Saloni Khanderia*

From Domestic Courts to Transnational Justice

An Examination of India's PIL within a Comparative Asian Framework

India, with its vast population, economic presence, and historical prominence in constitutional and human rights jurisprudence, has profoundly shaped international legal discourse. However, it has lagged in developing its PIL rules, chiefly due to its particularistic views favouring national law and its focus on international commercial arbitration. Judicial efforts striving to pace the country's economic policies post-liberalization are insufficient without concomitant efforts by the Parliament and the Law Commission of India. Using Singapore, China, Japan, and South Korea as examples, the study suggests that modernising India's framework predominantly involves relaxing restrictions on foreign legal practitioners, empowering the judiciary to investigate foreign law ex *officio*, and overhauling the recognition and enforcement regime to align with international standards. Pending comprehensive codification, interim guidelines drawn by the highest court should encapsulate case law to ensure consistency. The author contends that India's PIL cannot be internationalized by courts alone. Rather, the effort will require a collective of institutional perspectives – spanning the legislature, the Law Commission, and the judiciary – to foster sustainable growth.

Von nationalen Gerichten zu transnationaler Rechtsprechung. Das indische Kollisionsrecht im asiatischen Kontext. Mit seiner riesigen Bevölkerung, wirtschaftlichen Präsenz und historischen Bedeutung im Verfassungsrecht prägt Indien den internationalen Rechtsdiskurs. Das IPR hinkt jedoch hinterher – v.a. wegen der Bevorzugung des eigenen Rechts und der Konzentration auf die internationale Handelsschiedsgerichtsbarkeit. Bemühungen der Justiz, mit der Wirtschaftspolitik seit der Liberalisierung Schritt zu halten, sind ohne begleitende Maßnahmen des Parlaments und der indischen Rechtskommission ungenügend. Die Beispiele Singapur, China, Japan und Südkorea zeigen, dass die Modernisierung des indischen Rechtsrahmens v.a. durch die Lockerung von Beschränkungen für die ausländische Rechtspraxis, die Ermächtigung der Justiz zur Prüfung ausländischen Rechts von Amts wegen und eine Reform des Anerkennungs- und Vollstreckungssystems erreicht werden kann. Bis zur Kodifizierung sollte der Oberste Gerichtshof durch Leitlinien für eine konsistente Rechtsprechung sorgen. Um eine nachhaltige Entwicklung zu fördern, ist das Zusammenwirken aller Institutionen nötig – von der Legislative über die Rechtskommission bis hin zur Justiz.

* Ph.D (National Law University Delhi), Professor at Jindal Global Law School, OP Jindal Global University, Sonipat (India); *skhanderia@jgu.edu.in*.

RabelsZ 90:2 (2026), 323–358
ISSN 0033-7250

DOI: 10.1628/rabelsz-2026-0018
Published by Mohr Siebeck

Contents

I. Introduction 324
II. India's pursuit of becoming a transnational litigation hub in a comparative perspective 327
1. The internationalization of the Indian legal system and the degree of globalized justice in the republic 327
2. Exploring the internationalization of major Asian economies and India's relative position within this dynamic 329
III. The makers and making of PIL in India: A systematic examination 332
1. The international jurisdiction of Indian courts 332
a) The unattractiveness of Indian courts for transnational litigation 333
b) Strengthening the international competitiveness of Indian courts: A comparative assessment 336
2. Choice of law and the law of obligations 338
a) The complexities of internationalizing India's choice-of-law rules 338
b) Comparative reflections from major Asian jurisdictions 342
3. Recognition and enforcement of foreign judgments 347
a) The present architecture of India's REFJ regime 347
b) The future of India's REFJ framework: Comparative Asian perspectives . . 350
IV. Overcoming legal barriers: Tackling significant hurdles to advance India's PIL regulations 353
1. Treating foreign law as a question of fact 353
2. The rise of arbitration and the deteriorating development of the rules of Indian PIL applicable to judicial processes 354
V. Concluding remarks 356

I. Introduction

Throughout history, Asian states have adopted a diverse range of perspectives on international law.[1] This diversity extends to private international law (PIL) or the conflict of laws – a body of rules governing the regulation of cross-border or foreign-related disputes between persons in their private capacities. Traditionally, a unified Asian approach has centred on public international law issues, such as diplomatic immunity, state trading corporations, or sovereignty.[2] In contrast, foreign-related matters strictly between private individuals or entities, absent questions of state responsibility, have largely been addressed on a country-by-country basis, with no cohesive regional framework in place.

1 *Kenneth J. Keith*, Asian Attitudes to International Law, Australian Year Book of International Law 3 (1967) 1–35, 1.

2 *Keith*, Asian Attitudes (n. 1) 6–13.

The Asian Principles of Private International Law (APPIL) are the first and only "voice of Asia" working to harmonize PIL rules throughout the region.[3] APPIL brings together experts from Japan, South Korea, Mainland China, Hong Kong SAR, Taiwan, Vietnam, Indonesia, Thailand, and Singapore.[4] By establishing non-binding principles for resolving cross-border disputes which encompass contractual and non-contractual obligations, they aim to foster trade and cooperation among these countries.[5] Though the Hague Conference on Private International Law (HCCH) attempts harmonization, its instruments, being global by nature, do not typically represent an Asian perspective, which is crucial given the continent's unique legal and socio-economic characteristics.[6]

India exerts considerable influence on international law globally and in Asia, owing to its substantial size and GDP, which exceeds that of several industrialized economies, including the UK and France.[7] Particularly for the Global South, India's history offers crucial insights into balancing democracy, diversity, and economic progress. India's transition from an agrarian to a mixed economy after the liberalization reforms of 1991 exemplifies gradual yet significant transformation. Many post-colonial republics have also been influenced by the Republic's constitutional jurisprudence, which balances rights, obligations, and social welfare.[8] Serving on

3 *Weizuo Chen / Gerald Goldstein*, The Asian Principles of Private International Law: Objectives, Contents, Structure and Selected Topics on Choice of Law, (2017) 13:2 Journal of Private International Law (J.Priv.Int.L.) 411–434, 411–412.

4 *Chen/Goldstein*, Asian Principles (n. 3).

5 *Chen/Goldstein*, Asian Principles (n. 3) 417 ff.

6 For discussion, see *Yuko Nishitani*, Challenges of Private International Law in Asia, Korean Journal of International and Comparative Law 12 (2023) 23–56, 27–56; and *Ralf Michaels / Veronica Ruiz Abou-Nigm / Hans van Loon*, Private International Law and Sustainable Development in Asia, 2:2 Chinese Journal of Transnational Law 129–145, 137–140 (2025).

7 *Safeguard Global*, Top 15 Countries by GDP in 2024, <https://globalpeoservices.com/top-15-countries-by-gdp-in-2024/> (2 October 2025).

8 See, e. g., the Supreme Court of India's (SCI) decision in *Vellore Citizens Welfare Forum v. Union of India & Ors*, 1996 (5) SCC 647, on the application of the right to life and environmental protection as a constitutional duty, which has been mirrored in the Kenyan Constitution enacted in 2010. In *Dr. Mohiuddin Farooque v. Bangladesh*, DLR (2003) 69, the Supreme Court of Bangladesh also directly referred to the Indian courts' approach in *Vikram Deo Singh v. State of Bihar*, AIR 1988 SC 1982 (SCI), and *Subhash Kumar v. State of Bihar*, reported in AIR 1991 SC 420 (SCI), concerning the interplay between the right to life and environmental protection. See also the South African Constitutional Court's decision in *Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46, drawing on principles of substantive equality and human dignity that align with the constitutional trends in post-colonial countries like India under Art. 21 of the Indian Constitution.

panels like the Singapore International Commercial Court (SICC)[9] and the International Court of Justice,[10] Indian judges have achieved global renown.

Despite India's active involvement in international trade through platforms such as the World Trade Organization, the United Nations, BRICS, and the G77, its PIL principles remain impaired by inertia, developed without much international engagement and lagging behind its pace of growth.[11] Despite India's unprecedented growth rate,[12] only 1,177 cases were identified through a review of reported decisions of the Indian courts, a figure that remains disproportionately low compared to the Republic's expanding role in global trade.[13] Contrary to major Asian economies such as China, Japan, South Korea, and Singapore, India's PIL rules governing civil and commercial matters have evolved remarkably slowly. Although India's legal diversity positions it to influence similarly complex jurisdictions in the developing world, India's PIL rules present a distinct narrative. Despite judicial efforts to align India's rules with global standards, a lack of complementary efforts by the Parliament and the Law Commission of India (LCI) has prevented the internationalization of its transnational litigation system.

This paper examines the future of India's PIL rules governing international civil and commercial matters through a comparative analysis of the PIL regimes of China, Japan, South Korea, and Singapore. Each of these countries, despite sharing a common colonial legacy, has significantly modernized its framework. Alongside highlighting PIL's contribution to sustainable economic growth,[14] the paper considers what India might learn from these jurisdictions and share with others. Until then, regional advances remain useful examples for equally diversified countries, like Brazil and South Africa. Following these introductory remarks, Part II delves into India's ambitions to establish itself as a hub for conflict resolution by analysing the roles of the judiciary, specialized courts, the LCI, Parliament, and previous efforts at codification – contrasting these with developments in Singapore, Japan, China, and South Korea. Part III delves into India's endeavours to globalize its PIL

---

9 Former SCI Judge, Justice Arjan Kumar Sikri has been serving as an international judge in the SICC since 2019.

10 Former Supreme Court of Indian Judge and Chief Justice of the Bombay High Court, Justice Dalveer Bhandari has been serving as an ICJ judge since 2012.

11 For a general discussion, see *Sai Ramani Garimella*, India's Private International Law Rules: Persistence of Colonial Law in a Post-Colonial State: A TWAIL Exploration, in: Research Methods in Private International Law, ed. by Xandra Kramer / Laura Carballo Piñeiro (2024) 286–312, 301–312; and *T.S. Rama Rao*, Conflict of Laws in India, RabelsZ 23 (1958) 259–279.

12 Statista, India: Gross domestic product (GDP) in current prices from 1980 to 2031, <https://www.statista.com/statistics/263771/gross-domestic-product-gdp-in-india/#:~:text=The%20statistic%20shows%20GDP%20in,the%20Russian%20GDP%20for%20comparison> (11 May 2025).

13 The data was gathered manually by examining the reported cases through the SCI's database, <www.scconline.com>. The numbers indicated are approximate.

14 *Michaels / Ruiz Abou-Nigm / van Loon*, Sustainable Development (n. 6) 129–135.

regulations, highlighting its shortcomings relative to its Asian counterparts. This analysis encompasses relevant legal frameworks, the jurisdiction of national courts foreign-related matters, and the extraterritorial implications of Indian judgments. Part IV delineates two principal impediments: the prohibition of foreign lawyers before India courts, which hinders the adjudication of foreign law, and the over-reliance on arbitration as opposed to judicial resolution, which constrains transnational litigation. Utilizing perspectives from various Asian jurisdictions, Part V offers suggestions for expediting India's PIL transformation.

II. India's pursuit of becoming a transnational litigation hub in a comparative perspective

1. The internationalization of the Indian legal system and the degree of globalized justice in the republic

The federal models of the United States, Canada, and Australia have significantly influenced the intricate framework of the Indian legal system, developed over centuries and incorporating a variety of traditions.[15] British colonial heritage has resulted in an amalgamation of English common law, native customs and traditions. India's judiciary is hierarchical, with the Supreme Court at the apex and 24 High Courts that have appellate jurisdiction over lower courts. The uncodified and fragmented nature of PIL makes cross-border conflict settlement difficult, notwithstanding continuous efforts to reform the rules.

Economic liberalization since 1991 has complicated civil and commercial disputes before Indian courts. Initiatives like the Make-in-India (MiI) programme,[16] launched in 2014 to enhance India's global business reputation, have not been matched by legislative or judicial attention to PIL. Despite being a subject of national importance under the Constitution, enabling both Parliament and State legislatures to legislate, India's PIL remains largely uncodified.[17] The sole statutory provisions in civil and commercial matters concern the recognition and enforcement of foreign judgments (REFJ) (ss. 13, 14, and 44A of the Civil Procedure Code (CPC)) and arbitral awards (ss. 28(b), 34, 36, 44–60, the Arbitration and Conciliation Act 1996 (ACA)). For court-based dispute resolution, however, all other PIL domains have developed purely through precedents.

