The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

HARMONIZATION OR COSMETIC COMPLIANCE? PUBLIC POLICY EXCEPTION UNDER THE ARBITRATION AND CONCILIATION ACT VIS-À-VIS THE UNCITRAL MODEL LAW

~ Preet Juneja

Abstract

This paper is a critical analysis of key issues to determine whether India's interpretation of public policy exemption under the Arbitration and Conciliation Act, 1996 is a genuine reflection of harmonization with the international standards of arbitration practice or is cosmetic compliance with the UNCITRAL Model Law on International Commercial Arbitration. Public policy, under global instruments such as the New York Convention, is conceived as being narrow and exceptional ground, confined to serious violations of fundamental legal principles, morality or of justice.

However, the Indian jurisprudence in the early 2000s went in a different direction. Landmark judgment like Oil & Natural Gas Corp v Saw Pipes Ltd OR ONGC v Western Geco International Ltd. extended the scope of public policy and made illegality of a patent and reasonableness of standards of public policy topics for exploration by courts of merits-based examination. This development brought back appellate-style review which destroyed the finality and efficiency of arbitration.

The paper further analyses the corrective function of the Arbitration and Conciliation (Amendment) Act, 2015 and the related decisions of the Supreme Court that attempt to restore a narrow and pro-enforcement scheme that is in line with international norms. Through doctrinal and comparative analysis, using the above, the present study argues that although India has made

much progress towards harmonization, the vestiges of the former expansive approach remain, suggesting that India was in a phase of transition rather than doctrinal convergence.

Keywords: Arbitration and Conciliation Act, 1996, Public Policy, UNCITRAL Model Law , Harmonisation, Cosmetic Compliance

CHAPTER 1: Introduction

Arbitration has long been promoted as a speedy and final process of settling commercial disputes and is party autonomous. The 1996 Arbitration and Conciliation Act (ACA) of India was introduced expressly to align Indian arbitration law with the UNCITRAL Model Law to give an emphasis on minimal judicial interference, finality of awards and party autonomy[1]. In theory this harmonization was intended to increase investor confidence and help to reduce the time lag associated with litigation. One of the most important safety features in this scheme is the exception of public policy, which is a limited exception allowing courts to deny enforcement of a contract or to stay the results of an arbitral award flagrantly violating the basic legal standards of a state. Internationally, both the Model Law as well as the New York Convention contains a pro-enforcement bias, providing that courts may refuse recognition or set-aside only if enforcement would be "*contrary to the public policy of [that] State*"[2.] UNCITRAL's Commentary also emphasizes that this exception is limited to "*serious departures from fundamental notions of procedural justice*". [3]

Application of the public policy exception has, similarly been controversial in India. For many years after 1996, an expansive reading of "public policy" has been adopted by the Indian courts, thereby permitting merits-based review of arbitral awards under cover of this exception. Landmark decisions such as *Saw Pipes and Western Geco* have extended public policy to encompass illegality of patents and examinations for just reasonableness, which blurs the distinction between appeal and review. Critics continue to claim that this compromised the fundamental values of

---

[1] Arnav Kaushik & Saloni Kaushik, Fixing What's Final? The Gayatri Balasamy Dilemma, HNLU CCLS BLOG (Sept. 1, 2025), https://hnluccls.in/2025/09/01/fixing-whats-final-the-gayatri-balasamy-dilemma/

[2] U.N. COMM'N ON INT'L TRADE LAW, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION 1 (1985), with amendments as adopted in 2006 (U.N. 2008), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf.

[3] Supra

arbitration, by adding an element of uncertainty and delay. More recently, there have been amendments (particularly in 2015) and Supreme Court decisions (e.g. Associate Builders, Ssangyong, Vijay Karia) that have attempted to curb this overreach and bring India's law in tune with international law[4]. The issue that continues to be asked is whether this shift is genuine harmonization, or if it is cosmetic.

This paper looks at the scope and application of public policy exception in India against the UNCITRAL Model Law. It examines the historical development of Indian jurisprudence before the 1996 regime to the current regime in effect from 2015 and takes into account how international standards (and comparative practice in leading jurisdictions) impact upon the Indian approach. The issue is whether Indian law has really become mirror image to international practice or whether Indian national courts continue to see public policy as a catch-all, wide enough to permit judicial intervention.

Literature Review

The related public policy exception in arbitration has been much discussed in both academic and practical writings. The Model Law and New York Convention create a narrow scope by design[5]. Commentators point out that public policy under these instruments is a limited safety-valve i.e. an emergency escape mechanism, which relates to an unacceptable outcome (for example, corruption, sham transactions, gross denial of justice; etc.). In particular, the drafters of the Model Law and records of the New York Conference stress that the exception should be construed restrictively, in line with a "strong pro-enforcement approach" [6] . Practitioners also noticed that the majority of arbitration-friendly countries will require a high threshold in order for public policy challenges to be made.

For instance, the courts of Singapore considered that enforcement should only be refused in case of egregious breaches such as bribery or fraud "which violate the most basic notions of morality

[4] Paul Stothard, Public Policy as a Bar to Enforcement : Where Are We Now?, NORTON ROSE FULBRIGHT (May 2018), Public Policy as a Bar to Enforcement

[5] NEW YORK CONVENTION, Fixing What's Final? The Gayatri Balasamy Dilemma (last visited Mar. 30, 2026).

[6] NEW YORK CONVENTION GUIDE, Article V(2)(b) – Guide, https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=626&opac_view=-1 (last visited Mar. 30, 2026).

and justice"[7]. Likewise, jurisprudence from the United States (e.g. Parsons & Whittemore v. Societe Generale, 2d Cir. 1974) states that enforcement is prohibited "only where enforcement would violate the forum state's most basic notions of morality and justice"[8]. A recent analysis by Charles Russell notes the following consensus: Under the Model Law and New York Convention, national courts follow basic principles of their own law and only rarely fail to enforce an obligation based on simple legal errors[9].

In the Indian context, commentators have been especially critical of the broad construction that the courts gave to public policy in the early 2000s. Legal scholars point out that Indian courts "carried a 1940 Act mindset" into the post-1996 regime, resulting in a broad doctrine of public policy, that was very similar to the appellate review. A Norton Rose study notes that India was "once notorious" for decisions holding ordinary legal mistakes to a result of setting aside awards, conflicting with global trends. [10]Critics also complain this was inconsistent with the objects of the Act of party autonomy and finality. The 2015 legislative reforms and the recent Supreme Court decisions in turn have spawned a new wave of commentary observing a change in doctrine. Publications about arbitration forums and law firms (e.g. Kluwer Arbitration Blog, NCR ADR Association) applaud recent rulings for returning to a "pro-enforcement stance" by limiting the concept of public policy.[11]

Comparative literature helps reinforce the perception of India being out of step with great arbitration centers. Scholars often compare Indian law to the UK law, Singapore, and the US. For example, the UK Arbitration Act 1996 only permits appeal of awards on grounds of serious irregularity or breach of public policy, and the courts there also interpret public policy narrowly.

