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FOREIGN ARBITAL AWARDS; ARTICLE V(1)(A) AND PUBLIC POLICY, A BACKDOOR TO ESCAPE ENFORCEMENT

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ABSTRACT

International commercial arbitration is a means of resolving disputes between private parties originating from cross-national commercial agreements that permits the parties to avoid litigation in national courts. So many trades, contracts, and transections occur daily on national and international level that it is only natural for disputes to arise in a number of instances. Judicial proceedings are rarely an option for the parties in an international economic dispute. A private individual has no standing or jurisdiction in an international court. Only governments may present a dispute to the International Court of Justice for resolution, and they are not legally required to do so unless the issue's continuation threatens international peace and security.

Arbitration is an alternate method to resolve disputes. Arbitration is chosen by parties who wish to avoid protracted, expensive, and nationwide court proceedings. Arbitration usage has expanded alongside the expansion of international trade and commerce, as well as the conflicts arising from these endeavours. Most contracts have a clause that says any disagreements that come up over the contract will be settled through arbitration instead of litigating. At the time the contract is made, the parties can agree on the forum, the rules of procedure, and the law that will apply.

This article will discuss the evolution and necessity of international commercial arbitration in the modern world. I will focus primarily on two issues regarding foreign arbitral awards and grounds for their non-enforcement. And how the judiciary has protected these exploitable grounds and supported pro-enforcement ideas.

Keywords: *Arbitration, commercial, foreign arbitral awards, New York Convention, Public Policy, judiciary.*

RESEARCH OBJECTIVES

- To discuss various international treaties on international commercial arbitration with special emphasis on New York Convention, 1958.
- To determine the judicial interpretation and evolution of Article V(1)(a) of the New York Convention over the years.
- To comprehend the position of the Indian judiciary in challenging a foreign arbitral award on the basis of public policy pursuant to Article V(1)(c) of the New York Convention.

ANALYSIS

A. Development in the international commercial arbitration-

Arbitration agreements and awards aren't legally enforceable by themselves. Only a comprehensive legal framework comprising bilateral and multilateral conventions and treaties, as well as national laws and arbitration rules, enables arbitration as a method of conflict settlement[33]. Arbitration in the sense that it results in a 'binding' award would not be possible without this system.[34] Conventions, treaties, international instruments, and national laws ensure the validity of arbitration agreements by forcing national courts of accepting nations to refer to arbitration disputes. In the 1920s, continental

[33] Clive M. Schmitt Hoff's *Select Essays on International Trade Law* in EXTRAJUDICIAL DISPUTE SETTLEMENT, Dordrecht: London 1988(Cheng Chia-jui ed 1985)

[34] J Martin H Hunter, *'Judicial Assistance for the Arbitrator'* in, CONTEMPORARY PROBLEMS IN INTERNATIONAL ARBITRATION, (Julian D M Lew ed 1987).

Europe was the place where international commercial arbitration got its start. The League of Nations, the parent to the United Nations, developed the Geneva Protocol in 1923 to make international arbitration agreements and articles enforceable. Its specific objective was to ensure the enforcement of arbitration judgements in the countries where they were rendered.

The most significant issue with the 1923 convention was that it did not take sufficient measures to ensure that the arbitral rulings were carried out as intended. To address this issue, the 1927 Convention was established, which also lacked certain strict measures on the enforcement of arbitral laws.

1. New York Convention of 1958-

This multilateral convention was created by the United Nations Economic and Social Council to correct the shortcomings of the Geneva Treaties, which were designed to protect the integrity of international arbitration awards by incorporating both conventions and other significant changes into a more ***"pro-enforcement"*** arbitration process.[35] The New York Convention has been lauded as the *"linchpin of contemporary international commercial arbitration"*[36] and has been described as *"the single most important pillar on which the edifice of international arbitration rests"*.[37]

Apart from combining the two conventions, the New York Convention makes it possible to enforce a judgement in a country that was not party to the original contract.[38] However, the convention contains certain lacunae, such as the phrase "Convention on the Recognition and Enforcement of Foreign Arbitral Awards." only pertains to the enforcement of the arbitral award, not the arbitration agreement (i.e., the referral of the dispute to arbitration)[39]. Because of this, Article I of the Convention doesn't say anything about how it applies to the arbitration agreement. Instead, it says that the arbitral award must be a foreign award, which means it was made in a different country, or a non-domestic arbitral award.