---

15 *Mahendra Pal Singh Jain*, Indian Constitutional Law[6] (2013) Ch. I, Part E, para. L.

16 The details on the MiI programme can be found at: <https://mea.gov.in/Images/attach/Make_in_India_Initiative.pdf> (2 January 2025).

17 India: Constitution of India 1950, Seventh Schedule.

Where there is a lack of domestic precedent, Indian courts frequently refer to English rulings in the interests of fairness, justice, and morality.[18] Unlike disputes being settled by arbitration, international conventions have had little impact in modernizing India's conflict of law regulations governing matters resolved by litigation. India's participation in the HCCH has been limited, with only three civil and commercial conventions ratified: the 1961 Apostille Convention,[19] the 1965 Service Convention,[20] and the 1970 Evidence Convention.[21] Additionally, India has not participated in the drafting or shown any willingness to ratify the 2005 Hague Convention on Choice of Court Agreements (HCCCA)[22] or the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters (Judgments Convention),[23] despite the similarities with its own internal conflict-of-law rules on these issues.

Established in 1834 and re-established in 1955, the LCI, a non-statutory body, has largely overlooked transnational litigation. With the exception of its report on the shortcomings of India's limitation law – which is treated as procedural as opposed to substantive and results in challenges for transnational litigation in India – none of its 277 reports[24] attempts to analyse the state of the Republic's foreign-related rules governing civil and commercial disputes.[25] Moreover, even the significance of the report on limitation law remains questionable, as it has received little attention from legislators several years after its publication. Persistent efforts of the LCI resulted in the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act (CCA),[26] passed in 2015, which moves high-value commercial cases to specialized benches. Nonetheless, tailored to domestic disputes, the statute fails to accommodate the unique needs of transnational matters, for instance,

---

18 *V.G. Ramachandran*, Conflict of Laws as to Contracts, Journal of the Indian Law Institute (JILI) 12 (1970) 269–290, 270.

19 Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention) (adopted 5 October 1961, entry into force 24 January 1965), 1562 UNTS 331.

20 Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters (Service Convention) (adopted 15 November 1965, entry into force 10 February 1969), 658 UNTS 163.

21 Convention on Taking Evidence Abroad in Civil or Commercial Matters (Evidence Convention) (adopted 18 March 1970, entry into force 7 October 1972), 847 UNTS 231.

22 The Hague Convention on the Choice of Court Agreements (HCCCA) (adopted 20 June 2005, entry into force 1 October 2015).

23 Hague Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters (Judgments Convention) (adopted 2 July 2019, entry into force 1 September 2023).

24 See the LCI's official website: <https://lawcommissionofindia.nic.in/>.

25 *Law Commission of India (LCI)*, 193rd Report on Transnational Litigation Conflict of Laws: Laws of Limitation (June 2005), DO No. 6(3)/107/2005-LC(LS).

26 Act No. 4 of 2016.

through the appointment of international judges or an international experts committee – as is done in many other countries,[27] including Singapore and China[28] – to assist the judiciary with the complex questions they will likely encounter.

In contrast to international arbitration, which has seen continuous legislative engagement, India's transnational litigation framework has received scant attention from Parliament or the LCI.[29] Consequently, the judiciary has borne the burden of modernizing PIL. Though empowered under the Art. 141 of the Constitution of India 1950 to issue binding rules and guidelines, the Supreme Court of India (SCI) has intervened in PIL matters only twice – both in personal law disputes.[30] Regarding civil and commercial disputes, the SCI has not been as proactive as its counterparts in some other Asian economies, like China, whose Supreme People's Court (SPC) has frequently issued guidelines through "Interpretations" to fill gaps in the codified PIL rules and to clarify various nuances.[31] This inaction on the part of lawmakers in India has rendered Indian PIL far more complex and challenging compared to other major Asian economies such as Singapore, China, Japan, or South Korea.[32]

2. Exploring the internationalization of major Asian economies and India's relative position within this dynamic

Unlike India, Japan,[33] China,[34] South Korea,[35] and Singapore[36] have effectively adapted their conflict-of-law rules to rapid globalization. In civil law systems such as

---

27 See *Man Yip / Giesela Rühl*, Success and Impact of International Commercial Courts: A First Assessment, Yearbook of Private International Law XXIV (2022/23) 45–60, 51, referring to international commercial courts set up in Dubai, Qatar, and Kazakhstan.

28 See the text accompanying notes 44–52, below.

29 See, e. g., ss. 8, 11, 34, 48 and 57 of the Arbitration and Conciliation Amendment Act 2015 (ACAA) addressing the observations of the LCI, Amendments to the Arbitration and Conciliation Act 1996 (246th Report 2014), <https://lawcommissionofindia.nic.in/cat_Arbitration/> (10 November 2025).

30 See *Y. Narasimha Rao v. Y. Venkata Lakshmi*, 1991 SCR (2) 821 (SCI); and *Surya Vadanan v. State of Tamil Nadu*, (2015) 5 SCC 450 (SCI).

31 See the 2002 SPC Interpretation on the Provisions of the SPC on Some Issues Concerning the Jurisdiction of Civil and Commercial Cases Involving Foreign Elements; see also the 2015 SPC Opinion on Interpretation about the Application of the CPC.

32 For the 2024 GDP rankings, visit <https://worldpopulationreview.com/countries/by-gdp> (10 November 2025).

33 Act for Partial Revision of the Code of Civil Procedure, 2011 (CCP); and Japanese Act on the General Rules on the Application of Laws, Act No. 78 of 2006 (AGRA).

34 Civil Procedure Law of the People's Republic of China (2021 Amendment) (CPL); and the Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships 2010 (LAL).

35 Private International Law Act 2022.

36 For a list of HCCH Conventions that Singapore has ratified, visit: <https://www.hcch.net/en/states/hcch-members/details1/?sid=128> (10 November 2025).

those of Japan, South Korea, or China, modernization in regulating transnational litigation has primarily been achieved through comprehensive codification of legal principles coupled with regular amendments where necessary – in turn reducing reliance on precedents. In Singapore, active participation in global legal discourse through the ratification of multilateral conventions that promote harmonized dispute resolution via judicial processes has similarly assisted in the internationalization of the judicial system.

Like India, Singapore's PIL remains uncodified, with its principles scattered across various legislative acts and supplemented by case law, rather than a comprehensive codification. English law has played a significant role in developing most PIL rules governing civil and commercial matters.[37] Despite striking parallels to India's rules governing domestic courts' international jurisdiction, applicable law, and REFJ, Singapore has emerged as a leader in providing high-quality litigation services throughout Asia.[38] Key to this success has been the establishment of the Singapore International Commercial Court (SICC) in 2015 and the ratification of the HCCCA in 2016. Unlike India's commercial courts, the SICC, which aims to complement the Singapore International Arbitration Centre (SIAC),[39] boasts a panel of international judges having diverse legal backgrounds, thereby providing a global perspective in its decisions.[40] The parties do not have a say in choosing the judges, but the applicable law plays a significant role in determining which judge(s) will handle the case.

Therefore, judges handling international commercial matters before the SICC possess expertise in commercial matters and a profound understanding of the substantive law of the applicable legal system, ensuring that the decision meets the litigant's legitimate expectations. Additionally, foreign lawyers are readily granted permission to represent parties,[41] a significant contrast to the Bar Council of India's (BCI) ongoing scepticism about allowing foreign lawyers to represent parties in cross-border disputes.[42] Foreign lawyers are solely permitted to argue before Indian courts on a reciprocal basis under s. 47 of the Advocates Act 1961. Their participation is confined to providing legal advice on their own country's legal position (s. 2 Oaths Act 1969). The legal representation of non-national Indians is still limited to

---

37 *Tiong Min Yeo*, Singapore, in: Encyclopedia of Private International Law, vol. III, ed. by Jürgen Basedow / Giesela Rühl / Franco Ferrari / Pedro de Miguel Asensio (2017) 2484.

38 *Lucas Clover-Alcolea*, The Rise of the International Commercial Court: A Threat to the Rule of Law?, Journal of International Dispute Settlement 13:3 (2022) 413–442, 421.

39 See *Michael Hwang*, Commercial Courts and International Arbitration – Competitors or Partners?, (2015) 31:2 Arbitration International 193–212.

40 *Adeline Chong / Man Yip*, Singapore as a Centre for International Commercial Litigation: Party Autonomy to the Fore, (2019) 15:1 J.Priv.Int.L. 97–129, 101.

41 *Chong/Yip*, Singapore as a Centre (n. 40).

42 *Wenliang Zhang / Guangjian Tu*, Recent Efforts in China's Ambition to Become a Centre for International Commercial Litigation, RabelsZ 87 (2023) 497–531, 497–499.

specific areas, such as court-martial proceedings and statements regarding the Indian Armed Forces (s. 2 Oaths Act 1969).

China has similarly developed a well-structured framework for handling foreign-related civil and commercial claims through the provisions of the Civil Procedure Law of the PRC (CPL) and application of the Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships, also referred to as the "Law on the Application of Laws" (LAL). China's traditional caution towards foreign law, influenced by its Confucian culture's emphasis on moral governance and social harmony,[43] has been overshadowed by its dedication to global expansion, as demonstrated by the "One Belt, One Road Initiative" (BRI).[44] This commitment has expedited the creation of comprehensive regulations for foreign-related legal affairs.[45] Though China, unlike its South Korean or Japanese counterparts, lacks a comprehensive statute on PIL, the codification of fundamental PIL rules and the proactive approach of the SPC[46] have equipped national courts to handle complexities arising from open-market strategies. The launch of two Chinese International Commercial Courts (CICC) in Shenzhen and Xi'an in 2018 has continued to improve the PRC's legal system.[47] The CICC, in contrast to Singapore's SICC, forbids foreign lawyers from representing parties, and only domestic judges qualified in commercial dispute resolution may decide cases.[48] Nonetheless, creating the International Commercial Experts Committee with national and foreign judges who *assist* national judges in adjudicating foreign-related matters[49] provides a considerable international perspective.[50] Likewise, China's signing of the HCCCA in 2017 is further expected to elevate its judiciary's stature among other signatory states upon ratification, resulting in enhanced uniformity on the country's international jurisdiction and enforcement-related rules in disputes arising from choice of court agreements (CoCAs).

---

43 *Rui-Ping Liu*, China's Practice of Private International Law, Comparative and International Law Journal of Southern Africa 34:1 (2001) 1–28, 4–5.

44 *Zhang/Tu*, Recent Efforts (n. 42) 497–499; and *Zhengxin Huo*, Proof of Foreign Law under the Background of the Belt and Road Initiative, in: China's One Belt One Road Initiative and Private International Law, ed. by Poomintr Sooksripaisarnkit / Sai Ramani Garimella (2018) 125–143.

45 *Zhang/Tu*, Recent Efforts (n. 42).

46 *Weizuo Chen*, China, in: Encyclopedia of Private International Law, vol. III, ed. by Jürgen Basedow / Giesela Rühl / Franco Ferrari / Pedro de Miguel Asensio (2017) 1970–1980, for the proactive role played by the SPC in reforming Chinese PIL.

47 *Hansel Pham*, The China International Commercial Court, White & Case (4.3.2021), <https://www.whitecase.com/insight-alert/china-international-commercial-court> (10 December 2025).

48 *China International Commercial Court*, International Commercial Litigation and Diversified Dispute Resolution: A Brief Introduction of China International Commercial Court (28 June 2018), <https://cicc.court.gov.cn/html/1/219/193/195/index.html> (10 December 2025).

49 *China International Commercial Court*, International Commercial Litigation (n. 48).

50 *China International Commercial Court*, International Commercial Litigation (n. 48).

Similarly, Japan and South Korea have robust regulations regulating international civil and commercial matters. International conventions have left these PIL regimes unaffected (like India), with multilateral treaties regulating only peripheral aspects, such as the service of documents and legalisation requirements. Neither Japan nor South Korea have demonstrated interest in ratifying the HCCCA or the Judgments Convention.[51] Nevertheless, their proactive approach to establishing exhaustive rules addressing conflicts of law arising from global commerce distinguishes them from India. The need to safeguard Japan against European colonialism led to the promulgation of Hōrei in 1898, thus establishing detailed rules for regulating foreign-related civil and commercial matters based on extensive comparative studies of European nations, especially Germany.[52] Efforts to reform private international law further resulted in the promulgation of the Act Concerning the General Rules for the Application of Laws in 2007 (AGRA). Similarly, the Private International Law Act (PILA) of South Korea, influenced by German law,[53] was recently revised to accommodate growing international trade and tourism.[54] Despite the absence of specialized international commercial courts in Japan and South Korea comparable to those in China or Singapore, the continuity of conflict-of-law regulations is guaranteed by regular revisions.

