NAFED V. ALIMENTA: UNPREDICTABILITY IN THE APPLICATION OF THE 'PUBLIC POLICY' EXCPETION

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ABSTRACT

The 'unruly horse' of public policy continues to be one of the most controversial impediments to the enforcement of foreign arbitral awards. The 'public policy exception' is one of the few grounds for refusing the recognition or enforcement of a foreign arbitral award under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, and the following United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, 1985. Whilst there is no international consensus on definition of 'public policy', many established arbitral jurisdictions have adopted a pro-enforcement approach by defining it narrowly, and only exceptionally refuse the enforcement of a foreign award on this ground. However, many national courts that have taken diverse approaches and interpreted the concept erratically.

The lack of uniformity and unpredictability in the interpretation of 'public policy' and the application of the exception in refusing enforcement of foreign awards in the Indian context, has been brought to light by the recent ruling of the Supreme Court in the *NAFED v Alimenta SA Case*. This article would trace the evolution of the public policy jurisprudence in India by examining the judicial practice in applying the public policy exception to foreign awards, and would further compare the Indian approach with that of other arbitral jurisdictions. It would analyse the case of *NAFED v Alimenta* decision and consider some of the implications this decision would have on the future of international commercial arbitration in India, particularly, in view of recent governmental efforts to make India an arbitration hub. It would finally recommend bringing uniformity in the interpretation of 'public policy' and suggest a restrictive scope of judicial interference in the enforcement of foreign awards.

Keywords**:** International Commercial Arbitration, Public Policy, Enforcement of Foreign Awards, New York Convention, UNCITRAL Model Law, Arbitration Act 1996

INTRODUCTION

In light of various governmental efforts over the last decade, India is progressively moving towards achieving its dream of becoming a global hub for international commercial arbitration (Hereinafter referred to as 'ICA') on par with Paris, London, Singapore, Hong Kong, Geneva and New York. Several constructive amendments to the arbitration law including the recent The Arbitration and Conciliation (Amendment) Act, 2019[i], have been made with a view of promoting itself as an arbitration-friendly jurisdiction and a venue of international arbitration. However, in spite of these long-awaited amendments, there exist many unresolved challenges in making the ICA mechanism more effective, and the reality is that foreign firms even in India, prefer a destination abroad for resolution of disputes due to uncertainty in the legal environment. Foreign awards in India are regularly challenged at their enforcement stage till they reach the highest court, frustrating the primary aim of arbitration to evade long-drawn litigation. While speedy enforcement is one issue, the more concerning issue is whether at all the foreign award is capable of enforcement in India.

The 'public policy' exception recognized by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958[ii], (Hereinafter referred to as the "New York Convention") and provided for in the Indian Arbitration and Conciliation Act, 1996[iii] (Hereinafter referred to as the 'Arbitration Act, 1996') is all too often cited as a defense against the enforcement of an award. Since there is no international consensus on the definition of 'public policy', the national courts of the enforcing state have been left with the task of interpreting its ambit and scope. National courts play a dominant role in strengthening the arbitration mechanism of the country by ensuring uniformity and stability in the application of arbitration laws. The effectiveness of ICA depends on the predictable enforcement of arbitral agreements and awards[iv], and judicial review undermines the fundamental benefits of submitting to commercial arbitration.[v] For all the uncertainty surrounding the concept, there has been a reassuring trend in most major arbitral jurisdictions toward the adoption of a narrow interpretation of the public policy exception.

The interpretation of 'public policy' by the Indian judiciary has been through a rocky road, with inconsistent and conflicting rulings. Several earlier rulings of the courts adopt a restrained approach in interference, but the recent Supreme Court ruling in the case of *NAFED v Alimenta* deviates from the earlier pro-enforcement approach. The Supreme Court in this case, refused

to enforce a foreign award on the ground that a violation of export restrictions amounted to a violation of the public policy of India. The recent ruling sheds light on the unpredictability and uncertainty of the 'public policy' of the country and the capability of enforcement of an award by the winning party.

