
Constitutional Framework and Alternative Dispute Resolution: Balancing Judicial Oversight and Autonomy

Vaibhav Maheshwary & Ishann Chopra, Symbiosis Law School, Noida.

Abstract

The arbitration process establishes itself as the leading method to handle both bilateral and multilateral transactional disputes. A neutral and efficient framework exists for dispute resolution through this process. The public policy exception used by courts has a negative impact on arbitration efficiency because it increases time requirements and costs. This research investigates how legislative authorities and judicial bodies and statutory provisions have shaped the development of public policy within arbitration law in both Indian and international spheres.

The Indian court system in *Renusagar Power Co. Ltd.* (1994) made a narrow interpretation which confined public policy to essential legal foundations. However, in *ONGC v. In Saw Pipes Ltd.* (2003) the judicial interpretation expanded public policy coverage to include “patent illegality” while creating more opportunities for judges to intervene in arbitration matters. The 2015 and 2019 amendments of the Arbitration and Conciliation Act functioned to reduce judicial intervention thus aligning Indian arbitration practices with international protocols.

The Indian government remains active in developing its arbitration laws by studying arbitration approaches from the U.S., U.K. and France. The challenges to effective public policy protection remain in place because the legal framework lacks specific policy definitions and diplomatic decision-making differs from judge to judge. The researchers of this study support a tight regulation on the public policy exception to include only basic rules of justice morality and law.

The analysis of judicial case laws combined with legislative changes demonstrates that court independence and clear legislative expressions are essential for arbitration. India’s position as a prime arbitration-friendly jurisdiction will gain more investor confidence through reduced judicial intervention within arbitration systems.

Introduction

The contemporary global development together with its speed of expansion. Economic development receives major support from investments together with business activities across national borders. International trade together with cross-border transactions presents substantial opportunities for differences between parties to emerge. The conventional legal system in India requires substantial financial funding besides extending long durations which results in complex jurisdiction and enforcement issues. International commercial arbitration has gained popularity as the preferred dispute resolution mechanism since it offers unbiased neutrality combined with swift procedures and net results.

India functions as a key player in world business activities because it operates as a developing economic system. Multiple essential projects launched by India have aimed to build its arbitration together with dispute resolution system framework. The Arbitration and Conciliation Act of 1996 functions as the main law for arbitration in India through its adoption of UNCITRAL Model Law principles. The main contentious matter in arbitration exists through the public policy exception that grants courts the power to deny enforcement of arbitral awards that contradict fundamental legal principles even though the reforms are not in effect. Public policy definitions remain unclear which led courts to intervene thus making such judicial actions the main cause behind the creation and value of arbitration as a dispute resolution method. Court involvement remains restricted because of this scenario.

Importance of International Arbitration

International arbitration provides businesses with an alternative to traditional litigation through its fair dispute resolution system which operates efficiently. Heritage Court of Justice functions differently from national courts because it selects arbitrators who specialize in their respective fields to determine cases. The parties exercising autonomy stands out as a primary feature since they can select all essential components such as arbitrators and procedural rules alongside governing law frameworks. Arbitration cuts down legal proceedings because it functions more quickly and efficiently than standard court procedures. Business information remains highly confidential thanks to this system which prevents public exposure of crucial details.

Most countries that are members of the New York Convention support the enforcement of arbitral awards because they exceed 170 nations. The public policy exception has become a point of controversy since it enables court involvement that might result in prolonged processes and unpredictable delays. The existing exception concerning public policy creates doubt regarding investor trust because it enables courts to become excessively involved in arbitration processes in nations such as India which are known to support arbitration.

Concept of Public Policy in Legal Systems

The legal mechanism of public policy functions as a barrier to enforce arbitral awards that hold any provisions which oppose core legal standards. Legal interpretations about public policy differ among jurisdictions so it creates unclear understanding between them. Two opposing methods exist in public policy interpretation between nations since some only permit court intervention in cases affecting fundamental legal principles while others support national interest challenges against arbitral awards.