Aggressive codification, specialized courts, and reliance on multilateral conventions have prepared national courts in these other Asian countries for global competition. Conversely, India has not made substantial efforts to establish itself as a centre for international litigation. Generally, Indian courts lack competitiveness because lawmakers have not adequately developed regulations for resolving cross-border disputes, leaving the judiciary ill-equipped to rival the courts of greater renown in other prominent Asian countries.

III. The makers and making of PIL in India: A systematic examination

1. The international jurisdiction of Indian courts

After decades of economic liberalization and expanded foreign trade, India still lacks comprehensive legislation defining the jurisdiction of its national courts in

---

51 HCCCA: Status table shows only the EU and several other states as contracting parties; Japan and Korea are not parties or signatories. Judgments Convention: Status table lists parties including the EU, Ukraine, Uruguay, etc., but Japan and Korea are not listed as parties or signatories.

52 *Simon Schwarz/Eva Schwittek*, Japanese and European Private International Law in Comparative Perspective, RabelsZ 72 (2008) 136–146, 138.

53 *Kwang Hyun Suk*, South Korea, in: Encyclopedia of Private International Law, vol. III, ed. by Jürgen Basedow/Giesela Rühl/Franco Ferrari/Pedro de Miguel Asensio (2017) 2243–2244.

54 Private International Law Act 2022.

cross-border issues. India's international jurisdiction policies are a convoluted web of laws. With CoCAs gaining popularity in most parts of the world,[55] reported cases have increasingly seen litigants' decision to oust the jurisdiction of Indian courts. Singapore appears to be becoming a favoured venue for Indian parties and enterprises to resolve transnational issues.[56] Although fewer cases have been settled before Singaporean courts (including the SICC) based on the parties' choice (i. e., CoCA), recent reforms are likely to propel these courts into a preferred venue, at least for contracts concluded in that region.[57] Many cases involving international contracts favouring English courts have also come before Indian courts, indicating a preference for settling disputes outside India.[58] Establishing specialized commercial courts[59] and simplifying national courts' international jurisdiction rules,[60] mainly due to their membership in the HCCCA, has made these countries popular venues in parties' CoCAs for the adjudication of international disputes that otherwise fall under Indian jurisdiction.

a) The unattractiveness of Indian courts for transnational litigation

Spread across various legislation, none of India's jurisdiction rules have been formulated with international disputes in mind. The term "international" lacks a formal definition, but case law suggests it refers to disputes involving foreign elements, such as nationality, residence, business location, or performance overseas.[61] India's increased participation in trade since 1991 has led to a rise in international civil and commercial disputes. However, the legislature's indifference towards creating a special framework for civil and commercial matters has forced courts to extend existing domestic principles to cross-border disputes by analogy.

---

55 *Alex Mills*, Party Autonomy in Private International Law (2018) 91–92.

56 See, e. g., *World Sport Group (Mauritius) v. MSM Satellite (Singapore) PTE Ltd*., (2014) 11 SCC 639 (SCI); *Transasia (P) Capital Ltd. v. Gaurav Dhawan*, 2023 SCC OnLine Del 1957 (Delhi HC), indicating an express choice in favour of the Singaporean courts.

57 See n. 56. Also see *Yip/Rühl*, Success and Impact (n. 27) 55.

58 See, e. g., *National Thermal Power Corporation v. Singer Company & Ors*, (1992) 3 SCC 551; *Modi Entertainment Network & Another v. W.S.G. Cricket PTE Ltd*., (2003) 4 SCC 341 (SCI); *Rhodia Ltd. and Others v. Neon Laboratories Ltd. and Others*, 2002 SCC OnLine Bom 626 (Bom HC).

59 For a discussion on Commercial Courts in England, see *David Foxton*, The Commercial Court of England and Wales, in: New International Commercial Courts, ed. by Man Yip/Giesela Rühl (2024) 483–512. For Singapore, see *Lau Kwan Ho*, Singapore, ibidem 411–452.

60 Civil Jurisdiction and Judgments Act 1982 and the Private International Law (Implementation of Agreements) Act 2020 (PIL Act) (UK); and Ch. 322 of the Supreme Court of Judicature Act and the Choice of Court Agreements Act (Singapore). In these countries, common law is applicable only if no statutory provision exists.

61 *Gas Authority of India Ltd. v. SPIE CAPAG, SA & Ors*, 1993 (27) DRJ (Delhi HC).

Promulgated in 1908, India's Civil Procedure Code remains the chief framework for regulating civil and commercial matters even after the enactment of the CCA in 2015. While other specialized Acts such as the Copyright Act, 1957 (CA), the Trademarks Act, 1999 (TMA), and the Consumer Protection Act, 2019 (CPA) exist, none contain any provisions addressing disputes with foreign elements – leaving such matters to be governed by rules designed for domestic matters – even though these are limited to the distribution of territorial jurisdiction among national courts. The lack of clear jurisdictional demarcation between exclusive and permissive jurisdiction further increases unpredictability and potentially promotes parallel litigation and inconsistency in judicial pronouncements. Unlike many other countries,[62] India lacks a substantial framework prioritizing exclusive jurisdiction, with disputes on immovable property located in India being the sole exception (ss. 16–18 CPC) – thereby increasing the chances of inconsistency in judgment through concurrent jurisdiction. In disputes *in personam*, Indian courts' jurisdiction depends primarily on two key factors: (a) a legal relationship with the court through the defendant's residence, submission, or cause of action (ss. 19–20 CPC), and (b) being a "natural" forum for resolution if another foreign court is involved.[63]

While Indian PIL allows parties to international disputes to oust national jurisdiction through foreign forum-selection clauses,[64] the validity of similar agreements conferring jurisdiction on Indian courts when it has none remains unclear. One might argue that such agreements would be valid, because if Indian courts allow jurisdiction to be ousted, certainly prorogation would also be legal. However, the fact there are no reported instances of Indian courts being chosen when there is no connection to the dispute speaks volumes about investors' confidence in the Indian litigation system.

Recently, the SCI and High Courts have gradually modified India's traditional legal framework to attract more international disputes and comply with international norms. Courts now strive to prevent parallel proceedings and simplify judgment enforcement, adopting strategies like invoking the *forum non conveniens* rule to manage concurrent legal actions.[65] Before 2023, parties could definitively avoid the concurrent jurisdiction of Indian courts through a CoCA, a development permitted by the SCI's 2013 decision in *Modi Entertainment*.[66] Initially, parties could choose a competent Indian court based only on the defendant's residence or the

---

62 See, e. g., Art. 33 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 (Brussels Recast); and Art. 18 of the Japanese CCP.

63 *Mayar (HK) Ltd. v. Owners and Parties, Vessels MV Fortune Ltd.*, AIR (2006) SC 1828 (SCI).

64 *Mayar (HK) Ltd.* (n. 63).

65 *Shiju Jacob Varghese & Anr. v. Tower Vision Ltd. & Ors*, 2023 SCC OnLine Del 6630 (Delhi HC).

66 *Modi Entertainment Network* (n. 58).

location of the cause of action.[67] Recent rulings have increasingly emphasized the principle of comity of nations to boost India's appeal as a commercial destination. The DHC's handling of the *Banyan Tree*[68] case is similarly notable for its astute approach to international disputes stemming from online transactions, especially since statutory principles have not been updated to account for technological progress. By giving significant weight to the defendant's ability to effectively conclude contracts online in the Republic as a ground for initiating actions before national courts, the DHC ensured a balancing of interests between the plaintiff and the defendant. Unlike some jurisdictions in Asia – but also in the EU[69] – which prescribe extremely stringent or lenient standards, the Indian judiciary has instead adopted an intermediate approach known to American jurisprudence under which the jurisdiction of national courts over online infringements is confined to scenarios where the defendant has created the *plausibility* of specifically targeting consumers through its website by passing-off or infringing the plaintiff's trademark or copyright to the latter's detriment.[70] To initiate proceedings for online infringements of their copyrights or trademarks, a plaintiff must demonstrate that the defendant has not merely mislead consumers into believing that the product or services being advertised belong to the former, but that the plaintiff was actually harmed by such infringement online. Unlike countries like China, where courts may exercise jurisdiction over online infringement disputes only on proof of actual delivery in the country,[71] the principles of Indian PIL have ensured the protection of the plaintiff by authorizing such parties to initiate action without the need to wait until they can prove that the defendant has actually sold its goods or services in that territory by misleading consumers to believe that they belong to the plaintiff. In this manner, the interest of both parties remains balanced.

Despite these endeavours, the lack of a special regime for vulnerable parties like consumers, employees, or insurees remains a significant hinderance to India's aspirations of becoming a preferred centre for transnational litigation. Applying uniform jurisdictional rules for domestic matters to disputes with these parties allows

---

67 *A.B.C. Laminart* (P) *Ltd. v. A.P. Agencies*, (1989) 2 SCC 163 para. 16 (SCI).

68 *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*, 2009 SCC OnLine Del 3780 (Del HC). The decision has been relied on by the Bombay High Court in *Black Ticket Films v. Walter Phillip*, 2017 SCC OnLine Bom 5368; by the Calcutta High Court in *Rajat Agarwal & Ors v. Spartan Online Pvt. Ltd. & Ors*, 2017 SCC OnLine Cal 3709; and by the Madras High Court in *Captain Tractors Pvt. Ltd. v. Ashok Leyland Ltd*., 2018 SCC OnLine Mad 13669.

69 See Arts. 4, 7 Brussels Recast (for B2B contracts) and Art. 17 Brussels Recast (for B2C contracts).

70 *Banyan Tree* (n. 68) paras. 11–45, referring to *Calder v. Jones*, 465 U.S. 783 (1984); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F3d 414 (9th Cir 1997); *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F Supp 1119 (WD Pa 1997) among others.

71 Art. 20 Supreme People's Court, Interpretation on the Application of the Civil Procedure Law of the People's Republic of China of 30 January 2015, Zhu Shi (2015) No. 5.

more powerful parties to avoid Indian courts through CoCAs in favour of foreign courts having less stringent regulations, putting weaker parties at risk.

Overall, India's PIL principles, despite judicial efforts, are insufficiently internationalized to resolve civil and commercial disputes involving foreign parties. Thus, India is not an appropriate jurisdiction for settling international civil and commercial disputes. The legislature and LCI's disregard for transnational litigation contrasts with its active advocacy for international arbitration. Since 1996, India has made significant changes to the ACA in 2015,[72] 2019,[73] and 2021[74] in order to make it an arbitration-friendly jurisdiction. Arbitration promotion is another MiI priority.[75] Specialized jurisdictional rules for foreign-related disputes and the challenges posed by applying domestic laws to international conflicts are rarely discussed in legislative deliberations or political discourse. For instance, the Bharatiya Janata Party's (BJP) 2024 election manifesto exclusively prioritized improving arbitration and mediation.[76] This neglect in respect of traditional litigation is especially alarming for a rapidly developing nation which inevitably generates international disputes, thereby reducing the competence of Indian courts *compared to* their other major Asian counterparts.

b) Strengthening the international competitiveness of Indian courts: A comparative assessment

Many major Asian countries' international jurisdiction rules developed like India's, with domestic rules initially applied to foreign-related civil and commercial matters. Initially, neither Japan's Hōrei nor the Code of Civil Procedure contained specific provisions for international jurisdiction, compelling courts to rely on domestic rules by analogy while resolving international matters.[77] To prevent the exercise of exorbitant jurisdiction, and akin to India's *forum non conveniens* rule, Japanese courts developed a "special circumstances" criterion to refuse jurisdiction when it

---

72 The 2015 Amendment introduced prohibitions against international commercial awards being reviewed on their merits when assessing their enforceability in India.

73 The 2019 Amendment introduced additional changes to key provisions regulating domestic and foreign-seated international commercial awards, namely ss. 34 and 45.