This article argues that an uncertain legal environment and increased resistance of the higher judiciary to enforce foreign awards are contributing factors to the hesitance of foreign companies to choose India as a seat of arbitration, and is a setback for the country's legislative efforts to promote India as an arbitration hub. The first part of this article examines the judicial approach to the 'public policy' exception by mapping significant judgments of the Indian courts over the years. The second part analyzes the ruling in the *NAFED v Alimenta Case* and examine the implications it would have on India's image as an arbitration-friendly jurisdiction. The article concludes by highlighting the importance predictability in the interpretation of 'public policy', and further suggesting a pro-enforcement judicial approach while dealing with foreign awards.

JUDICIAL INTERPRETATION OF THE 'UNRULY HORSE' OF PUBLIC POLICY

Way back in 1824, Justice Burrough said "Public policy … is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from the sound law."[vi] These words have become relevant in the context of ICA, where by virtue of the uncertainty of the expression 'public policy', it's often used as a weapon to refuse to enforce an otherwise valid foreign award.

Article V(2)(b)[vii] of the New York Convention permits the national courts to refuse to recognize or enforce an award if the appropriate court of that nation finds that such recognition or enforcement of the award would be contrary to the public policy of that country, thus making 'public policy' one of the few grounds for refusing the recognition or enforcement of a foreign award. The legislative history of the New York Convention, gives little guidance as to the interpretation of this public policy provision, and it's been considered by commentators as the strongest impediment to widespread enforcement of foreign awards.[viii] However, the drafting committee when framing this Article did intend to limit its application to cases in which the

recognition or enforcement of a foreign arbitral award would be 'distinctly contrary' to the 'basic principles of the legal systems' of the country where the award is invoked.[ix] Public policy is thus not confined to the mere letter of law, but consists of broader basic principles which are often unwritten. The incapability to precisely define the concept has given the courts wide discretion in interpreting its scope and ambit, and the conception of public policy is therefore governed by precedents of the enforcing states.

It has been accepted that a broad interpretation undermines the strength and effectiveness of the New York Convention, and in turn, casts doubts on the effectiveness of international arbitration[x], and the refusal to enforce an arbitral award goes right to the heart of the Convention.[xi] As a result, there is a universal understanding that the concept is hinged on a narrow interpretation with limited review of the arbitral award. This is perpetuated by the language in Article 1[xii] of the New York Convention stating that "*each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles*" which appears to engender a 'pro-enforcement bias'. The scholarly and judicial interpretation of public policy in the jurisprudence of most jurisdictions appears to be determined by this 'pro-enforcement bias' towards arbitral awards.[xiii]

The United Nations Commission on International Trade Law Model Law, 1985[xiv] (Hereinafter referred to as the "Model Law"), on which the Arbitration Act, 1996 is based, contains a similar provision for the public policy exception under Article 36(b)[xv]. The Arbitration Act, 1996 was enacted with a view to promote the enforcement of arbitral awards, and bring about uniformity in the arbitral process. Along the lines of the New York Convention and the Model Law, Section 48(2)[xvi] manifests the public policy defence to enforcement of foreign awards. Over the years, the Indian judiciary has ventured into an evaluation of the "public policy" exception, which has often resulted in conflicting approaches and jurisprudential inconsistencies.

One of the first decisions involving the interpretation of the concept in relation to foreign awards was in the case of *Renusagar Power Co. Ltd v. General Electric Co.*[xvii], on the basis of the earlier The Foreign Awards (Recognition and Enforcement) Act, 1961 which dealt with the enforcement of an International Chamber of Commerce award. The Supreme Court, upholding the enforcement, stated that the 'public policy' exception has been used in a narrower sense and to attract the bar of public policy, the enforcement of the award must invoke something

more than just the violation of the law of India. It enumerated three situations when enforcement can be refused, namely, if its enforcement was contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality. This decision is in conformity with the internationally accepted position and the practice followed by established arbitral jurisdictions that only exceptional circumstances warrant intervention by national courts. However, the trail of cases that ensued proved to be detrimental to this pro-enforcement approach.