---

[7] Vijay Karia v. Prysmian Cavi E Sistemi SRL, AIR 2020 SC 1807.

[8] Supra

[9] Peter Smith, Public Policy in International Arbitration, CHARLES RUSSELL SPEECHLYS (Oct. 31, 2025), Public Policy in International Arbitration.

[10] ibid

[11] Nicholas Peacock & Vikas Mahendra, Shri Lal Mahal Ltd v Progetto Grano Spa: Supreme Court of India Overrules Phulchand and Reduces Court Interference in Enforcement of Foreign Awards, HERBERT SMITH FREEHILLS (July 22, 2013), https://www.hsfkramer.com/notes/arbitration/2013-07/shri-lal-mahal-ltd-v-progetto-grano-spa-supreme-court-of-india-overrules-phulchand-and-reduces-court-interference-in-enforcement-of-foreign-awards.

The UNCITRAL Model Law itself suggests that it is best for courts in such cases to resist the temptation to bring domestic appellate standards into the review of arbitration [12].

In sum, there are two pillars that are recognized by global literature: the international "harmonized" standard (narrow public policy) as opposed to the traditional Indian judicial approach (broader review). This consensus in commentary highlights the Statement of the Problem below - namely, whether Indian law has remained in line with the international standard or merely pays lip service to that standard.

Statement of the Problem

The public policy exception stands at the intersection of two competing principles: (a) the autonomy and finality of arbitration, and (b) the state's interest in ensuring justice and legality. By design, it was intended to be an extraordinary remedy, called for often only in extreme cases. [13]However, Indian courts long interpreted this exception as a broad basis to see through the awards looking at their merits. Judicial pronouncements in Saw Pipes (2003) and Western Geco (2014) were successful in making public policy not only a narrow safety valve but also a broad door to set aside awards for patent error of law. This trend thus diametrically conflicted with the spirit of the Model Law and added a measure of uncertainty, delays, and lack of confidence in India's arbitration regime. [14]The 2015 amendments to the Act - and subsequent Supreme Court decisions - expressly attempted to roll back this overreach (for e.g. by prohibiting merits review in the name of "fundamental policy. Yet it remains to be seen whether the balance has truly shifted.

In other words, the issue in issue is whether the public policy exception in India has been harmonized with international norms or is merely cosmetic. Are Indian courts now faithfully following the restricted scope envisaged by UNCITRAL and the New York Convention or are

---

[12] U.N. COMM'N ON INT'L TRADE LAW, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION, supra note 2

[13] Supra

[14] Krishna Sarma, Momota Oinam & Angshuman Kaushik, Development and Practice of Arbitration in India—Has It Evolved as an Effective Legal Institution?, STANFORD CTR. FOR INT'L DEV. (Oct. 1, 2009), Development and Practice of Arbitration in India.

vestige of the old expansive mindset still remaining? This question is pressing for the parties involved in international contracts because inconsistent interpretation of public policy can have an impact on the forced delivery of arbitral awards. The stakes are high: if the government fights like a lion to ensure ultra-protectionism, foreign investors might be deterred; if the government's relationship with domestic companies is a complete hands-off, it could run the risk of violating the basic legal values. Understanding where India falls between these two extremes - and whether its reforms represent real change - thus is extremely important.

Research Questions

1. **What is the intended scope of the public policy exception under the UNCITRAL Model Law, and has it been mirrored in India?** *Specifically, how broad or narrow was this exception envisioned to be, and to what extent have Indian courts deviated from that vision?*

2. **How has the interpretation of public policy evolved in Indian arbitration jurisprudence from the Arbitration Act, 1940 era through the post-2015 regime?** *In tracing this evolution, the focus will be on the shift from the broad, pre-1996 approach to the more recent restrictive trends.*

3. **In cross-border arbitration involving multiple jurisdictions, which country's public policy standard governs enforcement of an arbitral award?** *For instance, if parties are from different countries and arbitration is seated in a third country, whose fundamental policies apply when seeking enforcement?*

These questions provide the context for the inquiry into the extent to which Indian arbitration law is true harmonization with global and the extent to which it is a formal compliance gloss.

Hypothesis

This paper hypothesizes that the initial departure of Indian arbitration law off the UNCITRAL Model Law was because of the broad judicial interpretation of the public policy exception which is a remnant of the 1940 Act. Nonetheless, the current legislative changes and the cases of the Supreme Court point to a turn towards restraint that the country is slowly coming closer to harmonization with the international standards, but with some remnants of the former course.

Research Methodology

This study uses a *doctrinal legal research methodology*, which is suitable for examining legal principles, statutory language and case law. The method consists of a provided systematic analysis of main legal sources and supporting secondary materials:

- **Statutory Texts:** The most important legislations are the Arbitration and Conciliation Act, 1996 (including its amendment in 2015) and the Arbitration Act, 1940 which precedes it. We will examine in detail the language in Sections 34 [15]and 48[16] of the 1996 Act (which incorporates the public policy grounds). The (Statement of Objects and Reasons of Act) and Section 5 [17] make it very clear that minimal court interference was supposed to be in place. Any amendments (example: Explanation 2 to Section 34, 2015[18]) will also be studied to know the intent of legislation.

- **Case Law:** The judgments of the people from Indian Courts are authoritative and form the backbone of the analysis. This includes some landmark Supreme Court cases defining the scope of public policy under the old and new statutes: *Renusagar Power Co. v. General Electric (1994), ONGC v. Saw Pipes (2003), ONGC v. Western Geco (2014) Shri Lal Mahal Ltd v. Progetto Grano SpA (2014) Associate Builders v. DDA (2015), Ssangyong Engineering v. NHAI (2019), Vijay Karia v. Prysmian Cavi (2020),* among others. These decisions will be analyzed on the basis of the rationale and language with regard to public policy. Secondary sources, including case notes, law journal articles, and reports from international arbitration, will serve to interpret and put into context some of these rulings.

- **International Instruments:** The UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended in 2006) and the 1958 New York Convention are discussed in order to gain familiarity with the internationally accepted standards. This paper refers to the

[15] Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

[16] Arbitration and Conciliation Act, 1996, § 48, No. 26, Acts of Parliament, 1996 (India).