74 The 2021 Amendment introduced changes to the enforcement procedures for domestically-seated international commercial arbitral awards.

75 Government of India, Ministry of External Affairs, Remarks by the External Affairs Minister, Dr. S. Jaishankar, at the inauguration of the Arbitration Bar of India (11 May 2024), <https://www.mea.gov.in/Speeches-Statements.htm?dtl/37808/Remarks_by_EAM_Dr_S_Jaishankar_at_the_inauguration_of_Arbitration_Bar_of_India> (12 December 2025).

76 *Bharatiya Janata Party*, Manifesto 2024, 55–56, <https://www.bjp.org/bjp-manifesto-2024> (12 December 2025).

77 *Yuko Nishitani*, International Jurisdiction of Japanese Courts in a Comparative Perspective, Netherlands International Law Review 60:2 (2013) 251–277, 252.

was equitable or essential for prompt conflict resolution.[78] Global developments, such as the HCCH's Judgments Project, prompted Japan's Ministry of Justice to establish a Division on International Jurisdiction in 2008.[79] This division reformed the CCP, and it has implemented distinct provisions for international jurisdiction in civil and commercial matters since 2011 (Arts. 3-2–3-12 CCP). Analogously, the South Korean government has also re-evaluated its regulations on international jurisdiction to preserve a favourable business climate through the affordability, efficiency, and calibre of domestic courts. Like Japan, the PILA, passed in 2001 and amended in 2022, delineates the exclusive (Art. 3-5 CCP; and Art. 10 PILA) and permissive (Art. 3-3 CCP; and Arts. 2–9 PILA) jurisdiction of national courts and includes special regulations to protect parties having less bargaining power, such as consumers and employees (Art. 3-4 paras. 1–2 CCP; and Arts. 42, 43 PILA). Clear rules also exist to establish jurisdiction through prorogation agreements in favour of courts in these countries (Art. 3-7 para. 1 CCP; and Art. 8 PILA).

Conversely, neither Chinese nor Singaporean PIL demarcates special jurisdictional rules for cross-border matters, requiring the courts of both these countries to extend domestic principles by analogy to international disputes. In both these countries,[80] international jurisdiction may be founded (or ousted) on grounds nearly identical to India's. Singapore's prominence in international litigation has been boosted by the establishment of the SICC and its ratification of the HCCCA, despite the fact that – like India – it possesses unclear court jurisdiction rules and lacks a special regime for vulnerable parties.[81]

Similarly, China's decision to join the HCCCA in 2017 will enhance domestic courts' international competitiveness by establishing predictable rules as to when domestic courts must refrain from adjudicating disputes involving contracts containing CoCAs (Art. 6 HCCCA). Although Indian courts have devised similar rules restraining international jurisdiction in disputes involving CoCA,[82] absent statutory principles, litigants will invariably find these challenging to comprehend. Another factor enhancing the global competitiveness of Chinese courts is the SPC's issuance of Judicial Interpretations, providing summaries of previous judicial practices so as to adapt to the evolving judicial landscape in support of the nation's ambitious BRI.[83] Coherent principles exist under China's PIL rules on applying the *forum*

---

78 *Nishitani*, International Jurisdiction (n. 77) 253. Also see Art. 12 PILA (South Korea).

79 *Nishitani*, International Jurisdiction (n. 77) 253. Also see Art. 12 PILA (South Korea).

80 *Zheng Sophia Tang / Ting Liao*, The Initiation of Claims: China, in: Private International Law in BRICS: Convergence, Divergence and Reciprocal Lessons, ed. by Stellina Jolly / Saloni Khanderia (2024) 87–100; and *Tiong Min Yeo*, Commercial Conflict of Laws (2023) 13–98.

81 *Tang/Liao*, The Initiation of Claims: China (n. 80).

82 *Modi Entertainment Network* (n. 58) para. 16.

83 *Zhang/Tu*, Recent Efforts (n. 42) 500, referring to Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (CPL Interpretation), Fa Shi (2015) No. 5 (2015 Interpretation).

non-conveniens doctrine[84] and granting anti-suit injunctions.[85] In the absence of a consumer dispute-specific framework, the SPC has, unlike the SCI, created guidelines for the international jurisdiction of domestic courts in situations when the CoCA favours a foreign forum.[86] Thus, despite China's civil law tradition, where judicial precedents are less significant, the SPC has effectively utilized its authority to adapt to global judicial trends. Conversely, the absence of similar specialized frameworks and protracted court decisions severely affect India's competitiveness as a favoured destination for the resolution of international matters compared to other major Asian economies.

2. Choice of law and the law of obligations

a) The complexities of internationalizing India's choice-of-law rules

Despite its economic advancement, India's underdeveloped principles for determining the applicable law for foreign-related obligations are perplexing. While international jurisdiction rules have been partially codified, the development of choice-of-law rules has remained the exclusive domain of the judiciary in litigation. Nonetheless, India's choice-of-law rules for litigation are relatively primitive, even when compared to other common law countries in Asia, such as Singapore.

Despite significant judicial attempts to align India's choice-of-law rules with global standards since 1991, parliamentary inertia has been marking the death knell of transnational litigation in the world's largest democracy. Without codification, systematizing legal principles governing foreign-related obligations has been nearly impossible. From characterizing obligations as contractual or non-contractual, to assigning a governing law, India's choice-of-law rules are marred with uncertainties, exacerbating litigants' preference for foreign forums and alternative dispute resolution methods, which in turn hinders Indian courts from identifying inconsistencies in their choice-of-law rules. Regardless of encountering several foreign-related issues, Indian courts have not created clear guidelines for determining whether commitments are contractual or non-contractual. India's common law background suggests that the *lex fori* will likely be invoked to classify obligations.[87] Notwithstanding the fact that the courts have significantly modernized the regulations governing

84 *Zhang/Tu*, Recent Efforts (n. 42) 517–520, referring to Art. 532 of the 2015 Interpretation (n. 83).

85 *Zhang/Tu*, Recent Efforts (n. 42) 506–511, referring to Supreme People's Court, The First Injunction Issued by China's Intellectual Property Trial – Detailed Explanation by the Case Panel on the SEP Licensing Dispute between Kangwensen and Huawei, <https://ipc.court.gov.cn/zh-cn/news/view-1056.html> (16 December 2025).

86 *Tang/Liao*, The Initiation of Claims: China (n. 80) 95, referring to Minutes of the National Courts' Work Conference on Foreign-Related Commercial and Maritime Trials (2021), para. 1(3).

87 *Stellina Jolly/Saloni Khanderia*, Indian Private International Law (2021) 22–25.

foreign-related contractual obligations, it is difficult to determine their binding nature and whether they will be applied in the event of a dispute on the matter, as the majority of principles are articulated in the form of *obiter dicta*. India's choice-of-law rules rely heavily on English common law as it was before the UK joined the EU.[88] While English PIL has been extensively reformed since then,[89] India has not experienced a comparable transformation.

Concerning contractual obligations, similar to other countries, Indian courts discern the "proper law" via a three-tier mechanism.[90] The governing law depends on the express and implied choice of the parties or, in the absence of such choice, on the legal system most closely connected to the contract.[91] However, unlike other nations, India's PIL regulations do not classify contracts based on complexities or power imbalances. Consequently, all foreign-related agreements, including those involving consumers or employees, are subjected to the same proper law doctrine under Indian court jurisdiction; this can lead to unfair outcomes, predominantly because economically stronger parties can easily evade the protections available to vulnerable sections of society through choice-of-law agreements in favour of countries featuring comparatively lenient national regulations.

Beginning with a significant shift in how the court perceived choice-of-law agreements in 1992 – ranging from allowing parties to choose any law to govern their contract as long as it was part of a legal system,[92] to attempting to create a clear division in the parameters to discern the litigants' implied choice of law[93] – every aspect of India's proper law doctrine has undergone significant transformation. Historically, Indian PIL made no distinction between identifying the proper law through the parties' implied choice or objectively.[94] The same elements that are relevant in identifying the country with the closest and most real connection to the contract were also used to identify whether the litigants had tacitly chosen the applicable law.[95] This allowed courts to impute an intention under the pretext of identifying inferred intentions.[96] Increasingly, courts have been prescribing CoCAs and arbitration agreements as crucial indicators to discern the parties' implied choice, particularly when these agreements have other connections to the contract.[97] This move has fa-

---

88 *Garimella*, India: Persistence of Colonial Law (n. 11) 301–303.

89 See generally, *Adrian Briggs*, The Conflict of Laws[5] (2024) 211–267.

90 *National Thermal Power Corporation* (n. 58) para. 14.

91 *National Thermal Power Corporation* (n. 58).

92 *National Thermal Power Corporation* (n. 58).

93 *Modi Entertainment Network* (n. 58) para. 16.

94 See, e. g., *Delhi Cloth and General Mills Co. Ltd. v. Harnam Singh*, AIR 1955 SC 590 (SCI); and *Rabindra N. Maitra v. Life Insurance Corporation of India*, AIR 1964 Cal 141 (Cal HC).

95 See *Delhi Cloth and General Mills Co. Ltd.* (n. 94); *Rabindra N. Maitra* (n. 94).

96 See *Delhi Cloth and General Mills Co. Ltd.* (n. 94); *Rabindra N. Maitra* (n. 94).

97 See the SCI decision in *British India Steam Navigation Co. Ltd. v. Shanmughavilas Cashew Industries*, (1990) 3 SCC 481, para. 17 (SCI); *National Thermal Power Corporation* (n. 58) para. 15, and *Modi Entertainment Network* (n. 58) para. 16.

cilitated the alignment of Indian PIL with international standards.[98] Notably, Indian courts had endorsed CoCAs and arbitration agreements as a means to identify an implied choice by the parties as early as 1990,[99] even before the Hague Conference on Private International Law (HCCH) supported a similar methodology in the 2015 Hague Principles.[100]

Despite these efforts, this piecemeal approach has hindered true reformation. Barring situations where parties have expressly chosen the governing law, most clarifications and developments in choice-of-law rules have occurred in the form of obiter dicta, which have limited persuasive authority and fail to adequately reflect the practical application of identifying the governing law. Further, a practical challenge arises when parties choose non-binding legal principles as the proper law. While arbitral tribunals presiding over domestically seated international commercial arbitrations may recognize such choices (s. 28(b)(ii) ACA), opinions on the choice of non-binding legal principles in litigation have been divided in case law. While some SCI rulings prohibit such a choice,[101] there have been many cases, particularly in letters of credit disputes, where courts have upheld the parties' choice of non-binding legal principles, such as the International Chamber of Commerce's Uniform Customs and Practices for Documentary Credits.[102]

Courts may disregard the applicable foreign law if it lacks *bona fide* intentions, facilitates illegal acts, or contravenes Indian public policy.[103] Although there are only a handful of cases where the courts have invalidated foreign law on these grounds,[104] absent codification, courts have tremendous discretion in interpreting these limitations. Left undefined and seen as "an unruly horse",[105] public policy occasionally seems to be likened to overriding mandatory provisions by enabling courts to reject choice-of-law clauses to prevent the commission of unlawful acts in the Republic.[106]

---

98 See Art. 4 Hague Conference on Private International Law, Hague Principles on Choice of Law in International Commercial Contracts (2015), <https://www.hcch.net/en/instruments/conventions/full-text/?cid=135>.

99 *National Thermal Power Corporation* (n. 58).

100 *National Thermal Power Corporation* (n. 58).

101 *National Thermal Power Corporation* (n. 58).

102 See generally, *Saloni Khanderia*, The Law Applicable to Documentary Letters of Credit in India: A Riddle Wrapped in an Enigma?, (2024) 20:1 J. Priv. Int. L. 26–67, referring to the SCI decisions in *M/S V.O. Tractoroexport, Moscow v. M/S Tarapore & Co. & Anr.*, *Madras*, 1969 (I) SCC 233 (headnote); *United Commercial Bank v. Bank of India & Ors*, 1981 AIR 1426; and *U.P. Cooperative Federation Ltd. v. Singh Consultants & Engineers (P) Ltd.*, [1988] 1 SCC 174.

103 *National Thermal Power Corporation* (n. 58) para. 14.

104 See the Bombay HC in *Taprogge GmbH v. IAEC India Ltd.*, AIR 1988 Bom 157, rejecting the choice of German law.

105 *PASL Wind Solutions (P) Ltd. v. GE Power Conversion India (P) Ltd.*, [2021] 7 SCC 1 [70], referring to *Amicable Society v. Bolland*, [1830] 4 Bligh (NS) 194.