In *Bhatia International v. Bulk Trading S. A. & Anr* [xviii] the Court held that the provisions under Part I of the Arbitration Act, 1996, which only apply to domestic arbitrations, would also apply to foreign awards under Part II, unless specifically excluded by the parties. This had the effect of allowing an application for setting aside of a foreign arbitral award, contrary to the earlier position where only its enforcement could be challenged. Further, in the case of *Oil & Natural Gas Corp. Ltd v. Saw Pipes Ltd.*[xix], where a domestic arbitral award, holding that ONGC would not be entitled to liquidated damages as it hadn't proved any loss resulting from the late supply by Saw Pipes, was challenged. The Supreme Court stated that an award which is patently in violation of statutory provisions cannot be said to be in public interest. It therefore added 'patent illegality' to the three heads set forth in the *Renusagar Case*. It further went on to hold that the arbitrator had erred in failing to consider the law on liquidated damages, which under the provisions of the Indian Contract Act, 1872[xx] did not require the proof of loss. Though the judgment dealt with a domestic award, it did not expressly exclude foreign awards from its reasoning. This extended definition of public policy was reiterated by the Court in the *Venture Global Case*[xxi],which held that a foreign award could be set aside in the same manner as that of a domestic award, under Section 34[xxii] of the Arbitration Act, 1996. In *Phulchand Export Ltd. v. O.O.O. Patriot*[xxiii], it was held that the expression 'public policy' under sections 34 and 48 was the same, thus allowing challenges to a foreign award on the basis of 'patent illegality' even at the enforcement stage.

The combined effect of the above decisions essentially equated 'error of law' to 'public policy' and had widened the scope for judicial interference in foreign awards by creating a new ground which would allow for the review of merits of an arbitrator's decision. Moreover, it created a new mechanism for setting aside foreign awards, not statutorily contemplated, and failed to distinguish between foreign and domestic award. These decisions have been widely criticized

for amounting to judicial overreach. A Singaporean Court had also expressed its opinion on the *Saw Pipes* judgment, stating that "...the legislative intent of the Indian Act reflected in the Indian decision is not reflected in the Act, which in contrast , gives primacy to the autonomy of arbitral proceedings and limits court intervention to only the prescribed situations ."[xxiv]

The decision of the Supreme Court in *Bharat Aluminium Co v. Kaiser Aluminium Technical Services Inc.*[xxv] (‘*BALCO’*) signified a new beginning in the field of International Arbitration. It reconsidered and overruled the much-criticized *Bhatia International* and *Venture Gobal* decisions to the extent that they allowed the application of Part I of the Arbitration Act, 1996 to foreign-seated arbitrations. This watershed judgment held that the foreign awards sought to be enforced in India cannot be challenged on merits by the Indian Courts, thereby removing the ground of ‘patent illegality’. To further mitigate the effects of the *Phulchand Export* decision, the Supreme Court in *Shri Lal Mahal Ltd v. Progetto Grano Spa*[xxvi] clarified that ‘public policy’ under Section 48 is to be given a narrow meaning rather than the wider meaning under Section 34 adopted in the *Saw Pipes* judgment. It overruled the previous decision and upheld the test laid down in the *Renusagar case*. In light of these conflicting decisions, the legislature saw fit to intervene and save the judiciary from developing its own arbitration-related jurisprudence. The Arbitration and Conciliation (Amendment) Act, 2015[xxvii] brought back the scope of public policy in line with the *Renusagar case*, reflecting the established international practice. It inserted an explanation to this effect under Section 48, clarifying that a challenge on the ground of public policy is limited to the three heads, and would not entail a review on merits of the dispute. Section 2A clarifies that the additional ground of patent illegality would not be apply to International Commercial Arbitrations.

The case of *Vijay Karia and Ors. v. Prysmain Cavi E Sistemi SRL & Ors*.[xxviii], which was delivered earlier this year is a reaffirmation of the earlier pro-enforcement stance. An award passed by the London Court of International Arbitration was challenged on, inter alia, the ground of public policy as the tribunal failed to consider material issues and that the award violated provisions of the Foreign Exchange Management Act, 1999[xxix] (Hereinafter referred to as “FEMA”). The Apex Court, refusing to prevent the enforcement of the award, held that in the guise of public policy, foreign awards cannot be set aside by second guessing the arbitrator’s interpretation of the agreement. It developed a stringent threshold, stating that a “failure to determine a material issue which goes to the root of the matter or decide a claim in

its entirety may shock the conscience of the Court and may be set aside under Section 48(2)(b)." The Court relies heavily on a Delhi High Court[xxx] judgment which involved a similar problem of a foreign award violating the provisions of FEMA, which held that "Contravention of any provision of an enactment is not synonymous to contravention of fundamental policy of Indian law" and that the fundamental policy of India refers to the "basic and sub-stratal rationale, values and principles which form the bedrock of laws in our country".

