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**THE PUBLIC POLICY CONUNDRUM IN INTERNATIONAL
COMMERCIAL ARBITRATION: IMPACT OF NAFED V.
ALIMENTASA CASE**- Mashroofa T¹**ABSTRACT**

International Commercial Arbitration is an essential component of global dispute resolution centred on principles such as party autonomy, efficiency and the finality of arbitral awards. However, the public policy exception poses a significant challenge to the enforcement of foreign arbitral awards, often undermining their finality through broad judicial interpretations in domestic courts. The application of this exception in India warrants careful examination, as its expansive scope creates uncertainty for award holders and compromises India's standing as a jurisdiction that supports arbitration. Even though the 1996 Arbitration and Conciliation Act has a pro-enforcement bias, some court rulings have expanded the public policy exception by rejecting enforcement, citing domestic ideas such as illegality. These interpretations diverge from the exception's intended purpose of providing limited protection for important national values. These developments have far-reaching implications, threatening to erode trust in India as a reliable centre for international arbitrations. Inconsistencies in judicial approaches highlight the urgent need for a unified and restrictive criterion to define the public policy exception. By bridging India's arbitration system into compliance with international norms, this clarity could improve predictability and preserve the finality of awards. As case studies highlight how conflicting judicial perspectives create ambiguity, discouraging foreign investors and parties from seeking timely dispute resolution. Judicial harmonisation is essential to establish a clear framework for public policy exceptions and enhance India's position in global arbitration. Integrating local legal principles with international obligations will foster confidence in India's arbitration ecosystem, positioning

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the country as a top destination for cross-border commerce and ensuring reliable conflict resolution.

KEYWORDS: International Commercial Arbitration; Public policy conundrum; Award enforcement; party autonomy; judicial harmonisation; NAFED-Alimenta case.

1.1 INTRODUCTION

In today's interconnected global economy, effective dispute resolution mechanisms are essential. International Commercial Arbitration has become the favoured means for resolving disputes, offering parties a neutral, efficient and confidential alternative to conventional litigation. Unlike court proceedings, which can be rigid and influenced by local laws or biases, arbitration allows parties to choose expert arbitrators, customise procedures and achieve finality in outcomes. This flexibility is particularly beneficial in international contexts. The modern framework of ICA has evolved in response to globalisation, with institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the Singapore International Arbitration Centre (SIAC) playing vital roles in administering arbitrations worldwide.

International commercial arbitration's success hinges on the global recognition and enforcement of arbitral awards, largely due to the New York Convention of 1958². Article V lists specific grounds for refusal, with the public policy exception being particularly controversial due to its vague definitions, which cause varied interpretations and uncertainties in enforcement across jurisdictions. India is striving to become a global arbitration hub like Singapore and London by aligning its legal framework with international standards through the Arbitration and Conciliation Act of 1996³, based on the UNCITRAL Model Law. Amendments in 2015, 2019 and 2021 aimed to reduce judicial intervention and expedite the arbitration process.

However, the Supreme Court's decision in *NAFED v. Alimenta*⁴ has raised concerns about India's consistency in supporting arbitration, highlighting both the challenges and

²Convention On The Recognition And Enforcement Of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.

³Arbitration And Conciliation Act 1996, No.26, Acts Of Parliament, 1996(India).

⁴*Nat'l Agric. Coop. Mktg. Fed'n Of India Ltd. V. Alimenta Sa*, (2020) 19 Scc 260 (India).

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opportunities in its evolving landscape. NAFED appealed to the Supreme Court, arguing that enforcing a contract without government approval would violate Indian public policy. On 22 April 2020, a three-judge bench led by Justice Arun Mishra deemed the contract unenforceable under section 32 of the Indian Contract Act 1872⁵. Critics claim the ruling improperly reviewed merits and excessively broadened the public policy conundrum, potentially deterring foreign parties from choosing India for arbitration. Addressing these issues requires judicial restraint and better legislative clarity.

1.2 THE CONCEPT OF PUBLIC POLICY EXCEPTION IN ARBITRATION

In international commercial arbitration, foreign arbitral awards are designed to be final and enforceable; however, the public policy exception presents a significant dilemma, often hindering enforcement. Courts tend to apply this exception broadly, leading to uncertainty regarding its precise boundaries. This situation places state sovereignty and core legal principles in opposition to the obligation to uphold awards under the New York Convention. In India, the Arbitration and Conciliation Act of 1996 embeds this exception in sections 34(2)(b), 48(2)(b) and 57(1)(e). An award violates public policy if it involves fraud, corruption, breaches confidentiality, misuses evidence, contradicts India's fundamental policy or conflicts with basic morality and justice. Judicial scepticism towards arbitration necessitates court intervention as arbitrators may not fully address public policy issues, lack judicial expertise and operate without appeals or transparency.

1.2.1 THE NEW YORK CONVENTION AND THE PRO ENFORCEMENT BIAS

The New York Convention is also known as the Convention on recognition and enforcement of foreign arbitral awards of 1958, is vital in international arbitration law. Ratified by over 170 countries, it establishes a structured framework for recognising and enforcing arbitral awards internationally, promoting certainty in commerce. The convention mandates that contracting states enforce foreign arbitral awards, allowing only limited exceptions specified in Article V, such as invalid agreements or procedural irregularities. This pro-enforcement bias ensures arbitral awards are legally binding, addressing flaws in earlier treaties like the 1923 Geneva Protocol. By minimising judicial interference, the conventions provide predictability critical for

⁵Indian Contract Act, 1872, No. 9, Acts Of Parliament, 1872 (India)

sectors like shipping, construction and energy. The public policy exception in article V(2)(b) permits courts to deny enforcement in cases where an award contravenes the public policy of a forum state; however, this is interpreted narrowly to avoid re-litigation of cases. Global jurisprudences, including the US case *Scherk v. Alberto-CulverCo*⁶ (1974), support this limited judicial review, reinforcing the conventions' commitment to arbitration. This consistent approach has strengthened arbitration's reliability and encouraged its use in international contracts while influencing domestic laws, such as those in India, to adopt a pro-enforcement stance.