106 *Taprogge GmbH* (n. 104).

Hence, it appears that only the public policy of the forum would be relevant. Conversely, other obiter suggest that the relevance of third-State mandatory laws remains significant in assessing the validity of the choice of law, especially if the contract is to be executed there.[107] In a nation riddled with poverty, income disparities, and illiteracy, these ambiguities could be particularly problematic in foreign-related contracts involving national consumers, insurees, or employees where "stronger" parties may easily oust the application of Indian law and in turn its compulsory provisions through CoCAs coupled with choice-of-law agreements in favour of other countries. Codification would systematize and simplify the law, highlighting inconsistencies and neglected areas, such as the public policy exception, thus ultimately limiting judicial discretion and improving predictability.

Beneath this chaos lies India's choice-of-law rules on the proof of foreign law (on this, see also section IV.1. below): India's adversarial system does not empower courts to apply foreign law *ex officio*. Instead, litigants must plead it and provide expert testimony to prove its contents. Without this, Indian law is applied by default, presuming that it is the parties' implied choice. The lack of clear guidance and the burden of proving foreign law often dissuade litigants from pleading foreign law in most contractual disputes before Indian courts, resulting in the frequent application of the *lex fori*. Moreover, parties frequently end up being governed by the *lex fori*, mainly when their agreements contain a forum selection clause. While using CoCAs and arbitration agreements aligns Indian PIL with international standards, Indian law tends to apply in either case, as such clauses imply a choice of domestic law.

That said, in the context of non-contractual obligations, India's choice-of-law rules can be labelled as among the most obsolete worldwide, their being characterized by both parliamentary and judicial inertia. Unlike several other countries adopting varying rules for distinct obligations depending on their complexity, India has held firmly to the antiquated 19th century rule of double actionability, which is intended to govern all forms of non-contractual obligations ranging from negligence to product liability, environmental damage, and intellectual property infringement matters.[108] Interestingly, despite significant judicial activism in contractual obligations since privatization, Indian courts have resisted similar development in non-contractual matters. They argue that without statutory provisions, common law principles should govern.[109] This procedural requirement to prove foreign law has facilitated the non-development of this area, resulting in merely two reported foreign-related cases involving non-contractual obligations to date.[110] Both these were settled before the High Court, thus indicating the categorization of most other

107 *PASL* (n. 105) [84].

108 *Kotah Transport Ltd. v. Jhalawar Transport Services Ltd.*, AIR 1960 Raj 224 paras. 31–32; and *Sona Devi v. Anil Kumar*, [2011] 3 TAC 552 [6].

109 *Sona Devi* (n. 108) [6].

110 *Kotah Transport Ltd.* (n. 108); and *Sona Devi* (n. 108).

disputes as "domestic" or the resolution of the matter before other foreign courts having advanced principles.

Limited to acts occurring overseas, the double actionability rule, unlike its English law counterpart from which it originated, obligates courts to apply Indian law to all claims found actionable under the *lex loci delicti* and the *lex fori*. The distinction between acts originating overseas and domestically seems, however, superfluous insofar as each of these are governed by Indian law anyways. If anything, the double actionability rule only increases the plaintiff's burden in proving the actionability of their claim concurrently under two legal systems. Most importantly, it "comingle[s]" international jurisdiction rules with those concerning choice of law.[111] Why should a court test the actionability of a claim under the *lex fori* if it has already established jurisdiction based on the defendant's residence or place of business?

It is intriguing that the judiciary in India has not been impeded by the absence of statutory principles in disputes involving contractual obligations with international elements. Rather, courts have, occasionally, recognized and incorporated advances in English private international law that have occurred in the wake of the UK's EU membership.[112]

b) Comparative reflections from major Asian jurisdictions

Codification and its Limits. Although the lack of codification has doubtlessly been the biggest impediment to internationalizing India's PIL governing the law of obligations, it is not the only deterrent. In Asia, major jurisdictions like Japan (Arts. 7–9, 11, 17–19, 42 PILA), South Korea (Arts. 45–55 PILA), and China (see the LAL) have leveraged codification to reform and systematize their choice-of-law rules. Singapore has been a notable exception, choosing the route of multilateral conventions to internationalization. Ratifying conventions like the HCCCA,[113] and the resultant Choice of Court Agreements Act 2016, have increased the likelihood of disputes being governed by foreign laws, particularly through the enhanced participation of foreign lawyers before the SICC, a broad-competence commercial forum.[114] While the HCCCA has not directly altered Singapore's choice-of-law rules, its effect is indirect. By securing international recognition for jurisdiction clauses, parties are

---

111 *Stephen G.A. Pitel/Joost Blom/Elizabeth Edinger/Geneviève Saumier/Janet Walker/Catherine Walsh*, Private International Law in Common Law Canada: Cases, Texts and Materials[4] (2016) 651.

112 *Kumarina Investment Ltd. v. Digital Media Convergence Ltd. & Anr.*, 2010 TDSAT 73 [27], referring to Recital 13 Rome I in obiter.

113 For discussion, see *Poomintr Sooksripaisarnkit*, The Hague Convention on Choice of Court Agreements: Should the European Union's Footsteps be Followed?, in: Private International Law: South Asian States' Practice, ed. by Sai Ramani Garimella/Stellina Jolly (2017) 39–60, 53–54.

114 On the jurisdiction of the SICC, see *Chong/Yip*, Singapore as a Centre (n. 40) 105–121.

encouraged to litigate in Singapore, even if their contract is governed by foreign law. Especially in disputes being litigated before the SICC, foreign lawyers may appear, increasing the likelihood that the court will apply foreign law, in turn reinforcing party autonomy and commercial expectations.

Singapore's success contrasts sharply with India's scepticism towards foreign lawyers, which hinders the application of foreign law. Despite near-identical ideologies regarding proof of foreign law and choice-of-law rules on contractual and non-contractual matters,[115] Singapore has outperformed India. The SICC enables litigants to agree that a claim crosses state lines, encouraging foreign lawyers to participate and providing a comparative perspective in decisions that benefit from the wider application of foreign laws.[116] The benefits are most felt in non-contractual obligations, where Singapore, like India, follows the double-actionability rule. However, unlike their Indian counterparts, the Singapore High Court has shown readiness to depart from this rule on at least two occasions[117] and adopt the *lex loci delicti* rule employed by several common law countries.[118] This judicial flexibility underscores Singapore's pragmatic approach to international disputes. The SICC's commitment to improving transnational litigation is expected to lead to the abandonment of the double actionability rule, attracting plaintiffs with foreign tort claims to litigate in Singapore.[119]

Universalism and the Asian Model: A Structured Alternative to Indian Particularism. Singapore's experience demonstrates that lack of codification is not the sole barrier to internationalizing India's PIL. Particularism, the view that PIL is an integral part of domestic law,[120] has instead significantly impeded the development of India's choice-of-law rules. This perspective considers it unimportant for choice-of-law rules to adopt an equal stance towards foreign law.[121] Developed by scholars in the 19th century, the notion confines the relevance of foreign law to safeguarding mandatory provisions and public policy.[122] As seen above, in India foreign law holds limited practical relevance for foreign-related contractual or non-contractual obli-

---

115 *Yeo*, Singapore (n. 37) 2485.

116 *Chong/Yip*, Singapore as a Centre (n. 40) 120–121, referring to Singapore Rules of Court, O 110 r. 2(a)(iv).

117 *Ang Ming Chuang v. Singapore Airlines Ltd.*, [2005] 1 SLR(R) 409 (HC); and *IM Skaugen SE v. MAN Diesel & Turbo SE*, [2016] SGHCR 6.

118 *Ming Ren Tan*, Revisiting the Double Actionability Rule in Singapore: Time for a Change, Singapore Journal of Legal Studies (2021) 155–173, 166–172, referring to Canadian Supreme Court decision in *Tolofson v. Jensen*, [1994] 3 SCR 1022.

119 *Tan*, Double Actionability Rule (n. 118) 170–171.

120 *Guangjie Zhang*, Enlightenment of Japan's Private International Law Legislation to China, Foundation for Law and International Affairs Review, Special Issue 1:2 (2020) 91–111, 92–93.

121 *Zhang*, Enlightenment (n. 120).

122 *Zhang*, Enlightenment (n. 120).

gations, failing to meet litigants' legitimate expectations. Codification could encourage litigants to plead foreign law, fostering the just determination of cases.

Conversely, universalism, prevalent in other Asian jurisdictions, advocates settling foreign-related disputes with uniform principles,[123] ensuring a more predictable legal environment.[124] This approach confines the application of domestic law to where protecting national mandatory rules and public policy is necessary.[125] In these Asian states, the focus on universalism and the *ex officio* application of foreign law (Art. 22 PILA; Art. 10 LAL) facilitates meeting litigants' expectations. The law of another nation operates based on conflict-of-law rules, apart from exceptional circumstances where its contents are impossible to ascertain (see, e. g., Art. 10 LAL). Codification has further ensured compliance with foreign law enforcement, making rules legally binding.

Among these countries, China's trajectory is particularly noteworthy. Despite historical scepticism towards foreign law,[126] China now boasts advanced conflicts rules. Since implementing the Open-Door Policy in 1978, China's conflicts rules have faced ambiguities due to their scattered nature.[127] However, the highest court acted proactively, by drafting legally binding "Interpretations" that reduce ambiguities and address inconsistencies. Starting in 1987, the SPC has clarified and enhanced China's conflict-of-law rules.[128] Today, much of China's development evidently stems from some form of codification (see LAL), either through statutes or judicial interpretations, compelling lawmakers to thoroughly scrutinize the predicaments and absorb foreign experience while transforming legal rules. China's clear rules for the objective determination of the governing law (when parties have not chosen one)[129] or the relevance of its mandatory rules (Arts. 4–5 LAL) and the special regime for vulnerable litigants, such as consumers (Arts. 42–43 LAL), are only some examples of inconsistencies that have been tackled by codification and SPC Interpretations. While China, like India, recognizes expressly chosen laws in inter-

---

123 See, e. g., *Chin Kim*, New Japanese Private International Law: The 1990 Hōrei, 40:1 American Journal of Comparative Law 1–35, 3, 12 (1992), referring to the prevalence of universalism in Japan's choice-of-law journey.

124 See generally, *Alex Mills*, The Private History of International Law, (2006) 55:1 International and Comparative Law Quarterly (ICLQ) 1–49, 5–7.

125 *Mills*, Private History (n. 124) 41–42.

126 *Liu*, China's Practice of PIL (n. 43) 4–5.

127 *Guangjian Tu*, The Law of Obligations: China, in: Jolly/Khanderia (n. 80) 337–358, 338–339.

128 See the 1987 Interpretation of Foreign Economic Contract Law (FECL); the Rules of the Supreme People's Court on Related Issues Concerning the Application of Law in Hearing Foreign-Related Contractual Dispute Cases Related to Civil and Commercial Matters (2007 Interpretation); SPC, Interpretation of the SPC on Several Issues Concerning Application of the Law of the People's Republic of China on Choice of Law on Foreign-Related Civil Relationships (I) (Interpretation I on LAL), Fa Shi (2012) No. 24.

129 Art. 41 LAL, read together with Art. 5 of the 2007 Interpretation.

national contract disputes (Arts. 3, 41 LAL), it prescribes clear rules to identify the governing law as based on the parties' inferred intentions and objective factors.

Regarding inferred intentions, China's LAL adopts a unique stance by disregarding them altogether.[130] The sole exception is when both parties refer to the same law in their pleadings – in which case that country's law will be considered their implied choice.[131] In so doing, China, unlike India, compels courts to consider factors that genuinely point to the parties' inferred intentions – instead of postulating yet another principle as an excuse to apply the *lex fori*. As regards the absence of choice, China's rules echo the spirit of universalism by adopting the characteristic performance test (Art. 41 LAL) followed in several major jurisdictions (see, e.g., Art. 4 Rome I Regulation; Art. 1211 Civil Code of the Russian Federation (2023); Art. 24(4) Turkish PILA), including Japan (Art. 8 AGRA) and South Korea (Art. 46 PILA) in Asia. "The law where the party who is to effect the characteristic performance has its habitual residence" will be presumed to bear the closest and most genuine connection to the contract and will govern the contract (Art. 41 LAL). This determination is further guided by fixed-style rules developed for certain common types of contracts (Art. 5 of the 2007 Interpretation). Unlike India's problematic theory of localization, which struggles to determine the appropriate law in cases with equally balanced contractual elements, the characteristic performance test limits judicial discretion and effectively resolves these issues by making different presumptions about which nation has the closest and most genuine connection in various common transaction types Art. 5 of the 2007 Interpretation).

