THE UNRULY HORSE REVISITED: PUBLIC POLICY IN INDIAN ARBITRATION LAW

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INTRODUCTION

Arbitration is commonly understood as a dispute resolution mechanism that is grounded in party autonomy, speed, efficiency, and finality of awards. Parties who choose arbitration generally do so with the expectation that their dispute will be resolved conclusively, with minimal judicial intervention. However, Redfern and Hunter have observed that arbitration often presents a paradox: while it draws its power to escape the jurisdiction of the courts from a valid arbitration agreement, it depends structurally upon those same courts for constitution, interim relief, and for the ultimate enforcement of awards.[1] This tension becomes most apparent at the post-award stage, where the principle of arbitral finality comes into direct contact with judicial supervision of the Seat Court.

In the Indian context, the Arbitration and Conciliation Act 1996 (hereinafter "the Act") aims to minimise judicial interference and establish arbitration as an efficient and reliable mechanism for dispute resolution. However, the practical reality of the Indian arbitration framework reflects a more interventionalist judicial approach. This leads to a post-award framework where arbitral awards are frequently subjected to challenge, stays on enforcement are readily sought, and there is a culture of frequent adjournments, leading to a significant delay in the enforcement process.[2] This raises concerns regarding whether arbitration in India truly achieves the finality envisioned under international arbitration standards.

This paper proceeds in three main parts. Firstly, it shall examine how arbitral finality is conceived and protected under the New York Convention, UNCITRAL Model Law, and how the Arbitration and Conciliation Act 1996 was designed to reflect those international standards.

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[1] N Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015) ¶7.01

[2] Law Commission, *Amendments to the Arbitration and Conciliation Act 1996* (Report No. 246, 2014) para 14-15.

Secondly, it shall trace the evolution of public policy as an exception for enforcement of an arbitral award under Indian arbitration law. Additionally, the paper shall undertake a short comparative study by analyse United Kingdom's arbitration framework with respect to the public policy exemption. Finally, the paper shall argue that arbitral finality in India is neither irreparably broken, neither is fully secured as it remains an ongoing project.

I. PART I: The Foundation – Arbitral Finality Under International and Indian Law

A. The International Perspective

As Redfern and Hunter observe, when parties choose the path of arbitration, they accept that the award shall be binding and this decision is "not intended … to be the first step on a ladder of appeals".[3] International Arbitration frameworks are built on the assumption that arbitral awards are final and binding, with judicial intervention permitted only in limited and exceptional circumstances. This framework is built around two major international instruments i.e. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1959, and the UNCITRAL Model Law.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1959 (commonly known as the New York Convention) permits refusal of enforcement only under the exhaustive grounds defined under Article V.[4] These grounds include incapacity of parties, invalidity of the agreement, procedural irregularity, exceeding jurisdiction, non-arbitrability or violation of public policy. Importantly, this ensures that courts do not review the merits of the disputes by reassessing the facts and the reasonableness of the arbitral tribunal's decision.[5]

Similarly, the UNCITRAL Model Law has adopted a limited intervention approach with Article 34 allowing courts to set aside arbitral awards only on specifically enumerated grounds.[6] Many of these mirror Article V of the New York Convention, and require a party to

[3] N Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, Oxford University Press 2015) ¶10.02.

[4] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3, art V.

[5] Sébastien Fries, Martin Molina, Annemarie Streuli and Denise Wohlwend, 'Grounds to Refuse Enforcement' (*Global Arbitration Review*, 16 June 2025) https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/grounds-refuse-enforcement accessed 8 May 2026.

[6] UNCITRAL Model Law on International Commercial Arbitration (adopted 21 June 1985, amended 7 July 2006) UN Doc A/40/17 annex I, art 34.

prove issues like incapacity, invalid agreements, lack of notice or procedural irregularities. However, these grounds are framed as permissive rather than mandatory. Additionally, a court may set aside an award on its own initiative if the dispute is non-arbitrable or if the decision violates fundamental public policy and procedural justice.

