

**Public Policy Exception In Arbitration Law In India And The
United Kingdom: A Comparative Analysis Of Judicial
Interpretation And Its Impact On Commercial Certainty**

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ABSTRACT

The public policy exception in arbitration law is an important tool in protecting the upholding of basic principles of law, and at the same time creates difficulties in respect of finality and enforcement of arbitral awards. This paper presents a comparative analysis of the interpretation and application of this exception in India and the UK, and in relation to its consequences on commercial certainty. Using statutory provisions, case law, and other pertinent international instruments, the analysis reveals the differences in the approaches taken by the courts in the two jurisdictions. Although historically India adopted a broad and interventionist interpretation, especially by landmark cases which created the concept of patent illegality, recent legislative changes and judicial practice have made this much tighter, more in line with international norms. By contrast, the United Kingdom has always been a restrictive and pro-enforcement jurisdiction, with minimal intervention of the judiciary and finality of arbitral awards. Business certainty, investor trust, and the arbitration landscape as a whole have all been profoundly impacted by these competing approaches, the study finds. In order to preserve the credibility of legal systems and arbitration as an effective means of resolving disputes, it is recommended that the public policy exception be read with a sense of proportion and principle.

Keywords: Arbitration, Public Policy, Judicial Interpretation, India, United Kingdom, Commercial Certainty, Enforcement of Awards.

1. INTRODUCTION

Arbitration has become an important element of the contemporary commercial dispute management and provides parties with an effective, adaptable, and impartial alternative to traditional litigation. As international trade and investment continue to expand at a rapid pace, the enforceability of arbitral awards has gained greater significance in terms of legal certainty and easing international trade¹. The international system that would regulate such enforcement is mostly affected by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which dictates that the contracting states must acknowledge and enforce arbitral awards under the narrow exceptions. One of the most important and controversial ones is the public policy exception.

The public policy exception is the safeguarding mechanism, allowing the courts to deny the enforcement of arbitral awards that do not comply with the major legal, moral, or economic principles of a state. Nonetheless, the lack of a clear and widely agreed definition has made the

concept itself ambiguous, which has resulted in different interpretations of the concept in different jurisdictions. This irregularity has led to inconsistency in application thus the predictability and dependability of arbitration as a dispute resolution method.

India and the United Kingdom are a good place to start a comparison in this context. The arbitration system in India as stipulated in the Arbitration and Conciliation Act, 1996 has been evolving significantly especially in the interpretation of the public policy. Traditionally, there was a broad and interventionist approach to courts, which extended the scope of review and thus gave the courts more intrusion². Although this was a strategy to provide fairness and justice, it created delays, uncertainty, and lack of confidence among the foreign investors.

Conversely, the United Kingdom, which operates under the Arbitration Act 1996 has upheld a very limited approach to the public policy exception. Courts have stressed little judicial intervention and a strong pro-enforcement policy, restricting the use of public policy to extraordinary situations of breach of basic principles of justice and morality. Such a steady and modest stance has helped the UK to have a reputation of a prominent jurisdiction that is conducive to arbitration.

The clash of these two methods poses significant issues about the right balance between judicial control and arbitral finality. Although the broad interpretation can secure the values of domestic law, it can jeopardize the effectiveness and predictability of arbitration. On the other hand, a restrictive strategy enhances certainty, but in extreme cases, it can be seen to ignore substantive injustices.

The present research attempts to conduct a comparative study on the judicial interpretation of the public policy exception in India and the United Kingdom, and specifically how it affects commercial certainty. The study is conducted through the analysis of statutory frameworks, important judicial developments, and recent reforms in order to determine emerging trends in both jurisdictions and evaluate their implication to international arbitration. Finally, the research also hopes to add to the wider debate on aligning arbitration practices without compromising legal integrity and commercial predictability.

1.1.Objectives of the study

The objectives of the study are:

- To conduct a critical analysis of the legal foundation and extent of the public policy exception in Indian and British arbitration law.
- To examine how public policy has been interpreted by judges in both jurisdictions through significant landmark rulings.
- To compare and contrast how the public policy exemption is applied in the UK and India.
- To evaluate how judicial interpretation affects investor confidence in international arbitration, business certainty, and the enforcement of arbitral rulings.

2. LITERATURE REVIEW

The exception of public policy in international commercial arbitration is a subject that has been extensively discussed in academic literature, and especially its effects on enforcement and judicial intervention.