2. Foreign Arbitral Awards-

The convention aims to enforce and recognise foreign arbitral judgements as one of its fundamental goals.

Under article I (1), this Convention applies to the recognition and enforcement of arbitral awards that were made in a state other than the one asking for recognition and enforcement. It applies to arbitral awards that aren't considered domestic in the state where they are sought.

Under article I (3) when signing, ratifying, or joining this Convention, or when notifying extension under Article X, any State can say, based on reciprocity, that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State ***[Reciprocity Reservation]***. It can also say that it will only use the Convention to settle disagreements that arise from commercial contracts or other legal relationships that are considered commercial under its own law. ***[Commercial Reservation]***

In this way, a state may choose to apply the Convention only to commercial disputes, as defined by its own domestic rules, if it wishes.[40] This reservation negates one of the New York Convention's goals: to fix the 1923 Geneva Protocol.

In ***Bergesen v. Joseph Muller***[41] Corp.4, the U.S. Court of Appeals talked about the criteria for foreign arbitral awards. The court ruled that an award made in the state of New York between two foreign parties must be treated as a

[35] Elise P. Wheeless, *Article V(1)(b) of the New York Convention*, 7 Emory international Law Review, 805-806(1993).
[36] Albert J. Van Den Berg, *The New York Arbitration convention of 1958* (1981).
[37] J. Gillis Wetter, *The Present Status of the International Court of Arbitration of the ICC: An Appraisal, 1* American Review. OF International Arbitration. *91* (1990)
[38] New York Convention, art. I (1), 21 U.S.T. at 2519, 330 U.N.T.S. at 38.
[39] Albert Jan van den Berg, *"Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards-Explanatory Note"* 3 (para. 7), 2008
[40] Cindy Silverstein, Iran Aircraft Industries v. Avco Corporation: Was a Volation of Due Process Due? 20 BROOK. J. INT'L L., (454) (1994)
[41] Bergesen v. Joseph Muller Corp., 710 F.2d 928 (2d Cir. 1983).

nondomestic award under the New York Convention and the laws that follow it.

The court of appeals noted that the nondomestic award in the second criterion was meant to make the New York Convention's rules apply to more places. The text of the New York Convention also makes this clear. The second criterion says, *"It also applies to arbitral awards that are not considered domestic awards in the state where their recognition and enforcement are sought."*[42]

The New York Convention always applies to the recognition and enforcement of an arbitral award made in another state (that's the first criterion), and it may also apply to the recognition and enforcement of an arbitral award made in the state where recognition and enforcement are sought if that award is considered nondomestic (i.e., the second criterion). So, the second criterion of the Convention's scope only applies to the recognition and enforcement of an arbitral award made on the territory of the state where recognition and enforcement are sought.

B. *Judicial Interpretation And Evolution Of Article V(I)(a) of The New York Convention Over The Years-*

The purpose of the New York Convention is to *"encourage the recognition and enforcement of international arbitral awards,"* ***(Bergesen v. Joseph Muller Corp.),***[43]

to *"relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that is speedier and less costly than litigation."* ***(Ultracashmere House, Ltd. v. Meyer)***[44].

The purpose of article IV and VI is to facilitate the enforcement of awards. It thus reflects a *'pro-enforcement bias'*. Whereas Article V provides for the grounds under which the award can be set aside. Article V(I)'s exceptions to enforcement are confined to violations of arbitration rules of a procedural nature and are designed to preserve the parties and the integrity of the arbitration process. So, the court is prevented from determining whether or not the award is correct in its substance. Article V(II) protects the integrity of the nation's laws. It allows the enforcing court to refuse to enforce the decision if the "subject of the difference is not capable of settlement by arbitration under that country's legislation" or if *"recognition or execution of the award would be detrimental to that country's national policy."*

Usually, issues that we see with some of the convention's article in Article V(1)(a) and (c). Simply, there are three distinct scenarios to consider.