In these Asian countries, the relevance of the *lex fori* is limited to three scenarios. First, when a foreign law's contents cannot be determined; second, when its application contravenes the forum's overriding mandatory provisions; and third, when it does not conform to the forum's public policy. Like China (Arts. 4–5 LA), Japan (Arts. 11, 42 AGRA) and South Korea's (Arts. 20, 23 PILA) choice-of-law rules limit the relevance of domestic law to soften conflict rules based on the nation's cultural and legal context. Influenced by European conflicts rules, these countries have developed sophisticated principles governing the law of obligations.[132] Apart from prescribing more explicit rules to identify the governing law through the parties' inferred intentions (Art. 7 AGRA; Art. 45 PILA) and through objective factors (Art. 8 AGRA; Art. 46 PILA), each codification, unlike the situation in India, contains special rules protecting certain vulnerable sections of society, such as consumers and employees (Arts. 43–44 LAL; Arts. 11–12 AGRA; Arts. 47–48 PILA). Neither of these jurisdictions subjects such contracts to a uniform rule of party autonomy. The right of parties to choose the governing law is limited to protecting vulnerable

130 *Zheng Sophia Tang/ Yongping Xiao/ Zhengxin Huo*, Conflict of Laws in the People's Republic of China (2016) paras. 211–212, referring to Art. 8 Interpretation I on the LAL (n. 128).

131 *Tang/Xiao/Huo*, Conflict of Laws (n. 130).

132 *Suk*, South Korea (n. 53) 2243–2244; *Schwarz/Schwittek*, Japanese and European PIL (n. 52) 138.

groups from unfair contractual terms imposed by economically more powerful parties, like employers or traders (Arts. 43–44 LAL; Arts. 11–12 AGRA; Arts. 47–48 PILA). Thus, while some jurisdictions, like China, merely authorize consumers to choose the governing law (Art. 42 LAL), others, like Japan (Art. 11 AGRA) and South Korea (Art. 47 PILA), allow the choice of any law to the extent that it does not deprive the consumer of the protection available under domestic law. Further, by combining a special choice-of-law regime for such areas with special jurisdictional rules (Arts. 43–44 PILA; Arts. 3–4 CCP), these countries impose additional safeguards against exploitation through CoCAs that could potentially subject the weaker parties to the jurisdiction of courts in countries featuring lesser protection.

Likewise, for non-contractual obligations, China, Japan, and South Korea's evolved choice-of-law rules prescribe various general (Art. 44 LAL; Arts. 17–22 AGRA; Art. 52 PILA) and special (Arts. 45–47 LAL; Arts. 18–19 AGRA; Art. 51 PILA) rules that depend on the claim's complexity and that limit the relevance of domestic law to safeguarding national interests.[133] Absent a special rule, each prescribes application of the *lex loci delicti* (Art. 42 LAL; Art. 17 AGRA; Art. 52 PILA). This principle, though imperfect, is less arbitrary than double actionability, which requires the adoption of domestic law notwithstanding its fortuitous connection to the claim.

Another notable feature in Japanese and South Korean PIL is party autonomy in choosing the law in non-contractual obligations,[134] thus enhancing access to justice – a particularly relevant feature[135] for India given the slower developments in its substantive laws.[136] Japan maintains the double actionability rule (Art. 22(1) AGRA) despite efforts to internationalize its PIL, applying it more strictly than India. Unlike India, which requires actionability being proved under the *lex fori* and the *lex loci delictii*, Japan requires remedies to be identical under both legal systems for a claim to succeed (Art. 22(1) AGRA). Nevertheless, by prescribing the *lex loci delictii* for general torts (Arts. 17–22 AGRA), Japan maintains an equitable application of domestic and foreign law. Special rules for product liability and defamation-related claims similarly ensure the application of foreign law by requiring the application of the law where the goods were delivered (Art. 18 AGRA) or the law of the victim's habitual residence (Art. 19 AGRA). In contrast, India's double actionability rule tests the claim's actionability only under foreign law but continues to apply *lex fori*.

---

133 Arts. 44–47, read together with Arts. 4–5 LAL; Arts. 11, 42 AGRA; Arts. 20, 23 PILA.

134 Art. 21 AGRA; Art. 53 PILA, authorizing an *ex-post* choice of law.

135 See, e. g., Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (Product Liability Directive); Product Liability Act 1994 (Japan); Product Liability Act 2000 (South Korea); Product Quality Law of the People's Republic of China (1993).

136 Ch. VI Consumer Protection Act 2019, recognizing product liability only from 2019.

Singapore's example demonstrates that a significant obstacle to modernizing Indian PIL is particularism. Universalism, as embraced by other Asian nations, such as South Korea, China, and Japan, and as reinforced by judicial flexibility and codification, provides a more predictable and uniform legal environment for foreign litigants. Codification and universalization of Indian PIL can improve the country's global legal competitiveness. This would satisfy litigants' legitimate expectations and promote just resolutions in cases involving foreign-related contractual and non-contractual obligations. However, because formal legislative codification can be a slow process, the SCI, being the highest court, should proactively clarify legal positions – such as the validity of choosing non-binding legal instruments in matters being resolved by litigation. Drawing from China's experience, formulating such guidelines would dramatically reduce transaction costs in India, while also improving access to justice. Presently, legal representatives of parties litigating in India are compelled to ruminate on the correct legal position of law given the speculative nature of the existing choice of law rules.

3. Recognition and enforcement of foreign judgments

a) The present architecture of India's REFJ regime

Contract enforcement remains one of India's biggest business challenges.[137] Alongside international jurisdiction and choice-of-law regulations, REFJ helps ease the challenges of contract enforcement. Besides ensuring that judgment-creditors' foreign judgments are legally effective in the country without many hurdles if the debtor has assets there, REFJ law affects businesses' decisions to litigate in the country. For businesses to consider Indian courts for foreign-related litigation, the Republic's decisions must have extraterritorial impact in major jurisdictions. Reciprocity-based REFJ laws in many jurisdictions require the presence of similar criteria for determining the extraterritorial implications of foreign judgments. These requirements need not be the same, but the REFJ law of the country of origin must not be stricter (see, e.g., Art. 118(iv) Japanese CCP; Art. 217 South Korean Civil Procedure Act 2006). However, India's REFJ law is indeed stricter than most key jurisdictions, making it hard to enforce foreign judgments there. This discourages litigants from using India as a hub for transnational litigation.

Notwithstanding its global rejection, Indian law has, for 147 years, uniquely maintained *révision au fond* in its REFJ regime, thereby allowing courts to test a judgment's legal and factual correctness before enforcement (s. 14(a) Code of Civil Procedure 1877 (repealed and replaced by CPC 1908)). Found in s. 13(b) of the CPC, *révision au fond* significantly impacts the enforcement of foreign judgments in India

137 *World Bank Group*, Ease of Doing Business in India (2021), <https://archive.doingbusiness.org/en/data/exploreeconomies/india> (28 December 2025) 95–105.

against debtors who have assets in the Republic. Moreover, it reduces the Republic's appeal as a favourable venue for the resolution of cross-border disputes, especially if the country in which an Indian judgment is to be enforced, prohibits foreign judgments from being enforced because of the adoption of fundamentally more stringent standards than those found under its own law. Japan (Art. 118(iii) CCP), South Korea (Art. 103 Civil Procedure Act 1960 (as amended 2011)) and Germany (Art. 328(1) no. 4 Zivilprozessordnung 1877 (as amended 2009)) are prominent examples of countries adopting such forms of reciprocity, causing Indian judgments to be denied enforcement because of the greater challenges encountered by decisions of these jurisdictions than those faced by Indian judgments in these nations.

Though domestic courts have given a more nuanced meaning to s. 13(b),[138] limiting the assessment to an ascertainment of the presence of evidence in the foreign judgment,[139] the very presence of the ground as a test for extraterritorial effect of foreign judgments diminishes the chances of enforceability of Indian judgments in countries requiring equal conditions as a factor for establishing reciprocal relations with India. Thus, while all other aspects of India's REFJ law (see generally ss. 13, 14, 44A CPC) generally adhere to global standards,[140] the continued acceptance of the *révision au fond* principle remains the most significant impediment to India's transnational litigation system. Notably, out of the 1,353 legislative or constitutional records related to the drafting of the CPC,[141] none provide any insight or explanation for the reasons behind subjecting foreign judgments to further scrutiny through review on the merits in India.

Internationally, most international instruments, including the HCCCA (Art. 8(2) HCCCA), the Judgments Convention (Art. 4(2) Hague Judgments Convention), the Asian Principles for the Recognition and Enforcement of Foreign Judgments (APREFJ),[142] and the laws of most countries,[143] expressly prohibit *révision au fond* due to sovereignty concerns. Notably, France, where this practice originated,[144]

---

138 *Adeline Chong*, Moving Towards Harmonisation in the Recognition and Enforcement of Foreign Judgment Rules in Asia, (2020) 16:1 J. Priv. Int. L. 31–68, 41–42.

139 See the SCI decision in *International Woolen Mills v. Standard Wool (UK) Ltd.*, (2001) 5 SCC 265.

140 For discussion, see *Jolly/Khanderia*, Indian PIL (n. 87) 270–274.

141 See Parliamentary Debates, Lok Sabha Digital Library, Legislative Assembly Debates, <https://eparlib.sansad.in/handle/123456789/4/simple-search?page-token=572cf55e2393&page-token-value=620c22d7a178cbaa6fe24c17b107851c&sort_by=keywords_count&order=DESC&query=+recognition+and+enforcement+of+foreign+judgments> (11 May 2026).

142 Principle 4 Asian Principles for the Recognition and Enforcement of Foreign Judgments, in: Recognition and Enforcement of Foreign Judgments, ed. by Adeline Chong (2017).

143 On the REFJ-related practices and the prohibition of review on the merits in Asia, see *Anselmo Reyes*, Conclusion: Towards an Asia of Judgments without Borders, in: Recognition and Enforcement of Judgments in Civil and Commercial Matters, vol. I, ed. by idem (2019) 309–325.

144 See *Holker v. Parker*, Cass.civ. 19 April 1819, Sirey Jurisprudence I. 288. For discussion, see

abandoned it after enforcement challenges overseas.[145] When the court must decide if a decision violates public policy, it must avoid judging whether the decision was correct and factually accurate in the eyes of the recognizing state.[146] While the modernization of international jurisdiction and choice-of-law rules plays a vital role in internationalizing the judiciary, the REFJ regime ultimately dictates and influences contract enforcement having cross-border elements, as it plays a crucial role in determining litigants' decisions to resolve disputes in specific countries through a particular mechanism.

Another impediment remains the lack of clarity regarding the establishment of the international competence or jurisdiction of the rendering court. Being a common law country, the effectiveness of foreign judgments in India involves a determination of whether the debtor owed the creditor an obligation under the rendering country's law – the establishment of which, as indicated above, depends on the international competence of that court under its law and s. 13(a) of the (Indian) CPC. Despite being the most crucial pillar given India's common law roots, statutory provisions have remained silent on the criteria for its determination since the CPC's enactment in 1858 and subsequent re-enactment in 1908.

It was only in 1936 that a court defined exact standards for judging the international jurisdiction of foreign courts[147] – 28 years after the CPC's enactment in 1908. These guidelines were made legally binding in 1962 following the SCI's ruling in *Andhra Bank*.[148] The following year, the Supreme Court clarified that the criteria did not govern *in rem* decisions and were relevant exclusively to decisions involving disputes *in personam*.[149] Generally, India's indirect jurisdiction grounds align with prominent international instruments like the Judgments Convention (Art. 5(i)–(j) Hague Judgments Convention), thereby regarding foreign courts as internationally competent in disputes *in personam* when they assume jurisdiction based on the debtor's nationality, residence, submission, or if the cause of action occurred there. In disputes *in rem*, international jurisdiction must be based on the ability to dispose of the *res* (subject matter) under the rendering court's law.[150] The absence of explicit statutory provisions, however, reduces predictability and stability, allowing existing grounds to be easily changed by a court decision. Moreover, it increases transaction

Gilles Cuniberti, The Recognition of Foreign Judgments Lacking Reasons in Europe, (2008) 57:1 ICLQ 25–52.