[17] Arbitration and Conciliation Act, 1996, § 5, No. 26, Acts of Parliament, 1996 (India).

[18] Arbitration and Conciliation Act, 1996, § 34(2)(b)(ii) expl. 2, No. 26, Acts of Parliament, 1996 (India) (as amended in 2015).

relevant articles (Art. 34 and 36) and commentary of the Model Law, and the relevant provision (Article V(2)(b) (as reflected in sources) of the New York Convention.

- **Comparative Analysis:** In order to benchmark the position in India, this paper will compare the interpretation of the public policy exception by courts of other major jurisdictions. Sources include Singapore case law (e.g. Sui Southern Gas Co. v. Habibullah Coastal Power, 2010) and commentary, precedents in the U.S. (e.g. Parsons & Whittemore, 1974), and general surveys of European practice. The doctrinal method is useful in determining similarities and differences in legal reasoning.

- **Secondary Literature:** Law Commission, legislative debates and academic commentaries give insight into the policy debates in India. For instance, the suggestions of the Law Commission to reform the arbitration law and the modern academic readings on the Indian approach shall be taken into account. These are going to be balanced with empirical and historical accounts (such as Sarma et al., Stanford CDDRL Working Paper) to trace institutional practices.

By combining textual analysis of the laws and judgments within the comparative and normative approaches, this methodology will be useful in precisely analyzing whether India's jurisprudence has once more passed from judicial overreach back toward the restraints of the UNCITRAL model.

CHAPTER 2: Public Policy under the Model Law vs. India's Act

Under the UNCITRAL Model Law (1985, as amended 2006), the public policy exception is clearly limited. Article 34(2)(b)(ii)[19] provides that only if a court determines that the award is "in conflict with the public policy of this State" may a court set aside an award. Similarly, Article 36(1)(b)(ii) [20](enforcement) gives the possible option of refusal of recognition or enforcement in the event that it "would be contrary to the public policy of this State". Importantly, the official commentary on the Model Law says this should only apply to serious breaches of fundamental justice, not mere mistakes: public policy "is to be understood as serious departures from fundamental notions of

[19] U.N. COMM'N ON INT'L TRADE LAW, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION art. 34(2)(b)(ii) (1985), with amendments as adopted in 2006.

[20] ibid

procedural justice". In practice, signatory countries take this to mean that it applies only when its enforcement would cause a shock to the conscience of the forum or run counter to basic norms (for example, corruption, denial of natural justice or criminal contravention). [21]The overriding intention of both the Model Law and the New York convention was to restrict the right to review awards, delegating public policy to exceptional circumstances.

India *nearly fully adopted* the language of the Model Law to the ACA 1996. Section 34(2)(b)(ii) of the Act provides for the setting aside of an award in situations where such award conflicts with the "public policy of India" and Section 48(2)(b) also provides for refusing enforcement in situations where it would be contrary to the public policy of India[22]. The Act provides further that an award is against public policy only if: (i) the award was induced by fraud or corruption, or (ii) it is in contravention of fundamental policy of Indian law, or (iii) it violates the most basic notions of morality or justice. These categories are similar to Renusagar's definition (fundamental policy, interests of India, justice/morality) with the *exceptions of "interests of India"* and are focussed on the core defects. Notably, Explanation 2 to Section 34 was added to the 2015 amendment providing that in examining fundamental policy *"the court shall not review the merits of the dispute".* This is consistent with the spirit of the Model Law in that it expressly prohibits merits review under the pretext of public policy.

The textual structure in India in summary shares resemblance with the Model Law, on its face: both mention the public policy of the enforcing state, and both are aimed at identifying basic norms (as opposed to mere mistakes). The important issue, then, is the way the courts have given meaning to those terms. The analysis below will illustrate that notwithstanding the narrowness of words used, Indian courts for many years *operated under a much wider standard than intended and only gradually were shifting back towards a narrower intent.*

CHAPTER 3 Evolution of Public Policy in Indian Arbitration Law

[21] supra

[22] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

1940 Act Era: Broad Judicial Control

Under the pre-1996 Act of Arbitration Act 1940, the Indian courts exercised a huge control over arbitration. The court's power to set aside awards was broad, appropriate, and similar to appellate review. In fact, under the 1940 Act, it was permissible to set aside an award for "improper procurement" or what was somehow unspecified, and courts intervened routinely at all stages including setting aside awards for errors of law. Scholarly accounts mention that "judicial participation in the arbitral process" was heavy on the 1940 Act, and awards often invalidated on the mere basis of legal mistakes. This legacy had the consequences that judges were accustomed to consider the arbitral decision on the merits.[23]

When India repealed the 1940 Act and replaced it with the 1996 Act (based on UNCITRAL Model Law) the legislative intent was that it wanted to break from its past. The Act's Statement of Objects puts a strong focus on restriction of court involvement, finality and trust on party autonomy. Section 5 expressly states that courts are not to intervene absent (it has partial exception called "Part I") The obvious aim was to depart from the 1940-type wide review. However, courts did not immediately shake the old mindset.

Renusagar (1994): A Narrow Approach for Foreign Awards

One of the significant decisions after 1996 was in *Renusagar Power Co. v. General Electric Co. (1994)* [24] , which concerned the enforcement of a foreign award through the Model Law Framework. The Supreme Court (*three judge bench*) held that "public policy of India" in the context of foreign awards must be construed restrictively and this means essentially the practice of Geneva Conventions. The court stated that enforcement can be refused only if the award contravened: (a) the fundamental policy of Indian law, (b) the interest of India or (c) justice or morality. In doing so, the Court explicitly rejected merits review. It stated that courts "cannot sit in appeal over foreign awards". Renusagar thus established a narrow test which was very close to

[23] Krishna Sarma, Momota Oinam & Angshuman Kaushik, Development and Practice of Arbitration in India—Has It Evolved as an Effective Legal Institution?, STANFORD CTR. FOR DEMOCRACY, DEV. & THE RULE OF LAW (Oct. 1, 2009), https://cddrl.fsi.stanford.edu/publications/development_and_practice_of_arbitration_in_india_has_it_evolved_as_an_effective_legal_institution.

[24] Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp. (1) SCC 644.

the Model Law and New York Convention; in fact, it is often referred to as the standard of foreign awards in India.

Renusagar definition which restricted to the scope of foreign award (treated under Section 48). It did not deal with the situation for domestic awards under Section 34 of the 1996 Act. In fact, at that time, Indian law did not contain any distinction between domestic and international arbitrations - Part I of the Act applied to arbitrations "where the place of arbitration is in India". But Renusagar's framing (and its reliance on the Geneva background) implicitly suggested that a similar narrow test should apply in enforcement of foreign awards.