The Indian Supreme Court during the *Renusagar Power Co. Ltd. v. General Electric Co.* judgment in 1994 established a tight definition of public policy which included only fundamental precepts from Indian justice system and morality. The "patent illegality" aspect of public policy got added through later judicial rulings which raised doubts about courts overstepping their boundaries in *ONGC v. Saw Pipes Ltd.* (2003). India updated its arbitration legislation through 2015 and 2019 amendments to provide a restricted interpretation of public policy and reduce judicial interference for compliance with international arbitration norms.

Research Questions

1. What accounts for the concept of "public policy" under Indian arbitration law?
2. Evolution in the interpretation of public policy in arbitration by the Indian Judiciary?
3. Where does India stand and its take on the public policy comparative to the other nations?

Analysis

Historical Evolution of International Arbitration in India

Global trade expansion in India has made international arbitration vital for the country. India ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) during 1958 thus passing the Foreign Awards (Recognition and Enforcement) Act to fulfill treaty obligations. Both domestic arbitration started as part of the 1940 Arbitration Act before its repeal led to the creation of the 1996 Arbitration and Conciliation Act. The main purpose of this law simultaneously aims to unite diverse arbitration rules with modern standards for all three arbitration areas including domestic agreements and international business and foreign successful judicial proceedings. This legislation creates a legal foundation for handling matters of conciliation while establishing an arbitration system which follows world-standard procedures.¹

Different amendments have been applied to the Arbitration and Conciliation Act since its establishment through notable changes in 2015, 2018, 2019 and 2021 and finally leading to new guidelines in 2024. The National Litigation Policy from 2010 started to promote alternative dispute resolution methods alongside reducing unnecessary court cases through the policies outlined in the policy. The policy focuses on lowering court case numbers because the Government of India represents the system's biggest litigant body.²

Public policy within arbitration operates as an essential legal protection which stops the implementation of arbitral awards that conflict with fundamental legal standards and moral and just principles. Controversy about arbitral award acceptance or rejection exists because of the public policy concept's unclear contents. Two provisions in the Indian Arbitration and Conciliation Act 1996 encompass public policy as a legal recognition for arbitration cases. According to Section 34(2)(b) Indian courts possess the power to cancel domestic arbitral awards when they violate Indian public policy. The ONGC v. Saw Pipes judgment applied a broad definition to this particular provision. The Indian judiciary significantly interfered with

¹ *The Way Forward: An Analysis of India's New Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement* (ARIA, Columbia Law School, 2023)

² Gaillard E, 'The Representations of International Arbitration' (2000) 1(2) J Int'l Arb 1.

awards following the ONGC v. Saw Pipes (2003) judgment which included the concept of "patent illegality." The 2015 amendment clarified public policy considerations through restrictions that include only immoral acts and principles against fundamental laws which generate consequences against Indian public policy. India's public policy serves as one basis for courts to block enforcement of foreign arbitrated decisions according to Section 48(2)(b).

All modern court verdicts exemplify a restricted approach that follows the New York Convention standards. Judicial interpretation of public policy now consists of three fundamental elements which combine adherence to Indian legal fundamentals with award requirement to uphold justice and morality and ensure avoidance of awards obtained illegally through fraud or corruption activities. The application of public policy by Indian courts toward arbitration matters was extensive before the 2015 amendment. Post-2015 reforms have limited judicial intervention to a greater extent which aligns Indian arbitration standards with worldwide benchmarks.³

Understanding Public Policy in Indian Arbitration and Its Comparative Perspective

Cross-border transactions find international commercial arbitration to be the optimal dispute resolution method because of its efficiency and neutrality along with its ability to become enforceable. Public policy application represents a contentious part of arbitration law that provides grounds for court intervention regarding awards which go against Indian basic legal principles. The ambiguous nature of public policy safeguards fails to properly protect core legal principles therefore judges now actively intervene more frequently which violates both finality and party autonomy. India has started a transformation of public policy jurisprudence to establish itself as a welcoming jurisdiction for arbitration. The 1996 Arbitration and Conciliation Act shows continuous conflict between court intervention in arbitration and arbitration parties' right to authority. The first Indian judicial interpretation of public policy restricted its application to solely fundamental legal principles. Further rulings issued by the judiciary expanded the interpretation of public policy by granting more authority to intervene in arbitration matters.

