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EVOLVING SCOPE OF PUBLIC POLICY IN JUDICIAL REVIEW OF ARBITRAL AWARDS IN INDIA: A SHIFT FROM BROAD INTERPRETATION TO MINIMAL INTERVENTION

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Abstract

The doctrine of public policy has historically functioned as a pivotal yet contentious basis for the judicial review of arbitral awards within the Indian context. Interpreted traditionally broadly, it permitted significant judicial intervention, consequently jeopardising the finality and efficiency inherent in arbitration processes. Nonetheless, recent legislative reforms and judicial rulings have indicated a conscious transition towards a more constrained interpretation of public policy, to align India with international pro-arbitration paradigms. This study investigates the developing parameters of public policy in the judicial review of arbitral awards as delineated by the Arbitration and Conciliation Act of 1996, particularly in the context of seminal Supreme Court rulings such as Renusagar Power Co. Ltd. v. General Electric Co., ONGC Ltd. v. Saw Pipes Ltd., and Vijay Karia v. Prysmian Cavie Sistemi SRL. It explores how the Indian judiciary has gradually transitioned from extensive review to a minimalist stance honouring arbitral independence while preserving essential legal and ethical standards. The study further assesses the ramifications of this transformation for foreign and domestic arbitration, the enforcement of awards, and India's emerging status as a global arbitration centre. Through a doctrinal and comparative examination, it advocates for a nuanced interpretation of public policy that curtails judicial interference without undermining the fundamental principles of justice and the public interest.

Introduction

In the Indian context, when alternative mechanisms appear to falter, the judiciary frequently assumes the role of the state apparatus's most proactive and responsive segment. Therefore, it is imperative to investigate the evolving dynamics of judicial engagement with arbitral awards, particularly considering globalisation. The principal objective of arbitration is to furnish a prompt and economically viable avenue for dispute resolution, thereby circumventing protracted litigation through the assurance of definitive arbitral resolutions. Arbitration, especially concerning antitrust issues, is experiencing notable expansion. However, the legal framework continues to evolve to reconcile a nation's domestic priorities with the definitive nature of international arbitral awards. Arbitration necessitates procedural safeguards, such as the presentation of evidence and the conduct of equitable hearings, so that excessive judicial encroachment may jeopardise its fundamental purpose. Should recourse to court litigation remain unavoidable, the parties may become disenchanted with the option of

arbitration. Consequently, it is vital to delineate the appropriate parameters of judicial oversight—one that bolsters arbitration without transgressing its bounds. Courts ought to adopt a judicious and supportive stance, intervening solely within established legal confines to preserve the integrity of the arbitral process.[1]

Arbitration is a process for resolving disputes that relies on the parties' voluntary agreement in a contractual relationship. It functions separately from conventional court litigation, which is often lengthy and requires considerable resources. In contrast, arbitration provides a more efficient and streamlined approach where an impartial third party, chosen by the disputants, adjudicates the disagreement. Limiting judicial involvement to uphold the fundamental principles of arbitration is crucial. Such limitation respects the parties' autonomy and preserves the validity of arbitral awards. For arbitration to serve effectively as a viable alternative to court litigation, it must remain separate from the judicial system, and courts should avoid interfering in the arbitral decision-making process. Global frameworks such as the UNCITRAL Model Law and the New York Convention strongly discourage excessive court participation. While these structures allow for some domestic flexibility, they stress that intervention should be restricted to instances explicitly authorised by law. For example, the Model Law permits judicial action only in designated situations, a guideline echoed in the Arbitration and Conciliation Act, 1996 (the "1996 Act"). Likewise, the New York Convention supports the acknowledgement and enforcement of international arbitral awards, as indicated in Article V, which limits the reasons that can be used to deny such enforcement.

The key principle of restricting judicial involvement is executed through a limited, non-substantive review of arbitral awards by courts. This strategy maintains the finality of arbitration and honours the parties' autonomy. India has officially embraced these principles as a signatory to the UNCITRAL Model Law and the New York Convention. Indian courts have historically strayed from this approach, causing significant controversy. This pattern started to shift with the pivotal BALCO ruling and the notable reforms enacted through the 2015 amendment to the 1996 Act.[2] Before these changes, Indian courts frequently broadened the reach of judicial review, particularly invoking the ambiguous and often misinterpreted ground of "public policy." Cases like Saw Pipes[3] and Western Geco[4] Illustrate this overreach, where courts examined the merits of arbitral rulings far beyond procedural evaluations. The conventions discourage merit-based reviews, restricting judicial oversight to procedural fairness. The 1996 Act, in sections 34 and 48, embodies this objective by narrowly outlining the conditions under which domestic awards can be annulled or foreign awards can be denied enforcement. Despite these principles, there has been an increasing—sometimes well-established—tendency in regions like the United States and India to extend judicial examination into substantive elements of arbitral decisions. Terms such as "manifest disregard of the law" in the U.S. and "patent illegality" in India have fuelled this expansion. In India, including "patent illegality" within public policy further obscured the boundaries of judicial review, raising concerns due to its vague nature. This excessive intervention attracted significant international criticism, damaging India's reputation as a jurisdiction favourable to arbitration. However, the 2015 amendment to the 1996 Act represented a pivotal change by limiting judicial overreach and reinforcing India's dedication to establishing arbitration as a more