Saw Pipes (2003): Expansion of Public Policy for Domestic Awards

It was a critical turning point came in Oil & Natural Gas Corp. v. Saw Pipes Ltd. (2003)[25]. In Saw Pipes, the Supreme Court (again a three-judge bench) was faced with the issue as to whether it was possible to set aside domestic arbitral awards for *patent illegality*. ONGC argued that the award, though not procured by corruption, was clearly contrary to law and hence not in public policy. Relying on the ethos of the 1940 Act, the Court broadened the ambit of 'public policy' in regard to Section 34 (domestic awards). It held that an award may be set aside for "patent illegality" - meaning an error of law apparent on the face of the award which goes to the jurisdiction of the arbitrator. The Court interpreted public policy to include awards that are (for example) in "manifest disregard" of the law, violate the terms of the contract, or are "patently illegal".

In its reasoning, the Court stressed that arbitration could not be a "cloistered anonymity" and it would be unfair if an arbitrator could give a "patently illegal" award with impunity. Quoting the Attorney-General Palkhivala, the Court stated "If an award results in injustice, then the court would be within its right to challenge the award on the ground that it is in conflict with the public policy of India". An unanimous result was that public policy in domestic arbitrations should be given a wider meaning than the Renusagar test for foreign awards. As one commentator summarized: "the Court extended public policy to cover illegality in patent". [26]

---

[25] Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705.

[26] Hritika Jannawar, Analysing the Case of ONGC v. Saw Pipes, IPLEADERS (Aug. 1, 2021), https://blog.ipleaders.in/analysing-case-ongc-v-saw-pipes/

The Saw Pipes decision is very widely criticized as effectively bringing in appeal-like scrutiny again. The fraud or fundamental norms were not the only things that the Court stopped at; it enabled awards to be annulled for simple legal errors. This in effect recreated the broad review mentality of 1940 contraries to the arbitration friendly goals of the 1996 Act. Impact: Saw Pipes had opened the floodgates for judicial interference in domestic arbitration Lower courts and parties relied on this expanded doctrine, giving rise to many challenges of awards on grounds of erroneous laws.

Western Geco (2014): Peak of Judicial Intervention

The expansion continued in ONGC v. Western Geco International Limited. (2014). [27]In the case of Western Geco, another case against an ONGC domestic arbitration award was heard by a three-judge bench. The Court went a step further with the Saw Pipes logic. It held that even the notion of "fundamental policy of law" must be interpreted expansively - including the "judicial approach" and "reasonable decision making" standards (of Wednesbury unreasonableness) . In practice, this meant that a reviewing court was able to consider whether the arbitrator's reasoning was rational or provided by evidence. An award could be awarded outside if it was so perverse that no reasonable person could have made it or if the arbitrator ignored vital evidence or misconstrued the contract.

Western Geco therefore blurred the line between appellate review and judicial review. The Court stated arbitration must be "a service vocation" and it imposed a duty on tribunals to write "speaking awards" with rationales. If an arbitrator did not do so, domestic courts felt free to intervene. critics say that Western Geco effectively enabled the courts to second-guess the merits in the name of "public policy." In the words of one analysis, it meant courts "beginning to consider the substance of arbitral awards". This stage was the zenith of judicial intervention into Indian arbitration: at this point domestic public policy had ballooned to include any arbitrary, perverse or unjust result, a far cry from the Model Law vision.

[27] Oil & Natural Gas Corp. Ltd. v. Western Geco Int'l Ltd., (2014) 9 SCC 263.

Backlash and Foreign Awards: Shri Lal Mahal (2014)

By 2013-14, apprehensions were rising about India's different track, in particular with international investment linkages. The Supreme Court started to draw a line between a domestic and foreign award. In Shri Lal Mahal Ltd. v. Progetto Grano(2013) the Court was concerned with the enforcement of a foreign award (seat in London) which was challenged under the New York Convention (Section 48). The appellant attempted to invoke the expansion of the Saw Pipes where it was argued that the award went against the express terms of the contract and was therefore against the public policy of India. The Supreme Court discarded such an approach: it observed that for foreign award, one has to follow the Renusagar test (fundamental policy, interests, justice/morality) , rather than the much wider Saw Pipes definition.

In other words, the Court reiterated a narrow public policy to enforce foreign awards[20]. It expressly refused to give legality to challenges premised upon illegality of the patents in the enforcement context. As noted by Herbert Smith Freehills, Shri Lal Mahal brought back India internationally pro-enforcement status to differentiate domestic broad and foreign narrow tests. Thus, although domestic arbitration continued to be subject to wide judicial scrutiny, foreign-seated awards had the benefit of a stricter standard.

Legislative Reform: ACA Amendment 2015

The legislative branch finally stepped in to curb the judicial excess. The Arbitration and Conciliation (Amendment) Act, 2015 made some important changes are:

- **Explanation 2 to Section 34(2)(b)(ii):** Clarified in determining whether an award is in violation of the fundamental policy of Indian law, the court "shall not review the merits of the dispute." This directly reversed the implication in the Saw Pipes/Western Geco case that the merits could be reviewed in the guise of fundamental policy. It successfully revived the Model Law approach that the courts may not replace their judgment where that of the tribunal ought to go over points of law, even in domestic arbitrations.

- **Revision of Section 48:** The ground "contrary to the interests of India" was removed as a separate category, which brings the enforcement test even closer to Renusagar's original

three factors. The amendments made it express that mere error of law or patent illegality is no longer a ground for refusing enforcement of foreign awards.

- **Prospective vs. Retrospective:** Initially the amendment expressly provided it would be applicable prospectively only. This meant that earlier cases on old law continued to be binding. (The Supreme Court later clarified in Ssangyong v. NHAI (2019) some aspects should be retrogressively, effectively restricting Western Geco and Saw Pipes to awards made before 2015.)

Collectively, the 2015 reforms were a signal by Parliament that it would like to see the Model Law principles reinstated. As one law firm commentary observes, the intention of the Amendment was to "bring back a pro-arbitration stance" by deleting the illegality of patents and limiting for review. The immediate impact of this was that many of the challenges that were pending needed to be re-evaluated in the light of the narrower scope.

Recent Jurisprudence: Structuring and Restraint

Following these changes, the Supreme Court has continued to clarify and enforce the constrained approach:

- **Associate Builders v. DDA (2015):** [28]Shortly before the amendments, the Court itself noted that Indian courts had over-interfered in arbitration. It sought to *"structure and limit"* public policy review, suggesting that awards would only be set aside in very narrow cases (perverse irrationality, etc.) and that losing parties must prove patent illegality on the face of the award. This was an early judicial admission of the problem.