145 See, e. g., the decision of the US court in *Hilton v. Guyot*, 159 US 113 (1895); and *Arthur T. von Mehren / Donald T. Trautman*, Recognition of Foreign Adjudications: A Survey and a Suggested Approach, 81:8 Harvard Law Review 1601–1696, 1661 (1968), reporting the difficulties faced in enforcing French decisions in Germany.

146 See, e. g., *John Greenwood Collier*, The Conflict of Laws[3] (2004) 118, referring to *Pemberton v. Hughes*, [1899] 1 Ch. 781 [790], for English common law approach.

147 *Chormal Balchand Firm v. Kasturi Chand Seraogi*, [1936] 63 Cal 1033 para. 8 (Cal HC).

148 *Andhra Bank Ltd. v. R. Srinivasan*, (1962) 3 SCR 391 (SCI).

149 *R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid*, [1963] 3 SCR 269 (SCI).

150 *R. Viswanathan* (n. 149) paras. 15, 17, 142.

costs, requiring litigants to peruse a web of case law to ascertain whether the foreign court is internationally competent under Indian law.

Interestingly, India's REFJ regime also does not specify public policy violations as grounds to deny effect to foreign judgments. Most nations (Art. 45 Brussels I Recast Regulation; Art. 118(2)–(3) Japanese CCP; Art. 217(1) South Korean Civil Procedure Act; Art. 282 Chinese CPL), including India's arbitration regime under ss. 34, 36, 48, and 57 of the ACA, preclude foreign decisions from enforcement if they violate public policy. Thus, the absence of the "public policy" premise for foreign judgment finality lowers predictability. Of course, by allowing courts to deny *res judicata* effect to foreign judgments obtained by fraud or without due process in India under s. 13(d)–(e) CPC, the contravention of public policy does find an indirect place in India's REFJ law. Another factor distinguishing India's REFJ regime is the courts' authority to regard inconclusive judgments based on a misinterpretation of international law or the failure to recognize Indian law where applicable under s. 13(c) and (f) CPC, respectively, indirectly regarding these aspects as public policy exceptions that deny effect to foreign judgments. However, given the absence of reported cases indicating a denial of enforcement of foreign judgments on these grounds, these considerations have – fortunately – not impaired the extraterritorial effect of foreign judgments in India. Moreover, considering that these are merely forms of discerning public policy violations, it is additionally unlikely that these "extra" grounds would create substantial impediments for foreign judgments from countries that base their REFJ regimes on reciprocity, so as to adversely impact and prevent the enforcement of judgments in these jurisdictions.

b) The future of India's REFJ framework: Comparative Asian perspectives

Except for India, all major Asian countries, such as Singapore, Japan, China, and South Korea, among others, have worked to reform their REFJ regimes to establish themselves as transnational litigation hubs. Singapore, whose REFJ regime closely resembles India's, given their shared common law heritage, serves as a notable example. Determining the extraterritorial effect of foreign judgments in Singapore is primarily driven by the obligation theory.[151] Like India, only a few countries enjoy the privilege of reciprocity, allowing judgments from superior courts to be enforced in Singapore without additional procedures.[152] Judgments must be conclusive to operate as *res judicata* in Singapore, but they may be vitiated on similar grounds found in India's CPC.[153] However, ratification of the HCCCA has revolutionized its REFJ system and demonstrated the country's dedication to establishing the city-state as a

---

151 *Kenny Chng*, Singapore, in: Reyes (n. 143) 141–161, 147–148.

152 For the list of countries, see *Chng*, Singapore (n. 151) 143.

153 *Chng*, Singapore (n. 151) 153–159.

major hub for transnational litigation,[154] much like its reputation in international commercial arbitration. After the HCCCA is ratified by other major trading partners, such as the US and China,[155] judgments made in these countries will be enforceable in Singapore without the need for additional procedures or proof of the international competence of these courts. Currently, 27 EU Member States, Denmark, the UK, Mexico, Montenegro, Ukraine, and the Republic of Moldova have ratified the HCCCA.[156] This ratification has streamlined the process of enforcing judgments in Singapore from courts in HCCCA signatory countries chosen through CoCAs.

India also prioritizes party autonomy by prohibiting its national courts from assuming international jurisdiction that has been agreed upon by another forum.[157] Nonetheless, the Republic's adherence to this principle is questioned, given the absence of safeguards to stop its courts from upholding rulings that contravene forum-selection requirements. Currently, there are no restrictions on REFJ if CoCAs were violated and the rendering forum was internationally competent through other methods.[158] The Choice of Court Agreements Act has not only improved the enforceability of certain foreign judgments but has also increased the desirability of its courts. Critical to ensuring the seamless recognition of Singaporean court judgments in other major trading partners like Japan[159] that are not signatories to the HCCCA is the Singaporean lawmakers' proactive approach, which prohibits their courts from examining foreign judgments on their merits.

REFJ regimes in Japan,[160] South Korea,[161] and China[162] are based on reciprocity, which allows foreign judgments to be enforced without additional procedures such as filing a new action, relying instead on mutual guarantees. In Japan[163] and South Korea,[164] these guarantees include equivalent standards for judgment enforceability. Though the recognition standards need not be identical to the recognizing state's,

---

154 *Chng*, Singapore (n. 151) 161.

155 *Singapore Department of Statistics*, Singapore International Trade, <https://www.singstat.gov.sg/infographics/singapore-international-trade> (11 May 2026).

156 HCCH, Status Table: Hague Judgments Convention, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (12 December 2025).

157 *Modi Entertainment Network* (n. 58).

158 *Modi Entertainment Network* (n. 58).

159 *Singapore Department of Statistics*, Singapore International Trade (n. 155).

160 *Béligh Elbalti*, Foreign Judgments Recognition and Enforcement in Civil and Commercial Matters in Japan, Osaka University Law Review 66 (2006) 1–32, 26–29.

161 *Sung Hoon Lee*, Foreign Judgment Recognition and Enforcement System of Korea, Journal of Korean Law 6:1 (2006) 110–146, 125–126.

162 *Zhang/Tu*, Recent Efforts (n. 42) 521–527.

163 *Elbalti*, Foreign Judgment Recognition in Japan (n. 160) 26–29, referring to Art. 118(iv) Japanese CCP.

164 *Lee*, Foreign Judgment Recognition and Enforcement System of South Korea (n. 161) 125–126, referring to Art. 217 South Korean Civil Procedure Act 2006.

they should not be more rigorous nor significantly different either. Hence, national courts are prohibited from conducting merit-based reviews. Instead, finality is contingent upon the absence of fraud, procedural correctness, and non-contravention of public policy.[165]

Some scholars interpret the reciprocity requirement as a means of persuading the state of origin to cooperate with the recognizing state, either through treaty negotiations or changes in recognition legislation.[166] However, in practice, Japan and South Korea's REFJ regulations do not impede the free flow of judgments. Judgments from countries allowing for *révision au fond*, such as India, are often unenforceable in these Asian states due to significant disparities in practice. Nonetheless, unlike India, few modern legal systems permit a thorough *révision au fond* for foreign judgments beyond evaluating the decision's conformity with substantive public policy. By aligning their REFJ systems with global standards, Japan and South Korea have improved the competitiveness of their venues for transnational disputes.

Globally, China maintains the most stringent REFJ regime, necessitating that foreign judgments originate from countries with treaties with the PRC or a clear judicial precedent.[167] Chinese judgments can be enforced in India, but not vice versa, due to the lack of treaties or established precedents. Through documents like the 2021 Minutes, the SPC has increasingly supported *de jure* reciprocity, allowing Chinese courts to enforce foreign judgments if domestic judgments were enforceable in the rendering state *under the same conditions*.[168] To ensure uniformity in the interpretation of reciprocity across the country, the SPC has established an internal reporting system – allowing lower courts to enforce foreign decisions only after the SPC provides a formal reply, thereby preventing inconsistent outcomes among regional courts.[169] Foreign judgments may soon be enforceable in the PRC without the need for a treaty or precedent. China has adapted to globalization despite allegations of inflexibility, modernizing its national courts, primarily by constituting the CICCs, and ensuring the REFJ framework does not hinder growth.

In India, the law of enforcement is one area that would greatly benefit from interim guidelines developed by the judiciary. Developing such guidelines would prompt the SCI to confront aspects of India's REFJ regime that currently hinder the internationalisation of the country's litigation system. By clarifying the true nature of Indian law, such guidelines would facilitate the enforcement of Indian judgments in

---

165 *Kazuaki Nishioka*, Japan, in: Reyes (n. 143) 97–117, 103–112; *Unho Lee*, South Korea, in: Reyes (n. 143) 119–140, 123–131.

166 *Pontian N. Okoli*, Promoting Foreign Judgments: Lessons in Legal Convergence from South Africa and Nigeria (2019) 102–104.

167 *Wenliang Zhang/Yingqing Zhong*, Recognition and Enforcement of Foreign Judgments: China, in: Jolly/Khanderia (n. 80) 491–501, 491.

168 *Zhang/Tu*, Recent Efforts (n. 42) 525–526, referring to 2021 Minutes of the National Symposium on Foreign-related Commercial and Maritime Trials.

169 *Zhang/Tu*, Recent Efforts (n. 42) 523–528.

countries like Japan, South Korea, or China – through coherent proof that India's REFJ regime indeed prohibits merits reviews. Nuances of novel grounds such as "incorrect views of international law" (s. 13(c) CPC) or "breach of Indian law" (s. 13(f) CPC) would further be clarified providing litigants the desired predictability.

IV. Overcoming legal barriers: Tackling significant hurdles to advance India's PIL regulations

As indicated previously, there are predominantly two hurdles stagnating the growth of India's PIL regulations, the remedy of which could rapidly initiate reform in all three areas of the law. Each of these is discussed below.

1. Treating foreign law as a question of fact

Treating foreign law as a question of fact and presuming national law as the default choice in foreign-related issues does not inhibit the development of a country's private international law. Many modern systems, even in Asia, allow the application of the *lex fori* as a last resort when foreign law cannot be determined (see, e. g., Art. 10 LAL). Resolving such matters according to the *lex fori* offers a pragmatic solution to avoid the difficulties inherent in applying foreign law.[170] Although most legal systems now publicize their statutes electronically,[171] language barriers and extensive case law in countries like Singapore, India, and the UK complicate the application of foreign law. In India, scepticism towards foreign lawyers and insufficient training for domestic lawyers will perpetuate the use of the *lex fori*, diminishing national courts' competitiveness compared to countries where courts can determine the applicable law on their own initiative or allow experienced foreign lawyers to represent parties.

Take a moment to reflect on the importance of the 2015 Hague Principles on the Choice of Law in International Commercial Contracts[172] in India: Indeed, their importance in transnational litigation for interpreting or developing the law is expected to be much less than in international commercial arbitration, where arbitrators, who may be of any nationality, can apply suitable rules of law (ss. 11(9) and 28(b)(iii), ACA). By contrast, Indian litigation is restricted to Indian lawyers under s. 47 of the Advocates Act 1961. Foreign lawyers may merely provide advice on their own country's legal position.[173] The unpopularity of the Hague Principles as gap-fillers in In-

---

170 *Marta Requejo Isidro*, Application of Foreign Law, in: A Guide to Global Private International Law, ed. by Paul Beaumont / Jayne Holliday (2022) 133–146, 136.

171 *Requejo Isidro*, Foreign Law (n. 170) 141–142.

172 See n. 98.

173 *Bar Council of India v. A.K. Balaji*, (2018) 5 SCC 379 (SCI) paras. 46–48.

dian courts on various questions, such as the validity of the choice of non-binding legal principles or the resolution of a battle of forms, is due to limited knowledge among legal professionals and the lack of priority given to PIL in Indian law schools. Core courses focus on subjects essential for bar enrolment, and PIL is often neglected or taught as an elective. Global advancements in the field are frequently overlooked, resulting in a lack of awareness.