The above decisions and legislative efforts reflect a willingness to adopt corrective measures to prevent the development of regressive jurisprudence at the highest level of judiciary. They mark a step in the right direction towards integrating the spirit and ethos of the New York Convention and the Model Law into the Indian legal framework. The judicial approach in developed arbitral jurisdictions is worth comparing with the Indian one. In the United States, the often-cited *Parsons*[xxxi] decision of the U.S. Court of Appeals reflects the American approach to the application on the public policy exception. It held that the enforcement of foreign awards may be denied on this ground, if it "would violate the forum State's most basic notions of morality and justice". Numerous courts across the U.S. have adopted a similar approach. The French courts have interpreted public policy to represent the "International public policy" or 'ordre public international' which is usually narrower in scope than domestic public policy in most jurisdictions. The French Supreme Court has affirmed a strong pro-enforcement policy, ruling that the recognition or enforcement of the award has to be examined with respect to its compatibility with public policy, "with control being limited to the flagrant, effective and concrete character of the alleged violation." In the United Kingdom, it is widely accepted that the public policy ground should be given a restrictive interpretation[xxxii], and that though considerations of public policy can never be exhaustively defined, they should be approached with extreme caution.[xxxiii] The Singaporean Courts have also taken a similar view, ruling that awards would only be set aside in exceptional cases where the "upholding of an arbitral award would 'shock the conscience' …, or is 'clearly injurious to the public good' or … 'wholly offensive to the ordinary reasonable and fully informed member of the public' …, or 'where it violates the forum's most basic notion of morality and justice'…."[xxxiv]. In spite of differences in the national laws of these countries, a commonality between them all has been the fact that 'public policy' has been narrowly constructed and very limited options are available for widening its scope. Only a few Indian decisions truly reflect this notion.

A STRUGGLING WITH THE 'UNRULY HORSE': ANALYZING THE *NAFED V. ALIMENTA* JUDGMENT

The recent judgment of the Supreme Court in *National Agricultural Cooperative Marketing Federation of India ("NAFED") v. Alimenta S.A.*[xxxv] appears to be contrary to the evolving jurisprudence on the interpretation of the 'public policy'.

Brief Facts of the Case

The NAFED (Appellant) and Alimenta S.A. (Respondent) entered into a contract for the supply of a certain commodity. NAFED had failed to export the entire contracted quantity, claiming that an Export Control Order issued by the Government restricted such supply. NAFED contended that the supply of commodity was made impossible by the Governmental Order, and it being a canalizing agent of the Government of India, required permission and consent of the Government. The matter was placed before the Arbitral Tribunal of the Federation of Oils, Seeds and Fats Associations (FOSFA) which passed an award against NAFED and directed it to pay the Respondent for breach of contractual duty.

Alimenta then sought the enforcement of the award under the Foreign Awards (Recognition and Enforcement) Act, 1961[xxxvi] (Hereinafter referred to as "the Act, 1961"), which was the applicable Act at that time. NAFED challenged the enforceability of the award, on the ground that it was against the public policy of India, and therefore unenforceable under Section 7(1)(b) of the Act, 1961. It claimed that the award had not dealt with the restriction imposed by the Government of India regarding the export of the commodity, and it therefore flouts the basic norms of justice. The Delhi High Court held the award to be enforceable, following which NAFED appealed to the Supreme Court.

Analysis of the Judgment

The Supreme Court considered the main objections raised which were:

(i) Whether NAFED was unable to comply with the contractual obligation to export the commodity due to the Government's refusal?

(ii) Whether NAFED could have been held liable in breach of contract?

(iii) Whether the enforcement of the award is against the public policy of India?

The Court examined Clause 14 of the contractual agreement, which provided that in case of prohibition of export by executive order or by law, the agreement would be treated as cancelled. From this, the Court concluded that the Contract would fall with Section 32 of the Indian Contract Act, 1872 which deals with 'Contingent contracts'. It therefore held that since a contingency had arisen, i.e. the restriction on export on commodity by the Government of India, the contract would be void. The Court then held that it would be against the fundamental policy of India to enforce such an award as any supply of commodity made thereafter would contravene the public policy of India "relating to export for which permission of the Government of India was necessary".

