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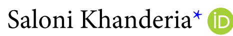

Thorn in the Lion's Paw: Révision au fond *as India's Self-Inflicted Injury in the Recognition and Enforcement of Foreign Judgments*

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Abstract

In an era characterised by a rise in cross-border litigation, India's stance on the Recognition and Enforcement of Foreign Judgments (REFJ) reveals a complex contradiction. Although India's REFJ regime appears to advocate a pro-enforcement stance, the inclusion of *révision au fond* – the practice of assessing foreign judgments based on their substantive merits – introduces considerable tension in the realm of cross-border dispute resolution. This paper explores the implications of India's commitment to conducting merits review as a self-imposed obstacle to fostering international judicial collaboration. This paper elucidates how this practice not only complicates the enforcement of foreign judgments within India but also hinders the recognition of Indian judgments abroad, especially in those countries that require reciprocity for such purposes such as Japan, South Korea, Germany and China. Through a comparative analysis of national laws and multilateral instruments, this paper illustrates how India's statutory *révision au fond* requirement poses reciprocal challenges for the enforcement of Indian judgments abroad, advocating a critical re-evaluation of India's REFJ framework to conform with emerging international judicial cooperation standards.

Introduction

Within the complex framework of international trade, the recognition and enforcement of foreign judgments (REFJ) stands out as an essential element of transnational dispute resolution.[1] The effectiveness of judicial decisions in international disputes is fundamentally dependent on their ability to be enforced,[2] especially when the assets of the judgment debtor are located outside of national borders.[3] This reality highlights a crucial principle: the effectiveness of a court's ruling is not solely dependent on its jurisdictional authority, but also on the judgment's ability to extend beyond geographical limitations and take effect in foreign jurisdictions.[4]

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[1] See generally Christopher Forsyth, *Private International Law* (5 edn, Juta 2012) 417–418.

[2] Unless otherwise indicated in this article, the expressions 'recognition' and 'enforcement' are used interchangeably.

[3] Forsyth (n 1) 417–418.

[4] See generally Linda J Silberman & Franco Ferrari, 'Introduction' in Linda J Silberman and Franco Ferrari (eds) *Recognition and Enforcement of Foreign Judgments* (Elgar 2017) xiii.

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The REFJ framework functions as a dual channel within the domain of global legal principles. On one hand, it outlines the conditions on which foreign judicial decisions may influence domestic legal frameworks.[5] On the other, it delineates the extraterritorial scope of domestic rulings, affecting their recognition and implementation in foreign jurisdictions.[6] This duality positions REFJ law as the cornerstone of any effective transnational litigation framework. The extent to which a nation's judiciary is integrated into the international legal framework and regarded as a conducive environment for resolving transnational conflicts is fundamentally connected with the doctrines that determine the enforcement of foreign rulings within its jurisdiction.

The REFJ regime in India reveals a complex and contradictory framework. While seemingly promoting a pro-enforcement perspective,[7] it contains intricacies that warrant careful examination. The enforcement of foreign judgments in India depends on the 'international competence' of the issuing court, a concept aligned with the jurisdictional factors assessed by the original court in accordance with its national law.[8] Nonetheless, a notable caveat exists within this framework: the existence of merits review (popularly known as *révision au fond*) of foreign judgments,[9] a characteristic that injects considerable friction into cross-border litigation. As the name suggests, merits review refers to the power of the (recognising/enforcing) court to evaluate the correctness of the decision of another forum – be it another court or an arbitral tribunal.[10] It is thus the enforcing court that 'stands in the shoes' of the deciding authority to determine whether the decision is legally and factually correct.[11] It is essentially a re-evaluation of the correctness of the decision to 'check' whether the deciding authority had acted improperly while pronouncing it, made an incorrect finding on which the decision depended, or based the decision on specific evidence that was pertinent but not examined.[12] Contrary to judicial review, which concerns the exercise of judicial authority in testing and ensuring statutory and administrative compliance with constitutional mandates, merits review goes beyond a mere ascertainment of a decision's validity.[13] In merits review, the concern is more with the decision-making process rather than its validity, thereby enabling recognising courts to deny enforcement of foreign judgments simply on the ground that they are considered incorrect. To be more precise, the existence of evidence or the process followed in ensuring the dispensation of justice is irrelevant; what matters is the *propriety* of the process before the original court.

The incorporation of merits review in India's REFJ framework has significant implications that reach well beyond its national confines. Indian courts have typically demonstrated a careful approach in interpreting the grounds for denying the enforcement of foreign judgments.[14] However, the presence of a merits review within the statutory provisions presents significant challenges for litigants attempting to enforce Indian court decisions in civil and commercial matters in jurisdictions that rely on reciprocity or equality of treatment. The implications of this legal stance reverberate across

[5]Trevor CW Farrow 'Globalization, international human rights, and civil procedure' (2003) Alberta Law Review 671.

[6]ibid.

[7]See for a discussion Saloni Khanderia, 'Recognition and Enforcement of Foreign Judgments: India' in Stellina Jolly & Saloni Khanderia (eds), *BRICS Private International Law: Convergence, Divergence and Reciprocal Lessons* (2024 Hart Publications) 470–490.

[8]Saloni Khanderia, 'The Prevalence of "Jurisdiction" in the Recognition and Enforcement of Foreign Civil and Commercial Judgments in India and South Africa: A Comparative Analysis' (2021) 21 Oxford University Commonwealth Law Journal 183–184.

[9]Civil Procedure Code 1908 (CPC), s 13(b).

[10]See Gilles Cuniberti, 'The Liberalization of the French Law of Foreign Judgments' (2007) 56 The International and Comparative Law Quarterly 931, 932, referring to the interpretation of *révision au fond* under French law where this practice is deemed to have originated.

[11]David Bennett, 'Balancing Judicial Review and Merits Review' (2000) 53 Admin Review 3, 4.

[12]ibid.

[13]ibid 4-5.

[14]See for a discussion Khanderia, 'Recognition and Enforcement of Foreign Judgments: India' (n 7) 470-490.

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India's key trading partners. In Asia, Japan,[15] and South Korea[16] stand out as a few prominent examples of countries where Indian civil and commercial judgments are likely to be denied enforcement due to the latter's purported acceptance of merits review for foreign judgments. In the European Union (EU), Germany,[17] India's largest trading partner from the bloc, is another example. Barring China, the laws of these countries necessitate reciprocity and prescribe equality of conditions for their judgments abroad as a prerequisite for the enforcement of a foreign judgment. For foreign judgments to be enforceable in Japan, South Korea, or Germany, they must originate from jurisdictions that establish equivalent or more advantageous conditions for judgments from these nations. Judgments from countries like India, which impose more rigorous standards through merits review, are thus denied enforcement in many jurisdictions, including Japan, South Korea, and Germany for a want of equal conditions. Presently, the enforcement of Indian judgments is impossible in China given the absence of a treaty or judicial precedent evincing reciprocal relations between the two largest Asian countries.[18] Indian judgments will continue to be ineffective under China's forthcoming regime which will similarly necessitate the existence of substantially similar conditions for foreign judgments to be enforceable.[19]

The empirical landscape validates these apprehensions. The scarcity of foreign-related civil and commercial disputes before Indian courts since independence is remarkable, with a significant increase occurring only after the launch of the 'Make in India' initiative in 2014.[20] Significantly, the disputes concerning REFJ constitute a negligible fraction, with only 142 documented cases.[21] The scarcity of cases, rather than suggesting an untroubled enforcement mechanism, likely reflects a hesitance among litigants to engage with the Indian REFJ framework. Parties are progressively drawn to alternative dispute resolution methods or seek out jurisdictions that provide better assurance in the enforcement of judgments.

Against this backdrop, this paper explores the complex practice of *révision au fond*, as established in the *Civil Procedure Code of 1908* (CPC), and its significant implications for the international enforceability of Indian judgments. This analysis aims to elucidate the paradox surrounding the Indian judiciary's adoption of merits review, a practice that is predominantly avoided in the international context of REFJ. Subsequent to these introductory remarks, the article explores the complex domain of merits review in rendering states and its significant influence on enforcement within recognising states. This section will clarify the theoretical foundations of merits review and their resulting implications for recognition, while also exploring the intricate relationship between *révision au fond* and the *res judicata* effect of foreign judgments, along with the notion's subtle connection to public policy exceptions in REFJ. The third section initiates a detailed examination of *révision au*

[15] See the Civil Code of Procedure of Japan (1996 as amended), art 118(iv).

[16] See the Civil Procedure Act of South Korea (1960 as amended 2008), art 217.

[17] See the Civil Procedure Act of the Federal Republic of Germany 1877 (amended 2009), art 328.

[18] See Stellina Jolly & Saloni Khanderia, 'Recognition and Enforcement of Foreign Decisions in BRICS - Reflecting Remarks: Convergences, Divergences and Some Reciprocal Lessons' in Stellina Jolly & Saloni Khanderia (eds), *BRICS Private International Law: Convergence, Divergence and Reciprocal Lessons*(2024 Hart Publications) 548-551, referring to the implications of the Supreme People's Court's interpretation of the application of the Civil Procedural Law of the People's Republic of China on the enforcement of Indian judgments in China.

[19] Wenliang Zhang & Yingqing Zhong, 'Recognition and Enforcement of Foreign Judgments: China' in Stellina Jolly & Saloni Khanderia (eds), *BRICS Private International Law: Convergence, Divergence and Reciprocal Lessons*(2024 Hart Publications) 496, referring to the 2017 Regulation of the SPC on Several Issues Relating to Recognition and Enforcement of Foreign Judgments (Sixth Draft), which, if adopted, could lead to the criterion of reciprocity being satisfied if Chinese judgments were enforceable in the rendering state under the same conditions.

[20] Of the approximately 1,585 disputes pertaining to the principles of private international law in India, 813 emerged post-economic liberalisation in 1991, while 744 of these arose after the launch of the 'Make in India' initiative in 2014. The data was gathered manually by examining the reported cases through the Supreme Court of India's database: www.scconline.com. The numbers indicated are approximate.

[21] The data was gathered manually by examining the reported cases through the SCI's database (www.scconline.com). The numbers indicated are approximate.

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fond in the Indian framework concerning REFJ. This segment examines the historical foundations of this practice, originating in 1877, delves into the reasoning underlying its incorporation, and highlights its continued relevance within Indian jurisprudence. By engaging in a thorough analysis of case law, this section elucidates the manner in which Indian courts have construed *révision au fond* under the CPC, which regulates REFJ across a wide array of civil and commercial issues. Furthermore, this section will examine other defences to REFJ in India, evaluating their possible intersections with the *révision au fond* doctrine. In the fourth section, the article contextualises India within the wider framework of international legal principles relating to transnational dispute resolution. This section undertakes a comparative analysis, showing the potential advantages for India a revision of its statutory provisions related to REFJ would bring. The fifth part provides the concluding remarks.