Gary B. Born (2021)³ studied the theoretical basis of international arbitration and highlighted the key role of the New York Convention in ensuring a consistent application of arbitral awards. According to him, as much as the public policy exception is needed to protect the most important legal principles, an overly liberal interpretation by domestic courts violates arbitral finality and efficiency. He thus supported a common and limited use of the exception across jurisdictions.

Similarly, **Margaret L. Moses (2017)**⁴ concentrated on the procedural integrity and the problem of enforcement in arbitration. She emphasized that judicial intervention should be minimal to maintain autonomy of the parties and the goodwill of arbitration. In her opinion, the courts must be cautious and not re-examine the arbitral decision in the guise of the public policy, which guarantees uniformity and predictability.

K. Serasinghe (2023)⁵ offered a comparative view, analyzing the enforcement practices in India, Sri Lanka, and the United States. The researchers discovered that jurisdictions vary widely in their understanding of the public policy, with India traditionally having a more active and comprehensive stance. Nonetheless, the study has also noted that India is gradually shifting towards a more restrictive and internationally oriented structure.

Further, **S. M. Jain (2025)**⁶ compared the institutional and legislative advances in arbitration in the United Kingdom, Singapore, and India. The research concluded that the United Kingdom has a very arbitration-friendly environment, based on a steady judicial restraint and a high bias towards pro-enforcement. However, India has experienced significant reforms, such as legislative changes and judicial interpretation, to enhance the effectiveness of arbitration and to meet the international standards.

In general, the literature suggests that there is a definite break between interventionist and restrictive methods of public policy. Although the overuse of judicial interference was noted as a major flaw of arbitration in previous studies, more recent studies have confirmed that there has been a global shift to limit the exception to increase commercial certainty and reliability in enforcing arbitration.

3. RESEARCH METHODOLOGY

Using a comparative legal research strategy grounded in doctrine, this study examines the public policy exception in UK and Indian arbitration law⁷. The study is mainly founded on secondary sources which include the statutory provisions such as the Arbitration and Conciliation Act, 1996 and the Arbitration Act 1996 as well as on other important international instruments such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The study relies on the analysis of landmark decisions of both jurisdictions, which would allow comprehending the way in which courts interpreted and applied the concept of public policy throughout their history. Further, the study uses the wisdom of the academic articles, legal commentaries, and scholarly literature to put the judicial trends and theoretical views in context. The comparative approach also helps in a systematic assessment of similarities and differences between the two legal systems especially in scope, consistency and practical

implications. Based on this methodology, the study evaluates how judicial interpretation affects commercial certainty, arbitral award enforcement and the general arbitration environment.

4. LEGAL FRAMEWORK GOVERNING PUBLIC POLICY EXCEPTION

The legal framework governing the public policy exception in arbitration is shaped by a combination of international conventions and domestic statutory provisions, which collectively define its scope and application across jurisdictions.

4.1. International Framework

The legal basis of the public policy exception in arbitration is based on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Article V(2)(b) authorizes national courts to deny the enforcement of an arbitral award when that award is determined to be in conflict with the country enforcing it in terms of its public policy⁸. Although this is an indispensable provision in the safeguarding of fundamental principles of law, the Convention conspicuously omits the definition of the concept. Jurisdiction specific applications have therefore been influenced on its interpretation by domestic courts. Nevertheless, on the international level, tribunals have typically taken a pro-enforcement stance, understanding the exception in a limited manner to maintain the effectiveness and finality of arbitration.

4.2. India

The Arbitration and Conciliation Act, 1996, that implements the provisions of the UNCITRAL Model Law, regulates the public policy exception in India. The act differentiates between domestic and foreign arbitral awards by providing provisions of setting aside and enforcing.

The judicial interpretation has been very instrumental in the scope of the public policy. The judiciary started off with restrictive approach wherein it was only applied to basic principles of law, national interests as well as justice or morality. This role was however extended with the concept of patent illegality being introduced which increased the judicial review and allowed more interference with arbitral awards.

Later amendments further broadened the interpretation especially regarding the basic policy of law and this resulted in more scrutiny by the courts. Having identified the negative connotations on the efficiency of arbitration and commercial certainty, legislative changes, particularly the 2015 amendment, attempted to put a limit on this growth. A narrower interpretation was subsequently reaffirmed by the courts with an accent on limited interference especially in the international award cases.

