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# Should Indian Courts give respect to the Judgments Passed by Foreign Courts?

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## ABSTRACT

*This paper analyses various judgments, orders passed by foreign courts of competent jurisdiction and these judgments have been recognized by Indian courts. Additionally, it also tries to find whether people are aware about the enforcement or recognition of foreign judgments. And the paper also sees whether the Indian courts gives equal weightage to these judgments. This paper contains non-doctrinal research conducted with the help of a questionnaire (in the form of google form). The questionnaire includes 13 questions out of which 10 questions are main. This questionnaire has collected responses from 52 people whose identities are kept anonymous. The main purpose of this questionnaire is to find if people who are from legal and non-legal whether they are aware about the enforcement or recognition of foreign judgments in Indian courts.*

## I. INTRODUCTION

Prior to commencing the research paper, it is imperative to acknowledge a couple of definitions that are outlined in the statute. A foreign judgement means the judgement of a foreign court<sup>3</sup> and a foreign court means a Court situated outside India and not established or continued by the authority of the Central Government.<sup>4</sup>

In the context of Indian law, foreign judgements carry significant weight. This is because Indian law draws heavily from English common law. Following India's independence, a comprehensive constitution was adopted that incorporates elements from various constitutions worldwide. When the supreme law of the country relied on foreign laws it is pertinent that the country's judiciary would follow suit in deciding cases with respect to similar disputes.

When it comes to enforcing foreign judgments in India, there are primarily three sources of law

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<sup>3</sup> Civil Procedure Code, 1908 (Act 05 of 1908), s. 2(6).

<sup>4</sup> *Id.*, s. 2(5).

that govern the process.<sup>5</sup> The first source is Section 44A<sup>6</sup> of the Civil Procedure Code, 1908<sup>7</sup> which lays down those judgments passed by the Superior Courts of Reciprocating Territories can be enforced in India as if they were passed by Indian District Courts. Filing the decree in a District Court allows for its execution in India, with the same authority as if it were passed by the District Court itself. Along with a certified copy of the decree, a certificate must also be submitted, providing conclusive proof of the decree's satisfaction or adjustment to the extent specified. However, if the judgment is from a non-reciprocating territory, then a fresh case needs to be filed for it to be regulated, and it will only hold evidentiary value. It is important to comply with Section 13 of the Civil Procedure Code, 1908 for both types of judgments, as it declares that a foreign judgment is conclusive. Additionally, Section 14<sup>8</sup> of the Civil Procedure Code, 1908 establishes the authority of the foreign court that issued the judgment.

The second source of law is India's bilateral treaties with reciprocating countries, which govern the recognition and enforcement of foreign judgments to which India is a party. Lastly, there are judicial precedents such as the *Moloji Nar Singh Rao v Shankar Saran case*<sup>9</sup>. This case states that foreign judgments not issued by a superior court of a reciprocating territory cannot be executed in India without filing a new suit. In such cases, the foreign judgment holds only evidentiary value.

## II. PROVISIONS THAT RENDER A FOREIGN JUDGEMENT INCAPABLE OF RECOGNITION

Section-13<sup>10</sup> of the Civil Procedure Code, 1809 lays down the exception which, if a particular foreign judgement fits in, is deemed inconclusive or not capable of being recognised in Indian courts.

Section-13 states, “A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim to litigate under the same title except-”

*The phrase “any matter” pertains to the rights claimed and not the subject matter.*<sup>11</sup>

When the term "any matter" is used, it refers specifically to the rights that are being claimed,

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<sup>5</sup>India: Enforcement of Foreign Judgments Comparative Guide, *available at*: <https://www.mondaq.com/india/litigation-mediation--arbitration/989134/enforcement-of-foreign-judgments-comparative-guide> (last visited on Nov, 29 2023).

<sup>6</sup> *Supra* note 1, s.44A.

<sup>7</sup> Civil Procedure Code, 1908 (Act 05 of 1908).

<sup>8</sup> *Supra* note 1, s.14.

<sup>9</sup> (1963) 2 SCR 577.