Merits Review in Rendering States and its Impact on Enforcement in Recognising States: Placing the Law in Context

Theoretical Justifications and Their Impact on Recognition

Unlike in the case of arbitral awards, theoretical justifications play a central role in determining the enforceability of foreign judgments.[22] Beyond considerations of public policy and due process, the enforceability of foreign judgments ultimately hinges on one or more of three justifications: whether recognition is grounded in an obligation arising under the law of the original court, in reciprocity between states, or in comity between the two countries.[23] Among these, reciprocity – essentially a form of *quid pro quo*,[24] demanding the existence of mutuality and cooperation between the recognising and requested state, has emerged as a chief basis for REFJ, particularly in the civil law world. Unlike most common law systems shaped by English law's reliance on the ascertainment of the original court's indirect jurisdiction under the law of the recognising court, mutual cooperation continues to play a pivotal role in most other parts of the world.[25] In contrast to the common law's demand for 'dual' international jurisdiction (first to prove the debtor's obligation towards the creditor under the original court's law and subsequently to ascertain its enforceability in the recognising state)[26] reciprocity-based enforcement is mainly concerned with the existence of a relationship with the other state. Reciprocity can manifest in various forms, including treaties (bilateral,[27] supranational,[28] or multilateral,[29]) and judicial precedents where cooperation is recognised through prior court decisions from the original state, demonstrating its willingness to enforce the judgments of the

[22]See generally Christa Roodt, 'Recognition and Enforcement of Foreign Judgments: Still a Hobson's Choice among Competing Theories' (2005) Journal of South African Law 18, 18-21; Sirko Harder, 'The Effects of Recognized Foreign Judgments in Civil and Commercial Matters' (2013) 62 International and Comparative Law Quarterly 441, 448–451.

[23]See generally Hock Lai Ho, 'Policies underlying the Enforcement of Foreign Commercial Judgments (1997) 46 International and Comparative Law Quarterly 443.

[24]Pontian N Okoli, *Promoting Foreign Judgments: Lessons in Legal Convergence from South Africa and Nigeria* (2019 Wolters Kluwer) 96.

[25]See generally Yeo Tiong Min, 'Common Law Developments relating to Foreign Judgments' (Ninth Yong Pung How Professorship of Law Lecture, School of Law, Singapore Management University, Singapore, 18 May 2016) 1–8 <https://ccla.smu.edu.sg/sites/ccla.smu.edu.sg/files/Yong%20Pung%20How%20Professorship%20of%20Law%20Lecture%202016.pdf> accessed 4 Feb 2026.

[26]Adrian Briggs, 'Recognition of Foreign Judgments: A Matter of Obligation' (2013) 129 Law Quarterly Review 87, 87. See also Ho (n 23) 451.

[27]See for instance the Treaty between India and the Russian Federation on Legal Assistance and Legal Relations Concerning Civil and Commercial Matters (3 Oct 2000), <https://www.mea.gov.in/Portal/LegalTreatiesDoc/RUB1197.pdf> accessed 4 Feb 2026.

[28]See for instance Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) [2012] OJ L351/1 (Brussels Ibis).

[29]See for instance The Hague Judgments Convention on the Recognition and Enforcement of Foreign Judgments (2 July 2019), <www.hcch.net/en/instruments/conventions/full-text/?cid=137> accessed 4 Feb 2026.

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recognising state, or through 'substantial similarity' between the REFJ regimes of the original and recognising courts. Determining reciprocity through substantial similarity has, however, emerged as a prevalent method for establishing mutuality between two nations.[30] This form of mutuality is seen as being necessitated under the laws of many major jurisdictions requiring reciprocity for enforcement, Germany,[31] Japan,[32] and South Korea[33] being a few. China, which is currently regarded as one of the most arduous places for judgment enforcement due to its stringent treaty-based and judicial precedent requirements[34], is predicted to soon follow suit.

In countries basing reciprocity on equality of conditions, the fact that the conditions imposed by the recognising state might be stricter than those currently applicable under the original state's law is thus irrelevant – provided these grounds are not fundamentally different.[35] This means that in the process of rendering decisions, courts may utilise more stringent standards for assessing foreign judgments based on factors like fraud or public policy, without inherently threatening reciprocal relations.[36] However, it is the implementation of fundamentally different criteria that genuinely obstructs the seamless transfer of judgments across jurisdictions. For example, the law of the originating country (A) could allow for the re-evaluation of fraud allegations that were previously examined by a foreign court, while the enforcing state (B) might limit considerations of fraud to external factors that emerged after the trial. These variations, while significant, do not fundamentally challenge the decisiveness of A's judgments in B, as they signify elevated rather than fundamentally altered criteria. A comprehensive examination of the merits presents a more substantial obstacle because it postulates fundamentally different standards, rather than simply elevated ones.

Oftentimes, countries that predicate their REFJ regimes on the notion of obligation, such as the UK[37] and India,[38] also recognise reciprocity alongside it. The distinction is that, in contrast to countries whose REFJ regimes are primarily founded on reciprocity, those that require reciprocity in conjunction with the concept of obligation grant an equal status to all countries that are designated as sharing a reciprocating status under the statutory framework – regardless of the substantial similarities between their laws or the absence of judicial precedents. The Foreign Judgments (Reciprocal Enforcement) Act 1933 in the UK serves as a notable illustration, permitting the automatic enforcement of foreign judgments from designated courts in countries acknowledged as having a reciprocating status with the UK, thereby eliminating the need for special procedural initiation.[39] Countries granted this reciprocal status under the statute likewise undertake to enforce judgments from English courts automatically. Nevertheless, whatever the form, reciprocity essentially requires *quid pro quo*.[40]

[30] Beligh Elbalti, 'Foreign Judgments Recognition and Enforcement in Civil and Commercial Matters in Japan' (2019) 66 Osaka University Law Review 1, 26-29, referring to the Civil Code of Procedure of Japan (1996 as amended), art 118(iv); Sung Hoon Lee, 'Foreign Judgment Recognition and Enforcement System of Korea' (2006) 6(1) Journal of Korean Law 125–126, referring to the Civil Procedure Act of South Korea (1960 as amended 2008), art 217.

[31] ibid art 328.

[32] Civil Code of Procedure of Japan (1996 as amended), art 118(iv).

[33] Civil Procedure Act of South Korea (1960 as amended 2008), art 217.

[34] Jeanne Huang, 'Reciprocal Recognition and Enforcement of Foreign Judgments in China: Promising Developments, Prospective Challenges and Proposed Solutions' (2019) Legal Studies Research Papers No 19/23, The University of Sydney Law School 2.

[35] See eg the Civil Code of Procedure of Japan (1996 as amended), art 118(iv); Civil Procedure Act of South Korea (1960 as amended 2008), art 217. In Germany, courts interpret art 328 of the Civil Procedure Act (2009) similarly by refusing enforcement to foreign judgments from countries practising *révision au fond*.

[36] See Elbalti (n 30) 23–24; Lee (n 32) 119-125, referring to the interpretation of the public policy exceptions in Japan and South Korea. Mere institutional differences do not affect the enforceability of foreign judgments in these nations. In these countries, fraud does not constitute a distinct defence but is instead perceived as an aspect of national public policy.

[37] See The Foreign Judgments (Reciprocal Enforcement) Act 1933.

[38] CPC, s 44A.

[39] For a discussion, see John Greenwood Collier, *The Conflict of Laws* (3rd edn, 2004 CUP) 127–128.

[40] Okoli (n 24) 96.

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The Reciprocity Paradox: How Révision au fond *Erodes International Judicial Cooperation*

In the context of REFJ, merits review or *révision au fond* constitutes a significant impediment to facilitating the free movement of judgments. Unlike other universally accepted factors preventing foreign judgments from being effective in the enforcing state (such as public policy concerns, the existence of fraud or technical and procedural defects that essentially evaluate the original court's authority to pass the decision), a merits review is an assertion of the enforcing state's sovereignty over another country.[41] However, in practice, while the absence of a judgment on the merits is meant to be a basis for denying effect in the enforcing state, it frequently becomes a major hurdle by preventing the enforcing state's judgments from having extraterritorial impact, in contrast to limiting the recognition of decisions in this country.

Originating in French law in the early nineteenth century to preserve the integrity of the legal system and safeguard its legal order as international trade expanded, while presenting more opportunities to enforce judgments from other countries,[42] the implications of *révision au fond* on the enforcement of foreign judgments of the recognising state overseas are well reported.[43] Beginning with the seminal US Supreme Court decision in *Hilton v Guyot*,[44] it has become increasingly clear that foreign judgments originating from jurisdictions adhering to the *révision au fond* principle are unlikely to be recognised in states that base their REFJ regimes on reciprocity. In *Guyot*, the Supreme Court declined to give effect to a French judgment against a US citizen, observing that American decisions did not enjoy equal treatment in France due to France's acceptance of *révision au fond*.[45] The Court emphasised the necessity of enforcing judgments based on comity as a general rule but reversed the lower court's decision to do so, as American judgments were generally unenforceable in France without being reevaluated on the merits of the case.[46] This decision underscored that comity would not operate as an absolute rule and highlighted the significance of reciprocity in the enforcement of foreign judgments.[47]

Today, approaches to *révision au fond* continue to reflect that state interests remain of paramount importance in legal systems. Many states require the absence of a merits review in rendering states for their judgments to be effective within the recognising state's territory.[48] Denial of enforcement is essentially based on the protection of the citizens of the recognising state as opposed to the interests of the judgment debtor *per se*.[49] Despite allegations of fraud by the French defendant before the US court, the judgment was denied recognition not because of the injustice it suffered but rather due to the absence of 'mutuality and reciprocity'.[50] An evaluation of modern legislation with a similar reciprocity requirement and mandating convergent conditions for enforcement[51] clearly reveals the

[41] Friedrich Juenger, 'The Recognition of Money Judgments in Civil and Commercial Matters' (1988) 36 American Journal of Comparative Law 26.

[42] *Holker v Parker* [1819] (Cour de Cassation) Sirey Jurisprudence I.288.

[43] See eg Arthur von Mehren & Donald Trautman, 'Recognition of Foreign Adjudications: A Survey and a Suggested Approach' (1968) The Harvard Law Review Association 1601, 1665–1667; Barbara Kulzer, 'Some Aspects of Enforceability of Foreign Judgments: A Comparative Summary' (1966) 16 Buffalo Law Review 113–115.

[44] [1895] 159 US 113.

[45] ibid. But see the New York Court of Appeals' decision in *Johnston v Compagnie Générale Transatlantique* [1926] 152 NE 121, 123 (NY) where the court refused to invoke the principle of reciprocity while recognising a French judgment. Also see US Supreme Court decisions in *Erie Railroad Co v Tompkins* [1938] 304 US 64 which disregarded reciprocity and redefined the application of *Hilton* (n 44).

[46] *Hilton* (n 44), referring to the decision of the French court in *Holker* (n 42).