1. Under Article V(1)(a), if there is no valid arbitration agreement, enforcement may be denied if the arbitrators hand down an award.
2. Assuming that the arbitrators are relying on a valid arbitration agreement, Article V(1)(c) can be invoked in two different scenarios; First if the arbitrators rely on a legitimate arbitration agreement. To begin with, enforcement may be denied for lack of jurisdiction if the arbitrators go outside the boundaries of the valid arbitration agreement, i.e., make an award related to disputes beyond the scope of this agreement.
3. Secondly, if a valid arbitration agreement permits the arbitrators to handle claims that the parties have not filed to them, enforcement may be denied because the arbitrators have exceeded their power. in the following paragraphs I will analyse these limitations and vague interpretation of these issues.

Under Article V(1)(a), a Party can first claim that it was not a part of the arbitration agreement, which would mean that the agreement was not valid. As an example, in the case of ***Romanian Firm C v. German (F.R.) party***[45], a Romanian seller won a case against a German company in an

[42] New York Convention, 1958, Art. I (1)
[43] Bergesen v. Joseph Muller Corp ,710 F.2d 928, 932 (2d Cir. 1983)
[44] Ultracashmere House, Ltd. v. Meyer, Manu/Feee/0001/1981

[45] Romanian Firm C v. German (F.R.) party (Oberlandesgericht Hamburg 1974), in Yearbook Commercial Arbitration II (Germany no. 10) at 240–240 (1977).

arbitration that was held there. After the decision was made, the German company was sold to a new owner. The new owner decided to fight against the award's enforcement, but enforcement had already been given. The state judge stated that in rare instances, an award can be enforced against someone else if that person is the legal heir of the person to whom the award was given.

In a case determined by the French Supreme Court on 14 May 1996[46], two companies had signed an exclusive distribution agreement with an arbitration clause stating that any dispute arising from the agreement or its termination would be arbitrated. A dispute arose, and the parties agreed to pay the distributor commissions for outside sales. This second contract had no arbitration or jurisdiction clauses. The distributor sued the Commerce Court of Bobigny over the second agreement. The lower court upheld its jurisdiction because the second agreement was not an accessory of the first because the two agreements involved different types of transactions. The absence of an explicit reference to the arbitration clause in the second agreement precluded acceptance of the clause in the context of this second agreement. The French Supreme Court reversed the decision, ruling that the second agreement was based on a breach of the first and thus its complement, falling under the first contract's arbitration clause.

But this approach was not followed in various other cases like in the case of ***Consorcio Rive, S.A. de C.V. (Mexico) v. Briggs of Cancun, Inc. (US) v. David Briggs Enterprises, Inc.***[47] this was a cooperate veil-based case in which Courts in the United States have ruled that an arbitrator's award cannot be enforced against a parent company even though that parent firm was a party to an arbitration agreement signed by the respondent company.

However, with the passage of time, the courts have widened the scope of article V(I)(a) across the world. As we can see in the following cases-

In the landmark judgment of ***Fiona Trust & Holding Corp v Privalov***[48]**,** the UK House of Lords established what is known as the *'presumption in favour of one-stop adjudication.'* The Fiona Trust case is one of the most well-known decisions in English arbitration case law, laying the groundwork for a 'new beginning' in English jurisprudence by establishing a strong presumption that commercial parties wish all disputes to be resolved in a single forum. The Fiona Trust doctrine assumes that "rational businessmen" intended for any disagreements between them to be resolved by the same court or tribunal, unless they expressly state otherwise.

