshmi-and-ors/>

⁶³¹ Vaibhav Bansal, *Recognition and Enforcement of Foreign Judgments in India: A Statutory and Judicial Analysis*, JUSCHOLARS (Dec. 4, 2025), <https://juscholars.com/recognition-and-enforcement-of-foreign-judgments-in-india-a-statutory-and-judicial-analysis/>

⁶³² Golden Triangle of the Indian Constitution, *LawyersClubIndia*, <https://www.lawyersclubindia.com/articles/golden-triangle-of-the-indian-constitution-14898.asp>

⁶³³ Article 21 (Right to Life and Personal Liberty), *Lukmaan LAS Polity Notes* (July 24, 2025), <https://blog.lukmaani.com/2025/07/24/article-21-right-to-life-and-personal-liberty/>

a constitutional framework⁶³⁴. Jurisdiction is not simply about territorial competence; it is about ensuring that adjudicatory power does not result in injustice.

In matrimonial disputes especially, Indian courts have demonstrated caution in recognizing foreign decrees that appear to bypass due process or undermine women's rights. This indicates that constitutional morality acts as a substantive limitation on jurisdictional recognition.

The interaction between jurisdiction and constitutional values in India reveals a dynamic legal landscape. Traditional rules of domicile and residence continue to guide courts, but their application is increasingly shaped by equality, dignity, and fairness⁶³⁵. This rights-oriented approach ensures that private international law remains consistent with the transformative vision of the Constitution.

3.5. Critical Analysis

A significant question emerges: Is Indian public policy evolving into "constitutional public policy⁶³⁶"? There appears to be a shift from classical conflict-of-laws reasoning toward value-based adjudication grounded in fundamental rights. While this progressive harmonization strengthens protection of individual rights, it also carries risks.

Excessive reliance on constitutional morality may lead to judicial overreach, particularly where Parliament has not enacted reforms⁶³⁷. Courts must avoid substituting legislative policy choices under the guise of public policy. At the same time, ignoring constitutional values in cross-border disputes would undermine the supremacy of the Constitution.

The challenge lies in striking a principled balance. Public policy should function as a safety valve⁶³⁸ to prevent enforcement of outcomes fundamentally incompatible with constitutional guarantees, but it should not become an open-ended tool to invalidate every foreign legal difference. The future of private international law in India will depend on how carefully courts navigate this evolving intersection between personal laws, constitutional norms, and global legal pluralism.

4. Recognition and Enforcement of Foreign Judgments

4.1. Legal Framework

The recognition and enforcement of foreign judgments in India is primarily governed by the Code of Civil Procedure, 1908 (CPC). Section 13 of the CPC lays down the substantive conditions under which a foreign judgment shall be considered conclusive between the parties. The provision reflects classical private international law principles and balances comity of courts with protection of domestic legal standards. A foreign judgment is not conclusive if it falls within any of the six exceptions mentioned under Section 13, such as lack of competent jurisdiction, decision not given on merits, breach of natural justice, fraud, or if it sustains a claim founded on a breach of Indian law.

Section 44A CPC supplements this framework by providing a procedural mechanism for enforcement of decrees passed by courts in "reciprocating territories." Under this provision, a certified copy of the foreign decree may be filed before a District Court in India and executed as if it were a domestic decree. However, even under Section 44A, the judgment must satisfy the substantive tests under Section 13. Thus, Section 44A simplifies enforcement but does not dilute the safeguards embedded in Section 13.

Together, these provisions demonstrate that India follows a qualified recognition model:

⁶³⁴ Horatia Muir Watt & Diego P. Fernández Arroyo, *Private International Law and Global Governance* (Oxford University Press 2014).

⁶³⁵ Sabavath Sreenivas, *Concept of Domicile (Home) Under Private International Law with Special Reference to Women in India*, 6 Int'l J. L., Pol'y & Soc. Rev. 37 (2024), <https://www.lawjournals.net/assets/archives/2024/vol6issue2/6041.pdf>

⁶³⁶ D.D. Basu, *Introduction to the Constitution of India* (23rd ed. LexisNexis 2020), available at https://kupdf.net/download/dd-basu-introduction-to-the-constitution-of-india_6999ba64b6d6927d6c8b4568_pdf

⁶³⁷ Shagun Kothari, *Constitutional Morality, Lawful Legal* (Jan. 15, 2025), <https://lawfullegal.in/constitutional-morality/>

⁶³⁸ The Interplay of Public Policy and Law in Modern Governance, *Laws Learned* (June 24, 2024), <https://lawslearned.com/public-policy-and-law/>

foreign judgments are generally respected, but not at the cost of fundamental legal principles.