Thus, the international framework does not treat arbitral finality as an absolute phenomenon. Judicial supervision continues to play a key role in ensuring procedural legitimacy, protecting public policy, and safeguarding confidence in the arbitral process. Therefore, the architecture of post award control under international arbitration law therefore represents, at least on paper, a balance between arbitral autonomy and judicial oversight.

B. **The Indian Perspective on Finality**

India's post-award framework is governed by the Arbitration and Conciliation Act, 1996, primarily under sections 34, 36 and 48. Together these provisions determine the extent to which Indian Courts may review, suspend, refuse, or enforce arbitral awards.

The principal mechanism for post-award judicial review over domestic arbitral awards is contained in Section 34 of the Act, which permit competent courts to set aside arbitral award on exhaustive grounds corresponding to Article 34 of the Model Law.[7] These grounds include incapacity, invalid arbitration agreements, procedural unfairness, excess of jurisdiction, non-arbitrability and conflict with public policy. Section 36 governs the enforcement of domestic awards.[8] The original 1996 Act contained a significant loophole, whereby simply filing a Section 34 challenge would trigger an automatic stay on enforcement of the award. This would incentivise the losing parties to stall enforcement through litigation, undermining arbitration's goal of being an effective alternative to litigation. Addressing this issue, the 246th Law Commission Report of India criticised this framework and recommended abolishing the regime of automatic stays.[9] The 2015 amendments incorporated this suggestion and fundamentally altered Section 36 and mandated a specific judicial order for a stay of enforcement. Parties must now file a separate application for a stay, and the courts may impose conditions while granting such relief. This reform was a step towards enforcing arbitral enforceability. Additionally, Section 48 provides the mechanism for enforcement of foreign awards under Part

[7] The Arbitration and Conciliation Act 1996, s 34.
[8] The Arbitration and Conciliation Act 1996, s 36.
[9] Law Commission, *Amendments to the Arbitration and Conciliation Act 1996* (Report No. 246, 2014) p 56.

II of the Act.[10] It lists conditions (incorporating the framework of Article v of the New York Convention) under which an Indian court can refuse to enforce an international award.

Therefore on paper, India appears closely aligned with international arbitration standards of limited judicial intervention. However, judicial interpretation of these provisions has significantly expanded the scope of review and created an interventionist post-award regime.

II. PART II: The Public Policy Exception – Overreach, Correction and What remains.

The nature of the 'public policy' exception, which is present in the New York Convention, Model Law and the Arbitration and Conciliation Act 1996, is inherently fluid and remains extremely difficult to define precisely. This complexity has been captured by Justice James Burrough who argued that public policy is an "unruly horse" and that once a court attempts to rely on it, the lack of fixed boundaries can lead to far reaching consequences.[11] As Redfern and Hunter have observed, the relationship between courts and tribunals is inherently paradoxical, and this tension is most visible in the public policy exception.

While Section 34(2)(b) and 48(2)(b) establish public policy as a basis for judicial intervention in domestic and foreign awards respectively, historically broad interpretation by Indian courts effectively turned this narrow exception into a backdoor for reviewing the merits of a case, thereby undermining the finality of awards. This part of the research essay shall delve into exploring how "public policy" has evolved to reshape the balance between arbitral finality and judicial supervision under Indian arbitration law.

A. Secction 34 – Setting Aside Domestic Awards Under the Public Policy Exception

Initially, this interpretation began with a restrained approach in the case of *Renusagar Power Plant Co. Ltd. v General Electric Co.* which limited judicial intervention to violations of fundamental policy of Indian law, the interests of India or justice and morality.[12] However the key turning point was in the case of *ONGC Ltd. v Saw Pipes Ltd.* where the Supreme Court expanded the scope of the 'Public Policy' exception under Section 34 to encompass awards

[10] The Arbitration and Conciliation Act 1996, s 48.
[11] *Richardson v Mellish* (1824) 2 Bing 229, 252.
[12] *Renusagar Power Plant Co. Ltd. v General Electric Co.*, (1984) 4 SCC 679.

