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PUBLIC POLICY AND THE ENFORCEMENT OF INTERNATIONAL COMMERCIAL ARBITRAL AWARDS: A COMPARATIVE STUDY OF INDIA AND SINGAPORE

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Abstract

The enforcement of international commercial arbitral awards is fundamental to the efficacy and credibility of international arbitration as a preferred mechanism for resolving cross-border commercial disputes. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 establishes a near-universal enforcement regime, yet permits limited grounds for refusal, among which the public policy exception remains the most controversial. While conceived as a narrow safeguard to protect the fundamental legal and moral values of the enforcing state, public policy has often been expansively interpreted, thereby undermining the finality and predictability of arbitral awards. This divergence in interpretation has resulted in uneven enforcement practices across jurisdictions.

India and Singapore offer a particularly instructive comparative study. India's arbitration regime has historically been criticised for excessive judicial intervention, especially through broad interpretations of public policy that permitted substantive review of arbitral awards. Although recent legislative amendments and Supreme Court jurisprudence signal a shift towards a pro-enforcement approach, concerns regarding inconsistency and residual judicial discretion persist. Singapore, by contrast, has consistently adopted a restrictive and internationally aligned interpretation of public policy, reinforcing its status as a global arbitration hub. This paper undertakes a comparative analysis of how public policy operates in the enforcement of international commercial arbitral awards in India and Singapore, assessing the doctrinal evolution, judicial reasoning, and practical consequences of each approach. The study argues that a narrow, principled application of public policy is essential to maintain arbitration's legitimacy and to promote investor confidence in emerging arbitration jurisdictions.

Keywords

International Commercial Arbitration; Enforcement of Arbitral Awards; Public Policy Exception; New York Convention; Comparative Arbitration Law; India; Singapore.

Introduction

International commercial arbitration has emerged as the dominant mechanism for resolving cross-border commercial disputes due to its neutrality, flexibility, confidentiality, and enforceability. The effectiveness of arbitration, however, depends not merely on the conduct of arbitral proceedings but on the enforceability of arbitral awards across jurisdictions. The New York Convention, ratified by more than 170 countries, represents a cornerstone of this enforcement framework by obligating contracting states to recognise and enforce foreign arbitral awards subject to limited exceptions. Among these exceptions, the public policy ground occupies a uniquely sensitive position, as it allows domestic courts to refuse enforcement where recognition would offend the forum state's fundamental legal values.

The concept of public policy is inherently indeterminate and deeply rooted in domestic legal culture. While the Convention envisages a narrow construction of the exception, national courts retain interpretive discretion, leading to divergent enforcement standards. Excessive reliance on public policy risks transforming enforcement proceedings into appellate reviews, thereby eroding the finality of arbitral awards and undermining international confidence in arbitration. Conversely, an overly restrictive approach may raise concerns regarding state sovereignty and protection of fundamental legal principles.

India's experience with the public policy exception illustrates the challenges of balancing these competing interests. For a considerable period, Indian courts adopted an expansive interpretation of public policy, particularly following the Supreme Court's decision in *ONGC v. Saw Pipes*, which allowed enforcement courts to review awards for "patent illegality."¹ This approach attracted sustained criticism from scholars and practitioners for deterring foreign investment and portraying India as an arbitration-unfriendly jurisdiction. In response, the Indian legislature and judiciary have undertaken significant reforms aimed at narrowing judicial intervention and aligning domestic practice with international standards.² Despite these

¹ *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

² Arbitration and Conciliation (Amendment) Act, 2015; *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1.

efforts, questions remain regarding consistency of application and the durability of this pro-arbitration shift.

Singapore represents a contrasting model. From an early stage, Singaporean courts have adopted a restrained interpretation of public policy, confining it to violations of fundamental principles of justice and morality.³ This consistency, coupled with legislative alignment with the UNCITRAL Model Law, has positioned Singapore as a preferred seat for international arbitration in Asia. The divergent trajectories of India and Singapore raise important questions regarding the role of judicial philosophy, institutional design, and legal culture in shaping enforcement outcomes. This paper seeks to explore these questions through a comparative analysis, with a view to identifying lessons for strengthening arbitration enforcement regimes in emerging economies.