[1] Tanuj Hazari, Judicial Intervention in Arbitral Awards: The Obsolete Notions of 'Public Policy' and Applicability Clause, India Law Journal (08 June 2025, 07:48 AM) https://www.indialawjournal.org/archives/volume2/issue_4/article_by_tanuj.html

[2] Bharat Aluminium v. Kaiser Aluminium Technical Services Ltd. (2012) 9 SCC 552

[3] Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd. AIR 2003 SUPREME COURT 2629

[4] Oil & Natural Gas Corporation Ltd v. Western Geco International Ltd. AIR 2015 SUPREME COURT 363

credible and independent dispute resolution method.[5]

Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 permits a court to annul an arbitral award if it is deemed to conflict with India's public policy.[6] However, the Act fails to define what "public policy" entails clearly. The explanation within this section provides some insight by detailing specific situations that may render an award contrary to public policy, such as instances where the award was secured through fraud or corruption or where it contravenes the confidentiality provisions stated in Sections 75[7] or 81 of the Act.[8] Furthermore, an award might be viewed as opposing public policy if it violates essential principles of Indian law or clashes with fundamental notions of morality or justice. In a recent decision, the Supreme Court of India reaffirmed the restricted interpretation of this provision, highlighting that arbitral awards can only be annulled if they breach public policy in India. This statement was made while adjudicating an appeal by Haryana Tourism Ltd. against a judgment from the Punjab and Haryana High Court, which had previously invalidated a 2005 arbitral award, including a related order from the Additional District Judge in Chandigarh.[9] The Supreme Court insisted that public policy should not be construed broadly, as this could compromise the finality and effectiveness of arbitration.[10]

The Act further differentiates between domestic and foreign arbitral awards. Section 44 characterises a foreign award as one stemming from a dispute between parties in a legal relationship, whether contractual or otherwise, recognised as commercial under Indian law.[11] To be classified as a foreign award, it must originate from a country officially designated as a reciprocating nation by the Central Government in the Official Gazette. The enforcement of foreign arbitral awards is discussed in Part II of the Act. Chapter I of this part includes provisions from the 1958 New York Convention, while Chapter II is derived from the 1927 Geneva Convention. These international agreements apply in India because of its status as a signatory. Currently, are 48 countries acknowledged as signatories to either or both conventions, rendering awards from those jurisdictions enforceable in India.[12]

In 1824, public policy was described as an unpredictable entity, likened to "an unruly horse" that provides no certainty of its direction once one attempts to control it. It is typically called upon only after all other legal arguments have failed.[13] This idea is fundamentally guided by essential legal and justice principles, particularly bribery and corruption. In 2002, the International Law Association Committee on International Commercial Arbitration convened a conference that resulted in a resolution regarding public policy, identifying it as the International Public Policy of a state. This includes:

(i) the fundamental principles of justice or morality that a state strives to uphold, even when it is not directly involved;
(ii) regulations intended to safeguard a state's essential political, social, or economic interests, often termed "lois de police" or "public policy rules"; and

[5] Advocate Sudhanshu Chandra, Judicial Review of Arbitral Awards: Public Policy and its Evolution, Live Law (20 August 2018, 10:54 AM) https://www.livelaw.in/judicial-review-of-arbitral-awards-public-policy-and-its-evolution-exploitation
[6] The Arbitration and Conciliation Act, 1996, § 34(2)(b)(ii)
[7] The Arbitration and Conciliation Act, 1996, § 75
[8] The Arbitration and Conciliation Act, 1996, § 81
[9] Haryana Tourism Limited vs. Kandhari Beverages Limited, MANU/SC/0033/2022
[10] Akanksha Sinha & Gauri Anand, Public Policy and its Role in the Setting Aside of Arbitral Award: The Supreme Court Examines, Mondaq (08 June, 2025, 04:37 PM) https://www.mondaq.com/india/arbitration--dispute-resolution/1186322/public-policy-and-its-role-in-the-setting-aside-of-arbitral-award-the-supreme-court-examines
[11] The Arbitration and Conciliation Act, 1996, § 44
[12] Nihit Nagpal & Anuj Jhawar, Public Policy and Arbitrability Challenges to Enforcement of Foreign Arbitral Awards in India, Mondaq (08 June 2025, 04:40 PM) https://www.mondaq.com/india/arbitration--dispute-resolution/1211184/public-policy-and-arbitrability-challenges-to-enforcement-of-foreign-arbitral-awards-in-india
[13] Sameer Sattar, National Courts, and International Arbitration: A Double-Edged Sword? Vol 27 Issue 1, JIA, 51-73 (2010) https://www.researchgate.net/publication/359346490_National_Courts_and_International_Arbitration_A_Double-edged_Sword

(iii) a state's commitment to respect its obligations to other states or international organisations.[14]