The Judgement is unexpected as it departs from principles of law laid down in earlier decisions. First, it evaluated the entire case and determined the unenforceability of the award on the ground of 'public policy' by entering into the merits of the award. It scrutinized the contractual agreement and held that failure to supply the commodity due to the restriction placed by the Government would render the contractual obligation impossible to perform and thus the contract would be void. It applied the Indian Contract Act, 1872, holding that the contract was a contingent one, thereby opining that the arbitrator should have decided otherwise. The Court surprisingly noted several earlier decisions, including the *Associate Builders Case*[xxxvii] and the *Ssanyong Case*[xxxviii], which have categorically held that there shall be no review of merits of the arbitral award.

Second, the Court's rationale behind holding the contract to be void resembles the test of 'patent illegality' according to which if the award which is, on the face of it, is patently in violation of statutory provisions[xxxix], or against the specific terms of the contract[xl], it would be opposed to public policy. The finding of the arbitrator that the supply could have been carried out by NAFED even after the Government had restricted such supply, was held to be a result of an erroneous application of law by the Supreme Court, because if such supply was undertaken, it would be unlawful. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.[xli] Further, an award could also be set aside if it's unfairness and unreasonableness shocks the conscience of the court. However, this test is only applicable in the case of challenges to domestic awards, and patent illegality appearing on the face of an award is not a ground to refuse enforcement under

Section 48. The judgment even refers to the internationally accepted view that it is an almost sacrosanct principle of international arbitration that courts will not review the substance of arbitrators' decisions contained in foreign awards in recognition proceedings[xlii] and that the grounds for refusal under Article V of the New York Convention do not include an erroneous decision in law or in fact by the arbitral tribunal.[xliii] According to the Court, the supply could not be made in view of the Government Order prohibiting it, while in the arbitrators opinion, it could be made. In spite of a difference of opinion on a point of law arising, the Supreme Court cannot question the correctness of the arbitrator's decision.

Second, and the most confounding part was the Court's determination of what constitutes "public policy", to prevent the enforcement of the award. By equating a Government Order restricting import, to fall within the "fundamental policy of Indian law", the Supreme Court substantially deviated from the previously settled position that a mere contravention of a provision of law cannot be held to be against the public policy of the country. Interestingly, this judgment which came out barely two months after the *Vijay Karia* one does not recognize its preceding rationale that "fundamental policy" may find expression not only in statutes but also "time-honoured, hallowed principles that are followed by the Courts".

Implications of the NAFED v. Alimenta Case

It is to be noted that the final judgment was delivered 27 long years after Alimenta S.A had filed for enforcement proceedings in India, raising concerns with respect to India being a favourable seat of ICA. The international community is likely to be sceptical of the recent view taken by the Court which has wavered the established principles relating to the interpretation of public policy and enforcement of foreign awards. An examination of the judgments of the Apex Court from the *Renusagar Case* to the *NAFED v Alimenta Case* brings out the contrasting standards that have been applied by the judiciary over the years. The most unsettling part is that the very legal principles applied seem to be at variance with each other. Further, in spite of a few progressive pro-enforcement judgments, many decisions have faced criticism for their contradiction with accepted standards, with the conflict being especially apparent in the *NAFED v Alimenta Case*. The decision is the antithesis of the evolving judicial discourse consisting of pro-enforcement and minimum judicial interference rulings, and is inconsistent with the Arbitration Act, 1996 itself.

Further, the decision is contrary to the spirit and ethos of the New York Convention and Model Law, which lie in the presumption of validity of foreign awards. The Conventions prohibit a national court from stepping into the shoes of the arbitrator, or acting as Court of appeal, and rectifying the findings in the award. It ensures that a party in favour of whom an award is passed can reap the benefits of the arbitral process. If parties are going to be dragged through lengthy litigation, only for the award to ultimately be held as unenforceable, it would frustrate the very purpose of arbitration i.e., expeditious dispute resolution.

Moreover, an interventionist approach by the Court turns a blind eye to the principle of party autonomy which lies at the heart and soul of every arbitration agreement. The freedom of parties to contractually decide on the dispute resolution mechanism is undeniably subject to the dictates of public policy. However, the grounds for refusal of enforcement of foreign awards are to be invoked as exceptions. The autonomous will of both the parties to have chosen arbitration as the method of dispute resolution cannot be interfered without merit. Parties commonly choose a foreign law as the substantive law of the agreement, which often runs against the law in the jurisdiction where enforcement is sought. Inevitably, foreign awards are likely to almost always be in discord with the law of the other country, in some way or the other. Due to this, there is a degree of sanctity and finality bestowed upon such awards, which cannot be faltered easily.