³ Arjit Oswal & Balaji Sai Krishnan, Public Policy as a Ground to Set Aside Arbitral Award in India, 32 Arb. Int'l 651 (2016).

The 2015 and 2019 amendments to the Act took action to limit judicial intervention because these reforms sought to make the arbitration framework in India match international best practices.⁴

This section of the chapter discusses the theory of public policy in Indian arbitration law, traces its judicial evolution, and examines India's position vis-a-vis other jurisdictions in the enforcement of arbitral awards.⁵

The Concept of Public Policy under Indian Arbitration Law

Under India's Arbitration and Conciliation Act of 1996 domestic courts have power to reject arbitral awards using public policy as grounds under Sections 34(2)(b)(ii) and 48(2)(b) as well as to disallow enforcement of foreign arbitration awards which contradict India's public policy. The Act makes no specific definitions of “public policy” which results in requiring judges to determine its meaning and application in each case.

The Supreme Court of India presented a restricted view of public policy through its decision in *Renusagar Power Co. Ltd. v. General Electric Co.* (1994) while applying it to public policy exceptions. The Supreme Court defined the requirements for public policy applications through three main factors which included India's legal foundation and domestic interests together with moral and just principles. The judgment contributed to the internationalization of the Indian arbitration system through reduced court involvement during foreign arbitral award enforcement thus promoting arbitration as an effective dispute resolution method.

The legal viewpoint transformed completely through *ONGC v. Saw Pipes Ltd.* (2003). In *Saw Pipes Ltd.* (2003) the Supreme Court of India expanded public policy by adopting the “patent illegality” criterion. The Supreme Court issued this decision which enabled judicial bodies to use Indian legal principles to challenge arbitral awards thus increasing their power to intervene.

⁴ Anirudh Krishnan & Shreya Jain, *Indian Arbitration and the Shifting Sands of Public Policy*, 16 *Asian Int'l Arb. J.* 129 (2020).

⁵ *The Way Forward: An Analysis of India's New Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement* (ARIA, Columbia Law School, 2023)

The judgment's aim to stop arbitrary decisions resulted in judges performing excessive oversight of arbitration cases which diminished arbitration's function as a fast method that provides final resolutions instead of formal court proceedings. The expanded rules regarding public policy in arbitration resulted in investor uncertainty which made foreign investors dubious about India's arbitration-friendliness. Further amendments had to be introduced to return arbitration to its effective dispute resolution status after this shift occurred.⁶

Evolution of Public Policy Interpretation by the Indian Judiciary.

Public policy interpretation by Indian courts has witnessed major changes throughout history. The Supreme Court took a limited stance in *Renusagar Power Co. Ltd. v. General Electric Co.* (1994) by declaring that enforcement of foreign arbitral awards required proof that they violated Indian principles of law and justice and morality. The court established through this choice a robust practice that limited judicial interference during international arbitration proceedings.

However, in *ONGC v. The Supreme Court* declared new rules in *Saw Pipes Ltd.* (2003) that broadened the boundaries of public policy by adding “patent illegality” to the definition. Judicial intervention against arbitral awards became more pronounced because the Supreme Court expanded the definition of public policy to include "patent illegality" resulting in minor Indian law violations being used as grounds for annulment. *Venture Global Engineering v. Satyam Computer Services Ltd* heightened the existing problem during that period. At *Satyam Computer Services Ltd.* (2010) the Supreme Court established the public policy exception to apply when evaluating foreign arbitral awards as well. By adopting this wide interpretation Indian judges ran counter to its international arbitration commitments and strayed away from following New York Convention standards which raised international investor doubts.