Research Methodology

This research adopts a doctrinal and comparative legal methodology, which is most appropriate for examining the enforcement of international commercial arbitral awards and the judicial interpretation of the public policy exception. The study is primarily based on an analysis of primary legal sources, including international instruments, domestic arbitration statutes, and judicial decisions from India and Singapore. Central to the analysis is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, which provides the normative framework governing enforcement and within which the public policy exception operates.

The doctrinal method is employed to analyse statutory provisions such as the Arbitration and Conciliation Act, 1996 (India), as amended, and the International Arbitration Act (Singapore), along with the UNCITRAL Model Law on International Commercial Arbitration. Judicial decisions of the Supreme Court of India, various High Courts, and the Singapore Court of Appeal are examined to trace the evolution of judicial reasoning, interpretive trends, and shifts in enforcement philosophy. Particular emphasis is placed on landmark cases that have shaped the scope of public policy and the degree of judicial intervention in enforcement proceedings. A comparative approach forms a core component of the methodology. India and Singapore are selected due to their shared commitment to the New York Convention but markedly different

³ *PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA* [2007] 1 SLR 597 (Singapore CA).

enforcement trajectories. The comparative analysis is not merely descriptive but evaluative, assessing how differences in legal culture, judicial attitude, and institutional design influence the application of public policy. Secondary sources such as scholarly books, peer-reviewed journal articles, arbitral commentaries, and law reform reports are used to contextualise judicial developments and to critically engage with existing academic debates. The study remains normative in orientation, aiming to assess whether current approaches align with international best practices and the objectives of arbitration law.

Hypothesis

The central hypothesis of this research is that a narrow, principled, and internationally aligned interpretation of public policy is essential for the effective enforcement of international commercial arbitral awards. The study hypothesises that expansive interpretations of public policy, which permit substantive review of arbitral awards, undermine the finality and certainty that arbitration seeks to provide, thereby discouraging foreign investment and cross-border commercial engagement.

It is further hypothesised that while India has undertaken significant legislative and judicial reforms to restrict the scope of public policy in enforcement proceedings, the persistence of interpretive ambiguity and inconsistent application continues to affect enforcement predictability. In contrast, Singapore's consistently restrained and pro-enforcement approach demonstrates that judicial discipline and minimal intervention strengthen a jurisdiction's credibility as an arbitration-friendly forum. The research proceeds on the assumption that sustained adherence to a narrow public policy standard is a key determinant of a successful international arbitration regime.

Research Questions

This study is guided by the following core research questions, which structure the analysis and inform the comparative inquiry.

The first research question examines how the public policy exception is conceptualised under the New York Convention and what limits international arbitration law places on its application. This question seeks to identify the intended scope of public policy and its function within the Convention's pro-enforcement framework.

The second question explores how Indian courts have interpreted and applied the public policy exception in the enforcement of foreign arbitral awards, and how this interpretation has evolved through judicial decisions and legislative amendments. It focuses on whether recent developments have succeeded in curbing excessive judicial intervention.

The third research question analyses Singapore's judicial approach to public policy in enforcement proceedings, examining the consistency, reasoning, and institutional factors that have contributed to its pro-enforcement reputation.

The fourth question undertakes a comparative evaluation by asking what practical and legal consequences flow from the divergent approaches of India and Singapore, particularly in terms of enforcement certainty, investor confidence, and alignment with international arbitration norms.

The final research question considers whether Singapore's approach offers a viable model for India, and what lessons can be drawn for future judicial practice and legislative reform in order to strengthen India's position within the global arbitration landscape.

Literature Review

The scholarly discourse on the enforcement of international commercial arbitral awards consistently identifies the public policy exception as one of the most problematic and litigated aspects of arbitration law. Leading arbitration scholars caution that while public policy is an essential safeguard for protecting fundamental legal values of the enforcing state, its indeterminate nature creates scope for judicial overreach. Redfern and Hunter observe that public policy, if expansively interpreted, risks transforming enforcement proceedings into a merits review, thereby eroding the finality of arbitral awards.⁴ Gary Born similarly argues that excessive reliance on public policy undermines the predictability and efficiency that make arbitration attractive for international commerce.⁵

Comparative literature highlights that jurisdictions with a narrow interpretation of public policy tend to enjoy greater credibility as arbitration hubs. Albert Jan van den Berg, in his seminal

⁴ Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* (Oxford University Press, 6th edn., 2015).