The Indian model as shown in Table 1 shows a slow transition between an intervention model to a more conservative and arbitration-oriented regime.

4.3. United Kingdom

Under the Arbitration Act 1996 in the United Kingdom, the role of party autonomy and judicial non-intervention is paramount. The public policy exception finds its way into Section 103, where a refusal to enforce an international award may be entertained if its enforcement is against public policy.

In UK courts, there have been numerous decisions in line with a narrow view of the public policy exception. Such a decision will be reserved for only exceptional circumstances in light of proven illegality or fundamental breach of principles. Courts have also enforced arbitral

awards notwithstanding allegations that may arise in the process. This is in recognition of finality and judicial restraint in the matter⁹.

Judicial trends as reflected in Table 1 are indicative of a consistent approach in the United Kingdom in line with its standing as an arbitration-friendly jurisdiction.

Table 1: Key Judicial Decisions on Public Policy in India and the United Kingdom

Jurisdiction	Case	Key Contribution to Public Policy Interpretation
India	ONGC Ltd v Saw Pipes Ltd ¹⁵	Introduced “patent illegality” and expanded judicial review
India	ONGC Ltd v Western Geco ¹⁶ International Ltd	Broadened scope of “fundamental policy of law”
India	Renusagar Power Co Ltd v General Electric Co ¹⁷	Established narrow interpretation (fundamental policy, justice, morality)
India	Ssangyong Engineering & Construction Co Ltd v NHAI ¹⁸	Reaffirmed restrictive interpretation post-2015 amendment
United Kingdom	Westacre Investments Inc v Jugoimport SDPR Holding Co Ltd ¹⁹	Upheld enforcement despite allegations; emphasized finality
United Kingdom	Soleimany v Soleimany ²⁰	Refused enforcement due to illegality in underlying contract

5. JUDICIAL INTERPRETATION OF PUBLIC POLICY

The scope and application of the public policy exception in arbitration have largely been shaped through judicial interpretation, with courts playing a central role in defining its limits and influencing the enforcement of arbitral awards across jurisdictions.

5.1. India: Evolution from Expansion to Restriction

The approach of the judiciary towards public policy in India has seen a major change, showing a trend from liberal interpretation to a more conservative and arbitration-friendly approach.

Initially, the judiciary followed a narrow interpretation of the scope of public policy, limiting its use to fundamental principles of law, national interest, and issues related to justice or morality. This was consistent with international standards and involved minimum judicial involvement in arbitral decisions¹⁰.

However, later this was extended as the courts added the principle of patent illegality, under which not only procedural flaws but even substantive mistakes evident from the face of the award could lead to setting aside the award. Thus, this led to wider judicial intervention and raised serious doubts about the loss of finality and efficiency in arbitration.

Further developments in the judiciary have expanded the interpretation of public policy, especially in the context of fundamental principles of law.

These problems having been taken into consideration, legislative action by way of the 2015 amendment aimed at reducing the ambit of public policy considerations. The amendment was aimed at limiting the application of the grounds of patent illegality for the review of awards

made abroad but not at those made domestically. The law also limited courts from reviewing the substance of the case when enforcing the award, thus fostering a favorable attitude towards arbitration.

The response to these changes from the bench came in the form of a stricter construction whereby the grounds for interfering would be limited to situations involving serious breaches of the basic rules of law.

5.2. United Kingdom: Consistent Narrow Interpretation

In contrast to India's more progressive stance, British courts have consistently applied stringent restricted interpretations of the public policy exception. Under the UK's courts' interpretation of the Arbitration Act 1996—which emphasizes a strong bias in favour of enforcement—arbitral rulings are not subject to invalidation excepting extremely exceptional circumstances. The courts in the United Kingdom have often ruled that enforcement should be refused when it would violate basic principles of justice and decency.

Cases such as *Westacre Investments Inc v Jugoinport SDPR Holding Co Ltd* make this concept quite obvious; in this case, the court affirmed enforcement notwithstanding the allegations of illegality so long as arbitration reached a definitive resolution. Similarly, in the case of *Soleimany v. Soleimany*, the Court rejected enforcement due to the plain illegality of the underlying transaction. This decision demonstrated that the exception is reserved for instances involving egregious violations of the law or public interest¹¹.