that were 'patently illegal'.[13] The court ruled that an award can be set aside if it fundamentally violates statutory provisions or is so unreasonable that it shocks the courts conscience. Furthermore that while trivial errors are ignored, any illegality that goes to the root of the matter is considered to be injurious to the administration of justice and public interest. The Courts reasoning here was that 'public policy of India' must be interpreted broadly in the case of *McDermott International Inc v Burn Standard Ltd. & Ors*, the Court treated the rule in *ONGC Ltd. v Saw Pipes Ltd* as binding precedent and applied its principles despite acknowledging the criticism surrounding the decision.[14]

Moving forward, in the case of *ONGC Ltd. v Western Geco International Ltd.,* the Supreme Court didn't just merely rely on "patent illegality", instead it relied on "fundamental policy of Indian Law" as laid down in Renusagar and significantly expanded its scope.[15] The court created a three part test to determine whether an award violated the "fundamental policy of Indian law". Firstly, the arbitrator must adopt a "judicial approach" i.e., the decision should reflect the proper application of mind and fairness. Secondly, the arbitrator must follow principles of natural justice. Thirdly, the award must not be so irrational or unreasonable that no reasonable person would have reached the same conclusion. Critics argued that this affectively allowed the courts to review the merits of the arbitral decision under the guise of public policy review, thereby turning Section 34 into a form of appellate scrutiny contrary to the UNCITRAL. Soon after this in the case of *Associate Builders v Delhi Development Authority*, the Supreme Court clarified that courts exercising jurisdiction under Section 34 are not appellate courts and therefore cannot reassess the merits of the arbitral award merely because another interpretation is possible.[16]

This the evolution of the public policy exception of the public policy exception under Section 34(2) reflects the judiciary's gradual attempt to restore arbitration's foundational principle of limited judicial intervention and finality.

A. Section 48 – Enforcement Of Foreign Awards and the Public Policy Exception

Section 48(2)(b) of the Act governs the refusal of enforcement of foreign awards on public policy grounds. The interpretation of this provision has evolved significantly though judicial

[13] *ONGC Ltd. v Saw Pipes Ltd* 2003 (5) SCC 705.
[14] *McDermott International Inc v Burn Standard Ltd. & Ors,* (2006) 11 SCC 181.
[15] *ONGC Ltd v Western Geco International Ltd*
[16] *Associate Builders v Delhi Development Authority,* (2015) 3 SCC 49.

decisions. Initially, in the case of *Phulchand exports Ltd. v OOO Patriot*, the Supreme Court applied the broad public policy standard developed in *ONGC Ltd. v Saw Pipes Ltd* to foreign awards as well.[17] This meant that now courts could engage in wider scrutiny of foreign awards, contrary to the narrow standard required under the New York Convention.[18]

This position was amended un the case of *Shri Lal Mahal Ltd. v Progetto Grano Spa*, where the Supreme Court overruled the *Phulchand case* and restored a narrower standard that was laid down in the Renusagar case.[19] The Court here clarified that the broader 'patent illegality' test applicable under Section 34(2A) does not apply to foreign awards under Section 48 and instead refusal of enforcement would be limited to the narrow grounds of fundamental policy of Indian law, justice or morality and the interests of India. This approach was further strengthened in the case of *Vijay Kariya v Prysmian Cavi E Sistemi SRL* where the Supreme Court held that that enforcement courts cannot re-examine the merits of foreign awards under the guise of public policy review.[20] Furthermore the Court also clarified that "fundamental policy of Indian law" refers to only the core principles such as natural justice. Due process, and upholding constitutional values, and not mere legal errors or indirect interpretation of statutes. It also explained that the "interests of India" ground applies only in exceptional situations involving genuine harm to India's sovereign or public interests, such as illegal transactions or national security concerns.