One of the main goals of India's Arbitration & Conciliation Act, 1996, was to limit the judiciary's authoritative power. To achieve this, the Act restricts judicial intervention in an arbitration process to just three specific situations: matters related to the appointment of arbitrators, decisions regarding the termination of an arbitrator's mandate due to incapacity or inability to fulfill duties, and the annulment of an award if it violates the enforcement provisions outlined in the Act.[15] The notion of public policy cannot consistently rely on the laws of individual states, leading to its variation from one jurisdiction to another. The New York Convention, notably, does not provide clear guidelines for national courts to interpret the public policy defence. The intrinsic pro-enforcement bias in international discourse represents a form of public policy. This bias often results in national courts interpreting public policy at their discretion, and in most advanced arbitral jurisdictions, public policy has been construed narrowly. The Supreme Court of India confirmed this pro-enforcement bias in its recent ruling in Vijay Karia v. Prysmian Cavi E. Sestemi, asserting that the pro-enforcement orientation of the New York Convention applies to national courts.[16]

Nevertheless, Indian courts have traditionally shown a strong tendency to intervene in international arbitration proceedings. Judicial intervention at the award enforcement stage based on public policy remains particularly contentious. The Renusagar v General Electric case has consistently acted as a critical precedent when examining the scope of Indian court involvement on public policy grounds.[17] This ruling was grounded in private international law principles and aligned with internationally accepted practices in well-established arbitral jurisdictions like France and the United States. It established that national courts should only intervene with arbitral awards on public policy grounds in exceptional cases. The legislative intent and principles of international recognition regarding judicial intervention indicate that courts should not engage in the merits of an arbitral dispute. However, this principle was notably contested by the Supreme Court in the Saw Pipes case, where an arbitral award was challenged because it was claimed that the tribunal had incorrectly applied domestic law in dismissing a claim for liquidated damages.[18]

In the Saw Pipes judgment, two major mistakes were made. Firstly, while assessing the case's merits, the court neglected to consider external factors like the labour strike affecting Europe, which was neither foreseeable nor manageable by the involved party. The court completely ignored this crucial element and its effect on the decision. Secondly, a two-judge bench in Saw Pipes overlooked the authoritative ruling from a three-judge bench of the Supreme Court in the Renusagar case. This reflects a lack of judicial discipline and a failure to adhere to the precedent established by a larger bench. While the Renusagar bench narrowly defined 'public policy of India,' the Saw Pipes division bench took a broader approach, allowing arbitration awards to be evaluated based on their merits. In the McDermott case, the Supreme Court recognised that the Saw Pipes decision had faced significant criticism and noted that only a larger bench could adequately reassess its validity.[19] Public policy serves as one of the grounds specified in the New York Convention that allows a party to contest the enforcement of a foreign arbitral award. Since the early 21st century, parties have been warned against placing too much reliance on public policy, with the saying reiterated that "it has been a very unruly horse, and when you get astride it, you

[14] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted on 10 June 1958), 330 UNTS Art. V(2)(b)
[15] Mohit Agarwal, Arbitration in India, SCRIBD (10 June 2025, 07:41 PM) https://www.scribd.com/document/342563203/Arbitration-in-India
[16] 2020 SCC OnLine SC 177
[17] (1994) AIR SC 860
[18] Udita Kanwar, ONGC v. Saw Pipes, Legal Services India (10 June 2025, 07:52 PM) https://legalservicesindia.com/article/584/ONGC-v-Saw-Pipes.html
[19] Mcdermott International Inc vs Burn Standard Co. Ltd. & Ors (2006) Insc 316

never know where it will carry you. It may lead you from sound law." Public policy continues to be one of the most powerful instruments available to domestic courts, granting them the authority to reject the enforcement of an arbitral award that might otherwise be legitimate.[20]

Foundations: Favouring Party Autonomy and Minimal Judicial Intervention

Individuals frequently opted for arbitration to settle disputes before forming formal legal systems and structured courts. Arbitration was favoured because it was more affordable and efficient compared to litigation. The informal characteristics of arbitration and the straightforward nature of the procedure attracted those looking for faster resolutions. A key feature of arbitration is limited judicial interference, which ensures that court involvement does not disrupt the efficiency of the process. However, figuring out the right level of court involvement is debated. Too much interference can hinder arbitration proceedings, while insufficient oversight might compromise the principles of natural justice.

The roots of arbitration extend back to ancient eras. According to biblical accounts, King Solomon is often considered the first arbitrator. In a well-known incident, he settled a conflict between two women who both claimed to be the mother of a child. Solomon suggested dividing the child into two and giving each woman half. One woman instantly protested, willing to relinquish her claim to save the child's life. Her selflessness identified her as the mother, allowing the king to reach a fair verdict. Likewise, historical evidence indicates that Philip II of Macedonia, the father of Alexander the Great, employed arbitration around 337 BC to resolve territorial disputes arising from a peace treaty with southern Greek states. Approximately 600 BC, a dispute regarding the island of Salamis between Athens and Megara was settled by appointing five Spartan arbitrators, who awarded the island to Athens.

Arbitration was woven into ancient legal frameworks. The Code of Hammurabi in Babylon underscored the sovereign's duty to resolve disputes through arbitration. In Roman society, arbitration practices were influenced by Roman law, which also shaped the legal customs of their trading partners. England's formal introduction to arbitration dates to 1698. In India, the notion of arbitration can be found in ancient texts like the Brihadaranyaka Upanishad, which discusses community-based tribunals known as Panchayats—gatherings of esteemed elders chosen by disputants to settle disputes.[21]

The British East India Company initiated a legislative effort to formalise arbitration in India with Act IX of 1850. However, various later legislations were ineffective, resulting in the passage of the Arbitration Act of 1940. This legislation, modelled after the English Arbitration Act of 1934, established a framework mainly for domestic arbitration while lacking provisions for enforcing international arbitral awards. Despite its robust structure, the 1940 Act was perceived as inadequate. This limitation was particularly noted in the Supreme Court case Guru Nanak Foundation v. Rattan Singh & Sons, where Justice D.A. Desai commented that the complex and technical nature of arbitration proceedings under the Act had undermined its primary objective.[22] Instead of functioning as a more straightforward and quicker alternative to litigation, arbitration became mired in procedural intricacies, making it inefficient and excessively legalistic.