4.2. Public Policy and Fundamental Rights

One of the most significant grounds for refusing enforcement is that the judgment is contrary to “public policy” or obtained in breach of natural justice. Indian courts have interpreted public policy as encompassing fundamental legal principles, procedural fairness, and substantive justice.

The natural justice exception operates where a party was not given proper notice or opportunity to present their case. This ensures that foreign proceedings meet minimum standards of fairness. Similarly, enforcement may be refused where the judgment sustains a claim contrary to Indian law for example, where it violates statutory protections or constitutional values.

Over time, public policy has evolved beyond a narrow procedural safeguard to include broader constitutional concerns. Indian courts have occasionally examined whether enforcement would undermine basic rights, including equality before law and procedural fairness under Article 14 of the Constitution. While this approach strengthens rights protection, it also raises concerns about excessive judicial scrutiny that may undermine certainty in cross-border transactions.

4.3. Case Law Development

Judicial interpretation has played a central role in shaping this area.

In *Satya v. Teja Singh*⁶³⁹, the Supreme Court refused to recognize a foreign divorce decree obtained in the United States. The husband had fraudulently invoked the jurisdiction of a foreign court by misrepresenting domicile. The Court held that fraud vitiates all judicial acts and that the decree could not be enforced in India. This case underscored that jurisdictional

competence and absence of fraud are foundational requirements under Section 13.

The principles were further clarified in *Y. Narasimha Rao v. Y. Venkata Lakshmi*, where the Court laid down detailed rules regarding recognition of foreign matrimonial decrees. It held that a foreign judgment in matrimonial matters would be recognized only if the foreign court had jurisdiction according to matrimonial law under which the parties were married and if the decision was on merits. This decision significantly restricted automatic recognition of foreign divorces, especially in cases involving Indian parties governed by personal laws.

These cases reflect judicial caution in protecting vulnerable parties and preventing misuse of foreign forums.

4.4. Expanding Meaning of “Justice”

In recent years, the concept of justice under Section 13 has gradually expanded. Courts have increasingly interpreted public policy in light of constitutional values⁶⁴⁰ such as dignity, autonomy, and substantive equality. For example, in matrimonial disputes, courts have considered whether enforcement would unfairly prejudice a spouse who had no effective participation in foreign proceedings.

This evolution suggests a shift from purely technical compliance toward a rights-sensitive approach. However, it also raises the question of whether courts are moving from limited review to merits-based reassessment, which traditional private international law discourages.

4.5. Comparative Insight

Comparatively, the UK adopts a relatively narrow public policy exception, focusing primarily on procedural fairness and jurisdictional competence⁶⁴¹. Similarly, US courts

⁶³⁹ CourtKutchehry, *Smt. Satya v. Shri Teja Singh*, <https://www.courtkutchehry.com/judgements/648022/smt-satya-vs-shri-teja-singh/>

⁶⁴⁰ The Judiciary’s Commitment to Protecting Rights: Notable Supreme Court Judgments of 2024, *CJP Legal Research Team*, Citizens for Justice and Peace (Dec. 6, 2024), <https://cjp.org.in/the-judiciarys-commitment-to-protecting-rights-notable-supreme-court-judgments-of-2024/>

⁶⁴¹ *Understanding the Public Policy Exception in Legal Contexts*, World Jurisprudence (International Law Editorial, Feb. 9, 2026), <https://worldjurisprudence.com/public-policy-exception/>

generally enforce foreign judgments under principles of comity unless enforcement would be fundamentally offensive to public policy or due process⁶⁴².

In contrast, Indian courts have sometimes adopted a broader interpretative approach, especially in family law matters⁶⁴³. The key question is whether India should align with the narrower international standard to promote certainty and commercial confidence, or retain a broader approach to safeguard social and constitutional values.