- ***Ssangyong Engineering v. NHAI* (2019):** [29]A five-judge bench confirmed that the "patent illegality" doctrine (as it was articulated in Western Geco and Saw Pipes) no longer applied to foreign awards, and that awards could only be set aside on grounds truly listed in the Act. Significantly, it found that the West Geco and Saw Pipes principles would not be

[28] Associate Builders v. Delhi Dev. Auth., 2014 AIR SCW 6861

[29] Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India, AIR 2019 SC 5041

applied to refuse enforcement of foreign awards under Section 48. It also confirmed that the 2015 public policy amendments would be applied prospectively.

- ***Vijay Karia v. Prysmian Cavi* (2020)[30]:** Recently, the Supreme Court reiterated a narrow approach to the public policy exception for all foreign awards under the New York Convention. It firmly stated that enforcement of foreign awards under Section 48(2)(b) can only be declined if it would offend against the fundamental policy, interest, justice and morality of India. It set aside previous dicta (e.g. Phulchand Exports 2011) that hinted at applying Saw Pipes to enforcement, and it reinforced that mere patent illegality is not sufficient. The Court explicitly relied upon international law (e.g. Parsons) to reiterate that only gross violations (corruption, fraud, gross injustice) give rise to public policy.

These changes depict a radical backlash. In foreign-seated arbitration, law has now been solidly limited: Indian courts use the traditional Renusagar test and do not review the merits, as required by the Model Law and New York Convention. In the case of domestic arbitrations, though technically still allows setting aside on the basis of public policy, courts have been reminded (through statute and decision) not to indulge in the broad judicial review. Practically, it has been brought out by Associate Builders and Ssangyong that patent illegality will be carefully examined, at best, in domestic cases.

Continuity of Reasoning

Nevertheless, despite these reforms, commentators observe that, in certain cases, Indian courts still tend to make recourse to the use of language that still is in the spirit of the 1940 Act. Such adjectives as perverse, irrational, or patently illegal, customary appellate standards, have been used in arbitration cases even after 1996. This implies continuity of patterns of reasoning. To illustrate, on a case related to Western Geco the Court applied the Wednesbury unreasonable standard, a notion of administrative law to the Section 34 review. On the same note, the illegality of Saw Pipes patent is similar to an error-of-law inquiry on the 1940 Act. The main thing is that there were many cases when the changes in the statute were not considered, and the old standards were used in any case.

[30] Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1

In order to establish this continuity, it is possible to compare judgments made prior to 1996 with those made after 1996. According to the 1940 Act, awards could be appealed on the basis of improper procurement or any other (rather general) reasons. The two categories in Sections 34 and 48 should have been the only ones that the courts used after 1996. Rather, Saw Pipes introduced a fallback of patent illegality (meaning any law error). The broad judicial review was reverted to by Western Geco. To put it briefly, the cases which followed before the year 1996 (2000s-2014) merely repackaged old appellate-style jurisprudence in new statutory terms.

It is inferring that the legislature was forced to offer corrections on this matter, initially in the form of Explanation 2 and the 2015 amendment, and subsequently with the help of court admonitions. Although one of the analyses cites this as evidence, each of the amendments was what one analysis describes as persuasive evidence that the courts had lost the aim of minimal interference model. Scholars also note that later even the judges themselves confessed the issue: judicial interference had been extreme as one court described it. These confessions together with the commentary that continued to appear well beyond would attest that, actually, India did have an aspect of the 1940s mindset carried over to the courts and that was something that had to be unlearned.

CHAPTER 4: Comparative Perspective: Public Policy in Other Jurisdictions

To assess harmonization, it is instructive to compare how other jurisdictions treat the public policy exception.

- **UNCITRAL and NY Convention (Global Standards):** As observed, the global standard is considerably high. The own guide of the UN to the New York Convention refers to Parsons v. Societe Generale: The acceptance of foreign arbitral awards can be refused based on public policy only in the situation when their enforcement infringes on the most fundamental conceptions of morality and justice, of the state where these awards are to be enforced. The policy challenges in society are supposed to be very few according to the other jurisdictions. To take one example; in Singapore, the courts have made it expressly clear that the enforcement must involve egregious circumstances (e.g. bribery, fraud) to

meet the requirement of the public policy. Equally, the stress of tribunals and commentators around the globe is that the public policy is not some kind of a re-litigation ground[31].

- **United Kingdom:** The UK Arbitration Act 1996 (section 103) permits the setting aside of severe irregularity such as the policy of the public. In the real world, English judges apply the concept of public policy in a limited way, which usually means it entails illegality (e.g. a contract vitiated by crime) or the basic violation of natural justice. The UK Supreme Court has observed that the English public policy concerning the Convention (section 101), simply translates to as contrary to morality or justice. Since the time of Lesotho Highlands Dev. Authority v. Impregilo SpA, UK[32] courts have hardly denied enforcement based on the ground of public policy in recent years. This case clarified that insolvency exceptions are limited and courts should further enforce awards.

- **United States:** The same can be stated of the U.S. courts recommended in Chapter 2 of the FAA (recruitment of the New York Convention) which takes a firm position. In Parsons and Whittemore v. The Second Circuit[33], the view of public policy adopted by Societe Generale (1974) was that it simply refuses to enforce awards which undermine the very essence of the forum. In practice, the U.S. courts have refused to enforce only in exceptional situations (e.g. awards that do not comply with U.S. criminal law, sanction regimes, and due process in an extremely obvious manner). It is open to the objecting party to show that exceptionally high threshold, which is in line with the pro-enforcement inclination of the Convention[34].

---

[31] Peter Smith, *Public Policy in International Arbitration*, CHARLES RUSSELL SPEECHLYS (Oct. 31, 2025), https://www.charlesrussellspeechlys.com/en/insights/expert-insights/dispute-resolution/2025/public-policy-in-international-arbitration/

[32] Lesotho Highlands Dev. Auth. v. Impregilo SpA and others, [2005] UKHL 43.

[33] Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969 (2d Cir. 1974).

[34] Ajay Karia v. Prysmian Cavi E Sistemi Srl, AIR 2020 SC 1807, 494 (2020) 3 SCALE, AIRONLINE 2020 SC 197.