<sup>10</sup> *Supra* note 1, s.13.

<sup>11</sup>R. VISHWANATHAN V. RUKN-UL-MULK SYED ABDUL WAJID, (1963) 3 SCR 22: AIR 1963 SC 1.

rather than the broader subject that is under discussion. This means that the focus is on the specific legal entitlements that are being sought, rather than on the general topic or context in which they arise. It is important to clarify this distinction in order to ensure that the legal arguments and evidence presented are relevant and properly aligned with the specific claims being made.

(a) where it has not been pronounced by a Court of competent jurisdiction;

*“A judgement of a foreign court to be conclusive between the parties must be a judgement pronounced by a Court of competent jurisdiction, and competence contemplated by s. 13 of the Code of Civil Procedure is in an international sense, and not merely by the law of the foreign state in which the court delivering judgement functions, and must have directly adjudicated on the matter which is pleaded as res judicata.”*

It means in order for a judgement from a foreign court to be considered binding for both parties involved, it is essential that the court in question has the legal authority to make such a decision. To determine this authority on an international level, the Civil Procedure Code, 1809 comes into play, rather than solely relying on the laws of the country where the court is located. Furthermore, it is necessary that the court in question has directly ruled on the specific issue that is being presented as a previously settled legal matter. This means that the judgement must be relevant to the dispute at hand, and not just a general ruling on a similar topic.

(b) where it has not been given on the merits of the case;

In the case of *Alcon Electronics Pvt. Ltd*<sup>12</sup>, it was stated, *“Also, a Judgement is considered as a judgment on merits when opportunity is extended to parties to a case to put forth their case and after rival submission court gives its decision in the form of an order or judgement.”*

In means, a Judgment on Merits is a ruling made by a court following a thorough presentation of evidence and arguments by both parties involved in a case. This type of judgment is typically issued after a trial or hearing, during which the court carefully considers all the evidence presented by the parties, including witness testimony and documentary evidence. Based on this evidence, the court then makes a decision or issues an order, which reflects its legal interpretation of the case at hand. In essence, a Judgment on Merits is a formal determination of the legal rights and obligations of the parties, as well as their respective responsibilities in relation to the dispute being adjudicated.

When trying to prove that a foreign judgment was not based on its merits, the burden of proof

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<sup>12</sup> *Alcon Electronics (P) Ltd. v. Celem S.A. of France*, (2017) 2 SCC 253.

falls on the party making the claim. However, it is not necessary for the party to prove the state of mind of the judge who made the decision. Instead, the party must establish facts such as whether the judgment itself shows that it was based on merits, what rules the court followed, what materials were presented to the court, and how the decision was made.<sup>13</sup>

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

*“The provision of clause (e) of S.13 of which requires that the courts in this country will not recognise a foreign Judgement if it has been obtained by fraud, is self-evident. However, the fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.”<sup>14</sup>*

Under the law, if a foreign judgement is obtained through fraudulent means, it will not be recognized by courts in this country. This implies that the judgement cannot be enforced here. The fraud can pertain to various aspects of the case, including the facts about where the case should be heard and the actual case itself. For instance, if it can be proven that a party misrepresented the location of the case or provided false evidence, the judgement could be considered fraudulent and therefore unenforceable in this country. Overall, the law ensures that foreign judgements obtained through fraudulent means are not given recognition or enforced within our legal system.

(f) where it sustains a claim founded on a breach of any law in force in India

### **Other Instances when Indian courts have given equal weightage to foreign judgments**

There are instances when Indian courts have recognized foreign judgments and enforced it in India. But to make a foreign judgment enforceable in India courts need to see if that judgment is from a country which falls under the reciprocating territory of India.

In a recent judgment given by Delhi High Court<sup>15</sup> in *Transasia Private Capital Limited v. Gaurav Dhawan*<sup>16</sup> court recognized an exparte judgement given by the High Court of Justice

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<sup>13</sup> *International Woollen Mill v. Standard Wool (U.K.) Ltd.*, (2001) 5 SCC 265.

