MORALITY AS A GROUND FOR CHALLENGE TO ARBITRAL AWARDS IN INDIA: WITH PARTICULAR REFERENCE TO CIVIL INFRASTRUCTURE PROJECTS

Dr Ram Kishan Rao Chilappagari, Advocate and Arbitrator,
Engineer-in-Chief (R&B) (Retd.)

1. INTRODUCTION

Arbitration clauses are commonly included in contracts for major civil infrastructure projects to provide a mechanism for resolving disputes between the parties. When a dispute arises, an arbitral tribunal is constituted under the Arbitration and Conciliation Act, 1996,[1] to adjudicate the claims and counterclaims of the parties. After considering the contractual provisions, pleadings, evidence and submissions, the tribunal makes its award in accordance with Section 31 of the Act,[2] ordinarily stating the reasons on which it is based.

Although an arbitral award is intended to bring finality to disputes, Section 34 of the Act permits judicial intervention on limited grounds.[3] One such ground relates to an award being in conflict with the public policy of India, which includes conflict with the most basic notions of morality or justice.

This paper examines the meaning and scope of morality in this context, with particular reference to Section 23 of the Indian Contract Act, 1872,[4] scholarly interpretations and judicial pronouncements of the Supreme Court of India.

Keywords: Arbitral Awards; Public Policy; Morality; Section 34 of the Arbitration and Conciliation Act, 1996; Civil Infrastructure Projects.

2. MEANING OF MORALITY

Morality, as generally understood, refers to the principles and standards by which human conduct is judged as right or wrong, good or bad. The *Oxford Advanced Learner's Dictionary*

[1] The Arbitration and Conciliation Act, 1996 (India).
[2] *Id.* § 31.
[3] *Id.* § 34.
[4] Indian Contract Act, 1872, § 23.

defines morality as:[5]

> *Principles relating to right and wrong or good and bad behaviour.*

Indian legislation uses the term "morality" but does not appear to provide a single, general definition applicable across all statutes. Section 23 of the Indian Contract Act, 1872,[6] provides that the consideration or object of an agreement is unlawful where "the Court regards it as immoral, or opposed to public policy." An agreement whose object or consideration is unlawful is void.

Two illustrations to Section 23 of the Indian Contract Act explain the scope of the expression:[7]

> Illustration (j): A, who is B's Mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.
>
> Illustration (k): A agrees to let her daughter to hire to B for concubinage. The agreement is void because it is immoral, though the letting may not be punishable under the Indian Penal Code (XLV of 1860).

3. Scholarly Literature on the Concept of Immorality

The concept of immorality under Section 23 of the Indian Contract Act, 1872,[8] has also been examined in established legal commentaries and textbooks.

In *Anson's Law of Contract*, Anson observes that the only aspect of immorality with which courts have dealt is sexual immorality.[9]

A similar statement appears in the third edition of *Halsbury's Laws of England*, volume 8, at page 138:

> *A contract which is made upon an immoral consideration or for an immoral purpose is*

[5] *Morality*, Oxford Advanced Learner's Dictionary, oxfordlearnersdictionaries.com (last visited Oct. 18, 2026).
[6] Contract Act, § 23.
[7] *Id.*
[8] *Id.*
[9] W.R. Anson, *Anson's Law of Contract* 222.

> *unenforceable, and there is no distinction in this respect between immoral and illegal contracts. The immorality alluded to is sexual immorality.*[10]

In *Cheshire and Fifoot's Law of Contract*, the authors observe that, although Lord Mansfield held that a contract *contra bonos mores* is illegal, the concept of morality in this context has not been given an expansive meaning but has been confined to conduct involving sexual immorality.[11]

These scholarly works reflect a traditional and relatively narrow understanding of immorality in the law of contracts, with particular emphasis on sexual immorality.

4. JUDICIAL PRONOUNCEMENTS ON THE CONCEPT OF IMMORALITY

4.1 *Gherulal Parakh v. Mahadeodas Maiya*

In *Gherulal Parakh v. Mahadeodas Maiya*,[12] the Supreme Court observed that the word "immoral" is comprehensive in its ordinary meaning, encompassing conduct that deviates from accepted standards of life or is repugnant to good conscience. Its content varies with time, place and the stage of civilisation of society, making it difficult to prescribe a universal standard. The Court nevertheless held that the legislative intention underlying Section 23 of the Indian Contract Act was to give the term a restricted meaning. Accordingly, judicial decisions and authoritative textbook writers had confined it, with justification, to sexual immorality.

4.2 *Associate Builders v. Delhi Development Authority*

In *Associate Builders v. Delhi Development Authority*,[13] the Supreme Court, relying on the principles laid down in *Gherulal Parakh*, observed that,[14] if the concept of morality is to extend beyond sexual morality, it would necessarily encompass agreements which, though not illegal, would nevertheless remain unenforceable having regard to the prevailing mores of the day.

The Court added that interference on this ground would be warranted only where the agreement shocks the conscience of the Court.

---

[10] *Halsbury's Laws of England* vol. 8, 138 (3d ed.).
[11] G.C. Cheshire & C.H.S. Fifoot, *The Law of Contract* 279 (3d ed.).
[12] *Gherulal Parakh v. Mahadeodas Maiya*, AIR 1959 SC 781 (India).
[13] *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 (India).
[14] *Gherulal Parakh*, AIR 1959 SC 781.