⁵ Gary B. Born, *International Commercial Arbitration* (Kluwer Law International, 2nd edn., 2014).

work on the New York Convention, emphasises that the Convention envisages public policy as a defence of last resort, limited to violations of the forum state's most basic notions of morality and justice.⁶ International arbitral practice has largely endorsed this restrictive approach, discouraging domestic courts from reassessing the substantive correctness of arbitral awards.

Indian academic commentary has been particularly critical of the judiciary's historical expansion of public policy. Scholars note that the Supreme Court's decision in *ONGC v. Saw Pipes* marked a turning point by introducing "patent illegality" as a ground for setting aside awards, thereby blurring the distinction between domestic awards and foreign award enforcement.⁷ This approach was widely criticised for discouraging foreign investors and undermining India's obligations under the New York Convention. Subsequent literature has welcomed legislative amendments and pro-enforcement judgments but remains cautious about their consistent application.⁸

In contrast, literature on Singapore portrays a jurisdiction that has consciously aligned itself with international arbitration norms. Judicial restraint, legislative clarity, and institutional support have been identified as key factors contributing to Singapore's arbitration-friendly environment.⁹ However, there remains limited comparative scholarship that systematically evaluates India's post-reform position against Singapore's long-standing approach. This research seeks to address this gap by offering a sustained comparative analysis of public policy in enforcement proceedings.

Public Policy under the New York Convention: Concept and Scope

The New York Convention establishes a strong pro-enforcement bias, permitting refusal of enforcement only on narrowly defined grounds. Article V(2)(b) allows courts to refuse enforcement if it would be contrary to the public policy of the enforcing state. The drafting history of the Convention indicates that this exception was intended to be interpreted restrictively, preserving enforcement as the rule and refusal as the exception.¹⁰ International

⁶ Albert Jan van den Berg, *The New York Arbitration Convention of 1958* (Kluwer Law International, 1981).

⁷ *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

⁸ Avtar Singh, *Law of Arbitration and Conciliation* (Eastern Book Company, latest edn.).

⁹ Sundaresh Menon, 'International Arbitration: The Coming of a New Age for Asia' (2012) 1 *Asian Journal of International Law* 1.

¹⁰ United Nations Conference on International Commercial Arbitration, *Travaux Préparatoires of the New York Convention*, 1958.

jurisprudence has consistently affirmed that public policy should be limited to violations of fundamental legal principles rather than errors of law or fact.

Despite this consensus, the Convention deliberately refrains from defining public policy, leaving its content to domestic legal systems. This has resulted in divergent interpretations across jurisdictions. While some courts have confined public policy to procedural fairness and fundamental morality, others have expanded it to include substantive review. The tension between international uniformity and domestic sovereignty lies at the heart of public policy debates in arbitration enforcement.

Expansion of Public Policy in Indian Arbitration Jurisprudence

India's early engagement with the New York Convention reflected judicial caution and interventionism. The Supreme Court's decision in *Renusagar Power Co. v. General Electric Co.* adopted a narrow interpretation of public policy, limiting it to fundamental policy of Indian law, interests of India, and justice or morality.¹¹ However, this restraint was significantly diluted by *ONGC v. Saw Pipes*, where the Court expanded public policy to include patent illegality, effectively permitting substantive judicial review of arbitral awards.¹²

This expansion attracted widespread criticism for undermining arbitral autonomy and finality. Scholars argue that the decision conflated enforcement and appellate review, contrary to international arbitration norms.¹³ The expansive interpretation also contributed to delays and uncertainty, reinforcing perceptions of India as an arbitration-hostile jurisdiction.

Judicial and Legislative Recalibration in India

In response to sustained criticism, India undertook legislative reforms through the Arbitration and Conciliation (Amendment) Act, 2015, which sought to confine public policy in enforcement of foreign awards to fundamental policy of Indian law, basic notions of morality, and justice. Subsequent judicial decisions have reflected a conscious shift towards restraint. In *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, the Supreme Court emphasised that enforcement courts must not act as appellate authorities and that refusal of enforcement should be exceptional.¹⁴

¹¹ *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644.