<sup>14</sup> *Y. Narasimha Rao v. Y. Venkata Lakshmi*, (1991) 3 SCC 451.

<sup>15</sup> Conclusiveness Of Foreign Judgment For Enforcement In India, *available at*: [https://www.livelaw.in/law-firms/foreign-judgment-enforcement-high-court-of-delhi-code-of-civil-procedure-high-court-of-england-foreign-judgment-transasia-226554?infinite\\_scroll=1](https://www.livelaw.in/law-firms/foreign-judgment-enforcement-high-court-of-delhi-code-of-civil-procedure-high-court-of-england-foreign-judgment-transasia-226554?infinite_scroll=1) (last visited on Nov, 29 2023).

<sup>16</sup> 2023:DHC:2336.

Business and Property Courts of England and Wales Commercial Court (QBD).

The court has referred to the Supreme court's judgment on the concept of merits in *Alcon Electronics*<sup>17</sup> As per paragraph 16 of this judgment- *"The appellant contends that the order of the English Court is not given on merits and that it falls under Section 13(c) CPC as a result of which it is not conclusive and therefore unexecutable. We cannot accept such submission. A judgment can be considered as a judgment passed on merits when the court deciding the case gives opportunity to the parties to the case to put forth their case and after considering the rival submissions, gives its decision in the form of an order or judgment, it is certainly an order on merits of the case in the context of interpretation of Section 13(c) CPC."*

The appellant has contended that the English court doesn't has merit and also it falls under the exception given in Sec- 13(c) of CPC but Delhi high court has not accepted this submission and said that the English court is a competent court and its judgment is enforceable in India and also the court has given opportunity to the parties to present their cases and after hearing their submission the court has given its decision.

Also, as per paragraph 17 of this judgment- *"Applying the same analogy to the facts of the case on hand, we have no hesitation to hold that the order passed by the English Court is an order on merits. The appellant who has submitted itself to the jurisdiction of the Court and on its own requested the Court to assess the costs summarily. While passing a reasoned order by dismissing the application filed by the appellant, English Court granted the costs against the appellant. Had it been the case where appellant's application was allowed and costs were awarded to it, it would have as well filed a petition for the execution of the order. Be that as it is, the appellant did not prefer any appeal and indeed sought time to pay the costs. The appellant, therefore, cannot be permitted to object the execution. It cannot be permitted to blow hot and cold at the same time. In our opinion, it is a pure abuse of process of law and the courts should be very cautious in entertaining such petitions."*

This paragraph of the judgment states that the order passed by the English court is an order on merits and the English court has passed a reasoned order by rejecting the application that was filed by the appellant. The English court has passed the order against the appellant. Additionally, the appellant has not opted for an appeal and accepted the costs that's why the appellant is not permitted to object the execution of the order passed by the English court. The court has also said that it is an abuse of the process of law and the courts should verify these types of petitions before entertaining them because the appellant cannot blow hot and cold at the same time.

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<sup>17</sup> *Supra* note 10.

As per paragraph 19 of **Alcon Electronics**<sup>18</sup> judgment- “*The principles of comity of nation demand us to respect the order of English Court. Even in regard to an interlocutory order, Indian Courts have to give due weight to such order unless it falls under any of the exceptions under Section 13 CPC. Hence we feel that the order in the present case passed by the English Court does not fall under any of the exceptions to Section 13 CPC and it is a conclusive one. The contention of the appellant that the order is the one not on merits deserves no consideration and therefore liable to be rejected. Accordingly, Issue (i) is answered.*”

Supreme Court in this judgment has also referred to the principles of comity of nations and said that Indian courts should respect the order given by the English court and should give equal weightage to such order. But if the order falls under the exception given in Section 13(a) to (f) then the foreign order will not be conclusive. Hon’ble Supreme Court has rejected the contention of the appellant in this case since the judgment doesn’t fall under the exception and passed the order.