B. The 2015 Amendments – Legislative Interventions and What Remains

The Legislature too gradually recognised that the broad and unclear interpretation of 'public policy' was negatively affecting arbitration and harming India's economic and commercial growth. Ultimately this led to legislative reforms.[21] The Law Commission of India's 246th Report identified and expanded the public policy standard as one of the central drivers of Indias arbitration dysfunction and recommended restrictions on its scope in both Sections 34 and 48.[22] The key changes included inserting two 'Explanations' in Section (2)(b). Explanation 1

[17] *Phulchand exports Ltd v OOO Patriot,* (2011) 10 SCC 300.
[18] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3, art V.
[19] *Shri Lal Mahal Ltd v Progetto Grano Spa,* 2014 (2) SCC 433.
[20] *Vijay Kariya v Prysmian Cavi E Sistemi SRL,* 2020 SCC OnLine SC 177.
[21] Rishav Ray, 'Assessing the Public Policy Exception and Comparative Perspectives in Enforcing Arbitral Awards: Where Does India Stand?' (*American Review of International Arbitration*, 14 June 2023) https://aria.law.columbia.edu/assessing-the-public-policy-exception-and-comparative-perspectives-in-enforcing-arbitral-awards-where-does-india-stand/ accessed 8 May 2026.
[22] Law Commission, *Amendments to the Arbitration and Conciliation Act 1996* (Report No. 246, 2014) p 22.

provided than an award is no contrary to public policy merely because the court takes a different view of the law or the evidence. Explanation 2 on the other hand confined patent illegality exclusively to domestic awards removing it entirely from international arbitrations seated in India. The 2015 amendments also removed the automatic stays on enforcement that would previously be attached upon filing a Section 34 challenge, under Section 36. Parties now challenging an award would have to apply for a stay separately. Furthermore 'patent illegality' was formally introduced in the Arbitration and Conciliation Act 1996 as Section 34(2A).[23]

Judicial interpretation of these amendments came in the form of *Ssangyong Engineering and Construction Co Ltd. v NHAI* in which the Supreme Court held that the pre-2015 expanded public policy standard would no longer apply in its original form.[24] With respect of domestic awards the Court confirmed that while patent illegality is still a permissible ground, its meaning shall be restricted to illegality that does to the root of the matter, is apparent on the face of the award and is not merely a wrong decision on the question of law or fact. As for international commercial arbitration awards, the Court must confirm that the patent illegality found is entirely unavailable post amendment, and that the only public policy grounds can be invoked against domestic awards are fundamental policy of Indian law and basic notions of morality and justice, both of which are to be understood in the sense of the *Renusagar Case.*

This legislative and judicial shift has aided in creating a more pro-arbitration environment in India, gradually building trust amongst investors and commercial parties that awards will be treated as final rather than an invitation to litigate.

C. Comparative Study: "Public Policy" Exception in the United Kingdom

The arbitration framework of the United Kingdom strongly prioritises party autonomy and minimal judicial intervention as key principles of the arbitral process. Firstly, the public policy exception is contained in Sections 68(2)(g) of the Arbitration Act 1996 and deal specifically with domestic awards.[25] In the UK, unlike in India, 'patent illegality' does not exist as a ground for setting aside a domestic award.

Secondly is Section 103(3) that permits the competent court to refuse enforcement of foreign

[23] Arbitration and Conciliation Act 1996, s 34(2A).
[24] *Ssangyong Engineering and Construction Co Ltd v NHAI* (2019) 15 SCC 131.
[25] Arbitration Act 1996, s 68(2)(g).

arbitral awards where enforcement would be contrary to public policy.[26] The case of *Soleimany v Soleimany* is a landmark UK case law, in which the English Court refused to enforce the award because the underlying contract itself was illegal.[27] Here the Court held that enforcing an award that is based on illegal activity is against the public policy. Intervention is considered only in exceptional situation that involve 'egregious violations of the law of public interest'.[28]In the case of *Westcre Investments Inc. v Jugoimport-SDPR Holding Co Ltd.* the Court of Appeal held that international arbitration awards should be enforced despite claims of bribery etc. provided that the tribunal has previously dismissed such claims, thereby prioritising the finality of arbitration over the public policy exemption argument.[29]

