**INTRODUCTION**

The Geneva Convention came to force on 25th of July 1927. Prior to 1927, foreign awards were enforceable in British India on the same grounds as the crown in England. The main motive of the convention is to enable the contracting signatory parties to get their awards enforced. The convention places certain conditions which should be fulfilled to make the award enforceable which are as follows:

* The award must have been made in pursuance of a submission to arbitration.
* The subject-matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon.
* The award has been made by the Arbitral Tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure.
* The award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
* The recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.[[1]](#footnote-2)

Further, the convention provides the exceptions of annulment in the home country (where the award is made), absence of notice (natural justice), and ultra vires decision by the tribunal.[[2]](#footnote-3)

The parties are supposed to supply the true copy of the award or the original award, documentary evidence to prove that the award is final, and other evidences to prove that the requirements of Article 1 & 2 have been complied with or not.[[3]](#footnote-4)

INDIAN SCENARIO:

India has more than 100 years of history in regard to arbitration legislation. During the British rule, India had its first legislation on arbitration in the form of Indian Arbitration Act, 1899. The 1940 Act did not deal with enforcement of foreign awards. To enforce the Geneva Convention on Foreign Awards, the legislature passed the Arbitration (Protocol and Convention) Act, 1937. The Foreign Awards (Recognition and Enforcement) Act, 1961 was brought in picture to enforce the New York Convention Awards.

The Indian Arbitration & Conciliation Act discusses the concept of Foreign Award in Part II Chapter II of the Act. According to Section 53 of the Act, a foreign award means an arbitral award on disputes arising between parties to arbitration, whether in contractual or non-contractual relationship, considered as commercial under Indian laws enacted on or after the 11th day of October, 1960. But the country must be a signatory to the any of the Convention and recognised by the Central Government of India as a Convention country and the award shall be passed in the territory of another contracting country which is a reciprocating territory. Section 55 of the Act emphasizes that the award which satisfies the conditions of Section 57. Section 54 of the Act empowers a judicial authority to refer the parties to arbitration at the request of one of the parties or any person claiming through or under him except in the situation when the agreement is found to be void, inoperative or incapable of being performed.

Section 56 imposes the same conditions as Article 4 of the Geneva Convention. Section 57 further provides certain exceptions to the enforcement of the awards on the grounds of parties being incompetent, agreement being invalid, absence of a fair trial, award being ultra vires of the arbitration agreement, or being against the public policy of the nation. Section 57 only provides grounds for refusal of enforcement of foreign award and it does not permit the court to make a review of the foreign award on the merits of the case; does not permit the court to exercise its appellate jurisdiction over the foreign award; and does not permit the court to enquire as to whether some .error has been committed by the tribunal while passing the foreign award.[[4]](#footnote-5)

According to Section 58 of the Court, if an award escapes all that which is listed above, it is termed to be a deemed decree of the court. The decree shall be enforceable under the Civil Procedure Code. But, if it is not enforceable, the appeal lies under Section 59 of the Act.

In Western Shipbreaking Corporation v. Clare Haven Ltd., the Gujarat High Court (single judge) held that the expression ‘enforcement' as used in Section 47 is nothing other than ‘execution' as contemplated under Order XXI of the Code of civil Procedure 1908.

The Hon’ble Supreme Court in Fuerest Day Lawson Ltd v. Jindal Exports Ltd[[5]](#footnote-6) also affirmed the view taken by the Gujarat High Court and The Supreme Court, speaking for the Court held that:

*“There is no need to take separate proceedings, one for deciding the enforceability of the award… and the other to take up execution thereafter…if the argument advanced on behalf of the respondent is accepted, the very purpose of the Act in regard to speedy and effective execution of foreign award will be defeated.”*

Viewed in its totality, India does not come across as a jurisdiction which carries an anti-arbitration bias or more significantly which carries an antiforeigner bias. The figures show that notwithstanding the interventionist instincts and expanded judicial review, Indian courts do restrain themselves from interfering with arbitral awards. Judged on this touchstone, India qualities as an arbitration-friendly jurisdiction.[[6]](#footnote-7)

1. Article 1, Geneva Convention, 1927 [↑](#footnote-ref-2)
2. Article 2, Geneva Convention, 1927 [↑](#footnote-ref-3)
3. Article 4, Geneva Convention, 1927 [↑](#footnote-ref-4)
4. http://www.theindianlawyer.in/blog/2016/09/09/enforcement-foreign-awards-india/ [↑](#footnote-ref-5)
5. (2011) 8 SCC 333 [↑](#footnote-ref-6)
6. https://www.lawteacher.net/free-law-essays/foreign/foreign-awards-and-foreign-judgments.php [↑](#footnote-ref-7)