- **Singapore:** The model law is reflected by Singapore in its International Arbitration Act (IAA). The Singapore High Court in Sui Southern Gas Co. v. Habibullah (2010)[35] directly went into the Parsons approach, saying that awards that were inconsistent with the conscience of a forum should be refused. Singapore has developed into one of the top arbitration centres through adhering to the awards and interpreting the public policy with a limited scope. The recent cases in Singapore have restricted the public policy in terms of violations of law or procedure of utmost gravity and have rejected the attempt to re-litigate contracts.

- **Other jurisdictions:**

The situation in many civil law systems (France, Germany, and others) is similar to this in that the public policy is restricted by the transgression of the fundamental principles or rules which are obligatory. This is workable in the concept of ordre public international, although an ordre public is still applied by courts of the implementation courts. As an illustration, the European courts will not allow it to be enforced in case the award goes against EU public policy (e.g. EU competition or public procurement laws). Nevertheless, at that point, they are very strict in their standards and an award may be overruled by action against domestic law that it is mandatory (such as antitrust or fraud in a purchasing decision), but a simple legal mistake is not adequate. Overall, it can be seen that the trend is quite simple, with uniform application of public policy exceptions as rare cases.

In summary, it is unanimously accepted by leading arbitration jurisdictions that the public policy is not the means of appellate review. It is a subsidiary, confined exception, to be used when a case is just offensive to the very core of the law or morality of a country. Indian practice, in turn, had long been sui generis in approaching public policy expansively. The new changes, however, have brought India closer to this consensus in the world.

Cross-Border Enforcement: Which Public Policy Applies?

The issue that keeps arising in international arbitration is on what laws and policies of any country of origin can be used to enforce the awards. Under international law, this is simply that the law of

[35] Sui Southern Gas Co Ltd v. Habibullah Coastal Power Co (Pte) Ltd, [2010] SGHC 62.

the forum state rules. New York Convention, article V(2)(b) clearly speaks of the public policy of such count in which enforcement is being pursued[36]. Article 36 of the Model Law also employs this State to enforce. This implies that in case an award is enforced in a foreign country, the court that does the enforcement just examines policies in its own country. According to the explanation of the Norton Rose study: the pursuing country courts use their interpretation of international public policy to determine whether they can and should recognize and enforce the award or not.

In other words, in case two parties (one Indian and one American) arbitrate in Singapore and one of the parties wishes to enforce the award in India, Indian courts will invoke Indian public policy. In the event, the enforcement is pursued in a different country (e.g. the U.S. or UK), the courts in that country will use their own public policy standards. The seat of arbitration or the nationality of the parties is irrelevant since it does not mean that their laws are to be enforced, the forum is what matters.

Naturally, it is a little more subtle with domestic awards. Assuming an arbitration is sedated in India (with foreign parties), it is considered a domestic award and appealed under Section 34, through the notion of Indian public policy. However, at that, the enforcement forum deploys its own test even in case the seat and the enforcing country are different. An illustrative case is that the enforced arbitration award based on a foreign-seated arbitration against an Indian party is subject to test through the Indian public policy. On the other hand, when a seat Indian-seated award of arbitration is enforced in Singapore, the Singaporean court will mainframe the Singapore public policy (and not that of India).

The justification here is that the exceptions dealing with the public policy by both the Model Law and the New York Convention are territorial: in this case, both safeguard the domestic legal order. A court that tries to enforce an award may not do so by claiming that it does not comply with the law of another country. This can be confirmed in Parsons: the US Second Circuit warned that the public policy in the Convention should not be a parochial tool to impose national interests outside the host state. In such a way, the state in question gazes out to the international standards, though eventually assesses them with its own standards.

---

[36] supra

However, it may be mentioned that confusion occurs sometimes. During disputes of multi-jurisdiction, parties may claim that a different law controls the public policy. In the case of Shri Lal Mahal, Indian courts have clarified that foreign law does not apply in the inquiry of the public policy under Section 48. In the same case of Vijay Karia, the Court once again stated that it did not plan to reconsider awards based on the standards of other countries. The imposing nation enforces a more severe domestic test: does the important national policy of my country go so much against the grain to have me enforce this award? If not, enforcement proceeds.

In a nutshell, in cross-border arbitrations the governing jurisdiction is the one under which they are enforcing their own policies. This is in line with the international custom[37]. Parties may assume that upon submitting an award to be considered or applied, it will be considered by the utmost basic standards of the forum in which enforcement is desired, instead of what it would undergo in other states a long distance away.

CHAPTER 5: Suggestions and Concluding Remarks

In this section, the paper advocates a new public policy model that the Indian courts can use to quash or enforce arbitral awards. It adds a multi-level doctrinal experiment that constriction to rather foundational legal presuppositions, as well as practical protection, and policy changes in order to forestall cloaked review of merits. The new framework is based on the UNCITRAL Model Law and the comparative law (Singapore, UK, US) and serves the purpose of maintaining the finality of arbitration and ensuring the purpose of justice. Its major features are: (a) a **three-tier public policy test** (identification of a particular statutory or constitutional norm, demonstrable causal nexus, and a balance of harms described as proportional); and (b) a **judicial checklist** in which the challengers evidently plead a specific statutory or constitutional norm and meet a high evidentiary bar. A comparison table compares the new practice in India (2015 vs after 2015) with the offered one and a flow-chart is provided to show the recommended process of decision-making by a judge. This evidence-based proposal seeks to make India change its public policy doctrine into a grounded and open standard *(see Table 1 and Flowchart 1).*

---

[37] Paul Stothard, *Public Policy as a Bar to Enforcement—Where Are We Now?*, NORTON ROSE FULBRIGHT (May 2018), https://www.nortonrosefulbright.com/en-us/knowledge/publications/c6fd727b/public-policy-as-a-bar-to-enforcement#:~:text=Article%20V,concept%20that%20defies%20precise%20definition (last visited Mar. 31, 2026)

Three-Tier Doctrinal Test

Drawing on expert opinion and international arbitration jurisprudence, this paper sets out a three-part test that courts should apply if faced with a public policy challenge to an arbitral award, which must be satisfied before an award can be set aside or refused enforcement.

1. **Threshold Norm Identification:** The first thing the court needs to ask the challenger is to ***identify a concrete mandatory norm or fundamental legal principle*** that is supposedly violated. This means identifying a certain statute, constitutional provision, or recognized public policy (e.g. criminal law, competition law, basic human rights) violated by the award. Vague evocations toward "justice" or "morality" are not enough. If no particular norm is found, the challenge is immediately rejected[38]. This is consistent with the law in Singapore (SGHC) which rejected a PP plea when "no particular public policy . . . was identified"; [39]and with English law which seeks to find a clear link with an established public policy.