India should adopt a calibrated middle path: maintaining a narrow public policy exception in commercial matters to encourage cross-border trade, while allowing a slightly broader scrutiny in sensitive areas like matrimonial and personal law disputes⁶⁴⁴. Such a balanced approach would harmonize India's global commitments with its constitutional ethos.

5. Commercial Private International Law and Constitutional Considerations

The relationship between commercial private international law and constitutional principles in India presents a nuanced legal landscape⁶⁴⁵. While constitutional values form the foundation of the Indian legal system, their application in commercial arbitration has traditionally been restrained. This calibrated approach reflects the judiciary's recognition of party autonomy, international comity, and the need for certainty in cross-border transactions.

5.1. Arbitration and Party Autonomy

Arbitration is fundamentally premised on party autonomy the freedom of parties to choose the governing law, seat, and procedural framework

of dispute resolution⁶⁴⁶. In commercial disputes, constitutional scrutiny is comparatively limited because arbitration is viewed as a consensual, private mechanism rather than a direct exercise of state power. Courts generally intervene only within the statutory boundaries set by the Arbitration and Conciliation Act, 1996.

This restrained constitutional engagement becomes particularly evident in the enforcement of foreign awards under the New York Convention⁶⁴⁷. Indian courts have consistently emphasized India's international obligations and the pro-enforcement bias embedded in the Convention framework. The objective is not to re-adjudicate the merits of the dispute but to ensure procedural fairness and minimal compliance with fundamental legal standards. Thus, constitutional principles operate indirectly, primarily through the "public policy" exception, rather than through expansive judicial review.

5.2. Public Policy in Arbitration

The evolution of the "public policy" doctrine reflects the judiciary's attempt to balance constitutional integrity with commercial certainty. In *Renusagar Power Co. Ltd. v. General Electric Co*⁶⁴⁸, the Supreme Court adopted a narrow interpretation of public policy in the context of enforcing foreign awards. It limited the scope to (i) fundamental policy of Indian law, (ii) interests of India, and (iii) justice or morality. This restrictive approach signaled judicial deference to international arbitral outcomes.

However, in *ONGC Ltd. v. Saw Pipes Ltd*⁶⁴⁹, the Court expanded the meaning of public policy in

⁶⁴² William S. Dodge, *International Comity in American Law*, 115 *Colum. L. Rev.* 2071 (2015), <https://columbialawreview.org/content/international-comity-in-american-law/>

⁶⁴³ Mayukha Chihni, *Customary International Law in Indian Courts*, 4 *Int'l J.L. Mgmt. & Humanities* (Issue 1, 2021), <https://ijlmh.com/customary-international-law-in-indian-courts/>

⁶⁴⁴ Yash Pathak & V. Harini, *The Public Policy Exception: Sword or Shield in Indian Arbitration*, *NLIU Law Review* (Oct. 28, 2024), <https://nliulawreview.nliu.ac.in/blog/the-public-policy-exception-sword-or-shield-in-indian-arbitration/>

⁶⁴⁵ Choice of Laws in International Contracts: Indian Jurisprudence, *Litem* (Apr. 1, 2024), <https://litem.in/advice/choice-laws-international-contracts-indian-jurisprudence.php>

⁶⁴⁶ Rishab Chand Jain & Jitya Singh, *Party Autonomy vs. Judicial Oversight: The Arbitration Dilemma*, *IndiaCorpLaw* (Apr. 8, 2025), <https://indiacorplaw.in/2025/04/08/party-autonomy-vs-judicial-oversight-the-arbitration-dilemma/>

⁶⁴⁷ Public Policy and Arbitrability Challenges to Enforcement of Foreign Arbitral Awards in India, *Lexology* (SS Rana & Co.), July 11, 2022, <https://www.lexology.com/library/detail.aspx?g=bc694337-b872-4e4f-89e8-17b7fb87c7cd>

⁶⁴⁸ How India Handles Foreign Arbitral Awards: A Look at *Renusagar Case*, *Online Legal Advisor* (July 10, 2025), <https://onlinelegaladvisor.in/adr/how-india-handles-foreign-arbitral-awards-a-look-at-renusagar-case>

⁶⁴⁹ *Landmark Ruling in ONGC v. Prasad Arbitration Case*, *TaxGuru* (Mar. 13, 2021), <https://taxguru.in/corporate-law/landmark-ruling-ongc-pipes-arbitration-case.html>

domestic arbitration by including “patent illegality” as a ground for setting aside awards. This expansion was criticized for reintroducing judicial intervention under the guise of constitutional supervision. Although subsequent amendments and judgments have attempted to recalibrate this expansion, the tension between minimal interference and constitutional review remains evident.