Considering such critiques and aimed at aligning Indian arbitration law with global standards, India eventually embraced the UNCITRAL Model Law on International Commercial Arbitration, 1985. This culminated in the enactment of the Arbitration and

[20] Talat Choudhary, Enforcement of Foreign Arbitral Awards in India, Vol 4 Issue 2, IJLMH, 1477 – 1500 (2021) https://ijlmh.com/wp-content/uploads/Enforcement-of-Foreign-Arbitral-Awards-in-India.pdf

[21] Dnyaneshwari Patil, The extent of Judicial Intervention into Arbitral Awards, iPleaders (11 June 2025, 08:06 AM) https://blog.ipleaders.in/extent-judicial-intervention-arbitral-awards/

[22] 1981 (4) SCC 634

Conciliation Act, 1996. The 1996 Act represented a notable change by incorporating domestic and international arbitration provisions. It was introduced to foster a business-friendly legal environment following economic liberalisation while reducing judicial interference and procedural delays in arbitration proceedings.

Judicial participation in arbitration is fraught with complexities, often resulting in detailed discussions about its limits. The evolution of arbitration in India has introduced additional complexities to this conversation. The primary concern revolves around the appropriate degree of judicial intervention in arbitration. The Arbitration and Conciliation Act, 1996, along with its amendments in 2015 and 2019, was enacted to alleviate the burden on courts by endorsing arbitration as a method for alternative dispute resolution. Lawmakers included provisions aimed at limiting judicial interference, acknowledging that excessive court involvement could obstruct the very aim of swift resolution through arbitration.

The judiciary's involvement in arbitration is divided into three phases: before initiating proceedings, throughout the arbitration process, and post-delivery of the arbitral award. Courts have broadly defined the term "Judicial Authority," as evidenced by the Supreme Court's ruling in Fair Air Engineers Pvt. Ltd. v. N.K. Modi, where entities governed by the Consumer Protection Act and the Monopolies and Restrictive Trade Practices Act were recognised as judicial authorities.[23] Similarly, the Company Law Board was deemed a judicial authority in Canara Bank v. Nuclear Power Corporation of India Ltd.[24] Despite the general principle advocating minimal intervention, courts may step in when allegations are severe or complex enough to necessitate judicial review, as demonstrated in A. Ayyasamy v. A. Paramasivam & Ors.[25]

Several legislative provisions specify when courts can intervene during arbitration. Section 9 of the Act empowers courts to provide interim measures to protect the parties' rights, regardless of party autonomy.[26] In contrast, Section 17 permits arbitral tribunals to issue interim measures; however, it lacks a strong enforcement mechanism.[27] This legislative shortfall was brought to light in Shri Krishan v. Anand, where the Delhi High Court encouraged amendments to enhance the enforceability of interim measures issued by tribunals.[28]

The potential misuse of Section 9 to stall proceedings has been warned against in Sundaram Finance Ltd. v. N.E.P.C. India Ltd., where the court stressed that such provisions are intended to aid, rather than obstruct, arbitral proceedings.[29] Similarly, in ITI Ltd. v. Siemens Public Communications Network Ltd., it was affirmed that while assessing applications under Section 9, the Civil Procedure Code, 1908, must be considered.[30]

Section 34 of the Act outlines the grounds for annulling arbitral awards, though judicial intervention under this section is restricted. The section specifies conditions such as a party's incapacity, a void arbitration agreement, absence of proper notice, the tribunal's excessive jurisdiction, or improper composition.[31] In Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., the Supreme Court stated that courts should refrain from interfering with awards merely because an alternative interpretation exists. Intervention is warranted only in cases of apparent injustice.[32]

As elucidated in the McDermott International Inc. v. Burn Standards Co. Ltd. case, the judiciary's function is to annul an arbitration award under specified conditions without modifying its substance. Section 34(2)(b) provides further grounds for annulling

[23] AIR 1997 SC 533
[24] [1995] 84COMPCAS 62 (CLB)
[25] 2016 (10) SCC 386

[26] The Arbitration and Conciliation Act, 1996, § 9
[27] The Arbitration and Conciliation Act, 1996, § 17
[28] 2009 SCC OnLine Del 2472
[29] AIR 1999 SC 565
[30] AIR 2002 SC 2308
[31] The Arbitration and Conciliation Act, 1996, § 34
[32] AIRONLINE 2019 SC 1928

arbitration awards if the subject matter is deemed non-arbitrable or contravening India's public policy.[33] The term "public policy" remains inherently ambiguous and subject to varying interpretations, thus inviting recurrent judicial examination. This uncertainty has been famously critiqued as an "unruly horse" due to its unpredictability.