As per paragraph 38 of **Transasia Private Capital Limited v. Gaurav Dhawan**<sup>19</sup>- “*The decisions of our Supreme Court noticed above thus clearly hold that a judgment rendered in the absence of the defendant does not cease to be executable merely because it came to be rendered ex parte as the expression is loosely and often employed. The principles propounded in both **International Woolen Mills**<sup>20</sup> and **Alcon Electronics**<sup>21</sup> have explained the test to be whether the foreign court has duly tried the claim or merely proceeded to render judgement based on the mere ipse dixit of the claimant and the absence of the defendant. The rule to be applied in such cases has been clearly expounded to be whether the court had, in fact, upon due consideration of the evidence laid before it come to the conclusion that the claim was liable to be granted or it merely dispensed with the aforesaid obligation simply on account of the absence of the defendant.*”

The Delhi High Court in this case has referred two important cases of **International Woolen Mills**<sup>22</sup> and **Alcon Electronics**<sup>23</sup> which has clearly explained about the test that whether the foreign court has properly tried the claim or merely just declared a judgment based on the ipse dixit of the claimant. In the **International Woolen Mills**<sup>24</sup>, it was also held by the court that the burden of proving that the judgment is not on the merits of the case lies on the person claiming

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* note 15.

<sup>20</sup> *Supra* note 11.

<sup>21</sup> *Supra* note 15.

<sup>22</sup> *Supra* note 11.

<sup>23</sup> *Supra* note 15.

<sup>24</sup> *Supra* note 11.

such allegation. That party must provide evidence to prove that the decree itself shows that it was not on merits.

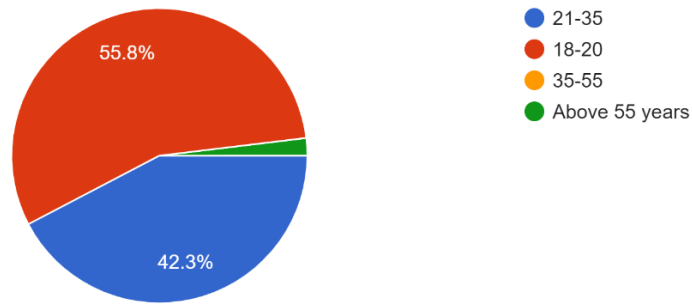
### **III. ANALYSIS OF THE NON-DOCTRINAL RESEARCH**

This paper contains non-doctrinal research conducted with the help of a questionnaire (in the form of google form). The questionnaire includes 13 questions out of which 10 questions are main. This questionnaire has collected responses from 52 people whose identities are kept anonymous. The main purpose of this questionnaire is to find if people who are from legal and non-legal whether they are aware about the enforcement or recognition of foreign judgments in Indian courts. The responses include people from law, economics, management, and a government employee involved in legal field. The maximum number of responses came from people of age group of 18-20 years i.e., 55.8%. And the maximum number of responses are from students/research scholars of 90.4%. 71.2% of the response are from people who have completed their intermediate (12<sup>th</sup>) or Diploma. If we look at the data mentioned below, we can see that 67.3% people (see 4<sup>th</sup> question) are aware about the enforcement of foreign judgments in India. Additionally, the data shows that 63.5% (see 5<sup>th</sup> question) responses support the enforcement of foreign judgments in India and 36.5% people doesn't support it. Furthermore, 67.3% (see 6<sup>th</sup> question) of the people in the responses know about the difference between recognition of foreign judgment and its enforcement. And 55.8% (see 7<sup>th</sup> question) people thinks that there is a separate legal framework to control the recognition and enforcement of foreign judgements in Indian courts. Moreover 59.6% people (see 8<sup>th</sup> question) of the provisions of the existing legislation that supervise the recognition and enforcement of Foreign Judgements. And 59.6% people (9<sup>th</sup> question) know about some criteria that makes a foreign judgement capable of recognition and enforcement in India. Also, 46.1% people (see 10<sup>th</sup> question) think that the Supreme court and High courts have jurisdiction to enforce the foreign judgment, 36.5% people thinks that only the Supreme court has the jurisdiction to entertain such cases and 17.3% people think that all the courts in India have jurisdiction. 48.1% people thinks that there are differences in the rules and procedure of recognition and enforcement between the various states in India. 55.8% people think that there is a relevant limitation period to recognize and enforce a foreign judgment. At last, if we look at the responses of the last question it states that only 26.9% people are aware of recent (in the last 24 months) legal developments related to the recognition and enforcement of foreign judgments in India and 61.5% people are not aware about it.