5.3. Distinction Between Commercial and Family Matters

A notable distinction emerges when commercial disputes are compared with matters involving personal status, such as marriage, custody, or inheritance. In family law conflicts, courts adopt a far more interventionist approach, often invoking constitutional values such as dignity, equality, and public morality⁶⁵⁰. The reasoning is that personal status issues implicate fundamental rights and social policy concerns more directly than commercial disputes do.

By contrast, commercial arbitration primarily concerns economic rights and contractual obligations⁶⁵¹. The judiciary appears more willing to prioritize predictability and international credibility over expansive constitutional scrutiny in such contexts. This distinction reflects an implicit judicial hierarchy between economic autonomy and personal rights.

5.4. Critical Reflection

This differentiation raises an important normative question: should constitutional morality apply with equal force in commercial disputes⁶⁵²? On one hand, commercial transactions are voluntary and negotiated between sophisticated parties; excessive constitutional intervention may undermine party autonomy and India’s attractiveness as

an arbitration-friendly jurisdiction. On the other hand, constitutional values permeate all branches of law, and insulating commercial disputes entirely from constitutional review may risk legitimizing outcomes that conflict with fundamental principles of justice.

In my view, a balanced approach is necessary. Constitutional morality should not function as a broad appellate standard in arbitration, but neither should it be entirely excluded⁶⁵³. Its role must remain confined to safeguarding the core values embodied within the “fundamental policy of Indian law,” without transforming courts into supervisory bodies over arbitral reasoning.

6. Way Forward

The interaction between constitutional values and private international law in India is still evolving. While judicial innovation has expanded the role of fundamental rights in cross-border disputes, the absence of structural clarity creates uncertainty. Therefore, the way forward must focus on reform that preserves constitutional supremacy while ensuring predictability in international commercial relations.

6.1. Legislative Reform: Codification of Private International Law

India does not yet have a comprehensive codified statute governing private international law⁶⁵⁴. Instead, principles relating to jurisdiction, choice of law, and recognition of foreign judgments are scattered across judicial precedents and statutory fragments such as the Code of Civil Procedure, 1908 and the Arbitration and Conciliation Act, 1996. This judge-made evolution has allowed flexibility, but it has also led to doctrinal inconsistency.

⁶⁵⁰ Vaishnavi Shukla, *Critical Analysis on Family Courts of India*, Lawful Legal (July 26, 2025), <https://lawfullegal.in/critical-analysis-on-family-courts-of-india/>

⁶⁵¹ Indian Courts in International Commercial Arbitration, Corrida Legal (June 22, 2023), <https://corridalegal.com/indian-courts-in-international-commercial-arbitration/>

⁶⁵² Use of Constitutional Morality in Recent Supreme Court Judgments, *LawCurb* (Nov. 28, 2025), <https://www.lawcurb.in/post/use-of-constitutional-morality-in-recent-supreme-court-judgments>

⁶⁵³ Arjun Krishnan & Abhijeet Singh, *The Indian Supreme Court Rules on Constitutional Validity of Arbitration Agreements – Can They Be Struck Down as Being Unconscionable or Unfair?*, Mondaq (Nov. 24, 2023), <https://www.mondaq.com/india/trials-appeals-compensation/1394202/the-indian-supreme-court-rules-on-constitutional-validity-of-arbitration-agreements-can-they-be-struck-down-as-being-unconscionable-or-unfair>

⁶⁵⁴ Prabhakar Singh, *Finding Foreign Relations Law in India: A Decolonial Dissent*, in *Encounters between Foreign Relations Law and International Law: Bridges and Boundaries* 86 (Helmut Philipp Aust & Thomas Kleinlein eds., Cambridge Univ. Press 2021), <https://doi.org/10.1017/9781108942713.006>

Codification would not mean rigidification; rather, it would provide structured guidance on connecting factors, party autonomy, public policy exceptions, and enforcement standards. A well-drafted PIL statute could clarify the hierarchy between constitutional mandates and conflict-of-laws principles, thereby reducing judicial unpredictability in international arbitration matters.