The courts in the United Kingdom are notoriously hands-off, meaning they won't even look into whether or not an arbitral ruling was fair. International business transactions rely on the efficiency, legal clarity, and predictability brought about by this consistent and limited approach. The outcome is that the UK is now one of the world's most arbitration-friendly jurisdictions, which attracts parties seeking a dependable judicial system to settle their disputes.

6. COMPARATIVE ANALYSIS

A comparison of the public policy exception between UK and India will reveal significant differences in judicial philosophy, statutory interpretation, and practical application¹².

Despite sharing a foundation in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the two countries' approaches to public policy have diverged considerably. All of these distinctions are laid out in Table 2 down below.

Table 2: Comparative Analysis

Aspect	India	United Kingdom
Statutory Basis	Arbitration and Conciliation Act, 1996	Arbitration Act 1996
Scope of Public Policy	Historically broad, now narrowed through amendments and judicial clarification	Consistently narrow and restrictive
Judicial Approach	Initially activist, allowing extensive intervention; now increasingly restrained	Conservative, with strong pro-enforcement bias
Patent Illegality	Recognized, but limited to domestic awards post-2015 amendment	Not recognized as a ground
Merits Review	Previously allowed indirectly; now restricted, especially for foreign awards	Strictly not permitted

Consistency	Evolving and transitional jurisprudence	Stable and predictable legal framework
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The arbitration regime in India has changed dramatically as seen in Table 2 where the country has shifted to a more arbitration-friendly position as opposed to an interventionist one. The previous broadening of courts, especially by adding the term patent illegality, caused uncertainty and the weakening of the finality of the arbitral decisions. But with legislative changes and recent judicial rulings have aimed at restoring equilibrium by reining in the reach of the public policy and ensuring that it fits within the international norms.

Conversely, the United Kingdom has been stable and assertive with its practice, particularly in terms of minimal judicial intervention and compliance with the pro-enforcement goals of the arbitration law. This denial of illegality in patents and a ban on the review of merits have guaranteed a high level of certainty and reliability in the enforcement of the arbitral proceedings. Table 2 illustrates, although India is gradually becoming part of the global best practices, the United Kingdom remains a model of stability and predictability in implementing the public policy exception, thus improving the level of commercial confidence in arbitration.

7. IMPACT ON COMMERCIAL CERTAINTY

International arbitration, where predictability, enforceability, and finality of verdicts are essential, is particularly affected by the public policy exception and its interpretation, which in turn impacts commercial certainty. The differences between the judicial practices in India and the United Kingdom have affected investor confidence, effectiveness of dispute resolution and general views on either jurisdiction as a destination of arbitration.

7.1. India

The earlier approach to public policy taken by India had an important effect on the certainty of commercial transactions¹³. The liberal application of judicial review, including the concept of patent illegality, meant that there were more instances where the courts would interfere in awarding arbitrations. This often led to re-evaluation of the disputes on merit, which was covered by public policy. This created great judicial unpredictability since it was not clear what would happen once the court reviewed the decision on grounds of public policy.

Moreover, this approach meant that there was greater delay in the process of awarding the arbitration awards. Delay in awarding was against the advantage of speed associated with the process of arbitration. This also led to increased transaction cost and reduced investor confidence, especially for foreign investors.

Nevertheless, the post-2015 reforms were different and represented a breakthrough for the country. Through the restriction of the application of the scope of public policy and patent illegality to only domestic awards, judicial and legislative interventions served to restrict over intervention by courts. In this respect, there was an increased emphasis on a narrower application of laws that reflected international practices and promoted arbitration.

As a result, there has been some improvement in terms of the legitimacy of the dispute resolution process in the country. In addition, investors from other countries have been building trust in the country as it seeks to provide a favorable environment for the arbitration process. In essence, India is slowly adopting international best practices.

7.2. United Kingdom

On the other hand, the UK has always been consistent with its strict and clear definition of public policy in the context of arbitration. It has been stated that the decision not to enforce an award can only be made when there is a clear case of breach of important moral and just principles. This is indicative of how seriously the country takes arbitration and how strictly it implements final decisions.

Therefore, the UK guarantees great certainty in the results of any arbitral proceedings. The courts of the country act in such a way that the outcome of the dispute can be trusted by all the parties involved. In addition, it is also helpful in building a strong enforcement regime that is very important for international business.