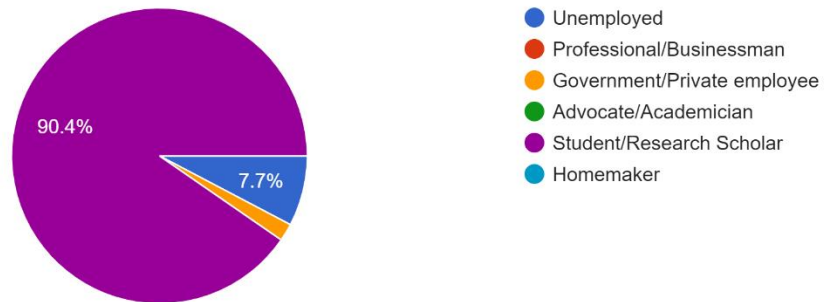
### 1. Age

52 responses



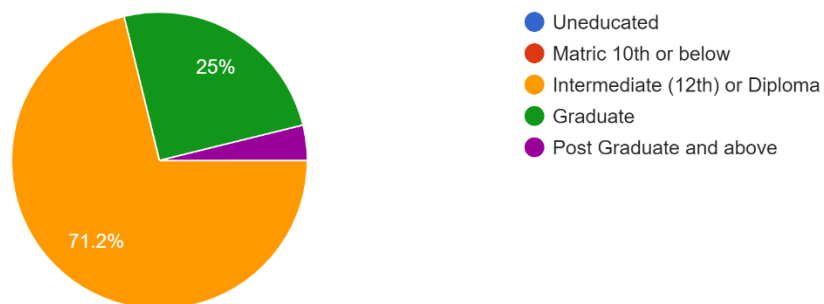
### 2. Profession/ Employment Type

52 responses



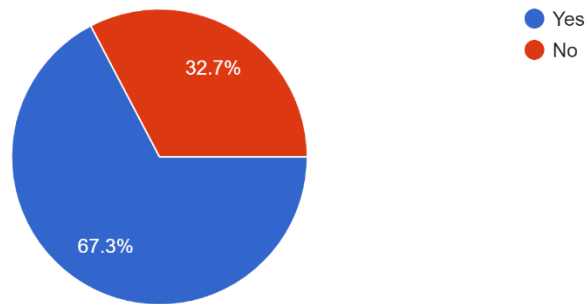
### 3. Educational Qualification

52 responses



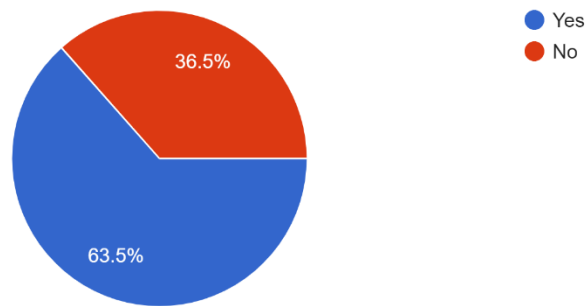
4. Do you know that foreign judgements can be enforced in India?

52 responses



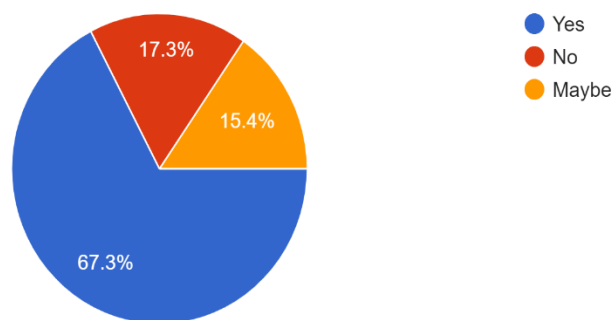
5. If yes, then do you think that they should be enforced in India?