However, In ***Dallah Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan***[49] , In this case, it was determined that a person who denies being a party to an arbitration agreement is not obligated to participate in the arbitration or pursue legal action in the seat country, even if the arbitral tribunal has found in favour of its own jurisdiction. This "Dallah principle" is of utmost significance and should not be lightly restricted. After that, a large number of Indian cases followed this strategy.

In the past few years, there have been a number of decisions around the world that have tested the limits of the doctrine. Based on these cases, it seems that the Fiona Trust doctrine will be used to reconcile arbitration and court jurisdiction clauses that are at odds with each other when the parties haven't made it clear that they want to settle certain parts of a dispute in one forum instead of another. This way, both clauses will continue to be valid and enforceable. These decisions have given effect to both clauses by finding, as a matter of construction, that the parties wanted all disputes to be settled through arbitration with the court acting as a watchdog, since the other way around would make the arbitration clause ineffective.[50]

[46] 1st Civ. Chamber, 14 May 1996, 1997 Rev. Arb. 535.

[47] Consorcio Rive, S.A. de C.V. (Mexico) v. Briggs of Cancun, Inc. (US) v. David Briggs Enterprises, Inc. (US) in Yearbook Commercial Arbitration XXIX (2004) (United States no. 472), (1160–1171) (5th Cir. 2003),

[48] Fiona Trust & Holding Corp v Privalov, [2007] 2 Lloyd's Rep 267

[49] *Dallah Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan, [2010] UKSC 46*

[50] James Allsop, Yosuke Homma (Herbert Smith Freehills LLP) July 7, 2022 http://arbitrationblog.kluwerarbitration.com/2022/07/07/what-are-

We can see it in a 2009 case of ***Tjong Very Sumito and Ors v. Antig Investments Pte. Ltd***[51]***;*** the Singapore SC, reviewed a Share Sale and Purchase Agreement (SPA) with an arbitration clause. Same parties signed four more Supplemental Agreements. A dispute developed over whether a fourth Supplemental Agreement payment arrangement (which lacked an arbitration clause) was subject to the SPA's arbitration clause. Since the fourth Supplemental Agreement *'owes its existence to the SPA',* it cannot stand alone, the Court of Appeal said. Like the preceding three supplemental agreements, it aimed to augment and/or alter SPA's terms. The court determined that the parties intended to be bound by the Arbitration Clause in the main SPA, which extended to the fourth Supplemental Agreement.

In a very recent important case of ***Melford Capital Partners (Holdings) LLP l v Wingfield Digby***[52]***(2021)*** Melford Capital partners' business relationship broke down, and a limited liability partnership agreement featured two opposing dispute resolution clauses. One section gave exclusive jurisdiction to English courts, whereas the other was arbitration clause but did not specify an arbitration seat.

The court understood the exclusive English jurisdiction clause as allowing the English courts to supervise arbitration, so the clauses may be read in harmony rather than in contradiction.

In more cases like ***Albion Energy v Energy Investments Global***[53]***, Silverlink Resorts Limited v MS First Capital Insurance Limited***[54] , and ***H v G***[55] different approach has been taken and we can interpret that courts and tribunals may not always give arbitration clauses the most weight when disputes come up about a specific contractual relationship. Much will depend on the specifics of the situation, how the clauses that don't match up are written, and what they say about the parties' intentions.

As illustrated by the case laws, courts have become more accommodating towards arbitration agreements throughout the years. However, the diverse approaches followed in different cases demonstrate that arbitration agreements and jurisdiction clauses must be carefully reviewed to ensure that they do not conflict (especially in multi-contract transactions). When the objective is to send specific disagreements to one forum rather than the other, the division and objective should be clearly stated in writing. This will aid in preventing unforeseen outcomes and pointless debates over which forum should be picked.

C. ***Judicial Position of The Indian Judiciary in Challenging a Foreign Arbitral Awards on The Basis of Public Policy Pursuant to Article V(I)(c) of The New York Convention-***

In India, under the Arbitration and Conciliation Act 1996, an International Commercial Arbitration is defined as an arbitration arising from a legal relationship which must be considered commercial, where either of the parties is a foreign national or resident, or is a foreign body corporate, or is a company, association, or body of individuals whose central management or control is exercised in another country, or is a foreign government.