The 2015 modification of the Arbitration and Conciliation Act clarified public policy content through three regulatory conditions: fraud or corruption in getting the award; violation of fundamental Indian legal principles; and discord with moral or legal justice principles. Under the 2015 amendment patent illegality was eliminated as a challenge factor for foreign arbitral

⁶ Ministry of Law and Justice, *National Litigation Policy 2024* (Government of India, 2024)

awards but this provision now applies exclusively to domestic arbitration. India strengthened its position as an arbitration-friendly country through this modernization of its arbitration framework which matched international standards.⁷

India's Position Compared to Other Jurisdictions

An understanding of India's arbitration position develops more clearly after analyzing global arbitration practices. The public policy exception in arbitration receives strict control from UK and US and French countries who exercise limited judicial powers to change arbitral decisions. The US judicial system implements the public policy exception with caution and steps in only to address awards that violate essential principles of justice. France and its pro-arbitration legal structure has minimized public policy objections by rejecting them except when they conflict with international norms of law. Following the 2015 amendments India evolved into an arbitration-friendly legal system which both limits judicial intervention and standardizes its arbitration approach with international arbitration standards.⁸

Public Policy's Dynamics in Accordance with Indian Arbitration Governance

Public policy functions as the primary protection mechanism in arbitration to enable proper operations and upholding of both legal principles and ethical guidelines. Section 34 within the Arbitration and Conciliation Act, 1996 includes the public policy clause which protects the essential principles of justice as well as public interest in arbitral awards. Through this provision the judiciary gains power to conduct assessments of awards that violate legal core values or jeopardize the arbitration process.⁹

The definition of public policy originates from Article V of the New York Convention and it derives from the local public policy standards of the state where an award's enforcement is pursued¹⁰.

⁷ Richa Kachhwaha, *Indian Arbitration and 'Public Policy'*, 89 Tex. L. Rev. 699 (2011)

⁸ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

⁹ Arbitration and Conciliation Act, 1996

¹⁰ Ibid

As a consequence of violation or breach of public policy, awards rendered unenforceable¹¹. One of the open issues is what the term "public policy" means, exactly, and the boundaries intended by the drafters when they drafted the provision; this has resulted in states applying the rule of the New York Convention in great discretion¹². The House of Lords has interpreted the term as not allowing a subject to lawfully do something which would harm the public interest or impede the public good.¹³

The Ex Dolo Malo Non Artur Action is a concept which basically means that no court will aid a man whose reason of action is immoral or illegal. It has been adopted in most common law countries including India. It is predicated on the idea that awards violate public policy are unenforceable. Courts in India have interpreted the public policy exception in a variety of ways. The Indian Supreme Court has changed its stance in recent decades in favor of a smoother and more laissez-faire system.¹⁴

The Supreme Court analyzed public policy in international arbitration in the case of *Renusagar Power Co. Ltd. v. General Electric Co.* The Supreme Court analyzed the difference between domestic law and public policy under public international law. The Court noted that prohibiting the execution of a foreign award for violating Indian domestic law cannot be justified by the term "public policy," which is too wide¹⁵. Conclusion In reaching its decision in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, the Court held that an award shall be regarded as contrary to public policy and refuse enforcement, only in cases where the infringement of justice is so egregious as to shock and appeal the conscience of the Court.¹⁶

¹¹ Pritha Srikumar et al, *Enforcement of Arbitral Awards in India: Overview*,

¹² Divya Suwasini & Shreya Bose, *Arbitration In India Not For The Faint-Hearted: Enforcing Foreign Arbitral Awards*, 2 NALSAR Student Law Review 14, (2011)

¹³ *Egerton v Brownlow* (1853) 4 HLC 1.