[47] Okoli (n 24) 98, referring to *Hilton* (n 44).

[48] Okoli (n 24) 100.

[49] ibid.

[50] ibid 103.

[51] See eg the Civil Code of Procedure of Japan (1996 as amended), art 118 (iv); Civil Procedure Act of South Korea (1960 as amended 2008), art 217; German Civil Procedure Act (2009), art 328. See also Zhang & Zhong (n 19) 496, referring to the 2017 Regulation.

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abysmal significance attached to the injustice suffered by the litigant when determining the effectiveness of a foreign judgment from a country adopting the practice of *révision au fond*.[52] The extent and manner of review are irrelevant, and the fact that the rendering state's law simply allows for a *révision au fond* is enough for courts necessitating a reciprocity requirement to deny effect to the judgment altogether.

Irrespective of the blatant arbitrariness involved in recognising judgments on the basis of reciprocity,[53] the fact that a *révision au fond* itself invites retaliation is indisputable.[54] Certainly, private entities ought not to face repercussions for the actions of their government, which has not succeeded in establishing a purportedly reciprocal relationship with the enforcing country through a treaty or the formulation of nearly analogous REFJ frameworks.[55] The refusal to recognise, stemming from the absence of a reciprocal relationship, serves as both an inducement and a threat, implying that judgments arising from such a context would not be recognised unless they conform to the legal principles prevalent in the recognising country.[56] The elimination of the long-standing practice of *révision au fond* in French law,[57] reportedly triggered by a series of non-recognitions from Germany, serves as an illustration of how reciprocity influences the legal framework and cultural customs of various states.[58]

While the criticisms of the reciprocity requirement hold merit, it is worth considering its application in the specific context of *révision au fond*. This requirement, which calls for equal conditions between the original and recognising state, presents an opportunity for countries to challenge the outdated and unjust principle, ultimately fostering the modernisation of recognition and enforcement regimes on a global scale.[59] The practice of *révision au fond* offers neither expedience nor fairness,[60] and the retaliation it provokes can be seen as justified, as it encourages improvements in the law. Why should any legal system, which calls for the cessation of litigation regarding issues that have already been decided or should have been decided by the adjudicating forum, simultaneously permit the further scrutiny of the decision? A decision which is purportedly 'incorrect' should be reversed on appeal before an appropriate forum in the same country instead of a foreign court that is attempting to act as an appellate authority.

Long before its abandonment in France, the principle experienced some resistance by domestic courts and was similarly critiqued by scholars.[61] Elsewhere, most countries prohibit *révision au fond*.[62] In situations where a court must examine the conclusiveness of a decision for potential violations of substantive public policy, it must do so in a manner that avoids assessing whether the decision was correct or free of errors of fact or law in the eyes of the enforcing state.[63] This includes

[52]Okoli (n 24) 102-103.

[53]See for a detailed discussion Kulzer (n 43) 90.

[54]Juenger (n 41) 29.

[55]Mehren & Trautman (n 43) 1661.

[56]Okoli (n 24) 104.

[57]*Munzer v Munzer* [1964] Rev Crit DIP 344.

[58]Mehren & Trautman (n 43) 1661.

[59]Juenger (n 41) 32; Okoli (n 24).

[60]Juenger (n 41) 29.

[61]ibid 298.

[62]See for the REFJ-related practices and the prohibition of merits review in Asia Anselmo Reyes, 'Conclusion: Towards an Asia of Judgments without Borders' in Anselmo Reyes (ed) *Recognition and Enforcement of Judgments in Civil and Commercial Matters* (2019 Hart Publications) 309–325. cf Arvin Jo & Jocelyn Cruz, 'The Philippines' in Anselmo Reyes (ed), *Recognition and Enforcement of Judgments in Civil and Commercial Matters* (2019 Hart Publications) 223, 234–238 which is the only Asian country reported to permit *révision au fond* in its true sense. See also Collier (n 39) 118; Reid Mortensen & R Garnett & Mary Keyes (eds), *Private International Law in Australia* (2019 LexisNexis Butterworths) 133–151 for the Australian courts' approach confirming the rejection of *révision au fond* under English and Australian Law.

[63]See eg Wolfgang Wurmnest, 'Recognition and Enforcement of US Money Judgments in Germany' (2005) 23 Berkley Journal of International Law 175, 195, referring to the position under German law; Morio Takeshita, 'The Recognition of Foreign Judgments by the Japanese Courts' (1996) 39 Japanese Annual of International Law 55, 66–72. For the position under

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international conventions such as the *2005 Hague Convention on the Choice of Court Agreements* (HCCCA),[64] the *2019 Hague Judgments Convention on the Recognition and Enforcement of Foreign Judgments* (Judgments Convention),[65] supranational instruments such as the *Brussels Ibis*[66] that currently extends to the 27 EU Member States where recognition is based on reciprocity. Likewise, national laws, including those applicable in most common law systems such as the UK,[67] Australia,[68] and Singapore[69] that base their REFJ regime on the notion of obligation as well as non-binding instruments, such as the *Asian Principles for the Recognition and Enforcement of Foreign Judgments* (APREFJ),[70] which have non-binding effect and merely seek to harmonise the conflict of law regimes among participating states, demonstrate a strong resistance to *révision au fond* by banning such a practice in the interest of comity.[71] National courts situated within the jurisdictions of these countries are either absolutely precluded from delving into the correctness of foreign judgments (even when there appear obvious errors of law on the face of the decision) or, in the case of non-binding legal principles such as the APREFJ, are encouraged to refrain from doing so. In the context of arbitration, the justifications for *révision au fond* appear to be more compelling than in litigation due to their emanation from ordinary persons designated by parties as arbitrators.[72] However, even in arbitration, this practice has not been upheld on the grounds that it undermines the very foundation of the dispute resolution mechanism, which is to operate in accordance with the parties' will.[73] Accordingly, both the *1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (popularly known as the New York Convention/NYC),[74] that has been ratified by 160 countries, and the *1985 UNCITRAL Model Law on International Commercial Arbitration* (UNCITRAL Model Law),[75] a non-binding instrument that nearly 93 States have adopted, explicitly prohibit a *révision au fond* for the purpose of recognition of international arbitral awards.

Révision au fond and the Recognition and Enforcement of Foreign Judgments in India

India's Encounter with Révision au fond *at a Glance*

While France relinquished the practice of *révision au fond* after 150 years because of the difficulties it posed for the international enforcement of its domestic court decisions,[76] in India, merits review

Japanese law; Pippa Rogerson, *Collier's Conflict of Laws* (4th edn, CUP 2013) 252, referring to *Pemberton v Hughes* [1899] 1 Ch. 781, 790 for the English common law approach. Mortensen & Garnett & Keyes (n 65) 149-150 for the Australian courts' approach.

[64]Hague Convention on the Choice of Court Agreements 2005, art 8(2).

[65]Hague Judgments Convention on the Recognition and Enforcement of Foreign Judgments 2019, art 4(2).

[66]Brussels Ibis (n 28) arts 45(2), 45(3), 52.

[67]Rogerson (n 63) 252, referring to *Pemberton v Hughes* [1899] 1 Ch. 781, 790.

[68]Mortensen & Garnett & Keyes (n 65) 143–150.

[69]Kenny Chng, 'Singapore' in Anselmo Reyes (ed), *Recognition and Enforcement of Judgments in Civil and Commercial Matters* (2019 Hart Publications) 141–161.

[70]Adeline Chong (ed), *Asian Principles for the Recognition and Enforcement of Foreign Judgments* (Asian Business Law Institute 2017) principle 4.

[71]Yujun Guo, 'Commentary to Art 4 of the APREFJ' in Adeline Chong (ed), *Asian Principles for the Recognition and Enforcement of Foreign Judgments* (Asian Business Law Institute 2017).

[72]Arthur von Mehren, 'International Commercial Arbitration: The Contribution of the French Jurisprudence' (1986) 46 Louisiana Law Review 1045, 1055.

[73]ibid.

[74]Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 <https://www.newyorkconvention.org/english> accessed 11 Sep 2024.

[75]UNCITRAL Model Law on International Commercial Arbitration <https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf> accessed 11 Sep 2024. For a detailed discussion on the UNCITRAL Model Law, see J Martin Hunter, 'The UNCITRAL Model Law' (1985) 13 International Business Law 399; Renaud Sorieul, 'The Influence of the New York Convention on the UNCITRAL Model Law on International Commercial Arbitration' 2 Dispute Resolution International 27–42.

[76]*Munzer* (n 57).

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has been an enduring aspect of its REFJ regime, boasting a history that spans 147 years as of 2024.[77] The origins of India's encounter with *révision au fond* can be traced back to 1877 and the second version of the CPC,[78] one of the Republic's three chief legislations regulating procedural matters along with the *Bharatiya Sakshya Adhiniyam* 2023 (formerly the Indian Evidence Act 1872) and the *Bharatiya Nagrik Suraksha Sanhita* 2023 (formerly the Criminal Procedure Code 1973). The practice has remained enshrined in subsequent versions of the legislation (re)enacted in 1882[79] and 1908,[80] with the latter being the current version. Notwithstanding multiple revisions to the CPC since its re-enactment in 1908,[81] the principle of *révision au fond* has persisted as a crucial component of India's REFJ framework, explicitly enshrined in section 13(b) of the CPC, which, alongside sections 14 and 44A, constitutes the triad of statutory provisions regulating REFJ in India. Furthermore, clauses (c) and (f) of section 13 seem to serve as extensions of this doctrine, enabling Indian courts to assess the correctness of foreign judgments in relation to established principles of international law and Indian law. India's decision not to participate in the HCCCA[82] and the 2019 Judgments Convention[83] has further limited the options for enforcing foreign judgments in the country. Currently, the only way to seek recognition in India is through the CPC, with *révision au fond* being an indispensable aspect of the process. This holds true for all judgments emanating from civil and commercial disputes, regardless of their nature, including those involving personal and inheritance matters.

Révision au fond *within India's Distinctive REFJ Framework: An Overview* Although the CPC does not formally define the terms 'recognition' or 'enforcement', each of these are subject to similar procedural requirements. Considering its common law heritage, foreign judgments are generally incapable of automatic recognition or enforcement in India. To be recognised or enforced in India, judgment creditors with foreign judgments must initiate new proceedings based on the decision rendered by the foreign court.[84] There are nominal exceptions to this rule with only foreign judgments from 'superior courts' (highest court) in countries designated as reciprocating per the Official Gazette maintained by the Central Government entitled to automatic *execution* in India.[85] But this is not the case for mere *recognition*.[86] In such cases, the general rule that foreign judgments must be recognised by a suit initiated by the parties applies. To date, only twelve countries have been classified as reciprocating and, consequently, benefit from an automatic execution in India (without the need for fresh proceedings) pursuant to bilateral agreements.[87]

In principle, a foreign judgment has extraterritorial effect in India only if it is both final and conclusive regarding *any matter* that was *directly adjudicated upon* between the same parties, or those

[77]Code of Civil Procedure 1877 (now repealed and replaced by the CPC 1908), s 14(a).

