Enforcing Indian Judgments Abroad: The Hidden Costs of Révision au Fond

A recent article in the latest issue of the *Asian Journal of Comparative Law* revisits a feature of Indian private international law that often sits in the background of transactional and disputes practice but can decisively shape outcomes: the continued presence of *révision au fond* in India's law on the recognition and enforcement of foreign judgments (REFJ).

For practitioners, the issue is not merely doctrinal. It concerns the enforceability of outcomes and, therefore, how disputes should be structured at the drafting stage.

Under Section 13 of the Civil Procedure Code 1908, Indian courts are formally empowered to refuse enforcement where a foreign judgment is not "on the merits." Read literally, this suggests a willingness to reassess the correctness of the decision. In most jurisdictions today, that approach has been abandoned. Refusal of enforcement is typically confined to procedural defects: jurisdiction, fraud, natural justice, or public policy, not the substance of the decision.

In practice, Indian courts have taken a far more restrained approach. They do not reopen the correctness of the foreign judgment. Instead, they ask whether the decision reflects a genuine adjudication: was there evidence, was there a real opportunity to be heard, and is the decision reasoned? In effect, what appears to be *révision au fond* operates as a proxy for natural justice.

The difficulty lies in how this framework is perceived externally. Courts in jurisdictions that condition enforcement on reciprocity or substantially similar standards, such as Germany, Japan, South Korea, and, increasingly, China, do not necessarily engage with the nuances of Indian case law. The statutory text continues to signal that India permits merits review. That signal alone may be sufficient to deny enforcement of Indian judgments abroad.

This gap between doctrine and practice creates a set of risks that practitioners

should factor into both litigation strategy and transactional drafting.

First, forum selection cannot be approached in isolation from enforcement.
Where assets are likely to be located outside India, the portability of an Indian judgment becomes a central concern. If enforcement is anticipated in reciprocity-based jurisdictions, the choice of an Indian court may introduce avoidable uncertainty.

Second, arbitration retains a structural advantage in this context.
India's alignment with the New York Convention and the prohibition on merits review in the enforcement of arbitral awards offers a level of predictability that litigation currently does not. Where enforcement abroad is critical, arbitration may continue to be the safer route.

Third, dispute resolution clauses should be drafted with enforcement geography in mind.
This may involve:

- Selecting a forum whose judgments are more readily enforceable in the jurisdictions where assets are located
- Considering hybrid approaches, such as arbitration with carefully chosen seats
- Avoiding assumptions that a favourable judgment in one jurisdiction will translate into effective recovery elsewhere

Fourth, expectations around default and summary judgments should be managed carefully.
Indian courts place emphasis on whether the judgment reflects a substantive evaluation of the dispute. Orders that appear purely formal or insufficiently reasoned may face resistance in India, and this in turn feeds into how Indian judgments are assessed abroad.

The broader point is that India's REFJ framework is not out of step in practice, but it appears to be so in form. Until that dissonance is addressed, whether through legislative clarification or greater international alignment, the enforceability of Indian judgments will continue to depend as much on perception as on doctrine. The article is available open-access here.