52 responses



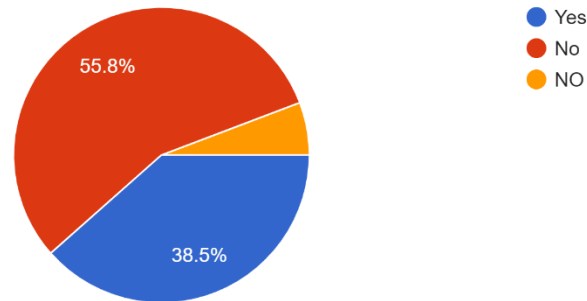
6. Do you know the difference between recognition of foreign judgement and its enforcement?

52 responses



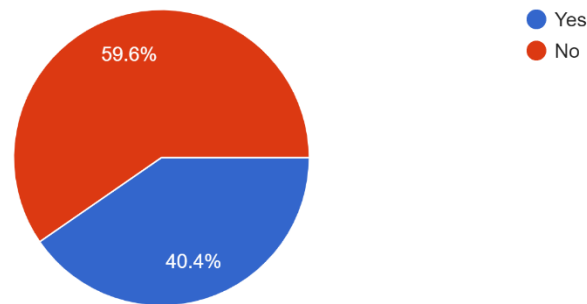
7. Is there a separate legal framework to control the recognition and enforcement of foreign judgements in Indian courts?

52 responses



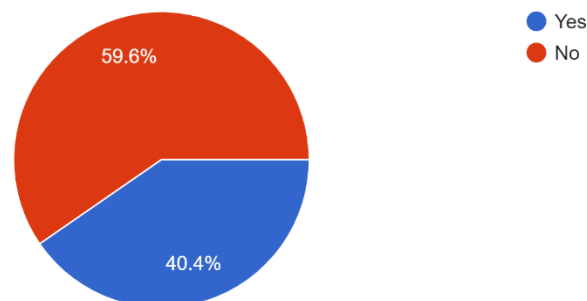
8. If no, then are you aware of any of the provisions of the existing legislation that supervise the recognition and enforcement of Foreign Judgements?

52 responses



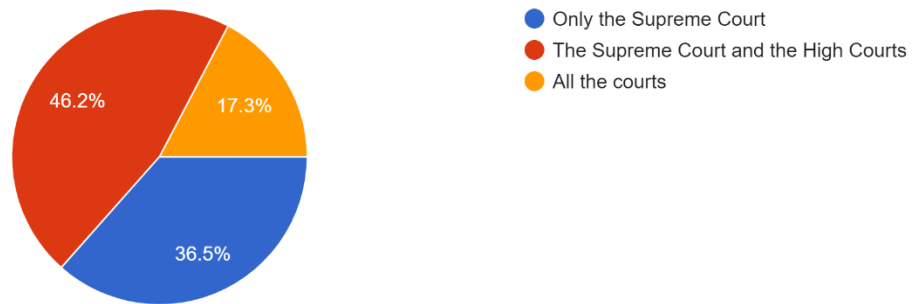
9. Do you know some of the criteria that makes a foreign judgement capable of recognition and enforcement in India?

52 responses



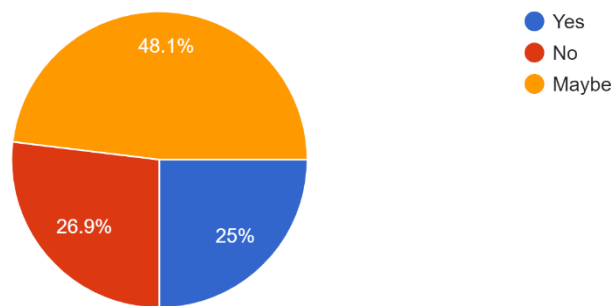
10. What courts in India have jurisdiction to recognize and enforce foreign judgements?