[78]ibid.

[79]Code of Civil Procedure 1882 (now repealed and replaced by the CPC 1908), s 14(a).

[80]CPC, s 13(b).

[81]The CPC 1908 underwent several notable amendments, particularly in 1976 (which introduced summary proceedings and appellate modifications); in 1999 (which addressed delays via procedural changes); in 2002 (which streamlined justice through mediation and decree execution); and from 2015 to 2018 (which established and regulated commercial courts).

[82]See for the list of signatories Hague Conference on Private International Law, 'Status Table: Convention of 30 June 2005 on Choice of Court Agreements' <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> accessed 30 Sep 2024.

[83]For the list of signatories, see Hague Conference on Private International Law, 'Status Table: Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgements in Civil or Commercial Matters' <https://www.hcch.net/en/instruments/conventions/status-table/?cid=137> accessed 30 Sep 2024.

[84]Jolly and Khanderia, *Indian Private International Law* (n 196) 259–260.

[85]CPC, s 44A.

[86]ibid.

[87]See for the list of these countries Chandigarh High Court Rules Vol I <https://share.google/2ZF25lKjCijifNcVx> accessed 6 Feb 2026.

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claiming under them, and litigating under the same title.[88] As per the CPC, a foreign judgment refers to a ruling issued by a court in a foreign jurisdiction.[89] A court is considered foreign not just due to its physical location outside the Republic of India, but also because it was established and continues to function under a distinct jurisdiction from the Central Government of India.[90] Due to their shared origins in common law, foreign judgments are considered final in the same way as their English equivalents, that is, when the (original) court that rendered the decision cannot revisit the case.[91] Since the court has finished its duties in this case and will not be reviewing its decision, it is final. Therefore, it would not change the finality of the foreign judgment in any way that would prevent it from being implemented in India, even though it is currently subject to appeal or could be appealed if the period for appeal has not passed.[92] In order to seek enforcement in India, a final decision must also be conclusive.[93] As a result, it needs to show the original court's final decision on the matter.

In contrast to the doctrine of *res judicata*, where issues that should or could have been raised may preclude future proceedings between the same parties,[94] the conclusiveness of a foreign judgment for enforcement purposes is determined solely by the matters directly adjudicated by the foreign court.[95] The grounds for the decision are irrelevant in establishing the conclusiveness of the foreign judgment, as is whether every question was heard and eventually decided.[96] What is important is the precise issue that has been resolved.[97] Thus, whether the foreign court decided the whole matter is irrelevant in determining the conclusiveness of a foreign judgment under Indian law.[98]

Subject to exceptional circumstances,[99] foreign judgments that are conclusive are binding and constitute *res judicata* in subsequent proceedings between the parties. It makes little difference whether the foreign judgment is *in personam* or *in rem*, as it can be challenged on the grounds outlined in section 13 of the CPC.[100] Judgments handed down by the highest courts in countries sharing a reciprocating relationship with India might be challenged for lack of finality on these grounds, even though they are otherwise entitled to automatic execution.[101]

Indian law differs from that of most other countries when it comes to the grounds for refusing enforcement of foreign judgments. While most countries' laws allow for the denial of effect on grounds of fraud, lack of international competence of the foreign court, or natural justice,[102] Indian law prescribes a number of additional grounds on which enforcement of a foreign judgment in India

[88] CPC, s 13. See for a discussion Dinshaw Fardunji Mulla, *The Code of Civil Procedure (Abridged)* (18th edn, LexisNexis 2022)124-130.

[89] CPC, s 2(6).

[90] CPC, s 2(5).

[91] Mulla (n 88) 124–128. See also Adian Briggs, *The Conflict of Laws* (5th edn, Oxford University Press 2024) 123 for a discussion on English common law.

[92] Jolly and Khanderia, 'Recognition and Enforcement of Foreign Decisions in BRICS - Reflecting Remarks: Convergences, Divergences and Some Reciprocal Lessons' (n 17) 560.

[93] ibid.

[94] CPC, s 11.

[95] *R Viswanathan v Rukn-ul-Mulk Syed Abdul Wajid* [1963] 3 SCR 22 para 35.

[96] ibid.

[97] ibid.

[98] Mulla (n 88) 124–128.

[99] See CPC, s 13(a)-(e).

[100] Khanderia, 'Recognition and Enforcement of Foreign Judgments: India' (n 7) 472.

[101] ibid 471.

[102] See eg Reyes (n 62) 309–321, referring the practices in Asia. Outside Asia, English common law, South African and Australian law also generally limits the defenses available to the debtor to these grounds. See for a detailed discussion see, Mortenson & Garnett & Keyes (n 65) 143–151 (Australia); Rogerson (n 63) 253–258 (English common law); and Pontian Okoli, 'Recognition and Enforcement of Foreign Judgments: South Africa' in Stellina Jolly & Saloni Khanderia (eds), *BRICS Private International Law: Convergence, Divergence and Reciprocal Lessons*(2024 Hart Publications) 519.

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may be refused,[103] including where the judgment a) was not given on the merits of the case;[104] b) appears, on the face of the proceedings, to have been founded on an incorrect view of international law or a refusal to apply Indian law;[105] or c) sustains a claim founded on a breach of any law in force in India.[106] Public policy, a characteristic that is frequently seen in the REFJ regimes of the majority of countries[107] as well as in India's arbitration laws,[108] does not serve as an explicit basis for determining the *res judicata* effect of foreign judgments. Neither has it been considered in any legal discourse. Nevertheless, denial based on fraud, or the absence of due process, is seen as a way to protect the public policy of the enforcing state.[109] This is achieved by declining to enforce foreign judgments that were obtained through deceit, as such judgments offend the court's sense of justice and unfairly harm one party, typically the debtor.

Simultaneously, the parameters to ascertain the enforceability of foreign judgments when they are based on an incorrect view of international law or a refusal or breach of Indian law remain unclear. Out of the 1353 legislative or constitutional records related to the founding of the CPC,[110] none provide any insight or explanation for the reasons behind subjecting foreign judgments to further scrutiny in India. Approximately 20 deliberative recordings expressly pertain to the legislation that governs foreign judgments in India.[111] Since the (re)enactment of the CPC in 1908, there have been two deliberations regarding the amendment of the Republic's current REFJ laws.[112] However, these discussions have primarily focused on the benefits of providing reciprocal treatment to specific countries, similar to what is done in the UK.[113]

Révision au fond*: Uncovering the Tapestry Through the Lens of Indian Law* The impact of *révision au fond* on India's legal framework is significant and subject to considerable debate. Since the re-enactment of the CPC in 1908, a remarkable 100 out of 142 reported cases concerning the REFJ have contended with the enforceability of foreign judgments due to their perceived lack of merit.[114] This includes disputes under sections 13(c) and (f) of the CPC, scrutinising foreign judgments for their purported incongruence with Indian[115] or international law.[116] India's commitment to *révision au*

[103] See CPC, s 13(b), (c) and (f).

[104] ibid s 13(b).

[105] ibid s 13(c).

[106] ibid s 13(f).

[107] See for instance Rogerson (n 63) 253-254 (English common law); Martin Davies & Andrew Bell & Paul Brereton (eds), Nygh's conflict of laws in Australia (9th edn, Butterworths 2014) 927-930 (Australian law); German Civil Procedure Act, art 328(1)(4); Civil Procedure Law of the People's Republic of China (adopted 1991, amended 2021), art 282; Civil Code of Procedure of Japan (1996 as amended), art 118(iii),; Brussels Ibis (n 28), art 45(1).

[108] Arbitration and Conciliation Act (Amendment) Act 2015 (ACAA), s 34(2)(b)(ii), read along with Explanations 1 and 2 to ss 34 and s 48(2)(b), read along with Explanation 1 to s 34.

[109] Khanderia, 'Recognition and Enforcement of Foreign Judgments: India' (n 7) 477.

[110] See to view the records Parliament of India, Lok Sabha Digital Library, Legislative Assembly Debates <https://eparlib.sansad.in/handle/123456789/760007> accessed 7 Feb 2026.

[111] See Parliament of India, 'Debates on Foreign Judgments', Legislative Assembly Debates (21 Feb 1935; 25 Jan 1937; 9 Feb 1937; 9 Apr 1947; 23 Sep 1947); Constitutional Assembly Debates (2 Sep 1948); Lok Sabha Debates (8 Jul 1952; 5 Nov 1952; 2 Aug 1955; 4 Aug 1955; 14 Nov 1856); CPC Amendment Bills Debates (8 Jul 1952; 5 Aug 1952; 5 Nov 1952; 2 Aug 1995; 5 Aug 1955; 13 Dec 1955; 14 Nov 1956) <https://eparlib.sansad.in/handle/123456789/760007> accessed 7 Feb 2026.

[112] See Parliament of India, 'Parliamentary Debates, Part II – Proceedings other than Questions and Answers' (Lok Sabha Debates, date 1951) vol X, cols 5564, 7177-7180 < https://share.google/3MrtTZJZV3ahw1aKv> accessed 7 Feb 2026; Code of Civil Procedure (Amendment Bill) 5 November 1952 < https://share.google/kMrLWpuJryos2YYEQ> accessed 7 Feb 2026.

[113] See Foreign Judgments (Reciprocal Enforcement) Act 1933 (UK).

[114] The data was gathered manually by examining the reported cases through the SCI's database: www.scconline.com. The numbers indicated are approximate.

[115] CPC, s 13(c), 13(f).

[116] ibid s 13(c).

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fond has the potential to create significant impediments for litigants seeking to enforce their judgments in countries necessitating reciprocal relations with the Republic. In India, unlike France[117] where the principle was historically practiced, or the Philippines[118] where it continues to constitute an important basis for testing the enforceability of foreign judgments, a merits review does not in any manner empower courts to test the factual or legal propriety of the decisions of courts from other countries.[119] A merits review, instead, is merely a means to ascertain whether or not the foreign judgment is procedurally sound under the requirements of Indian law. India's REFJ rules are misinterpreted as imposing conditions less favourable than those experienced by its own judgments in other parts of the world, such as Germany, Japan, South Korea, or the US, due to the use of incorrect terminology that indicates the need for merits review. This misinterpretation prevents enforcement from countries that adopt *révision au fond*. Barring Japan, there is no case law confirming a refusal of enforcement of Indian decisions in Germany, South Korea or the US in civil or commercial matters. This is plausibly because disputes involving Indian residents that require enforcement in these countries are being litigated outside India, through choice of court agreements or directly before the courts of Germany, South Korea, or the US, to ensure assured enforcement. Arbitration of such disputes, which require enforcement in jurisdictions demanding substantially similar conditions, is another possible reason explaining absence of reported cases indicating the unenforceability of Indian judgments. In any case, this is irrelevant considering that statutory principles, together with a general understanding of court practices in these jurisdictions, confirm the impermissibility of giving effect to judgments from any country that authorises *révision au fond* under its law.[120] One unreported case in Japan confirms the rejection of an Indian judgment. Nevertheless, the denial was predicated on the absence of a treaty.[121] It is surprising that Japanese law has never required treaties as a basis for enforcement, suggesting that the court may have made a mistake.[122] Simultaneously, however, there is a reported case confirming a rejection of a Belgian judgment because of the latter's adoption of *révision au fond*.[123] This connotes that Indian judgments will assuredly be denied enforcement on similar grounds. In practice, however, Indian courts have never conducted a merits review – and have instead always prohibited it; but they seem to continue to bear the brunt of the legislator's mistake.

