

Dispute Resolution Hotline

April 15, 2021

DEMYSTIFYING PUBLIC POLICY TO ENABLE ENFORCEMENT OF FOREIGN AWARDS – INDIAN PERSPECTIVE

This article was originally published in Indian Review of International Arbitration.

The open-textured and variable nature of 'public policy' has created much divergence in the international arbitration community on its meaning, applicability and limits. For some, public policy has played a savior of foreign awards; for others, it has set the arbitration proceedings and the outcome at naught. Most award creditors may have realized the fruits of their arbitration only after long arduous legal proceedings to establish non-contravention of public policy. This has created a cloud of uncertainty and unpredictability around public policy.

This present article attempts to demystify this uncertainty, and deduce situations in which the scope and ambit of public policy can be assertively ascertained. It examines 'public policy' as a ground for grant or refusal of enforcement of a foreign award in a jurisdiction that has one of the largest judicial caseload of international commercial disputes and international arbitration - India. While arriving at our deductions, we will analyze the context in which public policy is placed under the New York Convention; Indian law and its adoption of the New York Convention; the meaning of public policy and its realm of operation in law for purposes of enforcement of foreign awards; and judicial interpretation of public policy by Indian courts. In the end, based on the aforesaid analysis, we identify practical situations in which public policy can be raised as a ground to resist or defend resistance to enforcement of foreign awards.

The complete article can be accessed [here](#).

– Bhavana Sunder & Kshama A. Loya

You can direct your queries or comments to the authors

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