



Public Policy with Reference to Setting aside the Arbitral Award in India

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ABSTRACT: Public Policy in reference of setting aside of arbitral award in respect domestic and international commercial arbitral award is sine quo non in the furtherance of national and international judicial interpretation as well as national and international legal framework. It involves variety of interpretations in order to setting the uniform interpretation in the context of public policy where explicatively determined the scope for the strengthening enforcement of such arbitral award.

KEYWORDS: Policy, arbitral award, legal framework

1. CONCEPTUALIZATION OF PUBLIC POLICY

The term public policy is vague to define conspicuously because of vacillation on the part of judicial interpretation in order to ensure the uniform and universal definition without any iota of doubt whereas common law took initiative to define public policy on the realm of erroneous mistake appear apparently on the face of record that may connotes the principle of public policy in India (Srinivasan, 2012).

The general and common parlance refers public policy is analogous to the act which are mischievous in nature or tendency which may be against the interest of the state wherein prima facie it found to appear as an illegal (Sharma, 2011). Thus, in concisely we may demarcate that public policy is the fundamental and basic policy of the government which is protecting the interest of public at large that would not be compromised at any instance, thereby in arbitration it is very peculiar to play the significant role in the context of enforcement of arbitral award.

Section-34(1) (V) (b) (ii) categorically speaks about when award will set aside on the verge of patent illegality where enforcement of arbitral award is in question specially with regards to foreign commercial arbitral award (Aldemir, 2011; Dunna, 2018). It shall be construed in the reference of fundamental and basic

policy of law in India otherwise the same would be invalid while enforcement process by the Indian Courts.

Justice Burroughs apprised that it is unruly horse; when once you are trying to get astride it, you will never know where it shall bring or carry you (Dubey, 2018). Thus we may develop our understanding for public policy in the direction of ambiguity where we cannot determine that where it go (Ebb, 1994; Mittal, 2020a). Thus once we try to interpret the meaning in the sense of above mentioned judgment, we can draw the inferences that it better to refrain on the part of judiciary to construe the term public policy if they do not have required skill to handle the same.

Furthermore in the case of Renuagar, Supreme Court held that Public policy may be understood in the context of "Patent Illegality" thereby up to what extend the term public policy can be interpreted it is a matter of great academic discussion (Ebb, 1994). Wherein a senior legal luminary clearly stated that if there is no proper dispensation of justice on the side of arbitral award (Law & Pandey, 2020; MR, 2020), it would be considered gross miscarriage of justice with regard to Alternate Dispute Resolution thus interpretation of public policy for setting the arbitral award is vulnerable if we provide any erroneous scope hence patent illegality analogous to illegality appears conspicuously as matter of res ipsa loquitur.

2. PUBLIC POLICY WITH REGARD TO NATIONAL AND INTERNATIONAL COMMERCIAL ARBITRAL AWARD

The term “Public Policy” has been defined in S. 7(1)(b)(ii) of the Foreign Awards Act, as it has been applied in the field of the states which execute and govern their affairs in private. Executing of application by such following requisites on that enforcement of arbitral award may challenge on the account of these following essentials as herein mentioned as ;(i) it is Fundamental principle pertains to Policy of law relating to India (ii) the quintessential interest which are peculiar for law relating to India (iii) justifiability relating to enforcement of award or morality of concerned society thereto (Fawcett & Carruthers, 2008; S. Gupta & Mittal, 2015). Moreover Renu Sagar Case, was considered as a milestone of interpretation of the term public policy appeared as “Patent Illegality” the term patent connotes appearance of crystal clear illegality without any doubt but some questions raised (Hollander, 2016; Sebastian & Arya, 2013), pertaining to parameter to judge morality in India is vague except obscenity everything is affected by dysfunctional approach to analyses true sense of moral turpitude specially in India is one of the basic essential to construe the public policy, therefore determining public policy is not easy task as rightly stated by Justice Burroughs (Dubey, 2018; Gupta & Mittal, 2020) quoted as public policy is unruly horse whereas Lord Jessel M. R. stated that men of full age and competent understanding would be analogous to man with good saddle kept the unruly horse controlled thus party must entered into contract freely and voluntarily wherein court ensured them justice even in the case of public and fundamental policy (Gupta & Mittal, 2020; Mittal, 2020).

Article-V(2)(b) of the NY Convention states about the Public and fundamental Policy in the context of international applicability of such policy, while construe by the foreign courts in the context of enforcement of foreign award. Thus whether the award is domestic commercial or international commercial arbitral award, all must be consistent with the public policy of India otherwise the same would be set aside as per the section 34(2) of Arbitration and Conciliation Act 1996 mere on the application filled by the party that such award is against the fundamental principle of law wherein apparent error appears on the face of record hence such award should be subjected to nullify by using the judicial instrument of setting aside of the same.

3. JUDICIAL INTERVENTIONS PERTAINING TO PUBLIC POLICY

Since the 176th Law Commission Reports and Rt. Hon Lady Justice Marry Howarth Arden, DBE, Lord Justice of Appeal, UK purported categorically when parties filled an application to challenge the award on the mere ground of error of the law which is apparently appeared on the face of the arbitral award. During of the passage

of time judicial intervention came into picture through the application of Renu Sagar Case but it has narrow interpretation later on reviewed the earlier dicta in appeal by the Supreme Court, which recognized the same and gave the wider meaning and scope of the public interest in India that usually connotes the matter refers to protect the interest of the public at writ that would not be injurious and detrimental for the public at large however appear on the face of award for violation of statutory provision shall not be vitiating the public interest at all hence we should not understand the public policy mere on the verge of patently illegal resulted awarded would be vitiated rather Award may be setting aside if there is inconstant to: (i) Essential and Fundamental Policy of Indian Law (ii) (ii) the quintessential interest which are peculiar for law relating to India (iii) justifiability relating to enforcement of award or morality of concerned society thereto. iv) Patent illegality to giving its wider effect additionally added (G Banerji, 2009; Malhotra, 2007).

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