Generally, when it comes to interpreting the exceptions contained in section 13 of the CPC, the SCI has consistently emphasised the importance of being guided by the plain meaning of the words.[124] Nonetheless, concerning merits review under section 13(b), despite statutory provisions indicating otherwise, India's REFJ regime, staying true to its common law roots,[125] and as demonstrated by case law, indicates with sufficient clarity that the principle exclusively concerns

[117] See *Holker* (n 42).

[118] See Jo & Cruz (n 62) 234–238.

[119] See the SCI's decision in *R Viswanathan v Rukn-ul-Mulk Syed Abdul Wajid* [1963] 3 SCR 22 para 41.

[120] See German Civil Procedure Act (2009) art 328 read along with Rolf A Schütze, 'Nationale Rechte' in Reinhold Geimer & Rolf A Schütze (eds), *Europäisches Zivilverfahrensrecht* (4th edn, Beck 2020) E.1. 170 confirming the unenforceability of Indian judgments in Germany; and Civil Procedure Act of South Korea (1960 as amended 2008), art 217.

[121] Elbalti (n 30) 27, referring to Shunichiro Nakano, 'Gaikoku Hanketsu no Shikkō [Enforcement of Foreign Judgments]' in Yuji Shindo (dir), Hiroshi Takahashi and Shintaro Kato (ed.), *Jitsumu Minji Soshō-hō Kōza (daisanki, dairoppen) [Courses on the Practice of Civil Procedure Law]* (3rd series, vol 6, Nippon Hyoron-sha 2013) 456.

[122] See CCP, art 118.

[123] Elbalti (n 30) 27, referring to Tokyo DC judgment of 20 July 1960, Kakyū Saibanshō Hanrei-shū [Lower Court Reports] Vol 11(7), 1522.

[124] *Govindan Asari Kesavan Asari v Sankaran Asari Balakrishnan Asari* AIR (1958) Ker. 203 para 3 [Sankaran Govindan]; *International Woollen Mills v. Standard Wool (U.K.) Ltd.* (2001) 5 SCC 265 [IWM] para 29; *Alcon Electronics Private Limited v Celem S.A. of FOS 34320 Roujan, France and Another* (2017) 2 SCC 253 paras 14-15.

[125] See Rogerson (n 63) 252-253, referring to *Godard v Gray* (1870) LR 6 QB 139; *Pemberton v Hughes* [1899] 1 Ch 781, 790 indicating that errors of law and fact do not preclude foreign judgments from being enforceable under English common law. Foreign judgments would however be denied effect for being contrary to natural justice (if, *inter alia*, the defendant was denied a chance to be heard).

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an evaluation of due process *ie*, was the defendant given an opportunity to defend their case?[126] Is the foreign court's ruling based on the evidence *recorded* in the judgment?[127] These are the two sole concerns of an Indian court conducting a merits review.

While the thoroughness or quality of the evidence examined is irrelevant,[128] a simple reiteration of the statutory language similarly does not suffice in concluding that the foreign judgment was based on its merits. Instead, it must clearly evince the decision to be the product of the contest between the parties[129] through a substantive evaluation of the case and the connection between the facts and conclusions.[130] For this reason, judgments that are entirely erroneous are entitled to enforcement in India[131] unless they are otherwise found to be inconsistent with principles of international or Indian law where applicable to the facts and circumstances of the case.[132]

Under English common law too, any judgment rendered without substantiating evidence is barred from enforcement due to a lack of finality and conclusiveness.[133] Such judgments remain susceptible to reconsideration by the originating court at any time, subject to certain conditions.[134] As a result, default judgments, which are mainly based on the defendant's failure to appear without any evidence being presented, typically lack enforceability under common law because they do not meet the essential criteria of finality or conclusiveness.[135] In contrast, interlocutory orders are enforceable, as they are deemed both final and conclusive, assuming they represent the court's definitive ruling on the pertinent issue.[136]

Though Indian courts have almost never used common law principles (or case law) to interpret section 13(b), foreign judgments have similarly been regarded as not being rendered on their merits, not because they are wrong, but rather because they were rendered in the absence of 'sufficient material for the adjudicating authority to draw a conclusion in respect of the issue involved between the parties'.[137] For this reason, summary judgments have equally been capable of enforcement provided these are given pursuant to some form of contest between the parties.[138] Indian courts, rooted in common law tradition, have consistently ruled that assessing whether a matter was adjudicated on its merits does not invariably require the presentation of evidence in all cases.[139] Consequently, if the parties concur that no evidence shall be presented in a specific case, and solely rely on the pleadings and submissions, it cannot be asserted that such a judgment lacks merit if it was rendered in accordance with an agreement or settlement between the parties[140]– provided that the adjudicating court has assessed the evidence in the form of the documents submitted by the parties while issuing its decision.[141]

[126]See *IWM* (n 124); *Alcon* (n 124); *Jayaraman v Glaxo Laboratories* AIR 1981 Mad 258; *Atit Omprakash Agarwal v. BNP Paribas (Switzerland) SA* 2017 SCC OnLine Bom 9827.

[127]*IWM* (n 124) [17]-[33]; *HSBC Bank v Silverline Technologies* AIR 2006 Bom 134 paras 14-15; *Dhirajlal Babaria & Another v Navinbhai C. Dave & Another* 2011 (4) Mh.L.J. 681, 689, 690; *CK Moosa & Ors. v Bank of Baroda* 2012 SCC OnLine Ker 31672 paras 5, 13; and *Jayaraman* (n 126) para 5.

[128]*Moosa* (n 127) para 5.

[129]*Y Narasimha Rao & Ors v Y Venkata Lakshmi & Anr* (1991) 3 SCC 451 [13]; *Moosa* (n 127) pars 5, 13.

[130]MP Jain & SN Jain, *Principles of Administrative Law*, 9th edn (2021 LexisNexis) 10.10.4.

[131]*Viswanathan* (n 119) para 41.

[132]CPC, s 13(c), (f) read along with the SCI's decisions in *Narasimha* (n 129); the Delhi High Court in *TransAsia Private Capital v Gaurav Dhawan* 2023 SCC OnLine Del 1957.

[133]Briggs, *The Conflict of Laws* (2024) (n 91) 123-124.

[134]ibid.

[135]ibid.

[136]ibid. See also the SCI's decision in *Alcon* (n 124) para 19.

[137]*Janardhan Mohandas Rajan Pillai v Madhubhai Patel* AIR 2003 Bom 490 para 5.

[138]*IWM* (n 124) para 18; *Dhirajlal* (n 127) 689-690.

[139]*Kashmira v Kishorekumar* 2010 (4) Mh.L.J. 395 para 25-29; *Silverline* (n 127) para 14-15.

[140]ibid. See also Adeline Chong, 'Moving towards harmonisation in the recognition and enforcement of foreign judgment rules in Asia' (2020) 16(1) Journal of Private International Law 31, 41-42.

[141]*IWM* (n 124) paras 22, 27, 32-33; *Silverline* (n 127) para 14; *Atit* (n 126) para 6.

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The legitimacy of foreign judgments made pursuant to a contest between the parties in India remains unaffected by whether the defendant is present or absent.[142] Evidence is not required to be presented by both parties.[143] An *ex parte* judgment favouring the plaintiff is considered meritorious if evidence was presented and the judgment, however succinct, was founded on the evaluation of that evidence.[144] In a series of rulings, courts have upheld that *ex parte* judgments may be evaluated based on their substantive merits.[145] Since 2001, Indian courts have repeatedly affirmed the legality of *ex parte* judgments under section 13(b), provided that the conclusions are based on the evidence supplied to the court.[146] Previously, there were indications that *ex parte* rulings were seen as equivalent to default judgments and, therefore, unenforceable due to their initial classification as outcomes of adversarial proceedings.[147] Thus, *ex parte* judgments rendered without the defendant's presence, either personally or via a representative, were deemed ineffective as they were not considered to be adjudicated on their merits due to the absence of a contest between the parties in the technical sense of the term.[148] In the existing Indian framework, the pivotal element is not the physical presence of the defendant, but the opportunity afforded to them to contest their case in the foreign court.[149] Should the defendant choose to forgo appearance, the judgment will stand on its merits, contingent upon the oral and documentary evidence submitted by the plaintiff.[150] Upon proper service of the defendant, it becomes their responsibility to furnish evidence that substantiates their claim; should they fail to do so, the court is free to advance based solely on the evidence provided by the plaintiff.[151]

Of the many cases that have come before the courts, there have only been a handful of cases in which enforcement was denied on the ground that the foreign judgment was not passed on the merits of the case. Among these, the decisions of the Supreme Court in *International Woolen Mills*[152] in 2001 and the Bombay High Court in *Atit Omprakash Agarwal*[153] in 2017 are clearly the most prominent. Although these judgments concern the court's refusal to enforce foreign judgments made by English and Swiss courts, in reality, they evince the reluctance with which Indian courts have been denying extraterritorial impact to foreign judgments on the ground that they were not passed on the merits of the case. In both of these cases, enforcement was denied not for any other reason but because the judgments were solely the result of the defendant's default of appearance. In other words, the decisions, being predominantly penal by nature and made as a result of non-appearance, were non-enforceable.

The *International Woolen Mills [IWM]*[154] case in particular, serves a guiding principle. The SCI denied enforcement to a judgment from a London court (a reciprocating country under section 44A of the CPC) because the judgment lacked evidentiary support.[155] The dispute involved a contract between Standard Wool (UK) Ltd (SWL) and International Woollen Mills (IWM) over the supply of wool, which IML claimed was of inferior quality.[156] When IWM failed to appear in the English proceedings, a default judgment was issued against IWM without even mentioning whether the Court

[142] *The Owners & Partners of the firm Shah Kantilal v Dominion of India (East Indian Railway)* AIR 1954 Cal 67 para 18; *IWM* (n 124) paras 17-33; *Kashmira* (n 139) paras 25-29; *Dhirajlal* (n 127) 689, 690.

[143] *IWM* (n 124) paras 22-33; *Atit* (n 126) paras 6-10.

[144] *Moosa* (n 127) para 5.

[145] *Dhirajlal* (n 127) 689; *IWM* (n 124) para 29.

[146] *IWM* (n 124) para 29.