History of foreign arbitral awards in India-

- India is one of the countries that are signatories and parties to the New York Convention. As a signatory to both the New York and Geneva Conventions, Indian laws have always allowed for the enforcement of foreign arbitral awards in India's domestic territory.
- Foreign arbitral awards could not be enforced in India prior to the adoption of the Arbitration (Protocol and Convention) Act, 1937. The Geneva

the-limits-of-the-fiona-trust-doctrine-a-review-of-recent-cases-on-inconsistent-dispute-resolution-clauses

[51] Tjong Very Sumito and Ors v. Antig Investments Pte. Ltd, 4 S.L.R.(R) 732,

[52] Melford Capital Partners (Holdings) LLP l v Wingfield Digby [2021] EWHC 872 (Ch)

[53] Albion Energy v Energy Investments Global [2020] EWHC 301

[54] *Silverlink Resorts Limited v MS First Capital Insurance Limited* **[2020] SGHC 251**

[55] *H v G*[55] **[2022] HKCFI 1327**

Protocol of 1923 and the Convention of 1927 on execution of international arbitral awards were both ratified by India after 1937. In conformity with the New York Convention, the foreign Awards Act, 1961, recognised and enforced foreign arbitration awards in India.[56]

- Section 44 of the Arbitration Act, 1996 defines the term *'foreign awards*. It states that "foreign award' means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India-
  - *in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and*
  - *in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette."*

In case of ***Serajuddin & Co.* v. *Michael Golodetz,***[57] *Calcutta HC examined that in the past, the terms 'foreign arbitration' and 'foreign award' were found to have been used in connection with the following:*

- *Arbitration in a foreign country*
- *foreign arbitrators*
- *application of foreign law*
- foreign *national;*

Section 48 of the Arbitration Act specifies the very few grounds on which the court may refuse enforcement of an award. It is based on Article V (2) of the New York Convention of 1958.

Court's discretionary powers; Enforcement of an arbitral award may also be refused if the Court finds that—

(a) The subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

I. Public Policy-

The New York Convention and Foreign Arbitral Awards Act do not define public policy. Since moral conviction or policy is understood differently in each state, it is difficult to understand how public policy is conceptualised in various States[58]. Because it is very unrealistic and unfair to expect all states to adhere to a single harmonised ideal of public policy, the drafters of the Convention made this provision on purpose so as to allow each nation to derive its own notions of public policy. This was done for the purpose of allowing each nation to derive its own notions of public policy. In the following paragraphs, I will discuss how the Indian judiciary has defined public policy and protected an award to be set aside in the name of public policy unfairly.

In the landmark judgment of ***Renusagar v General Electric***[59]***,*** *it has been reaffirmed that national courts should only interfere with arbitral awards on public policy grounds in extreme cases.* It was *held that enforcement of a foreign award would be refused if it violated*

- *fundamental policy of Indian law, or*
- *India's interests, or*
- *justice or morality.*

Specifically, on one party's objections based on unfair enrichment, the Court decided that the case was not one of unjust enrichment and that the concerns expressed were about the award's amount. To hold that this was unjust enrichment would mean that any time an arbitrator awarded more than what was due, the award might be challenged as unjust which the New York convention does not allow.

Article V(2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not

[56] K. Venkatramaih, 'Enforcement of Foreign Arbitral Awards in India,' *Law of International Trade Transaction*

[57] *Serajuddin & Co. v. Michael Golodetz* 1959 SCC OnLine Cal 196.