Finality of awards and ease of enforcement is one of the prominent benefits of arbitration. A jurisdiction's credibility as an arbitration friendly one rests primarily on the efficiency and efficacy of its award enforcement regime.[xliv] The ease with which courts might disregard a foreign award would undermine the arbitral award enforcement process, and weaken international commercial arbitration as a method of dispute settlement.[xlv] If finality and sanctity of awards is not preserved, it would undoubtedly affect India's image internationally.

Finally, the decision reflects the reality that even today, the "public policy" exception is used as a weapon to resist enforcement of awards under the pretext that they are affront to public policy. Precedent dictates that interference would not be triggered by a mere contravention of a provision of law. The ruling has now muddied the waters and has effectively reopened the the question of the scope and ambit of the fundamental policy of India. Parties need a certain degree of predictability in the legal environment, characterised not only by a robust statutory

framework, but also uniformity in judicial interpretation of laws. Further, transgression of the permissible degree of interference hampers the progress made by India so far from a legislative standpoint. Leaving these decisions unaddressed would open the floodgates for loosing parties to challenge an award, rendering the enforcement mechanism weak. Presumably, a larger bench of the Supreme Court will have to review these decisions and clarify the correct position.

SUGGESTIONS AND CONCLUSIONS

The public policy exception is integral to preserving the sovereignty of States, acting as a safety net if a foreign award is irreconcilable with the legal framework of the enforcing state. However, the underlying pro-enforcement stand of the New York Convention requires a pragmatic approach towards minimal interference. It is unlikely that an international initiative, bringing together countries to deliberate on the accepted standard of public policy and to lay down certain parameters for national courts to consider, will be taken in the near future. It is even more unlikely that countries would accept the outcome of such deliberations. In spite of the absence of an express international understanding, many jurisdictions have judicially evolved a sound jurisprudence in consonance with the spirit of the Model Law and the New York Convention. The judiciary has undoubtedly played a role in the popularity and growth of many centres for arbitration by adopting a narrower scope of interpretation and preserving the integrity of the arbitral process.

There have been an overwhelming number of foreign awards that have been enforced which is testament to the predominantly pro-enforcement trend in the Indian judiciary. However, the Indian Supreme Court's forbearing approach in the *Renu Sagar case* and pro-enforcement shift seen post the *Shri Lal Mahan case* has taken a turn, and a range of conflicting decisions seem to be gradually changing the judicial discourse. While decisions like *NAFED v. Alimenta* might be considered as an exceptional digression based on the factual matrix, the Court's expansive interpretation of 'public policy' and extensive review of the merits of the award have caused concern. This decision has yet again put the spotlight on the unpredictability and lack of uniformity in the Indian judicial approach to enforcement of foreign awards. The precariousness of the enforcement mechanism implies an uncertain legal environment, and such erratic court rulings will be a significant deciding factor in the arbitration-friendly image

of India. Another cause for concern the time taken in enforcing foreign awards in India. Hopefully, a larger bench would clarify the correct position of law, and bring the existing discourse back in line with the earlier pro-enforcement decisions.

Following the example set by established arbitral jurisdictions and imposing a degree of self-restraint while examining arbitral awards, would be a preferred approach for the judiciary to adopt. The grounds for challenging enforcement under Section 48 of the Arbitration Act, 1996 are watertight and no ground beyond that must be considered by courts. Nurturing a culture of finality to arbitral awards so that the winning party can realise the fruits of victory is the need of the hour. Parties would be confident to do business on more favourable terms with Indian parties if they know that foreign seated arbitrations are less likely to be subject to interference by national courts. A consistent application of a non-interventionist approach would contribute to increased willingness to choose India as the seat of arbitration. Expectations in the arbitration community with respect to enforcement of foreign arbitral awards have to be met to transform India into a hub of international commercial arbitration. For this, the urgent need is for the judiciary and legislature to take concerted efforts to limit the misuse of the 'public policy' exception, and further ensure the enforcement of foreign awards within a reasonable period of time.

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