2. **Nexus and Adjudicative Integrity:** Next, the court looks for whether the alleged norm was ***adequately considered by the tribunal*** as well as the outcome of the award's decision is directly related to the breach of the norm. If the arbitral tribunal has already decided the factual or legal issue (by way of example, specifically rejecting the occurrence of any crime or illegality), the court must defer to these results except for fraud or bias. Likewise, if the alleged violation is some collateral or tangential to the contract, it should not invalidate the award. In practical terms, the challenger must demonstrate by clear demonstration that the decision of the tribunal depends on the norm in question. This is equivalent to the high evidential bar in the UK (Hulley) and the US (Parsons) where mere allegations of misconduct without direct causal link to the award do not succeed against enforcement[40].

3. **Proportionality Balance:** Only if the above, the court would have to go through an inquiry of proportionality. In this case, ***the court considers the interest in enforcement against how***

---

[38] Sui Southern Gas Co. Ltd. v. Habibullah Coastal Power Co. (Pte) Ltd., [2010] SGHC 62 (Sing.).

[39] ibid

[40] Shane Jury & Freddie Akiki, International Arbitration: Public Policy Objections to the Enforcement of Arbitral Awards, AKIN (Mar. 17, 2026), https://www.akingump.com/en/insights/alerts/international-arbitration-public-policy-objections-to-the-enforcement-of-arbitral-awards

serious the breach is. If the breach of the identified norm is manifestly egregious - for example, an award enforcing a contract which on its face requires the commission of a crime - then enforcement would shock basic notions of justice[41]. In such rare cases limited remedy is called for. However, if the breach is minor/incidental (even if proved) the award should stand. This is to ensure that the public policy exception is exceptional in line with UNCITRAL's position that there should be no relief for the purpose of this Convention unless it is a "serious departure from fundamental notions of justice".

In summary, the test (illustrated in Flowchart 1 below) limits public policy issues to particular and proven threats to fundamental legal values. It includes the addition of elements of proportionality and deference on the findings of the arbitral tribunal, consistent with international norms. By tiering the analysis, it protects against "free-standing" appeals on mere legal grounds, while still of course picking up only the most egregious infractions.

Procedural Safeguards (Judicial Checklist)

In applying the above test, judges should consider a list of points for their bench notes when a party claims that an award against her is unenforceable due to public policy:

- **Specific Pleading:** Force the claimant to specify the law or policy in question (eg "Section 138 IPC" or "Article 23(3) of the IFC Agreement") rather than vague ideas. If no specific ground is cited, reject it as a premature plea.
- **Onus on Challenger:** Tell the party that the onus is on them. The challenger must present relevant evidence (documents or statements) in support of the breach. If the challenge is founded on allegations of fact (such as bribery) then the challenge must be specifically pleaded and supported by good evidence[42].
- **Findings of Tribunal**: It should be checked if the tribunal raised the issue and whether it made an express finding (particularly on the same evidence) , court should be very cautious in

[41] Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1

[42] Shane Jury & Freddie Akiki, International Arbitration: Public Policy Objections to the Enforcement of Arbitral Awards, AKIN (Mar. 17, 2026), International Arbitration: Public Policy Objections to the Enforcement of Arbitral Awards.

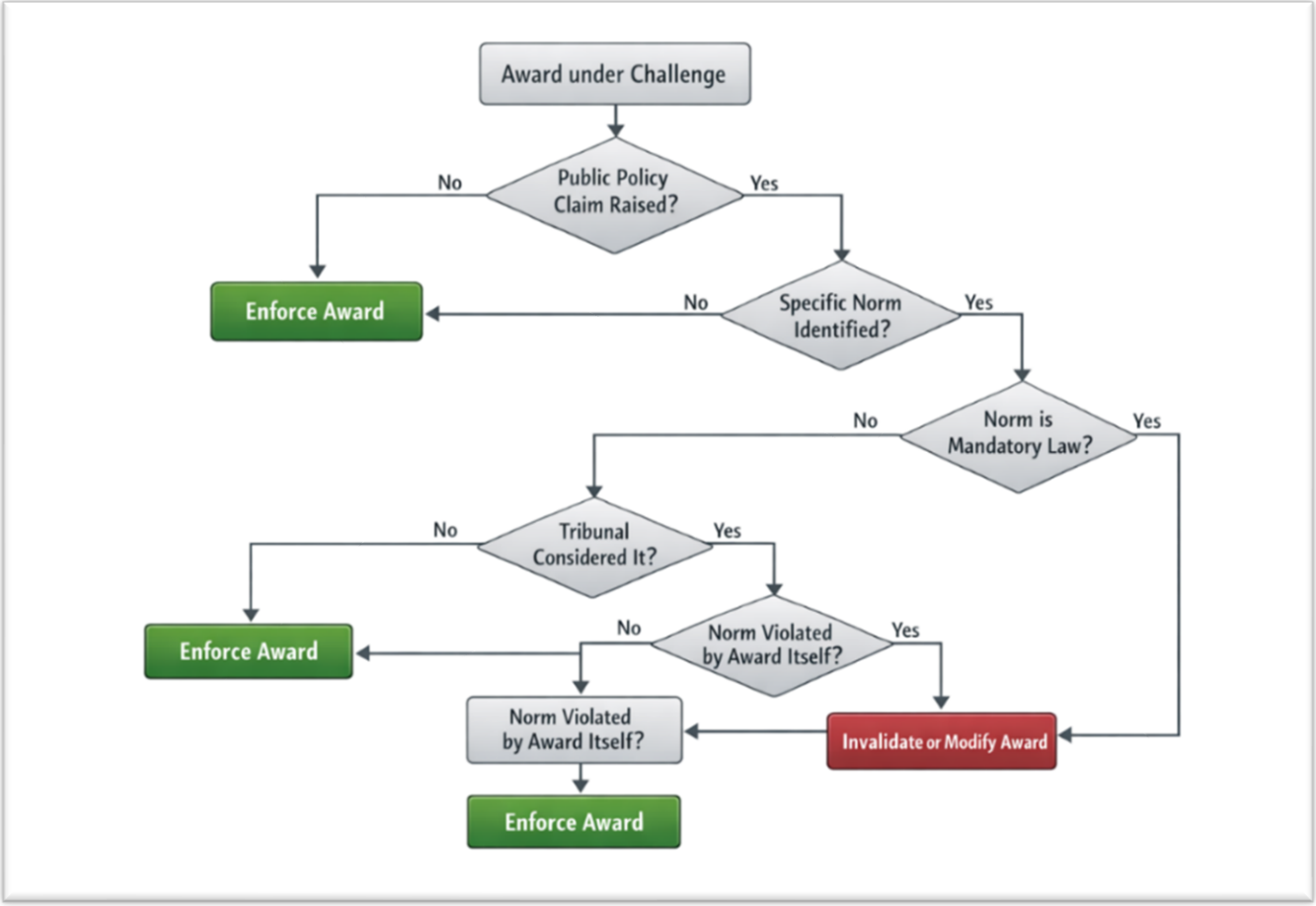
dealing with the same issue again. For instance, in Hulley Enterprises Ltd. (Cyprus) v. The Russian Federation, [43] the English court accepted the tribunal's findings of fact because there were no fresh findings of fact proved.