¹⁴ Dhruv Malik and Mannat Sabharwal, *Pro-enforcement regime for foreign arbitral awards: Is India really headed towards it?*, INTERNATIONAL BAR ASSOCIATION (Mar 09, 2023, 07.32 PM),

¹⁵ AIR 1994 SC 860.

¹⁶ 2011 (9) SCC 735.

Public policy is crucial in arbitration. It ensures that arbitral awards are in accordance with justice and public interest, as reflected in Section 34 of the Arbitration and Conciliation Act, 1996, and Article V of the New York Convention. Indian courts, through cases like *Renusagar Power Co. Ltd. v. General Electric Co.* and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, have narrowed the scope of public policy to prevent excessive judicial interference, allowing intervention only in cases of egregious injustice.

Current Scenario

Challenges

Given its efficiency, neutrality and finality, arbitration has found preference in being a preferred dispute resolution mechanism for international commercial transactions. In India, there has been a public policy exception in the law of arbitration, though, a controversial issue as public policy. In particular, public policy acts as a legal barrier preventing the enforcement of arbitral awards that violate essential principles of law, justice and morality; however, with its ever evolving and ambiguous interpretation, judicial intervention has increased, thereby contributing to tainting the advantages of arbitration. A difficulty that is central in Indian arbitrations is that courts enjoy discretionary power to give meaning to public policy. Unlike the UK and France where the courts tend to follow a restrictive approach; the Indian judiciary has broadened the range of public policy taking away much of the arbitral proceedings from the court. This has served to swell the definition so far as to cause uncertainty with respect to enforcement of arbitral awards and to prolong the resolution of disputes. The Supreme Court's decision in *ONGC Ltd. v. Saw Pipes Ltd* (2003) represented a significant shift in India's arbitration framework, by expanding the scope of public policy. According to it, an arbitral award could be set aside if it was (a) contrary to the fundamental policy of Indian law, (b) against the interests of India, (c) against the principles of justice and morality or (d) patently illegal in the case of domestic awards. Second, the declaration of "patent illegality" as a ground for setting aside of domestic arbitral awards rendered judicial scrutiny of the merits of the

award possible and gave courts the power to invalidate the arbitral award rather than merely to contest violations of procedural rules.

The ruling later resulted in excessive judicial interference in arbitration which went contrary to international arbitration standards where public policy is narrowly interpreted to minimise court intervention in arbitration.¹⁷

In *ONGC v. Western Geco International Ltd.* (2014), the Supreme Court further extended the ambit of the fundamental policy of Indian law as a ground for setting aside arbitral awards. The judiciary, however, did not define in clear terms what constitutes a fundamental policy, thus leaving it in limbo and giving judges greater discretionary powers. This lack of clarity has led to inconsistent judicial decisions, rendering the enforcement of arbitral awards uncertain. It has also caused frequent challenges to awards, thus promoting more litigation and limiting the finality of arbitration. Judicial overreach has also become an issue, with the courts reviewing arbitration decisions instead of enforcing them in accordance with the arbitration process. Arbitration is more desirable than conventional litigation mainly because of its efficiency and quick resolution of disputes.¹⁸

But in India, lengthy litigation has eroded this fundamental benefit. In *Indian Oil Corporation Ltd. v. Amritsar Gas Service* (2009), the Supreme Court recognized that arbitration in India is frequently not able to fulfill its desired efficiency because of judicial delays in enforcing awards, lengthy appeals and counterclaims on grounds of public policy, and unnecessary legal formalities that slow down arbitration proceedings. These have increasingly added to the burden of litigation, defeating the very purpose of arbitration as an alternative dispute resolution process. Enforcement of foreign arbitral awards in India has also been a slow process because of judicial intervention and lack of certainty in enforcement. This deters international investment and is against the commitment of India to international arbitration standards.