[58] Albert Van Den Berg in his book titled '*The New York Arbitration Convention of 1958. Towards a Uniform Judicial Interpretation'*

[59] *Renusagar v General Electric* (1994) AIR SC 860

preclude refusal of recognition and enforcement of a foreign award on the grounds that it is contrary to the law of the country of enforcement. The challenge is limited to the recognition and enforcement being contrary to the public policy of the country in which the award is set to be enforced. Nothing indicates that "public policy" in Article V(2)(b) of the New York Convention and Section 7(1)(b)(ii) of the Foreign Awards Act is not used in the same way as in Article 1(c) of the Geneva Convention of 1958. This would suggest that "public policy" in Section 7(1)(b)(ii) has been used in a limited sense and that the execution of the judgement must invoke more than the breach of Indian law.

In a very recent case in 2021 supreme court of Pakistan "…[the] non-interference or the pro-enforcement policy is in itself a policy of Contracting States, which is not easily persuaded by the public policy exception argument… The public policy exception acts as a safeguard of fundamental notions of morality and Justice, such that the enforcement of a foreign award may offend these fundamentals… [T]he public policy exception should not become a back door to review the merits of a foreign arbitral award or to create grounds which are not available under Article V of the Convention as this would negate the obligation to recognize and enforce foreign arbitral awards. Such kind of interference would essentially nullify the need for arbitration clauses as parties will be encouraged to challenge foreign awards on the public policy ground knowing that there is room to have the Court set aside the award."[60]

In 2003 the case of ***Oil and Natural Gas Corporation v. Saw Pipes***[61]*, the Supreme Court widened the definition of public policy and rejected the narrower definition of public policy adopted in* ***Renusagar judgment*** *which had focused on the three grounds.* It was previously thought that public policy defence did not include an error of law when it was applied to this case but the SC has broadened its definition to include an error of law that is contrary to arbitration laws because it creates a system to review arbitrator's decisions. This expansive view stems from the ***RattanChand Hira Chand v Askar Nawaz Jung (Dead) By L.Rs***[62] **,** the court observed in this case that a contract that has the potential to harm public interests or welfare is contrary to public policy and what constitutes a harm to the public interest evolves over time, and the legislature can't always keep up. It's up to the judge to fill this lacuna by legislating judicially.

Following this trend, wider interpretation of *'fundamental policy of India'* was adopted in cases like ***ONGC v. Western Geco International Ltd.***[63]***, and Associate Builders v. Delhi Development Authority***[64]**.**

However, this approach was not followed in the case of ***Shri Lal Mahal Ltd v Progretto Grano Spa***[65]*., this Court concluded that the law established in the Renusagar decision would apply to the ambit and extent of Section 48(2)(b) of the 1996 Act. It prohibits a 'second look' at a foreign award during enforcement. Section 48 does not permit a reassessment of the foreign award's merits. Public policy does not automatically exempt a foreign arbitration ruling from execution due to improper procedure.*

To address the issue faced in ONGC case, the law commission's 246th report aimed to limit the broad concept of "public policy." If it had not done so, the review of arbitral rulings would have been based on the case's merits. Based on these recommendations, the arbitration act was amended in 2015, introducing explanation 2 in section 48, which stated, *"For the avoidance of doubt, the examination for whether there is a violation of the fundamental policy of Indian law shall not include an evaluation of the dispute's merits."*[66]

[60] Orient Power Company (Private) Limited v. Sui Northern Gas Pipelines Limited, Supreme Court of Pakistan, Civil Appeal No. 1547/2019

[61] *Oil & Natural Gas Corp. v Saw pipes (2003) 5 SCC 705*

[62] RattanChand Hira Chand v Askar Nawaz Jung (Dead) By L. Rs, 1991 SCC (3) 67

[63] ONGC v. Western Geco International Ltd.[63], MANU/SC/0772/2014

[64] Associate Builders vs. Delhi Development Authority, MANU/SC/1076/2014

[65] Shri *Lal Mahal Ltd v Progretto Grano Spa*, (2014) 2 SCC 433

[66] Arbitration and conciliation(amendment) act, 2015

II. Recent judicial approach-

In a very recent case of ***Vijay Karia v Prysmian Cavi E Sistemi Srl***[67] *the Supreme Court stated:*

"Given the "pro-enforcement bias" of the New York Convention, which has been adopted in Section 48 of the Arbitration Act, 1996, the U.S. cases show that the burden of proof is now on the parties who don't want the award to be enforced, not on the parties who want it to be enforced. Under the guise of the country's public policy, foreign awards can't be overturned by questioning the arbitrator's interpretation of the agreement between the parties."