- **Nexus Analysis:** There should be explanation on the nexus of norm with award. If the subject transaction or contract was not illegal or the illegality did not affect the performance, then the enforcement should be permitted. [44]
- **Proportionality Test:** If a demonstrated illegality passes the above tests,a narrow proportionality test should be conducted and checked whether the enforcement of the award so grossly unfair that it offends public policy? If not (e.g. illegality can be separated or punished separately), then enforce the award.
- **High Standard of Proof: A** high evidentiary standard should be adopted, such as "beyond reasonable doubt" for criminal levels of anti-public policy violations, or "clear and convincing evidence" for civil levels of serious violations to reflect the gravity of the violations. If the evidence is equivocal, it should then be in favor of enforcement.
- **Remedial Caution:** If invalidation is justified, be cautious: for domestic awards, if possible, remit to tribunal for rectification of award, rather than to annul, or if only parts of the award were affected by illegality, let such parts be enforced. For foreign awards, non-enforcement should be avoided, if possible, in line with the language of the New York Convention.

The checklist as mentioned above, hence prevents judges from launching disguised appeals and it supplements the doctrine above by ensuring that all claims are treated equally and in a disciplined manner.

[43] Hulley Enterprises Ltd. (Cyprus) v. The Russian Federation, PCA Case No. AA 226, UNCITRAL Arbitration Rules (1976) (Energy Charter Treaty 1994, Permanent Court of Arbitration, Netherlands).

Flowchart: Proposed judicial decision flowchart for a public policy challenge. *(Courts must identify a specific norm and ensure strict proof before denying enforcement.)*



Comparative Illustration

Table 1: *Compares the traditional Indian approach (pre-2015 and post-2015) with proposed test:*

Aspect	**Pre-2015 Indian Practice** (Saw Pipes/WesternGeco era)	**Post-2015 Indian (Amendment & Recent Cases)**	**Proposed Three-Tier Test**
Scope of "Public Policy"	Very broad - included fundamental policy +	Narrow - concerned with rudimentary laws or	Strict - only explicit statutory or constitutional demands. Must be a

Aspect	Pre-2015 Indian Practice (Saw Pipes/WesternGeco era)	Post-2015 Indian (Amendment & Recent Cases)	Proposed Three-Tier Test
	any illegal under patents (even basic law errors).	public morals (Renu Sagar standard).	mandatory norm at Tier 1, no review of mere errors.
Burden of Proof	Implicitly on respondent, behaves freely to identify illegality on record.	Explicitly on challenger (per Ssangyong[45]/Vijay Karia[46]) to prove violation.	Clearly on challenger Tiers 1-2. Must make a plea and prove the specific violation by cogent evidence.
Evidentiary Standard	Low - courts have frequently presumed or inferred violations (sometimes sua sponte).	Higher - courts require hard proof of breach. If no evidence of, say, corruption fails for claim.	High - similar to "beyond reasonable doubt" in the case of criminal lapses, or "clear and convincing" in the case of civil wrongs.
Remedies	Awards have commonly been set aside in whole for errors of law. Some remittals offered.	Awards usually upheld. Where enforcement refused Narrowly limited (no automatic full annulment cheviot.	Proportional - allow enforcement, as far as possible. If refuse needed, give only minimal award (i.e. sever offending clauses or pass narrow issue to tribunal),

[45] Ssangyong Eng'g & Constr. Co. Ltd. v. NHAI, (2019) 15 SCC 131.

[46] Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1.

Aspect	**Pre-2015 Indian Practice** (Saw Pipes/WesternGeco era)	**Post-2015 Indian (Amendment & Recent Cases)**	**Proposed Three-Tier Test**
			leaving remainder of award intact.

Conclusion

The Indian experience with the public policy exception has been one of tension between enunciated legislative purposes and judicial tactics. Initially, Indian courts interpreted the Arbitration and Conciliation Act incorrectly, as leaving in place the old regime of wide review. This resulted in a wave of "judicial overreach" that was far beyond what UNCITRAL Model Law envisaged. The expansive approach with regard to public policy under Sections 34 and 48 during the 2000s was in fact at odds with India's professed desire for international conformity. In effect, India's courts adopted an option lens of domestic finality, whereby even if working under a model law scheme of finality, they still continued to exercise interference at earlier to 1996 standards.

However, a mix of internal criticism and external pressure was brought. The amendments in the mid-2010s and the changes via the landmark Supreme Court decisions have limited the scope of the public policy exception considerably. Today in case of foreign-seated awards, the standard is firmly Renusagar's narrow test, and in case of domestic awards, courts are inhibited from re-assessing merits. This shift has brought closer India to harmonization with the pro-enforcement spirit of the Model Law. That said, revictuals of the past exist. Some residual rhetorics of reasonableness and patent illegality are still found in judgments, notwithstanding it being prohibited by statutes.

In answer to the research questions: The UNCITRAL Model Law envisages a high threshold in terms of public policy (taking a serious violation of fundamental justice) [2], a level which now has been largely adopted in Indian enforcement practice (especially with respect to enforcement of foreign awards). Judicial interventions - notably Saw Pipes and Western Geco - did play a role in over-reach through the expansion of the exception to its intended limits. The interpretation in India therefore changed from the broad pre-1996 approach (courts resorting to the full range of

appellate tools) to the more recent narrow approach (courts recognizing limited interference) following the amendment of 2015 and subsequent cases. Finally, in cases where there are issues of cross-border disputes, enforcement is determined by the public policy of the enforcing jurisdiction. Parties may argue about the seat or system, but in the end, it is the national court that will apply its own standards of morality and justice in enforcing them.

In sum, in India's journey it has been from cosmetic compliance on the way back to substantive harmonization. The law on the books is now in harmony with the Model Law - whether that harmony has fully pervaded judicial practice is an on-going story. But when compared to a decade ago, it appears that India in the present day is a lot closer in appearance to the international arbitration-friendly jurisdiction, with a public policy exception which in principle is narrow and exceptional.