¹⁷ Yash Pathak and V Harini, 'The Public Policy Exception: Sword or Shield in Indian Arbitration?' (NLIU Law Review, 28 October 2024) accessed 7 February 2025

¹⁸ Anil Xavier, *Indian Arbitration and the Shifting Sands of Public Policy*, 16 Asian Int'l Arb. J. 201 (2019).

Courts tend to intervene to scrutinize the merits of foreign arbitral awards, even though global best practices promote minimal interference. Consequently, foreign participants in arbitration with Indian parties experience prolonged court fights, which degrades the desirability of India as an arbitration destination.¹⁹

Opportunities

In *Soleimany v. Soleimany* (1999), the Supreme Court articulated the contours of the public policy exception: maintaining the integrity of the arbitral process, ensuring that private agreements do not breach public policy, preventing the oppression of weaker parties to a dispute due to arbitration, and striking a balance between judicial oversight and an accessible, fair arbitration avenue.²⁰ This case reaffirmed the principle that awards against these norms of fundamental legal and ethical principles cannot be enforced, regardless of whether they arise from private contractual arrangements. The holding is in line with more general perspectives from afar which recognize that public policy is only one exit road but an important ground for refusing enforcement as found in Article V(2)(b) of the New York Convention, 1958. The scope of public policy has been liberalised in India to an extent that judicial intervention in arbitral awards has been common for many years.²¹ However, in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI* (2019) the Supreme Court adopted a pro-enforcement position, in line with international norms.²² This paradigm shift has played a crucial role in establishing arbitration as a preferred and effective mechanism for dispute resolution in India, and hence attracting higher volume of foreign arbitrations. However, there are still apprehensions about how public policy might play a role in the enforcement of awards, particularly in cases involving national interests or essential principles of law.²³

¹⁹ Anirudh Krishnan & Pavitra Sriprakash, *Assessing the Public Policy Exception and Comparative Perspectives in Enforcing Arbitral Awards: Where Does India Stand?*, *Am. Rev. Int'l Arb.* (2021).

²⁰ [1999] QB 785 (CA).

²¹ 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.

²² (2019) 15 SCC 131.

²³ Yash Pathak and V Harini, 'The Public Policy Exception: Sword or Shield in Indian Arbitration?' (*NLIU Law Review*, 28 October 2024) accessed 7 February 2025.

In recent years, the Indian government has been taking steps to make arbitration easier, neutralizing interference and more effective. Public policy would be limited to 'Just' and 'Fair' under the recommendations of the 246th Law Commission Report (2014) to curb judicial intervention, which was further supported by the decision to this effect in the case of *Shri Lal Mahal Ltd. v. Progetto Grano SPA* (2014)²⁴. By limiting the application of public policy grounds, the intent was to make awards of arbitration totally immune from subsequent reconsideration on merits on account of the enforcement stage — rather than aim at endless judicial intervention. This overhaul signifies the turning point when it comes to enforcing law and order and India being portrayed as an encouraging area for arbitrating situations that are in dispute. Nonetheless, achieving a delicate balance between enforcement and the safeguarding of fundamental legal principles remains a challenge, so long as not countenancing further judicial intervention and legislative changes.²⁵

Loopholes

Arbitration isn't the most pleasant experience in jurisdictions where courts are slow and weighed down by unnecessary complexities. Established a decade ago, a U.S. company set out to revolutionize dispute resolution by offering a quicker and more cost-effective way of resolving disputes. Arbitration works as a result of both the legal system's autonomy and the willingness of parties to resolve conflicts without involving the courts. However, sometimes states like France and Italy, though generally deemed pro-arbitration, have an outmoded approach. This enables third-party interference which results in the diluting of arbitral proceedings and a final award that reflects such processes. There are some exceptions to the judiciary's possible interference in the arbitration process, such as issues of public policy. These legislative provisions have become increasingly necessary in the face of an ever-growing accumulation of case law that continues to define the scope of deny the enforcement of specific proceedings due, among other reasons, to an alleged violation of public policy.