6.2. Clear Guidelines on Public Policy

One of the most contentious aspects of Indian private international law is the interpretation of “public policy.” Courts have gradually narrowed its scope in enforcement proceedings, particularly after decisions such as *Shri Lal Mahal Ltd. v. Progetto Grano Spa*⁶⁵⁵. However, when constitutional rights are implicated, the scope tends to expand. There is therefore a need to define what may be termed “constitutional public policy.” This would involve clearly identifying whether only violations of non-derogable constitutional principles such as basic structural values, natural justice, or manifest arbitrariness should trigger refusal of enforcement. Without clear boundaries, public policy risks becoming an unpredictable escape clause. Structured statutory clarification could strike a balance between protecting constitutional morality and preserving India’s pro-enforcement credibility.

6.3. Harmonization with International Conventions

As India seeks to position itself as a global arbitration hub, alignment with international standards becomes crucial. The enforcement framework already reflects obligations under the New York Convention. However, broader harmonization with instruments such as the Hague Convention on Choice of Court Agreements (if adopted in the future) could strengthen certainty in cross-border dispute resolution⁶⁵⁶. Participation in such conventions

would demonstrate India’s commitment to comity, reciprocity, and uniform conflict-of-laws standards. At the same time, harmonization must not dilute constitutional guarantees. The objective should be calibrated integration rather than mechanical transplantation of foreign models.

6.4. Rights-Based but Predictable Framework: Structured Proportionality

The increasing invocation of constitutional morality in private disputes suggests a shift toward rights-centered adjudication. However, rights-based reasoning must operate within a structured analytical framework. A proportionality test assessing legitimacy, suitability, necessity, and balancing can ensure that constitutional intervention in arbitration-related matters remains principled rather than subjective⁶⁵⁷. This would allow courts to evaluate when constitutional values genuinely override party autonomy and when they should defer to international comity and contractual certainty.

7. Conclusion

In conclusion, this paper has argued that constitutional morality is increasingly shaping the development of Indian private international law, transforming what was once viewed as a largely technical and procedural branch of law into a rights-conscious and value-driven discipline. Traditionally, private international law in India focused on neutral conflict-of-law rules determining jurisdiction, choice of law, and recognition of foreign judgments through structured doctrines rooted in certainty and predictability. However, constitutional principles, particularly those relating to dignity, equality, and fundamental rights, have begun to play a more visible role in judicial reasoning.

This shift reflects a broader judicial trend in which courts no longer treat cross-border

⁶⁵⁵ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433

⁶⁵⁶ *Tsvety*, The Hague Choice of Court Convention: Legal Framework, Purpose, and Global Significance, *The Law to Know* (May 12, 2025), <https://thelawtoknow>

⁶⁵⁷ Manisha Kunwar, *Constitutional Law Evolution: Supreme Court’s Proportionality Doctrine from Puttaswamy to Administrative Jurisprudence*, Primelegal Blog (Sept. 28, 2025), <https://blog.primelegal.in/constitutional-law-evolution-supreme-courts-proportionality-doctrine-from-puttaswamy-to-administrative-jurisprudence/>

disputes as merely mechanical exercises in applying foreign law. Instead, they increasingly examine whether the outcome aligns with constitutional values. In this sense, adjudication has moved from a rigid application of conflict rules toward a rights-centered approach that prioritizes substantive justice. Constitutional morality thus operates as a normative filter, ensuring that private international law does not function in isolation from the larger constitutional framework.

At the same time, this transformation is not without tension. Excessive reliance on constitutional review in cross-border matters may undermine principles such as international comity, party autonomy, and legal certainty values that are central to private international law. Courts must therefore strike a careful balance. Constitutional supremacy must remain the guiding principle, but it should not be applied in a manner that destabilizes settled conflict-of-law doctrines or discourages international cooperation. Ultimately, the challenge lies in harmonizing constitutional commitments with the structural needs of a predictable and globally integrated legal system.