The petitioner in ***EIG (Mauritius) Limited vs McNally Bharat Engineering Company Limited (Calcutta High Court)***[68] sought implementation of a foreign arbitral judgement against the respondent. The implementation became a source of contention on the floor of India's Public Policy. The court rejected the respondent's arguments that enforcement of the judgement should be denied on the grounds suggested. As a result, the court determined that the foreign award was enforceable under Sections 46, 47, and 49 of the Act.

The preceding case laws demonstrate that the judiciary has advanced toward a more favourable view to arbitration, acknowledging the sanctity of arbitral rulings and arbitration as a dispute resolution method. By way of the Arbitration and Conciliation Act, India is one of the very few jurisdictions in the world to have public policy that is statutorily defined. Since Indian courts have determined that there is no concept of international public policy that can be put into practise, the theory of public policy as it is implemented by the courts in India should be taken into consideration.[69]

[67] *Vijay Karia v Prysmian Cavi E Sistemi Srl*, 2020 SCC OnLine SC 177

[68] EIG (Mauritius) Limited vs. McNally Bharat Engineering Company Limited, MANU/WB/0759/2021.

[69] Rachi Gupta and Nili Khandelwal, India: Gamut Of Section 48 Of The Arbitration & Conciliation Act, 1996 : A Case Study, 2022.

CONCLUSION

International commercial arbitration is the most well-known method of resolving commercial disputes in international trade. The growth of international commercial and investment arbitration is evident in recent years. If an award couldn't be enforced, the entire arbitration system would collapse and awards would be worthless. International Commercial Arbitration would lose value without an effective enforcement mechanism.

The New York Convention established two essential pillars of the legal framework by mandating the referral of a dispute to arbitration by a national court in the event of a valid arbitration agreement and the enforcement of the arbitral award.

Burrough J. once said, *"Public Policy is a very unruly horse, and when once you get astride it you never know where it will carry."*

The main goal of India's ratification of the New York Convention by bringing act of 1996 was to support pro-enforcement policy, which is the underlying of the true purpose of arbitration. But the wide approach of public policy diminishes this very purpose. Even though there were different interpretations in the enforcement of foreign awards prior to the amendment of 2015, denial of an award under section 48 has decreased in scope since then. India's public policy jurisprudence has come a long way since the Renusagar Case.

REFERENCES

- J Martin H Hunter, *'Judicial Assistance for the Arbitrator'* in, CONTEMPORARY PROBLEMS IN INTERNATIONAL ARBITRATION, (Julian D M Lew ed 1987).

- Elise P. Wheeless, *Article V(1)(b) of the New York Convention*, 7 Emory international Law Review, 805-806(1993).

- Albert J. Van Den Berg, *The New York Arbitration convention of 1958* (1981).

- Clive M. Schmitt Hoff's *Select Essays on International Trade Law* in EXTRAJUDICIAL DISPUTE SETTLEMENT, Dordrecht: London 1988(Cheng Chia-jui ed 1985).

- J. Gillis Wetter, *The Present Status of the International Court of Arbitration of the ICC: An Appraisal, 1* American Review. OF International Arbitration. *91* (1990)

- Albert Jan van den Berg, *"Hypothetical Draft Convention on the International Enforcement of Arbitration Agreements and Awards-Explanatory Note"* 3 (para. 7), 2008

- James Allsop, *Yosuke Homma (Herbert Smith Freehills LLP)* July 7, 2022 http://arbitrationblog.kluwerarbitration.com/2022/07/07/what-are-the-limits-of-the-fiona-trust-doctrine-a-review-of-recent-cases-on-inconsistent-dispute-resolution-clauses