Efforts to elucidate the parameters of public policy have been undertaken through seminal judicial pronouncements. In Renusagar Power Co. Ltd. v. General Electric Co., public policy was articulated to encompass transgressions against the fundamental tenets of Indian law, the interests of the nation, as well as the principles of justice and morality. Subsequently, the scope was broadened in ONGC Ltd. v. Saw Pipes Ltd. to incorporate "patent illegality," which considerably augmented the incidence of challenges to arbitral awards. In ONGC v. Western GECO International Ltd., the judiciary delineated three integral components of the fundamental policy of Indian law: a judicial ethos espoused by tribunals, strict adherence to principles of natural justice, and the application of rationality in adjudications.

The concept of miscarriage of justice was further articulated in Associate Builders v. Delhi Development Authority, whereby the court determined that an award that significantly offends the judicial conscience could be annulled.[34] Nonetheless, after the 2015 amendment, the judiciary has adopted a more circumspect stance. In Venture Global Engineering LLC v. Tech Mahindra Ltd.[35] and Sutlej Construction v. Union Territory of Chandigarh,[36] it was reiterated that courts possess the authority to annul awards solely on the explicit grounds enumerated in Section 34.

Despite the initially expansive interpretation permitted under the rubric of public policy, the Supreme Court clarified in 2018 that the term encompasses both central and state legislation. Nevertheless, excessive judicial intervention could undermine the fundamental essence of arbitration by fostering an environment conducive to perpetual litigation of awards.

The Arbitration and Conciliation Act of 1996 empowers parties to designate arbitrators through an arbitration agreement autonomously. Judicial interventions primarily safeguard the parties' rights and ensure equitable conduct. However, practical impediments persist within the landscape of arbitration in India. Domestic arbitration prevails, frequently involving public sector entities where the affiliations of arbitrators may raise potential biases. The informal character of arbitration and the lack of procedural expertise among arbitrators often result in proceedings that resemble conventional litigation. Party representatives commonly employ litigation-like strategies, negating the intended benefits of arbitration.

Moreover, many arbitrators appointed by courts under Section 11 are former judges, who often replicate courtroom procedures, thus prolonging the process unnecessarily.[37] This includes extensive arguments, the submission of evidence, and cross-examinations, rendering arbitration comparably lengthy to litigation. Such deviations from the intended simplicity of arbitration engender dissatisfaction, prompting individuals to seek recourse through the courts. Consequently, limited and constructive judicial intervention is imperative, not solely to uphold the rights of the parties but also to maintain the objectives of the Act and ensure access to equitable and timely justice.[38]

Public Policy as a Ground of Challenge: Origins and Expansion

The principle of ordre public within private international law is vital for addressing issues related to the choice of law and the acknowledgement and enforcement of foreign

[33] The Arbitration and Conciliation Act, 1996, § 34(2)(b)
[34] 2015 (3) SCC 49
[35] AIRONLINE 2018 SC 860
[36] (2018) 1 SCC 718

[37] The Arbitration and Conciliation Act, 1996, § 11
[38] Rishika Sharma & Avdhesh Parashar, Scope of Judicial Interpretation in Arbitration, iPleaders (11 June 2025, 08:11 AM) https://blog.ipleaders.in/extent-judicial-intervention-arbitral-awards/

court rulings or arbitration awards. This doctrine is based on the understanding that although parties can form contracts and resolve disputes through arbitration, such freedom is not unlimited. Courts can annul an arbitral award or contractual terms if they contradict public interest.

According to Article V of the New York Convention, "public policy" is defined concerning the country where the enforcement of a foreign arbitral award is sought. Significantly, the court's role is to evaluate whether enforcing a foreign arbitral award would violate that state's public policy. Legal scholars' contributions and court rulings have shaped this term over time. For example, the English House of Lords has characterised public policy as the legal doctrine prohibiting individuals from taking actions detrimental to the public or contrary to the public good.

In discussions regarding international versus domestic public policy, most legal scholars concur that Article V (2) of the New York Convention pertains to global public policy, which is generally interpreted as having a more limited scope than domestic public policy. Public policy in a national legal system may not necessarily apply internationally. Nonetheless, determining what qualifies as international public policy ultimately rests with the state's domestic courts enforcing the award. The rationale for maintaining this distinction is to restrict the justifications for denying the enforcement of foreign arbitral awards, thereby fostering consistency and predictability in international arbitration.

The interpretation of public policy also differs based on whether the legal framework involved adheres to civil law or common law traditions. In civil law jurisdictions, public policy is often linked to essential societal principles and values, frequently articulated in abstract forms. In contrast, in standard law systems, it is generally associated with broader concepts like justice, equity, and morality.[39]

Section 23 of the Indian Contract Act, 1872, emphasises the significance of public policy in contract law. It stipulates that if the objective or consideration of a contract is unlawful—whether it is prohibited by law, undermines the intent of the law, involves deceit or injury to a person or their property, is unethical, or contradicts public policy—then that contract is considered void under the Act. This provision guarantees that agreements that breach legal or moral standards do not receive legal validity.[40]

The Arbitration and Conciliation Act, 1996 is an extensive legislation that consolidated and superseded the previous Arbitration Act of 1940, the Foreign Awards (Recognition and Enforcement) Act of 1961, and the Arbitration (Protocol and Convention) Act of 1937. While the 1940 Act did not address public policy, the 1961 Act, which aligned with the New York Convention, included a public policy clause. Section 7(1)(b)(ii) of the 1961 Act[41] Stated that enforcing a foreign arbitral award could be refused if it conflicted with India's public policy.[42]

This principle was retained in the Arbitration and Conciliation Act, 1996, which comprises two sections: Part I oversees all arbitrations in India, and Part II enforces foreign arbitral awards. The term "public policy" is referenced in both sections—first in Section 34, which enables an award to be annulled if it contravenes public policy, and subsequently in Section 48,[43] which permits refusal to enforce a foreign award on similar bases.