However, an interesting feature of UK arbitration law is Section 69 of the Arbitration Act 1996 which permits parties to appeal an award on a question of English law, but under very narrowly defined circumstances.[30] An appeal can only be brought with the consent of all parties or with the permission of the court, when the legal issue substantially affects the parties right and the tribunal's decision is either obviously wrong or raises a question of general public importance. This provision demonstrates UK's attempt to balance arbitral finality with limited judicial supervision, by providing a transparent mechanism to correct serious legal errors. India currently does not have an equivalent of Section 69. Adopting a mechanism similar to Section 36 may not be suitable for India because it risks further weakening arbitral finality in a legal system that is already characterised by excessive judicial intervention and procedural delays. Furthermore, given India's already overburdened judiciary, this would only intensify backlog.

In light of these continuing tensions between arbitral finality and judicial supervision. The next and concluding Section of the paper shall examine possible reforms and institutional solutions that can help curate a more balanced system.

III. PART III: The Way Forward – Reforming Sections 34 and 48

It can be argued that India's present post-award framework, particularly post the 2015

[26] Arbitration Act 1996, s 103(3).
[27] *Soleimany v Soleimany,* [1999] QB 785.
[28] A Choudhary, 'Public Policy Exception in Arbitration Law in India and the United Kingdom: A Comparative Analysis of Judicial Interpretation and Its Impact on Commercial Certainty' (2026) 3(2) *International Journal of Advanced Research and Multidisciplinary Trends* 288 https://ijarmt.com/index.php/j/article/view/904 accessed 8 May 2026.
[29] *Westcre Investments Inc. v Jugoimport-SDPR Holding Co Ltd*., [2000] QB 288.
[30] Arbitration Act 1996, s 69.

amendments and through decisions such as *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India* and *Vijay Kariya v Prysmian Cavi E Sistemi SRL s*trike a more balanced approach between arbitral finality and judicial supervision. Represents a more balanced approach between arbitral finality and Judaical intervention. The current framework distinguishes between domestic and foreign awards, limits the application of 'patent illegality' to domestic awards, and adopts a narrower interpretation of public policy in lines with the New York Convention, marking a significant shift towards a more pro-arbitration regime. This framework however still contains certain ambiguities that can provide pathways for excessive judicial intervention. Certain reforms may therefore be necessary to further strengthen consistency.

Firstly, "basic notions of morality or justice" criteria under the public policy exemption should be clearly defined. At present, this phrase is broad and is very subjective, allowing courts significant discretion and interpretative power. Providing a statutory definition and limiting this ground to situations involving fraud, corruption, or grave violations to natural justice would help prevent courts from indirectly reviewing the merits of the dispute. Secondly, the condition of 'patent illegality' under Section 34 (2A) of the Act should include clear and exhaustive list of requirements to constitute such a ground. Courts should only be permitted to set aside an award where the illegality is so serious that is materially affected the outcome of the dispute. Thirdly, Section 48 should expressly state that the grounds listed for refusing enforcement of foreign awards are exhaustive. While this principle has been recognised judicially in the case of *Vijay Kariya v Prysmian Cavi E Sistemi SRL,* incorporating it directly into the statute would provide greater certainty and reduce the possibility of future expansion of judicial powers.[31]

Ultimately, India's post-award framework reflects on an ongoing attempt to reconcile two competing objectives i.e., preserving arbitral finality while also ensuring sufficient judicial supervision to maintain legality and fairness. Although recent developments have moved Indian arbitration closer to international standards, the challenge continues to remain to ensure that judicial intervention strengthens the legitimacy of arbitration without transforming arbitral awards into the starting point of prolonged litigation.

[31] *Vijay Kariya v Prysmian Cavi E Sistemi SRL,* 2020 SCC OnLine SC 177.