Improving the situation demands more than emphasising PIL in education or requiring the *ex officio* application of foreign law by courts – neither will independently increase the likelihood of foreign law being implemented. An *ex officio* application implies that PIL training should be focused on a smaller group, which can be achieved by incorporating it into judges' induction training. Judicial notice is particularly viable when foreign law sources are readily accessible and of "indisputable accuracy", a practice also endorsed by the English courts.[174] Even if a source, like a standard work, is outdated, judicial notice should be taken on the presumption of continuity.[175] Improved cooperation between courts and parties seeking advice from foreign lawyers and courts in the host nation would help reduce difficulties in determining the content of foreign law.[176] Pending codification, the determination of foreign law remains challenging and costly, particularly in a country like India with widespread poverty. Due to globalization, the incorporation of foreign elements has become a prevalent aspect of private relationships. Thus, until it is formally incorporated into legislation, courts should acknowledge the decision made by parties to utilize non-binding legal instruments like the UNIDROIT's Principles of International Commercial Contracts (PICC). These instruments are easily accessible in various languages and can be used without extra costs.

2. The rise of arbitration and the deteriorating development of the rules of Indian PIL applicable to judicial processes

The roles of India's legislature, the LCI, and the judiciary in developing PIL rules for litigation and arbitration have been imbalanced since the enactment of the ACA. Indian law generally permits arbitration for most disputes, except those regarding rights *in rem*[177] and consumer matters.[178] Most international civil and commercial disputes over rights *in personam* can be arbitrated. Judicial dicta indicate that parties in international commercial disputes often opt for Indian arbitration. Although

---

174 See *Tony Ward/Ann Plenderleith Ferguson*, Proof of Foreign Law: A Reduced Role for Expert Evidence?, (2024) 20:1 J. Priv. Int. L. 95–116, 103–105, referring to *FS Cairo (Nile Plaza) LLC v. Brownlie*, [2021] UKSC 45; *Scott v. Attorney-General (Bahamas)*, [2017] UKPC 15 para. 41.

175 *Ward/Ferguson*, Proof of Foreign Law (n. 174) 104.

176 *Requejo Isidro*, Foreign Law (n. 170) 137–139.

177 *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532 (SCI).

178 *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751 (SCI).

the Indian Council of Arbitration (ICA) has a superior reputation and more experience in resolving these disputes than courts,[179] its track record is poor compared to London, Dubai, Paris, and Singapore,[180] with ICA decisions typically taking 12 months.[181] The absence of clear adjournment rules and widespread disregard for them have both contributed to the decline of courts in international civil and commercial matters.[182]

India's judiciary faces challenges competing with arbitral tribunals due to the codification of rules, regular statutory amendments, and interventions made by the LCI and judiciary to maintain investor confidence in arbitration law. The SCI's rulings reflect the judiciary's commitment to international commercial arbitration. For instance, in *Shin-Etsu*, the court limited its role to making prima facie findings to save time and uphold the sanctity of arbitration clauses.[183] *Renusagar* offered guidelines for the public policy exception,[184] and *Shri Lal Mahal* prohibited nullifying awards for patent illegality, thus improving enforceability.[185] *BALCO* further prohibited the setting aside of such decisions altogether, asserting that this right is exclusively within the jurisdiction of the courts of the country in which the proceedings are conducted.[186] Most of the principles initially clarified through case law were subsequently codified in the form of an amendment to the ACA in 2015 (see ss. 34, 48, 57 ACAA). Similarly, development of the choice-of-law rules on the law that would govern an international commercial arbitration agreement has correspondingly gained much traction.[187] As with litigation, this area of law has remained uncodified, but arbitration's popularity has created ample opportunities to develop

---

179 *Fali S. Nariman*, National Report for India, in: ICCA International Handbook on Commercial Arbitration, ed. by Lise Bosman (2020, Suppl. No. 108, Dec. 2019) 1–52, 8.

180 *White & Case and Queen Mary University of London*, International Arbitration Survey: Improvements and Innovations in International Arbitration, <https://arbitration.qmul.ac.uk/research/2015/> (11 May 2026).

181 *Nariman*, National Report for India (n. 179) 8.

182 See *Saloni Khanderia*, India, in: Yip/Rühl (n. 59) 329, 365–368, indicating the violation by international commercial courts across India of the three-adjournment rule prescribed in Order XVII of the CPC.

183 *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234 paras. 238 ff. (SCI).

184 *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644 (SCI).

185 *Shri Lal Mahal Ltd. v. Progetto Grano SpA*, (2014) 2 SCC 433 (SCI).

186 *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 paras. 135–142 (SCI).

187 The primary choice-of-law rule is stipulated in s. 28(b) ACA. This is complemented with principles developed by cases such as *National Thermal Power Corporation* (n. 58), *PASL* (n. 105); *Shreejee Traco (I) Pvt. Ltd. v. Paperline International Inc.*, (2003) 9 SCC 79 (SCI); and *Indtel Technical Services Pvt. Ltd. v. W.S. Atkins Rail Ltd.*, (2008) 10 SCC 308 (SCI), to name a few. But see *Sai Ramani Garimella*, Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: An Indian Perspective, in: idem/Jolly (n. 113) 323–346, 346, who advocates future reforms prioritizing a clarification of the choice of law methodologies in international commercial arbitration under the ACA.

and clarify choice-of-law rules on the applicable law. Barring non-commercial international arbitrations, which are treated like domestic matters, parties can choose the governing law.

The mandate under s. 89 of the CPC, which empowers courts to refer parties to arbitration, has also encouraged lawmakers to delay reforms in several areas of India's choice-of-law rules, such as the identification of governing law. When courts cannot address intricate PIL questions, they may direct parties to arbitration, where rules are more comprehensive. The proliferation of arbitration in India, akin to trends in other common law jurisdictions, has impeded the evolution of legal doctrines for international civil and commercial issues within judicial proceedings, relegating courts to mere vestiges and imposing costly processes on small entrepreneurs.[188]

V. Concluding remarks

India's leadership in constitutional, environmental, and international legal frameworks, including the G77 and BRICS, as well as its capacity to address vast and diverse populations, has provided a compelling example for other developing countries confronting comparable challenges. Many countries in the Global South, particularly those that are striving to reconcile tradition with modernization, have drawn inspiration from India's example of harmonizing economic development, social justice, and legal pluralism. India's judiciary has been instrumental in developing the legal system since independence, frequently engaging with constitutional and environmental issues. As a part of BRICS, India, along with other major developing countries, Brazil, Russia, China and South Africa, demonstrates its strong desire to foster cooperation, advocate for reforms in global governance, and play a more significant role in international affairs. As the world's largest economy, with a population of 1.4 billion as of the date of writing, Indian courts have numerous opportunities to regulate complex disputes involving foreign elements, such as those resulting from initiatives like MiI, which increase the presence of foreign corporations in the country. Despite India's global presence in private international law, it has lagged considerably. Unlike all other major jurisdictions, including Asian countries like Singapore, China, Japan and South Korea, in India, the lack of cooperative effort among the three lawmaking bodies – the legislature, the LCI, and the judiciary – has prevented the rules regulating foreign-related civil and commercial disputes from developing in tandem with the country's pace of development.

Particularly since 1991, after India transitioned to an open-market economy, case law reflects the judiciary's sustained efforts to elevate the country's rules regulating

---

188 See *T.S. Rama Rao*, Some Recent Developments and "Non-Developments" in Private International Law, JILI 27 (1985) 555–563, 560–563.

foreign-related matters: the acceptance of party autonomy in the choice of law and courts, the imposition of limitations on the use of arbitration and forum-selection agreements in deciphering implied choices of law, and more recent efforts to internationalize the country's international jurisdiction rules through more stringent regulations on the assumption of concurrent jurisdiction all underscore the judiciary's commitment to keeping pace with global developments. Simultaneously, however, the current fragmented system of uncodified precedents underscores the urgency of a comprehensive PIL code streamlining jurisdictional, choice-of-law, and enforcement-related rules. To establish India as a competitive hub for transnational litigation, legislators ought to undertake a series of statutory, institutional, and structural reforms – marked by a necessary shift in the country's legal philosophy that (currently) embraces a particularist view. By adopting the Asian model of universalism – seen in China, Japan, and South Korea – India would embrace uniform principles that treat foreign law on equal footing, which in turn would ensure that the legitimate expectations of global litigants are met.

Presently, the BCI's scepticism towards foreign lawyers, confining their role to providing advice on the laws of their own countries in foreign-related disputes, considerably hinders the adjudication of high-value disputes, as legal representatives are often compelled to rely on the *lex fori* due to a lack of formal training in choice-of-law methodologies. To ensure a just, fair, and accurate resolution of cross-border transactions, judges should be empowered to investigate and apply foreign law on their own initiative, rather than treating it as a fact that litigants must prove through costly expert evidence. To facilitate this, PIL should essentially be positioned within the core curriculum, ensuring that future legal professionals are fully aware of global developments. Until then, training on the nuances of the specialized rules governing cross-border disputes should be incorporated into induction programmes for judges, to prepare them for the *ex officio* application of foreign law.

Notwithstanding these reforms, it must be acknowledged that the Indian judiciary will remain unable to rival the renowned international courts of other major Asian jurisdictions until these efforts are infused with a stronger international perspective. The creation of an international commercial experts committee to assist national judges, as has been done in China, would facilitate this, while at the same time ensuring that final decision-making power is not handed over to foreign nationals; such a step would comply with the CPC, which limits the appointment of members of the judiciary to nationals.

Considering foreign law as a question of law that compels the judiciary to determine the applicable law autonomously would promote further reforms to conflict-of-laws rules. This approach would enable legislators to address the practical challenges encountered directly, thereby placing the responsibility of identifying methods to advance the principles onto a smaller demographic. Particularly in the context of the choice-of-law methodologies adopted to adjudicate contractual obligations with foreign elements, there remains an urgent need for modernization,

given the direct bearing of such cases on international trade, investor confidence, and ultimately India's economic growth. Courts would become acquainted with and encouraged to see the 2015 Hague Principles as an accessible supplementary resource for determining the proper law. While the existing principles limit the role of CoCAs and arbitration agreements in establishing the parties' implied or tacit preferences,[189] formally invoking the Hague Principles[190] to enhance current regulations would significantly bolster certainty in a domain that remains ambiguous due to the *obiter dicta* nature of judicial pronouncements. The discretion to select non-binding legal principles like the PICC – an area where the law exhibits comparable inconsistencies[191] – would likewise attain the character of a formal rule.[192]

In a related vein, the current framework's ability to foster the exploitation of vulnerable parties, such as consumers, necessitates the development of a specialized choice-of-law framework that reflects the trends of more advanced PIL rules in other Asian economies. Absent specialized choice-of-law rules or a clear intent on the extraterritorial effect of domestic laws governing contracts with parties possessing unequal bargaining powers, the SCI's ruling in *Modi Entertainment*[193] – being wide enough – allows economically stronger parties to easily evade the protections offered by Indian law to residents through CoCAs in favour of foreign forums.

Lastly, it is imperative to recognize that none of these reforms is worthwhile unless Indian judgments are enforceable across borders. Even though Indian courts do not, in practice, assess any foreign judgment for its legal or factual propriety, the enforcement of Indian judgments in most countries that require reciprocity is currently prevented by India's rigid adherence to *révision au fond*. A review on the merits requirement is meaningless and will continue to distort the internationalization of the Indian judiciary significantly. Ratifying the HCCCA would significantly enhance the enforcement of foreign judgments arising from the CoCAs in the EU and, in the near future, in China, where Indian judgments presently encounter significant hurdles. Until India decides to ratify major conventions aimed at harmonizing core PIL principles, the SCI being the highest court must step in using its constitutional mandate under Art. 141 of the constitution to formulate detailed guidelines consolidating judicial practices, thereby enabling interested parties to ascertain the applicable rules when litigating international disputes before Indian courts.

Presently, there is an alarming disconnect between India's status as an economic powerhouse and its impaired PIL principles. While initiatives such as the Make-in-India programme have caused the country to thrive, they do so in isolation from a predictable legal regime.

---

189 See the text accompanying notes 100–101.

190 Art. 4 Hague Principles on the Choice of Law in International Commercial Contracts.

191 See the text accompanying notes 102–103.

192 Art. 3 Hague Principles on the Choice of Law in International Commercial Contracts.

193 *Modi Entertainment Network* (n. 58).