This decision opened the possibility of applying the concept of morality beyond its traditional understanding, while prescribing a restrictive threshold for judicial intervention.

5. THE STATUTORY RESTRICTION: FROM PUBLIC POLICY TO "MOST BASIC NOTIONS OF MORALITY OR JUSTICE"

While *Associate Builders* explained how the broad ground of public policy encompassed considerations of justice or morality,[15] the scope of judicial intervention under this ground called for legislative clarification, particularly to prevent arbitral awards from being set aside on the basis of subjective judicial assessments of morality.

Following the 246th Law Commission Report on amendments to the Arbitration and Conciliation Act, 1996,[16] Parliament enacted the Arbitration and Conciliation (Amendment) Act, 2015, which substituted the existing Explanation to Section 34(2)(b) with two Explanations.[17]

Explanation 1 specified three circumstances in which an arbitral award would be in conflict with the public policy of India. The third circumstance, under Explanation 1(iii), reads:[18]

> (iii) it is in conflict with the most basic notions of morality or justice.

The amendment thus restricted the scope of judicial intervention by requiring the conflict to be with the most basic notions of morality or justice.

6. SUBSEQUENT JUDICIAL DEVELOPMENTS

6.1 *OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited*

In *OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited*,[19] the Supreme Court examined the ground of morality under Section 34(2)(b)(ii) of

[15] *Associate Builders*, (2015) 3 SCC 49.
[16] Law Commission of India, *Report No. 246 on Amendments to the Arbitration and Conciliation Act, 1996*, 14 (2014) (India).
[17] The Arbitration and Conciliation (Amendment) Act, 2015, § 18 (India).
[18] The Arbitration and Conciliation Act, 1996, § 34(2)(b)(ii), Expl. 1(iii) (India).
[19] *OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited*, 2024 INSC 711 (India).

the Arbitration and Conciliation Act.[20] It reaffirmed the principles laid down in *Associate Builders*,[21] reiterating the established judicial understanding of morality and the restrictive scope of interference under the amended provision.

6.2 *Sri Lakshmi Hotel Pvt. Limited v. Sriram City Union Finance Ltd.*

In *Sri Lakshmi Hotel Pvt. Limited v. Sriram City Union Finance Ltd.*,[22] arising from a challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, the Supreme Court examined whether charging interest at 24% in a purely commercial transaction was contrary to public policy, particularly the basic notions of morality.

The Court observed that, in commercial transactions, the justifiability or reasonableness of a high rate of interest would depend, inter alia, on the transparency of the contractual terms and the informed consent of the borrower. It further observed that morality is inherently context-dependent and that the moral implications of high interest rates must be assessed in the light of economic, social and regulatory factors.

Applying these principles, the Court held that the rate of interest in the circumstances of the case did not render the award contrary to the public policy of India. The Supreme Court declined to interfere with the order of the High Court and dismissed the appeal.

7. CONCLUSION

Traditionally, courts confined the concept of immorality under Section 23 of the Indian Contract Act,[23] principally to sexual immorality. In *Associate Builders*,[24] the Supreme Court recognised that the concept could extend beyond sexual morality to agreements that, though not illegal, would not be enforced having regard to prevailing social mores, provided they shocked the conscience of the Court. In *Sri Lakshmi Hotel*,[25] the Supreme Court examined the morality of charging interest at 24% in a commercial transaction, while declining to find it contrary to the most basic notions of morality or justice in the circumstances of the case. These decisions indicate that the judicial understanding of morality is capable of evolving beyond its

[20] The Arbitration and Conciliation Act § 34(2)(b)(ii), (India).
[21] *Associate Builders*, (2015) 3 SCC 49.
[22] *Sri Lakshmi Hotel Pvt. Limited v. Sriram City Union Finance Ltd.,* 2025 INSC 132 (India).
[23] Contract Act, § 23.
[24] *Associate Builders*, (2015) 3 SCC 49.
[25] *Sri Lakshmi Hotel Pvt. Limited*, 2025 INSC 132.

traditional boundaries, subject to the restrictive threshold of judicial intervention under Section 34 of the Arbitration and Conciliation Act.[26]

[26] Arbitration and Conciliation Act, § 34.

BIBLIOGRAPHY

Legislation

(1) The Indian Contract Act, No. 9 of 1872, India Code (1872).
(2) The Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

(3) The Arbitration and Conciliation (Amendment) Act, 2015, § 18 (India).

Reports

(1) Law Commission of India, *Report No. 246: Amendments to the Arbitration and Conciliation Act, 1996* (August 2014).

Books

(1) Anson, William R. *Principles of the English Law of Contract and of Agency in its Relation to Contract*. 22nd ed., edited by A. G. Guest, Clarendon Press, 1964.

(2) Cheshire, G. C., and C. H. S. Fifoot. *The Law of Contract*. 3rd ed., Butterworth, 1952.

(3) Halsbury. *Halsbury's Laws of England*. Vol. 8, 3rd ed., Butterworth & Co., 1952–1964.

Dictionaries

(1) Oxford Advanced Learner's Dictionary. "Morality." Oxford University Press, oxfordlearnersdictionaries.com.