²⁴ (2014) 2 SCC 433.

²⁵ Saha S, 'Extent of Judicial Review in Foreign Awards: Whether Arbitration and Conciliation (Amendment) Act, 2015 Expanded the Scope of "Public Policy" in Section 48 of the Act' (23 July 2019) SCC Online.

The ongoing hope now is that the contemporary suite of arbitration measures will aid in ensuring that this country is globally recognized for arbitration by lowering the burden of setting aside of arbitral awards. To address this overreach, recent statutory amendments sought to establish a more narrowed interpretation of public order, and public policy. Its passage fulfilled the aim: to promote an international framework that guarantees the reference point of arbitral awards while not disregarding the principles of equity and justice.²⁶

Despite these reforms, the broad and often inconsistent application of public policy exceptions has created challenges. In the past, courts have labeled public policy an uncertain and ambiguous standard that would often result in contradictory decisions. In *Richardson v. Mellish*, public policy was referred to as an "unruly horse," warning against its use and abuse. This unpredictability was seen in the case of *ONGC v. Western Geco International Ltd*²⁷. and *Associate Builders v. DDA*, wherein the courts had stretched the scope of public policy to include justice and morality, thus causing undue judicial intervention.²⁸ In the case of *Shri Lal Mahal Ltd. v. Progetto Grano SPA*, the Supreme Court restricted the interpretation of public policy in relation to the enforcement of foreign arbitral awards, which stands in line with international best practices.²⁹ The pro-enforcement approach of the judiciary was re-established in the *Ssangyong Engineering & Construction Co. Ltd. v. NHAH* case, nullifying public policy as a strong and undue tool to delay arbitration by misusing it.

Again, stronger parties may find a way to avoid arbitration if they expect they will face much judicial scrutiny, which will increase the time span, forcing weaker parties to costly litigation, thus defeating arbitration.³⁰ This will keep public policy within the confines of a narrow exception, and maintain the integrity of arbitration, fostering confidence in the ability of arbitration to provide a fair and final resolution to disputes. Only with a balanced approach, whereby the courts intervene in cases of grave legal violations, can arbitration be maintained as an efficient alternative to traditional litigation.

²⁶ *Richardson v. Mellish*: (1824) 2 Bing 229.

²⁷ (2014) 9 SCC 263.

²⁸ (2015) 3 SCC 49.

²⁹ (2014) 2 SCC 433.

³⁰ (2019) 15 SCC 131.

Conclusion

The development of public policy in Indian arbitration is a demonstration of the continuing struggle between judicial control and party autonomy. Arbitration seeks to be an effective and impartial method of resolving disputes, but India's strategy has experienced drastic changes. The judiciary first followed a restrictive approach in *Renusagar Power Co. Ltd. v. General Electric Co.* (1994), reserving public policy for basic principles of law. Yet, the judgment in *ONGC v. Saw Pipes Ltd.* (2003) broadened the ambit to encompass "patent illegality," permitting greater judicial interference. This change created apprehensions regarding arbitration's efficacy, as courts could examine awards for more than mere procedural fairness.

The *ONGC v. Western Geco* (2014) judgment further expanded the fundamental policy doctrine without any guidelines, which has resulted in varying judicial interpretations. To address this need for reform, the 2015 and 2019 amendments to the Arbitration and Conciliation Act aimed to restrict judicial intervention by limiting public policy grounds to fraud, violation of fundamental legal principles, and against justice or morality. These reforms brought India's arbitration system into line with international practice seen in jurisdictions like the UK, US, and France, which have a strict approach to public policy to ensure finality of arbitration.

Even with these reforms, there remain problems. Judicial delay, expansive interpretations, and abuse of the public policy exception are still undermining the efficiency of arbitration. In order to enhance its arbitration-friendly regime, India has to make sure that public policy remains a limited exception, permitting minimal judicial interference. Finding the right balance is key to credibility in international arbitration as well as generating investor confidence.