Section 34, based on Article 34 of the UNCITRAL Model Law, states that an award can only be contested through a motion for annulment

[39] Anshu Singh Rathore, Public Policy Conundrum in the Enforcement of Arbitral Award, Manupatra (11 June 05:17 PM) https://articles.manupatra.com/article-details/Public-Policy-Conundrum-in-the-Enforcement-of-Arbitral-Award
[40] The Indian Contract Act, 1872, § 23
[41] The Foreign Awards (Recognition and Enforcement) Act, 1961, § 7(1)(b)(ii)
[42] Yash Dubey, Analysis of Public Policy and Enforcement of Domestic and Foreign Arbitral Awards in India, Vol 7 No 2, CULJ, 63-81 (2018) http://journals.christuniversity.in/index.php/culj/article/view/1901
[43] The Arbitration and Conciliation Act, 1996, § 48

under subsections (2) and (3). A court has the authority to nullify an award if the subject matter is not arbitrable under the Act or if the award is against India's public policy. An award is considered contrary to public policy if it is affected by corruption, fraud, or breaches Sections 75 or 81 of the Act.

Section 48, which is founded on the New York Convention, regulates the enforcement of foreign arbitral awards and reflects the language of Section 34. It allows the court to deny enforcement if the dispute is non-arbitrable under Indian law or if the award infringes upon public policy. The explanation clarifies that violations such as corruption, fraud, or breaches of Sections 75 and 81 would make the award unenforceable.

The notion of public policy as a limitation to enforcing foreign awards was first established in the Renusagar Power Co. case regarding enforcing an ICC arbitral award under the 1961 Act. The Supreme Court ruled that "public policy" as defined under Section 7(1)(b)(ii) must be interpreted restrictively, under the Indian judiciary's definition of public policy, which is related to the welfare and interests of the public. The Court determined that enforcement could only be denied in instances that involved harm to India's interests, justice or morality, or infringements on India's fundamental policy.

In administrative law, one established reason for nullifying judicial or quasi-judicial orders through a writ of certiorari is the existence of an "error of law apparent on the face of the record." In the United Kingdom, tribunals no longer have the freedom to misinterpret the law—any legal mistake makes their decision ultra vires and subject to cancellation. Consequently, courts will invalidate any significant legal error, since all legal mistakes are now considered jurisdictional.

Conversely, Indian courts hold that such an error must be discernible in the proceedings or decision. The error must be clear-cut and not demand intricate reasoning or interpretation. The reviewing court should be able to easily pinpoint the legal error—only glaring, unmistakable, and obvious errors satisfy this criterion. An error is deemed "apparent on the face of the record" only if it is so evident and self-explanatory that it requires no extensive clarification or debate.

In arbitration, awards that include clear legal mistakes, like contradicting constitutional provisions, statutory laws, or rulings from the Supreme Court or the pertinent High Court, are regarded as fundamentally defective. If an arbitral award goes against the Arbitration and Conciliation Act, 1996 provisions, it is classified as suffering from a patent legal error. Such an award is rendered legally void—described using terms like "void," "void ab initio," "non est," or "coram non judice"—and has no legal status or enforceability. It is viewed as invalid from the beginning and fundamentally null in the eyes of the law. Even if section 34(2) of the Arbitration Act does not explicitly enumerate such an error as grounds for annulment of an award, its enforcement under section 36[44] can still be contested on these bases.

Moreover, section 38 of the Code of Civil Procedure, 1908 permits a decree to be executed by the court to which it is sent.[45] Generally, the executing court must accept the decree as it is and cannot challenge its validity. Nonetheless, there is an exception: if the court that issued the decree lacked inherent jurisdiction, the decree is considered null. In these circumstances, its invalidity can be contested during execution proceedings, and the decree cannot be enforced.[46]

The principle was further explicated in the Saw Pipes case, wherein the pivotal issue pertained to the possibility of annulling an arbitral award that erroneously applied the legal principles governing liquidated damages on the grounds of infringing public policy. In a departure from the precedent established in Renusagar, the

[44] The Arbitration and Conciliation Act, 1996, § 36
[45] The Code of Civil Procedure, 1908, § 38
[46] OP Malhotra, The Scope of Public Policy under the Arbitration and Conciliation Act, 1996, Vol 19 Issue 2, NLSIR, 23-29 (2007) https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1056&context=nlsir

Court determined that an award that contradicts Indian statutory provisions is "patently illegal" and consequently at odds with public policy. The Court distinguished this case from Renusagar, highlighting that the prior ruling addressed enforcement under the 1961 Act. In contrast, Saw Pipes pertained to the legitimacy of a domestic award under the 1996 Act.