Moreover, the consistent enforcement of arbitration awards has led to the growth of the UK as one of the world's leading arbitration centers. The stability of the legal system and its supportiveness have created a favorable atmosphere for arbitral proceedings. It is known that London is among the most popular venues for holding arbitration proceedings.

7.3. Comparative Impact

A comparative evaluation shows that there is a stark difference in the effect of judicial interpretation on commercial certainty:

- **India (Pre-reform):** The wide-ranging interventionist style made the arbitration regime comparatively uncertain and arbitration hostile and dissuaded international actors and influenced the enforcement effectiveness.
- **India (Post-reform):** The recent judicial and legislative change suggests the move towards the arbitration-friendly system with the enhanced predictability and minimized judicial interference.
- **United Kingdom:** The narrow and principled interpretation over the years has guaranteed a predictable, stable and arbitration friendly environment making it a model jurisdiction in international arbitration.

Conclusively, though India is increasingly enhancing its arbitration system and commercial certainty, United Kingdom remains a model of a well-developed and stable arbitration system. The comparative analysis highlights the fact that a moderate and limited use of the public policy exception is necessary to facilitate investor confidence, facilitate effective dispute resolution, and maintain the effectiveness of arbitration in the international business environment.

8. CRITICAL ANALYSIS

The fact that India and the United Kingdom part ways over the interpretation of the public policy exception is indicative of deeper differences in judicial philosophy and legal priorities. The Indian courts have historically stressed the importance of substantive justice and judicial supervision, and tended to be interventionist in arbitration. This tendency can be observed in the situation with *ONGC Ltd v Saw Pipes Ltd* in which the public policy was greatly increased by introducing the concept of patent illegality. Although the intention behind this was to avoid injustice and respect domestic legal values it undermined the finality of arbitral awards and created an ambiguity in their enforcement.

Conversely, the United Kingdom has always been quite restrictive and enforcement-oriented as state by the Arbitration Act 1996. The UK courts have been focused on autonomy of parties and finality of arbitral proceedings, and only intervene in extraordinary situations where there are apparent breaches of the basic rules of law. The stance is demonstrated in *Westacre Investments Inc v Jugoimport SDPR Holding Co Ltd*, where it was enforced, although it was claimed to be illegal, and it is significant that there must be certainty and predictability in arbitration.

The previous broad-based strategy in India, despite its safeguarding of the local legal interests, had negative effects, such as delays, litigation growth, and decreased investor confidence. It eroded arbitration as an effective dispute resolution method by eroding the difference between judicial review and arbitral autonomy. On the other hand, the coherent and close interpretation of the UK has reinforced its popularity as an arbitration centre by providing reliability and certainty of commerce.

Nevertheless, the strictness of the UK might, in exceptional circumstances, expose the country to the risks that substantive injustices would be overlooked when an arbitral award is inaccurate, but falls short of the high test to apply the public policy exception. Understanding these difficulties, in recent years, India has shifted to a more balanced and internationally oriented approach, especially after the 2015 amendments and the following court cases like *Ssanyong Engineering & Construction Co Ltd v NHAI*.

Finally, as the analysis has shown, both extremes: over-expansion and too much restriction are not desirable. The key is to have a balanced, principled, narrow application of the public policy exception to guarantee fairness and efficiency in arbitration and still have commercial certainty and investor confidence.

9. CONCLUSION

The preservation of fundamental legal principles and the finality of the arbitral decision must be carefully balanced with the continued importance and difficulty of the public policy exception as an aspect of arbitration law. This comparative study demonstrates that India's arbitration has historically been less efficient and more open to ambiguity due to its expansive and interventionist approach. However, the country has recently limited its scope through legislative reform and judicial interpretations of the Arbitration and Conciliation Act, 1996, bringing it in line with international standards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In contrast, the UK has been extremely cautious and enforcement-oriented since the passage of the Arbitration Act 1996, which has resulted in a high degree of efficiency, predictability, and business certainty. The discussion highlights that a too liberal implementation of the public policy may weaken arbitration, but a too restrictive one may jeopardize the consideration of substantive justice in special cases. As such, it is necessary to have a balanced, narrowly focused, and principled interpretation to improve investor confidence, adequate dispute resolution, and the credibility of arbitration in the changing international business environment.



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