[147] See the SCI's decision in *Narasimha* (n 129) para 13.

[148] ibid.

[149] *Viswanathan* (n 119) para 40; Alcon (n 124) paras 5-19.

[150] *IWM* (n 124) para 27; *Atit* (n 126) para 6.

[151] *IWM* (n 124) paras 22, 29.

[152] Ibid.

[153] *Atit* (n 126).

[154] *IWM* (n 124).

[155] ibid.

[156] ibid.

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had read the documents or assessed the merits of the case.[157] The court did not apply its mind nor examine the points in controversy between the parties.[158]

The SCI's dictum in *IWM*[159] continues to represent the prevalent judicial stance of Indian courts concerning the manner in which foreign judgments must be tested on their merits. In *Atit Omprakash*, the Bombay High Court similarly declined to enforce a Swiss judgment in favour of BNP Paribas (Switzerland) SA against Atit Omprakash, an Indian national, due to the absence of any disclosure as to whether the plaintiff's pleadings and evidence had been evaluated in reaching the decision.[160] The reality was that the plaintiff presented no proof, and the judgment was rendered in default of the defendant's appearance, without affording them a sufficient opportunity to contest the case.[161]

Thus, under Indian law, 'the real test' of whether a foreign judgment is on its merits does not depend on either its correctness or the presence of the defendant, but on 'whether it was formally passed as a matter of course or by way of penalty or it was based on the consideration of the truth or otherwise of the plaintiff's claim'.[162]

India's REFJ journey matters not only for determining the fate of the sub-continent's own judgments abroad, but also because the influence it has had on the regimes of several countries across the African continent. Kenya,[163] Uganda[164] and, more recently, Tanzania[165] have based their foreign judgments enforcement rules on India.[166] Their courts are authorised to deny extraterritorial impact to decisions when they are found to have not been made on the merits of the case. How the national courts in these other countries test the merits of foreign judgments is beyond the scope of the paper. What matters is that judgments of these countries are similarly incapable of enforcement in other countries based on the absence of reciprocity. In these cases, *révision au fond* results in substantially unfavourable conditions for decisions from these countries.

Review of Merits: A Variant of the Natural Justice Doctrine in India? An examination of contemporary case law illustrates that in India a review of merits essentially assesses whether the foreign judgment conforms to core principles of fairness and justice.[167] Despite isolated judicial opinions claiming that historically natural justice is unrelated to the merits of a case,[168] substantial evidence indicates that today's *révision au fond*, as interpreted by Indian courts, can be considered a subset of natural justice.[169]

The term natural justice, although not explicitly defined, implies adherence to procedural requirements.[170] A foreign court issuing a ruling must ensure compliance with the fundamental principles of natural justice, specifically that the adjudicating court consists of impartial individuals who act fairly, without bias, in good faith, and after affording the parties a reasonable opportunity to present their arguments.[171]

[157] ibid paras 29-33.
[158] ibid.
[159] ibid.
[160] *Atit* (n 126).
[161] ibid paras 6-10.
[162] *IWM* (n 124) para 39; *Dhirajlal* (n 127) 690; *Atit* (n 126) paras 6, 9.
[163] Civil Procedure Act 1924, s 9.
[164] Civil Procedure Act 1929, s 10.
[165] Civil Procedure Code 2019, s 11.
[166] See in this respect, S. Thanawalla, 'Foreign Inter-Partes Judgments: Their Recognition and Enforcement in the Private International Law of East Africa' (1970) 19 International and Comparative Law Quarterly 430.
[167] See the SCI's decision in *Alcon* (n 124). See also *Moosa* (n 127).
[168] *Sankaran Govindan* (n 124) para 40.
[169] *Viswanathan* (n 119); *Alcon* (n 124).
[170] *Viswanathan* (n 119) paras 40, 41.
[171] ibid.

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When it comes to the interpretation of the natural justice doctrine under section 13(c), Indian courts have generally invoked a higher threshold than most of their common law counterparts, including in the UK and Australia. In these jurisdictions, the failure to provide reasons in the decision does not prevent foreign judgments from being enforced if all other criteria have been met.[172] Foreign judgments continue to be in compliance with the principle of natural justice as long as the defendant was duly served and both parties were presented a fair opportunity to present their case.[173] In English common law, the deprivation of the right to present evidence does not serve as a defence,[174] as it does in law.[175] On the other hand, the requirement that foreign judgments be based on the evidence presented by the parties necessitates that the decision be reasoned based on the evidence submitted by the party in order for them to be enforceable in India. Thus, unlike in most other legal systems, in India, natural justice is deemed to include the right to be given the reasons on which the decision was based over and above the right to be duly served and be presented with the a fair opportunity to be heard.[176]

Within the framework of India's REFJ regime, the principles of natural justice and *révision au fond* serve as dual pillars, closely connected yet distinct in their implementation. The Indian judiciary's interpretation of these doctrines demonstrates a sophisticated approach that distinguishes it from its common law counterparts, especially in its effort to avert arbitrariness in judicial decision-making. Reasoned decisions provide appellate courts with the benefit of understanding and scrutinising the rationale behind the lower court's judgment; the lack of such reasoning impairs the court's ability to leverage this advantage, necessitating that the reviewing court independently resolves the issues between the parties.[177] This nuanced approach is exemplified by the 2017 ruling of the SCI in *M/S Alcon Electronics v Calem*.[178] The Court elucidated the complex relationship between the *révision au fond* and natural justice exceptions outlined in section 13 of the CPC by refusing to dismiss the enforcement of an English court's dictum on the basis that it lacked merit, when the decision contained reasons for its conclusion. The Indian Court emphasised that a judgment is deemed to be rendered on merits when the adjudicating body 'gives an opportunity to the parties to put forth their case' and, after evaluating the opposing submissions, issues a decision in the form of an order or judgment.[179] The SCI's statements in other cases too clearly indicate that decisions issued by foreign courts must be enforced in India if they adhere to fundamental judicial procedures, regardless of any inaccuracies in the law applied by the foreign court.[180]

Under section 13 of the CPC, similar to the *révision au fond* exception, the natural justice doctrine pertains to the court's diligence in ensuring that the defendant is not deprived of the opportunity to submit their case.[181] The distinction is a matter of letter rather than spirit. Natural justice concerns evident deficiencies in the procedural rules of foreign law, whereas review of merits involves determining whether the decision resulted from a substantive process, in which both parties were genuinely afforded the opportunity to present their cases.[182] In essence, the natural justice exception assesses whether the principle of *audi alteram partem* was upheld by ensuring the defendant was not

[172] See for a discussion see Briggs *The Conflict of Laws* (2024) (n 91) 139-150; see for a discussion of Australian law Davies & Bell & Brereton (n 107) 921-933.

[173] See for a discussion of English law Rogerson (n 63) 256-257; for Australian law, see Davies & Bell & Brereton (n 107) 930-932.

[174] Collier (n 39) 121, referring to *Scarpetta v Lowenfeld* (1911) 27 TLR 509.

[175] *Viswanathan* (n 119) paras 40-41.

[176] ibid.

[177] Jain & Jain (n 130) 10.10, 10.10.8.

[178] *Alcon* (n 124).

[179] ibid paras 14-16.

[180] *Viswanathan* (n 119) para 41.

[181] ibid paras 40-41.

[182] *IWM* (n 124) para 28; *Dhirajlal* (n 127) 690; *Atit* (n 126) paras 6-10.

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unjustly denied the opportunity to be heard, while the court's authority to review foreign judgments on their merits is likewise confined to determining if the decision was adequately reasoned.[183]

Vitiation Based on Incorrect Views of International Law, Refusal to Apply Indian Law and the Breach of Indian Law: Révision au fond *in Disguise?* The framework of India's REFJ regime reveals intricate legal complexities, surpassing the explicit *révision au fond* stipulation in section 13(b) of the CPC. A closer examination reveals some other grounds for refusing to enforce foreign judgments under sections 13(c) and (f) of the statute, namely when they are based on incorrect views of international law, refusals to apply Indian law, or violations of Indian law. These appear to be variations of the *révision au fond* doctrine. These supplementary grounds, articulated in section 13(c) and (f) constitute distinctive elements of India's REFJ framework. The reasoning for their inclusion and the criteria for their application remain unclear, as neither legislative nor constitutional records provide clarification.[184] This legislative silence adds to the jurisprudential intrigue, as these defences have no parallels in other common law systems,[185] distinguishing India's approach as unique. The lack of a clearly defined public policy exception within India's REFJ framework introduces an additional dimension of intricacy. Although most legal systems clearly list public policy violations as reasons to deny extraterritorial effect to foreign judgments,[186] India's stance is more complex. An exhaustive examination of sections 13(c) and (f) demonstrates that these provisions, when evaluated collectively, serve as safeguards against contraventions of India's public policy.

In the context of choice of law considerations, Indian courts have the authority to refuse the application of foreign law on the ground that to do so would result in violations of the Republic's public policy.[187] However, unlike in the case of international arbitration, where the notion of public policy has expressly been confined to instances of fraud or corruption in the making of the award, contraventions of the fundamental policy of Indian law, and basic notions of justice,[188] as far as transnational litigation is concerned, the expression has nowhere been defined. Nonetheless, akin to international arbitration, public policy violations have generally been narrowly confined to the protection of the fundamental values of the society as indicated in the Preamble of the Constitution of India, including the Fundamental Rights and the Directive Principles of State Policy as well as the preservation of substantial injustice that may be caused to any person or section of the public through the application of foreign law.[189] Unlike in the case of choice of law considerations where determinations of public policy violations depend on an array of factors, including the repugnant application of foreign law,[190] under the Indian REFJ framework, public policy review is confined to the *repugnant* application of foreign law.[191] The expression 'repugnant' is generally understood to connote incompatibilities in legal principles. It must be distinguished from incorrect applications of law which, under India's REFJ law do not vitiate foreign judgments unless they result in violations of natural injustice. In no situation are Indian courts allowed to test the correctness of the foreign judgment. For the application of foreign law to be construed as 'repugnant', Indian law under section 13 of the CPC obligates courts to confine their analysis to the existence of three situations, requiring that the foreign judgment

[183] *Viswanathan* (n 119) paras 40-41; *Moosa* (n 127) paras 11-12.

[184] See reference to the 1353 legislative and constitutional records on foreign judgments indicated in note 112.

[185] See for English common law Briggs, *The Conflict of Laws* (2024) (n 91) 139–150; see for Australian law Davies & Bell & Brereton (n 107) 921–933; see for Singaporean law Chng (n 69) 141-161; see for South African law Okoli (n 102) 519.

[186] ibid. See also Brussels Ibis (n 28) art 45(1)(a); CPA, art 103; CCP, art 118(iii).

[187] See for a discussion of Indian law in a comparative context Stellina Jolly & Saloni Khanderia, *Indian Private International Law: Asia Private International Law Series* (2021 Hart Publications) 195-225.