The Court underscored that the Indian judiciary, serving as the supervisory authority for domestic awards, is vested with the authority to intervene when significant injustice arises from arbitral determinations. It further remarked that a restrictive interpretation of "public policy" would make specific provisions of the 1996 Act ineffective. As a result, the Supreme Court broadened the interpretation of Section 34(2)(b)(ii) to encompass "patent illegality" as a legitimate basis for annulling an award.

To substantiate this expansive interpretation, the Court alluded to the insights of the late Senior Advocate Nani Palkhivala, who posited that Indian arbitration law should reflect Section 68 of the English Arbitration Act, thereby permitting courts to rectify legal inaccuracies in awards. He emphasised that courts must wield the power to intervene when an arbitral prize culminates in substantial injustice. The affirmation of an unjust prize, particularly if it contravenes public policy, would undermine the fundamental objective of arbitration as a mechanism for alternative dispute resolution.

Incorporating "patent illegality" consequently aligns Indian jurisprudence with international benchmarks and safeguards equity in arbitration. It extends the ambit of judicial scrutiny, empowering courts to annul awards because of legal errors, thereby fortifying the accountability of arbitral tribunals and ensuring the administration of justice.

This approach experienced a notable shift following the rulings in Bhatia International v. Bulk Trading SA[47] and Venture Global Engineering v. Satyam Computers.[48] In Bhatia International, the Court made the distinction between Part I and Part II of the Act less clear, ruling that the provisions of Part I would apply to all arbitrations unless there were a specific exclusion. This applied even to international arbitrations conducted outside of India. Further expanding on this, the Court in Venture Global employed the broader interpretation of public policy to annul a foreign arbitral award. In this case, Satyam Computer Services Ltd. had formed a joint venture with Venture Global Engineering Ltd., governed by Michigan law, with a shareholders' agreement that included an arbitration clause. After the arbitration outcome favoured Satyam, which sought enforcement in a U.S. court, VGE countered by arguing that the award violated India's Foreign Exchange Management Act (FEMA).

Even though the arbitration took place outside India, the Court determined that the award could be set aside under Section 34(2)(b)(ii) due to its purported conflict with Indian public policy, affirming that this decision would not contradict Section 48 or any other sections in Part II. The Court highlighted that, given the strong connections of the dispute and the parties to India, Indian law could not be circumvented by pursuing enforcement internationally. Nonetheless, this interpretation faced significant criticism for potentially jeopardising the fundamental principle of finality and the mutual recognition of arbitral awards, a crucial aspect of the New York Convention.

The 246th Law Commission Report and the 2015 Amendment Act

In light of the Supreme Court's broad interpretation of the term public policy in ONGC and Western Geco, the Law Commission of India released a supplementary report in February 2015 to complement its earlier 246th Report from August 2014. The Commission criticised these judgments for expanding the public policy exception and cautioned that such

[47] 2002 (4) SCC 105

[48] 2010 (8) SCC 660

interpretations could potentially "open the floodgates" for judicial intervention. It stressed that Sections 34 and 48 of the Arbitration and Conciliation Act, 1996, outline an exhaustive list of procedural grounds to set aside or refuse enforcement of arbitral awards, urging courts to avoid engaging with substantive issues. The Commission suggested adopting the more limited definition of public policy in the Renusagar judgment, which confined judicial scrutiny to essential procedural defects.

Considering these recommendations, Parliament passed the Arbitration and Conciliation (Amendment) Act, 2015, which clarified Sections 34 and 48. According to the revised provisions, courts may only invalidate an arbitral award or decline its enforcement on public policy grounds if:

(1) the award was influenced or compromised by fraud or corruption, or breached Sections 75 or 81 of the Act;
(2) it violates the fundamental principles of Indian law; or
(3) it contradicts the most basic notions of morality or justice. This amendment significantly narrowed the scope of public policy exceptions and decreased judicial interference in arbitration proceedings.[49]

The 2015 amendment had several significant effects. Firstly, it limited judicial overreach by confining the grounds for courts to annul arbitral awards, thereby creating a more arbitration-friendly legal environment. This reform brought Indian arbitration law closer to international standards and heightened India's attractiveness as a site for global arbitration. Secondly, the refined definition of public policy provided more certainty for arbitrators and disputing parties, assuring them that awards would not be annulled unless they transgressed India's core legal principles. Thirdly, the amendment fostered the enforcement of foreign arbitral awards by lowering the chances that they would be overruled on ambiguous public policy grounds, thus reinforcing India's commitment to a pro-enforcement framework.

The Supreme Court validated this legislative change in Sangyong Engineering v. National Highways Authority of India.[50] In this instance, the Court explicitly acknowledged the 2015 amendments. It dismissed the broad approach previously taken in cases like Western Geco, reaffirming the restricted interpretation of public policy established in Renusagar Power Plant Co. Ltd. This ruling signified a return to a limited scope of judicial review, in line with international arbitration standards. The 2015 Amendment represented a crucial reform in India's arbitration landscape. Curbing the potential misuse of the public policy exception reinforced the finality of arbitral awards. It indicated a clear shift towards minimal court intervention, fostering India's more robust, dependable, and globally compatible arbitration framework.[51]