52 responses



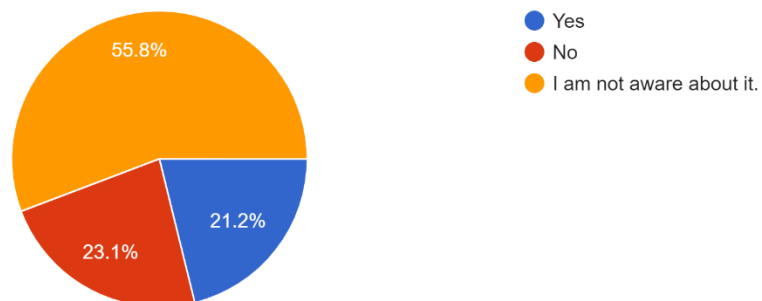
11. Are there any differences in the rules and procedure of recognition and enforcement between the various states in India?

52 responses



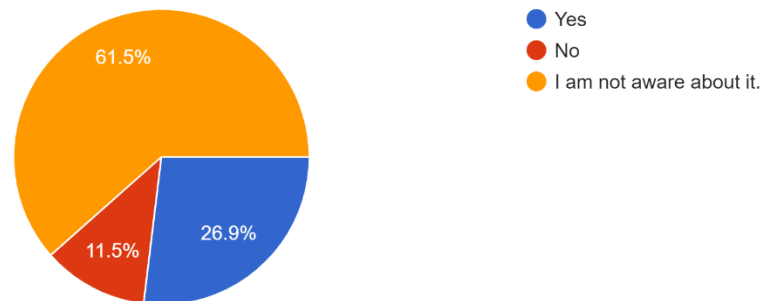
12. Is there a relevant limitation period to recognize and enforce a foreign judgment?

52 responses



13. Have there been any noteworthy recent (in the last 24 months) legal developments related to the recognition and enforcement of foreign judgments in India?

52 responses



#### IV. CONCLUSION

In conclusion, the recognition and enforcement of foreign judgments in Indian courts is a complex and multifaceted issue that has significant implications for both the legal community and individuals outside the legal field. This research paper has explored the various dimensions of this matter, shedding light on its intricacies, and providing insights into the prevailing legal landscape.

One key aspect of our investigation has been the question of whether foreign judgments can be enforced in Indian courts. Through an in-depth analysis of Indian laws, it is evident that Indian courts do possess the mechanisms and the legal framework to recognize and enforce foreign judgments under specific conditions. These conditions, such as reciprocity and the absence of certain legal impediments, serve as a litmus test to determine whether a foreign judgment merits enforcement.

Furthermore, it is essential to gauge the awareness of this legal process among both legal professionals and individuals outside the legal field. As demonstrated by our research, there is often a lack of awareness among non-legal professionals regarding the recognition and enforcement of foreign judgments. This knowledge gap underscores the need for increased education and dissemination of information to ensure that people are equipped to navigate these legal complexities effectively.

The question of whether Indian courts should give respect to foreign judgments has also been explored. While the principle of comity of nations is a foundational element in recognizing foreign judgments, it is crucial for Indian courts to carefully evaluate each case on its merits and in alignment with Indian public policy. Striking a balance between respecting foreign judgments and safeguarding the interests of Indian justice is a challenge that courts must address

judiciously.

Finally, this paper has delineated specific criteria under which foreign judgments cannot be enforced in Indian courts, emphasizing the significance of public policy and procedural irregularities in this context. It is imperative that Indian courts maintain a rigorous and principled approach in applying these criteria to uphold the integrity of the Indian legal system.

In conclusion, the enforcement of foreign judgments in Indian courts is a nuanced issue that demands a careful balancing of international cooperation and domestic interests. While the legal framework exists, efforts should be made to enhance awareness and understanding of this process, both within and outside the legal community. Ultimately, the recognition and enforcement of foreign judgments must be guided by the principles of justice, equity, and the rule of law to ensure a fair and equitable resolution of cross-border disputes.

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