[188] ACAA (n 108) s 34 explanation 2 and 2A, s 48 explanation 2, s 57.

[189] *PASL Wind Solutions (P) Ltd v GE Power Conversion India (P) Ltd* [2021] 7 SCC 1 paras 68-74. See also *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644 para 53.

[190] ibid.

[191] Mulla (n 88) 133–134, referring to CPC s 13(c), 13(f).

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A. resulted in a breach of Indian law;[192]
B. was based on a refusal to recognise Indian law where it should have been applicable;[193] or
C. was otherwise based on an incorrect understanding of international law.[194]

Foreign judgments based on an erroneous application of law would still be effective in India as long as they do not result in a breach of Indian law.[195] Thus foreign judgments based on a purportedly 'correct' application of law may still be denied effect if they violate Indian law. Conversely, an incorrect application of law will not invalidate such judgments, despite significant differences in legal principle, as long as they do not result in a breach of Indian law. Denial of enforcement for breach of domestic law under section 13(f) has nonetheless been limited to violations of natural justice.[196] Failure to adhere to the principles of natural justice could thus vitiate foreign judgments not merely under section 13, clause (d) (for violating natural justice) but also clause (f) (for constituting a breach of Indian law) and eventually under clause (b) because such decisions will not be regarded as having been passed on the merits of the case.

Likewise, simple failures to apply Indian law would not render foreign judgments incapable of enforcement. For a foreign judgment to be ineffective in India, the non-application of the principles of Indian law would need to be based on a refusal to apply it when it should have been applicable.[197] This could be the case, for instance, when a certain law or provision is intended to operate as compulsory because of the close connection of the dispute with the Republic – but was overlooked by the foreign court. As such, the defence of the foreign judgment being based on a refusal to apply Indian law under section 13(c) has most commonly been triggered in disputes involving REFJ in matrimonial matters pursuant to the original court's decision to grant a divorce on grounds not recognised under Indian law, regardless of the parties' domicile in India.[198] Nonetheless, other general civil and commercial judgments are equally capable of being vitiated on this ground on account of the original court's failure to apply mandatory provisions of Indian law if the terms of the contract necessitated performance in the Republic.

Section 13(c) similarly empowers Indian courts to deny foreign judgments extraterritorial effect in India when they are found to be based on an incorrect application of international law. However, what appears to be a test of the propriety of the foreign law applied by the original court is, in effect, an inquiry into whether that law is plausibly repugnant to settled principles of international law as understood in India under section 13. In the absence of many reported cases or any scholarly writings illustrating how an incorrect understanding and/or application of international law can lead to the unenforceability of the foreign judgment in India, the precise parameters of this defence remain unclear. A 2023 decision of the Delhi High Court in *TransAsia Private Capital v Gaurav Dhawan* indicates that to be considered a good ground, the debtor must prove that the foreign court inaccurately understood foreign law, thereby affecting the fairness and justice of the decision.[199] Mere misapplications of the principles of international law are unlikely to affect the enforceability of the foreign judgment provided that principles of natural justice are followed.[200] The approach adopted by the DHC in *Transasia* illustrates this point. The dispute concerned an attempt to prevent the direct execution of a judgment of the High Court of Justice, Business and Property Courts of England and

[192] CPC s 13(f).
[193] ibid s 13(c).
[194] ibid.
[195] For a discussion see Mulla (n 88) 133–134.
[196] See *Satya v Teja Singh* AIR 1975 SC 105 concerning the refusal of the SC to recognise a US divorce decree under section 13(e) of the CPC on the ground that the wife was not duly served and given an opportunity to be heard.
[197] See the SCI's decision in *Narasimha* (n 129), referring to the application of CPC s 13(c).
[198] The SCI's decision in Narasimha (n 120) remains a prominent example.
[199] *TransAsia* (n 132).
[200] ibid.

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Wales Commercial Court on the ground that it was based on an incorrect understanding of the principles of (private) international law within the meaning of section 13(c).[201] The English Court had applied English law despite the parties' contractual agreement to adjudicate their two revolving loan agreements subject to the 'Laws of the Dubai International Finance Centre' and 'Singapore Law' respectively.[202] Declining to deny extraterritorial effect to the English decision, the DHC confirmed that the foreign judgment would not be denied effect on the ground that it was based on an incorrect understanding of international law simply because the original court overlooked the parties' choice of law clause(s) and instead applied domestic law.[203] In England, the principle of private international law that foreign law is to be treated as a question of fact, requires the parties to prove the content of governing law when it belongs to another country. When the parties fail to do so, the court applies national law 'by default'.[204] Such a decision was held not to be repugnant to the principles of international law because it was otherwise in conformity with the principles of natural justice.[205]

As a result, notwithstanding the legislative aims to the contrary, the judiciary has meticulously upheld the alignment of India's REFJ framework under section 13 with international benchmarks by abstaining from exercising its authority to evaluate the validity of foreign judgments in terms of legal and factual accuracy.

India in the International Legal Order: Navigating the Way Forward

The recourse to litigation for civil and commercial disputes with foreign elements is relatively rare, particularly in contrast to arbitration. There are merely 1,585 documented cases involving the REFJ in civil and commercial matters.[206] Arbitration has experienced considerably more disputes.[207] An essential element supporting arbitration is India's ratification of the New York Convention, which, notwithstanding certain reservations,[208] has fostered predictability and consistency in the enforcement of foreign arbitral awards. The allure of arbitration is notably enhanced by well-defined principles,[209] the ban on *révision au fond*,[210] and a wealth of case law.[211] While India's implementation of the New York Convention is confined to international commercial disputes concerning contracting states,[212] it has enhanced the appeal of arbitration by diminished the probability of certain defences.[213] Likewise, for domestically seated international commercial arbitrations, India's adoption of the UNCITRAL Model Law has effectively aligned its legal framework with that of 93 other jurisdictions including France, Germany, China, South Korea, Japan, and Russia where enforcement of

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[201] ibid paras 1, 39.

[202] ibid paras 12–14, 23.

[203] ibid paras 31–34.

[204] ibid referring to *Brownlie v FS Cairo (Nile Plaza) LLC* 2022 AC 99.

[205] ibid para 39.

[206] The data was gathered manually by examining the reported cases through the SCI's database: www.scconline.com. The numbers indicated are approximate.

[207] While the decisions of arbitral tribunals are confidential, since the enactment of the ACA in 1996, there have been approximately 5270 reported disputes arising in relation to international commercial arbitration – indicating the popularity of this alternative dispute resolution mechanism. The data was gathered manually by examining the reported cases through the SCI's database, www.scconline.com. The numbers indicated are approximate.

[208] India has expressed reservations under Art 1(3) of the NYC. See ACAA (n 108) s 44.

[209] See ACAA (n 108) s 34, 35, 44-60 for domestically seated and foreign seated international commercial arbitral awards respectively.

[210] ACAA (n 108) s 34 explanation 2 and 2A, s 48 explanation 2, s 57.

[211] For details on case law, visit www.scconline.com.

[212] ibid. See also Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015 [CCA] s 44 read along with s 2(c).

[213] ACAA (n 108) s 34, 48, 57.

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Indian judgments would otherwise be strenuous thanks to section 13(b)'s postulation of *révision au fond*.

India's hesitance to participate in substantial international legal frameworks, such as the HCCCA and the Judgments Convention, but also non-binding initiatives like the Asian Principles of Private International Law (APPIL),[214] has rendered its REFJ rules antiquated. This disparity obstructs integration with contemporary legal frameworks, thereby reducing the attractiveness of pursuing litigation in India. An analysis of judicial trends unequivocally demonstrates that regardless of the legislative intent behind the introduction of *révision au fond* in India's REFJ regime in 1877, the principle has been interpreted in a highly restrictive manner, ensuring alignment with global standards and minimal disparity with the enforcement regime applicable to arbitral awards. In India, what is mistakenly termed *révision au fond* is clearly a reinforcement of natural justice and public policy of the Republic. Thus, there are primarily two scenarios in which foreign judgments are deemed not to have been rendered on their merits: first, when they are issued without affording the defendant an opportunity to be heard, and second, when they lack reasoning.

Globally, most legal systems prohibit the recognition of foreign judgments that are rendered without providing the defendant a right to be heard – be it at the domestic, supranational or multilateral level. This includes countries otherwise prohibiting *révision au fond* such as Japan,[215] South Korea,[216] Germany,[217] China[218] but also common law systems such as the UK[219] and Australia[220]. Like India, under the REFJ regimes of these nations, the *audi alteram partem* principle encompasses default and summary judgments.[221] Consequently, foreign judgments, whether issued by default due to the defendant's absence or in a summary fashion, remain enforceable unless they contravene essential principles of natural justice.[222] Foreign judgments rendered without conferring defendants a chance to present their case are thus generally denied enforcement because they constitute a violation of natural justice.[223] Such violations concern the public policy of the enforcing state, both procedurally and substantively.[224] Due to the broader interpretation given to the natural justice exception, such a foreign judgment is considered to be procedurally flawed and thus against the enforcing state's public policy. At a substantive level, such judgments are additionally deemed to be a violation of the enforcing state's public policy because of the effect they would have domestically, should they be enforced. This can be because of the injustice caused to a) the defendant who was denied an opportunity to be apprised of the grounds on which the foreign court based its decision;b) the plaintiff who might be disadvantaged by the enforcing court's reopening of the decision to ascertain if the foreign court provided the parties with an opportunity to be heard. The sole distinction between India and most other nations is the parameters of the operation of the public policy and natural justice exceptions.

[214]For a discussion see Weizuo Chen & Gerald Goldstein, 'The Asian Principles of Private International Law: Objectives, Contents, Structure and Selected Topics on Choice of Law' (2017) 13 Journal of Private International Law 411-12.

[215]CCP art 118(iii).

[216]CPA art 103.

[217]Dieter Martiny, 'Recognition and Enforcement of Foreign Money Judgments in the Federal Republic of Germany' (1987) 35 American Journal of Comparative Law 721, 749–752.

[218]Civil Procedure Law of the People's Republic of China (adopted 1991, amended 2021) art 300–301.

[219]Collier (n 39) 120-121.

[220]Davies & Bell & Brereton (n 107) 930-931.

[221]Briggs, *The Conflict of Laws* (2024) (n 91) 139–150 (for English common law); Mortensen & Garnett & Keyes (n 68) 143, 147, 156 (for Australian principles of private international law); Takeshita (n 69) 66-72 (for Japaneseprinciples of private international law); Martiny (n 217) 744-749 (for German principles of private international law); Civil Procedure Law of the People's Republic of China (adopted 1991, amended 2021) art 300–301 (for Chinese principles of private international law).

[222]ibid.

[223]ibid.

[224]ibid.