Conclusion

The term public policy is inherently flexible, making it open to different interpretations by the judiciary. Nonetheless, from a business perspective—especially for a developing country like India that aims to draw foreign investment and stimulate economic growth—it is crucial that courts practice restraint when invoking the public policy exception. Instead of completely reevaluating the arbitral award, attention should be directed towards determining whether enforcing the award would truly violate public policy. Undertaking a review based on merits can jeopardise essential benefits of arbitration, such as its speed, efficacy, and conclusiveness. A measured and equitable approach is thus essential—one that thoughtfully weighs both national interests and commercial factors while considering public

[49] Vishal Ranaware & Amol Shelar, Public Policy as a hurdle under the Indian Arbitration Law: Critical Analysis, Vol 4 Issue 1, IJLS, 1-9 (2018) https://www.alliance.edu.in/ijls/ijls-2018/assets/documents/Public-poilcy-a-hurdle-under-the-indian-arbitration-law.pdf

[50] (2019) 15 SCC 131

[51] Abhishek Shet, Public Policy as a Ground for Setting Aside Arbitral Award, Vol 8 Issue 3, IJLMH, 285 – 294 (2025) https://ijlmh.com/wp-content/uploads/Public-Policy-as-a-Ground-for-Setting-Aside-Arbitral-Award.pdf

policy. The recent International Bar Association (IBA) report indicates that numerous jurisdictions have embraced a more limited interpretation, necessitating considerable inconsistency with fundamental principles before an award is considered contrary to public policy. In this context, the judiciary, legislature, and relevant stakeholders must embrace a change in mindset. Such a transformation is crucial to ensure effective enforcement of arbitral awards and to prevent the misuse of the public policy concept as an erratic or overly expansive exception.[52]

Applying the public policy exception in recognising and enforcing international arbitral awards has introduced uncertainty, mainly due to different states' varying interpretations of public policy. This lack of uniformity complicates the enforcement process across various jurisdictions. The notion of transnational law, first articulated by Jessup in 1940 as governing activities that transcend national borders, has transformed over time. It includes legal norms influenced by states, international bodies, and non-state entities such as commercial organisations. Although its origins lie in public international law, the concept has also gained significance in private international law and arbitration.

A key concern in arbitration is arbitrability, which determines which disputes are amenable to resolution through arbitration. This impacts the jurisdiction of arbitral tribunals and is contingent on the parties' agreement. Tribunals might lack jurisdiction if the parties have not consented to arbitrate a particular dispute or if the subject matter is ineligible for arbitration due to public policy restrictions. The latter has generated more challenges in practical arbitration contexts.

Both Article V(2)(b) of the New York Convention and Article 36(1)(b)(ii) of the UNCITRAL Model Law allow courts to deny enforcement of an award if it contravenes the public policy of the state where enforcement is sought. However, neither document offers a clear definition of public policy. In 2015, the International Bar Association reiterated that public policy remains an ambiguous and evolving notion. While the New York Convention is broadly recognised positively, its public policy provision has faced criticism for potentially hindering the Convention's objectives by creating loopholes for hesitant parties or states to challenge enforcement. On the other hand, some consider it an essential protective measure. The Convention's authors intended for this exception to be narrowly defined.

Worldwide, there is a noticeable trend toward a constricted interpretation of the public policy exception. In India, the Supreme Court once took a broader approach encompassing legal errors, which was inconsistent with the views held by jurisdictions such as the US and Europe. However, the amendments made in 2015 to India's Arbitration and Conciliation Act explicitly prevent courts from denying enforcement based on legal errors or "patent illegality" in foreign awards. The Delhi High Court has confirmed that these amendments considerably limit the public policy defence, as demonstrated in Cruz City 1 Mauritius Holdings v. Unitech Limited.

In contrast, certain jurisdictions continue to adopt a more expansive perspective. For example, a Chinese court declined to enforce an ICC award in 2016, arguing that it failed to satisfy China's criteria for institutional arbitration. Critics contend that this confuses domestic procedural regulations with public policy. Nevertheless, every foreign award rejection in China is subject to review by the Supreme People's Court, which provides an enforcement-friendly safeguard. In the UK, courts upheld a robust enforcement approach in Sinocore International Co Ltd v. RBRG Trading (UK) Ltd (2017), asserting that even awards tied to bribery or fraud should not be categorically denied if the contracts are valid.

[52] Naveen Chandra Sharma & Partha Pratim Mitra, Demystifying Judicial Intervention through Public Policy Exception: Analysing its Impact on Enforceability of Foreign Arbitral Award, Summer Issue, ILILR, 155-178 (2023) http://www.ili.ac.in/pdf/8._Naveen_Chandra_Sharma__F.pdf

Nonetheless, some nations adopt strict interpretations. Egyptian courts have invoked public policy on grounds such as surpassing statutory interest rates or lacking governmental approval in administrative contract cases. Russian courts often reject enforcement when damages are deemed excessive or punitive. Likewise, courts in Poland, Finland, Italy, Greece, and Portugal have denied awards on similar public policy bases.

Despite these exceptions, recent legislative and judicial changes indicate that numerous significant jurisdictions are moving toward a careful and limited interpretation of the public policy exception, offering optimism for increased consistency in international arbitration.[53]

[53] Akosua Serwaah Akoto, Public Policy: An Amorphous Concept in the Enforcement of Arbitral Award, Vol 7 No 1, JLIA, 51-69 (2021) https://e-jlia.com/index.php/jlia/article/view/258