¹² *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

¹³ Fali S. Nariman, 'Ten Steps to Salvage Arbitration in India' (2009) 1 *NLS Business Law Review* 1.

¹⁴ *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1.

While these developments signal progress, inconsistencies remain at the lower judicial level. Academic commentary suggests that the success of reforms ultimately depends on sustained judicial discipline and clarity in interpretation.¹⁵

Singapore's Restrictive and Pro-Enforcement Approach

Singapore's arbitration regime exemplifies strict adherence to international best practices. The International Arbitration Act incorporates the UNCITRAL Model Law and limits judicial intervention to exceptional circumstances. Singaporean courts have consistently held that public policy refers only to violations of fundamental principles of justice and morality. In *PT Asuransi Jasa Indonesia v. Dexia Bank*, the Court of Appeal reaffirmed that errors of law or fact do not engage public policy.¹⁶

This consistent jurisprudence has enhanced Singapore's reputation as a neutral and predictable arbitration seat. Scholars attribute this success to judicial clarity, legislative precision, and a conscious policy choice to prioritise enforcement certainty.¹⁷

Comparative Assessment and Implications for Enforcement

A comparative analysis reveals that while India and Singapore operate within the same international framework, their judicial cultures have produced divergent enforcement outcomes. Singapore's predictability and restraint have translated into increased arbitration activity and investor confidence. India's trajectory reflects a gradual transition from intervention to restraint, but residual uncertainty continues to affect enforcement perceptions.

The comparison underscores that effective arbitration regimes depend not merely on statutory reform but on consistent judicial philosophy. Singapore's experience demonstrates that narrow interpretation of public policy strengthens enforcement credibility without compromising fundamental legal values.

Conclusion

The enforcement of international commercial arbitral awards lies at the heart of the international arbitration framework, ensuring that arbitration remains a credible and effective

¹⁵ Law Commission of India, 246th Report on *Amendments to the Arbitration and Conciliation Act, 1996* (2014).

¹⁶ *PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA* [2007] 1 SLR 597 (Singapore CA).

¹⁷ Gary Chan, 'Judicial Support for Arbitration in Singapore' (2016) 28 *Singapore Academy of Law Journal* 100.

mechanism for resolving cross-border commercial disputes. The public policy exception, while essential as a safeguard to protect the fundamental legal values of the enforcing state, has consistently posed challenges due to its inherent vagueness and susceptibility to expansive judicial interpretation. This comparative study of India and Singapore demonstrates that the manner in which public policy is construed plays a decisive role in shaping a jurisdiction's arbitration landscape.

India's experience reflects a complex and evolving trajectory. For a significant period, Indian courts adopted an interventionist approach that expanded the scope of public policy to include substantive review of arbitral awards. This approach, particularly evident in decisions such as *ONGC v. Saw Pipes*, undermined the principles of finality and enforcement certainty that are central to international arbitration. The resulting perception of India as an arbitration-unfriendly jurisdiction had tangible consequences for foreign investment and commercial confidence. However, recent legislative amendments and pro-enforcement judgments of the Supreme Court indicate a conscious effort to recalibrate India's arbitration regime. Decisions such as *Vijay Karia v. Prysmian Cavi* signal judicial recognition that enforcement proceedings must not devolve into appellate review. Despite this progress, residual inconsistencies at lower judicial levels suggest that reform is still a work in progress.

Singapore, by contrast, presents a model of sustained judicial restraint and institutional clarity. Its consistent adherence to a narrow interpretation of public policy, limited to violations of fundamental principles of justice and morality, has ensured predictability and reinforced its reputation as a premier arbitration hub. The Singaporean experience illustrates that minimal judicial intervention, when combined with legislative alignment with international standards, enhances rather than diminishes the legitimacy of arbitration.

The comparative analysis underscores that effective enforcement of arbitral awards depends not only on statutory reform but also on judicial philosophy and institutional culture. For India to fully realise its aspiration of becoming a global arbitration hub, sustained commitment to a restrictive public policy standard is imperative. Such an approach would strengthen enforcement certainty, align domestic practice with international obligations, and reinforce arbitration as a reliable instrument of international commercial dispute resolution.

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