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Unlike India, barring a few countries,[225] not all legal systems regard foreign judgments made without reasons as a blatant violation of natural justice or their public policy, especially if such decisions are rendered after complying with other essentials of natural justice (namely, due process and *audi alteram partem*).[226] However, these variations are matters of policy, and there is nothing wrong with Indian courts' decision to add 'reasoned decisions' to this list in the same way that some jurisdictions regard decisions imposing punitive damages as a violation of their public policy while others do not.[227]

At the supranational level, there is some indication that, as far as intra-EU REFJ is concerned, which is subject to the Brussels Ibis, such judgments will be denied effect for being regarded as being in contravention of the member states' public policy.[228] The violation of the right to be duly served and heard constitutes a general violation of public policy for its failure to comply with the European Convention on Human Rights.[229] However, unlike India, public policy constitutes an explicit exception for intra-EU judgments in civil and commercial matters to which the Brussels Ibis is applicable[230] – thereby reducing ambiguity in the defence's applicability. For intra-EU judgments to be unenforceable in other member states, the breach must be sufficiently serious in order to be regarded as a violation of its public policy, rather than a mere infringement of its (the recognising member state's domestic law).[231] An example would be the violation of a fundamental right to a fair hearing.[232] Like in India, violations of natural justice constitute public policy contraventions under the Brussels Ibis.[233] The denial to enforce a judgment on grounds of violations of natural justice for lack of service of process or the opportunity for a fair hearing is nonetheless confined to decisions made in default of the defendant's appearance. This renders the REFJ regimes of India and the EU substantially different.[234] Another significant difference concerns the scrutiny applied to default judgments requiring enforcement under the laws of these regimes.[235] The EU, through its two-prong scrutiny for default judgments, generally ensures greater compliance with natural justice.

For a default judgment from another EU member state to be effective, courts must be satisfied whether the defendant a) was served with the summons in a timely manner so as to be provided with an adequate opportunity to be heard and defend their case;[236] and b) had commenced proceedings (either before the same or the appellate court) to challenge the decision of the original court, but was unsuccessful.[237] As seen previously, neither the CPC nor Indian courts make any such distinction when examining the validity of default judgments. Whether the defendant has exercised the opportunity to apply to set aside a default judgment does not affect the finality or conclusiveness of the decision, provided that it was rendered in accordance with the principles of natural justice and public policy in India. Requiring explicit proof of service of summons in default judgments, for

[225] Adian Briggs, *The Conflict of Laws* (4th edn, Oxford University Press 2013), referring to *Trade Agency Ltd v Seramico Investments* Ltd [2012] ECR I-(Sept 6) on the interpretation of art 45(1)(a) of the Brussels Ibis (n x) governing the REFJ among the 27 Member States. See also Gilles Cuniberti, 'The Recognition of Foreign Judgments Lacking Reasons in Europe: Access to Justice, Foreign Court Avoidance, and Efficiency' 57 2008 The International and Comparative Law Quarterly 25.

[226] See text accompanying note 223.

[227] See eg *SA Consortium General Textiles v Sun and Sand Agencies* [1978] QB 279 CA (for the position in English common law); *Schnabel v Lui* [2002] NSWSC 15 *and Benefit Strategies Group Inc v Prider* (2005) 91 SASR 544 [552]; [2005] SASC 194 (for the position in Australia).

[228] Briggs, *The Conflicts of Laws* (2013) (n 225) 151-152, referring to *Trade Agency* (n 231) on the interpretation of art 45(1)(a) of the Brussels Ibis (n 28).

[229] Briggs, *The Conflicts of Laws* (2024) (n 91) 168, referring to Brussels Ibis (n 28), art 45(1)(a).

[230] Brussels Ibis (n 28), art 45(1)(a).

[231] Rogerson (n 63) 225.

[232] ibid 225-227.

[233] ibid.

[234] Brussels Ibis (n 28), art 45(1)(a).

[235] ibid.

[236] ibid.

[237] ibid.

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the enforcement of such decisions in India, would improve transparency and ensure clarity in the handling of such decisions. Providing the opportunity to set aside a default judgment contemporaneously helps prevent unjust outcomes, particularly in cases where defendants may have missed the proceedings for reasons beyond their control, such as sickness, thereby ensuring fairness in the final judgment rendered by the court in the original country. False claims can be refuted by the defendant during this time, enabling the core principles of natural justice and the right to be heard to be upheld.

At the multilateral level, significant instruments, such as HCCCA[238] and the Judgment Convention,[239] similarly subject default judgments to tighter scrutiny at the time of enforcement. Thus, though courts in signatory countries are generally obligated to adhere to the findings of the original courts, they retain the discretion to scrutinise the factual determinations in cases of default judgments.[240] Consequently, in cases of default judgments (as with foreign judgments in civil and commercial matters enforced under Brussels Ibis[241]) both the HCCCA[242] and the Judgments Convention[243] require explicit proof of summons service on the defendant. Otherwise, the recognising court may *suo moto* refuse enforcement. This scrutiny serves to guarantee that the decision is equitable and grounded in comprehensive facts, rather than being the result of an incomplete evaluation, thereby ensuring a thorough and unbiased assessment.

Ratifying the HCCCA and the Judgments Convention would facilitate the alignment of India's REFJ regulations with those of its international trade partners. Meanwhile, judicial activism has caused India's REFJ regime to be compliant with global and international standards in practice. Nonetheless, an explicit rejection of *révision au fond* under section 13 is necessary to guarantee the international efficacy of foreign judgments. Foreign litigants cannot reasonably be expected to navigate the intricate landscape of Indian case law at the time of enforcement in foreign jurisdictions to demonstrate that Indian courts indeed do not examine the legal and factual propriety of decisions from overseas courts, and thus do not impose substantially less favourable conditions. This can simply be achieved by deleting the defence of merits review under section 13(b) of the CPC through a legislative amendment – *without* abandoning the procedural safeguards that the Indian courts currently apply when enforcing foreign judgments. Instead, the procedural safeguards against due process violations that the defence of *révision au fond* under the CPC, section 13(b) strives to achieve should be subsumed into the natural justice requirement under section 13(d). After all, both these provisions essentially aim to scrutinise whether the defendant was provided an adequate opportunity to be heard before the foreign court. First, by ensuring that the judgment is based on the evidence produced before the court under section 13(b). Second, by confirming that it is a reasoned decision. Simultaneously, the creation of specialised 'enforcement courts' and a 'court enforcement disclosure system' which provided details about enforcement rules and requirements as some countries, such as Saudi Arabia[244] and China[245] have done, should urgently be considered to streamline procedures and build trust in Indian courts and its legal system. Such a step would contribute to a lesser backlog

[238] HCCCA (n 64) art 9(c), 9(e).

[239] See the 2019 Judgments Convention (n 65) art 7(1)(a), 7(1)(c).

[240] HCCCA (n 64) art 8(2), 13(c); Judgments Convention (n 65) art 12.

[241] Brussels Ibis (n 28) art 45(1)(2).

[242] HCCCA (n 64) arts 8(2), 13(c).

[243] 2019 Judgments Convention (n 65) art 12.

[244] See Kingdom of Saudi Arabia, *Enforcement Law* (Royal Decree No M/53, 13/8/1433H) [2012].

[245] See *China Enforcement Information Disclosure Platform*, Supreme People's Court, *English.Court.Gov.Cn* (14 Mar. 2017), https://english.court.gov.cn/2017-03/14/c_761592_6.htm. accessed 6 Feb 2026.

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of cases, considering that most of them pertain to a misunderstanding among litigants as regards the true nature of a merits review under Indian law.

The criticism of India's REFJ regime in many other legal systems necessitating reciprocity for judgment enforcement is predominantly based on India's purported acceptance of *révision au fond.* However, delays in conducting such 'merits-based reviews' (namely, public policy and natural justice compliance) pose significant challenges even for Indian courts. Statistics indicate approximately 50 million civil and commercial cases are pending before courts across India.[246] Among the various reasons, enforcement contributes substantially to these pending cases,[247] causing delays in justice delivery and needlessly undermining confidence among litigants in the judiciary that otherwise has a respected global reputation[248]. While structural issues such as unavailability of counsel contribute to major backlogs in disposing cases before Indian courts,[249] the controversies surrounding the procedure for conducting merits review for foreign judgments are another major factor. Specifically, the gap between what section 13(b) says and intends to say has contributed to more than half of the cases on REFJ before Indian courts.[250] Ordinarily, judicial compliance with statutory provisions is encouraged in the interest of predictability and certainty. However, in India's case, it is the legislation that must evolve to align with the REFJ practices of the Indian judiciary. Amending India's REFJ regime would reduce the bottlenecks litigants currently encounter in enforcing the Republic's judgments abroad, giving Indian judgments and the judiciary the respect they deserve.

Concluding Remarks

As India seeks to enhance its contribution to global GDP by expanding its involvement in international trade, it is inevitable that its judicial system will encounter an increasing volume of civil and commercial disputes with transnational dimension. Initiating proceedings in India may be more efficient when the defendant has domestic assets; nonetheless, many judgments may require enforcement internationally, especially in instances when defendants have left India while holding overseas assets.

In the present global context, it is impractical for India to maintain an REFJ framework that was established in 1877. The modern setting markedly contrasts with that period, as the enforcement of foreign judgments has become far more common. It is perplexing that neither Parliament, which initially integrated the *révision au fond* rule into the CPC, nor the Law Commission of India, responsible for identifying and recommending reforms for outdated laws,[251] has conducted a thorough examination of the adverse consequences stemming from the merits review provision under Section 13(b).

Despite the judiciary's careful and sophisticated interpretation of what was originally meant as *révision au fond* as a limited public policy exception, this practice lacks a clear statutory mandate. Effective remediation of this situation necessitates a modification to section 13 of the CPC. This would promote authentic internationalisation of Indian courts. Moreover, better alignment with international mechanisms such as the HCCCA, the Judgments Convention, and APPIL would

[246] See the data available on the National Judicial Data Grid (NJDG) <https://njdg.ecourts.gov.in/njdg_v3/> accessed 5 Feb 2026.

[247] ibid.

[248] Former SCI Judge and Chief Justice of the Bombay High Court, Justice Dalveer Bhandari, has been serving as a Judge of the ICJ since 2012. Likewise, former SCI Judges, Justice AK Sikri and Justice SK Kaul, have been serving as International Judges in Singapore and Bahrain International Commercial Courts since 2019 and 2024.

[249] See NJDG (n 246).

[250] See text accompanying note 114 above, which states that 100 out of 142 reported cases before Indian courts have arisen in the context of the merits review requirement under the CPC s 13(b).

[251] See Law Commission of India, 'Vision and Mission' (2 Jul 2018) <https://lawcommissionofindia.nic.in/about-department/vision-mission/#:~:text=The%20Terms%20of%20Reference%20of,to%20the%20reasonable%20demands%20of> accessed 16 Sep 2024.

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be important objectives. Such harmonisation would significantly bolster India's standing within the global legal framework, while simultaneously promoting more seamless cross-border legal engagements, thereby supporting the country's economic and legal advancement in an increasingly interconnected world.

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