1.2.2 THE PUBLIC POLICY EXCEPTION IN INDIA

The Arbitration and Conciliation Act 1996 is an inevitable arbitration law in India. Aligning the nation's legal framework with international standards, particularly the UNCITRAL model law and the New York Convention. The act incorporates the public policy exception in two crucial provisions:

- Section 34(2)(b) for setting aside the domestic arbitral awards; and
- Section 48(2)(b) for refusing the enforcement of foreign arbitral awards.

These provisions reflect Article V(2)(b) of the New York Convention, permitting judicial intervention only when an award is found to violate India's public policy. The Act's explanation of these sections provides a structured and restrictive definition of public policy, ensuring minimal judicial interference while safeguarding fundamental legal principles. It includes;

- a) The Act was enacted to modernise India's arbitration regime, replacing outdated laws and fostering a pro-arbitration environment that is conducive to international commerce. By mirroring the New York Convention's public policy exception, sections 34(2)(b) and 48(2)(b) strive to balance the finality of arbitral awards with the necessity of protecting India's core legal and ethical values. These provisions are aimed at preventing courts from reevaluating the merits of disputes, thereby upholding the autonomy of the arbitral process. This alignment enhances India's appeal as an arbitration hub, offering certainty to both domestic and foreign parties engaged in cross-border transactions.
- b) **Grounds for public policy violations:** The explanation to sections 34 and 48 outlines specific circumstances under which an arbitral award may be

⁶*Scherk V. Alberto-Culver Co.*, 417 U.S. 506 (1974).

considered contrary to public policy, ensuring focused and precise application of this exception:

- 1) **Fraud or corruption:** An award that is induced or influenced by fraudulent activities, such as the bribery of arbitrators or the falsification of evidence, undermines the integrity of the arbitration process. This ground ensures that only awards obtained through legitimate means are enforceable, thereby safeguarding the sanctity of arbitration.
 - 2) **Violation of confidentiality or procedural rules:** The confidentiality of arbitration is a fundamental feature that sets it apart from litigation. Breaches, including unauthorised disclosures of sensitive commercial information or non-compliance with procedural norms outlined in the Act, may justify the refusal of enforcement. This protects the trust that parties place in arbitration as a private mechanism for dispute resolution.
 - 3) **Contravention of fundamental policy of Indian law:** This encompasses core legal principles inherent in India's constitutional framework, including equality, justice and rule of law. However, the Act explicitly prohibits courts from reviewing the merits of the dispute under this provision, thus preventing judicial overreach and preserving the finality of the awards.
 - 4) **Conflict with basic notions of morality or justice:** This catch-all provision applies to awards that are evidently unconscionable such as those enforcing illegal contracts like involving smuggling or human trafficking or violating fundamental human rights. It acts as a safeguard against awards that would shock the conscience of the court.
- c) **Legislative safeguards against judicial overreach:** a key aspect of this Act is the directive that courts “shall not entail a review on the merits” when assessing public policy violations. This provision limits judicial intervention, preventing misuse of the public policy exception to challenge arbitral decisions. By restricting judicial scrutiny to exceptional cases, the act

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supports the pro-enforcement bias of the New York Convention, promoting arbitration as a reliable and efficient alternative to litigation.

d) Judicial evolution and refinement: The interpretations of the public policy exception in India have evolved significantly, especially after the 2015 and 2021 amendments. Earlier cases like *ONGC v. Saw Pipes Ltd* (2003)⁷ broadly defined public policy as “patent illegality”, leading to excessive judicial interference. The 2015 amendments, based on the 246th Law Commission Report⁸, narrowed this scope. Subsequent rulings such as *Vijay Karia v. Prysmian Cavi E Sistemi SRL* (2020)⁹ established that only awards deemed perverse, unconscionable or fundamentally against India's legal order can be rejected. This shift towards judicial restraint has strengthened India's position as a pro-arbitration jurisdiction.

e) Balancing public policy with economic goals: India's restrictive public policy exception supports its aim to attract foreign investment in a globalised economy by ensuring the enforceability of arbitral awards with minimal judicial obstacles. This boosts confidence among international businesses, especially in infrastructure, energy and technology. However, India's socio-economic factors complicate the concept of public policy involving environmental protection and labour rights. Courts must balance national interests with international obligations while adhering to the Act's limits.

1.3 ANALYSIS ON NATIONAL AGRICULTURAL COOPERATIVE MARKETING FEDERATION OF INDIA LTD V. ALIMENTA SA

The dispute in *NAFED v. Alimenta SA* arose from a contractual agreement executed in 1980 between the National Agricultural Cooperative Marketing Federation of India Ltd (NAFED), a government-owned cooperative in India and Alimenta SA, a Swiss company specialising in agricultural trade. The agreement mandated that NAFED supply 5,000 metric tons of Indian groundnuts (JPS groundnut kernels) to Alimenta during the 1979-1980 export season.

⁷*Oil & Nat. Gas Corpn. Ltd. V. Saw Pipes Ltd.*, (2003) 5 Scc 705 (India).

⁸Law Comm'n Of India, Amendments To The Arbitration And Conciliation Act 1996, No. 246 (2014).

⁹*Vijay Karia V. Prysmian Cavi E Sistemi Srl*, (2020) 11 Scc 1 (India).

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However, a severe cyclone disrupted agricultural production in India, resulting in a significant shortfall in supply. Consequently, NAFED was only able to export 1,900 metric tons of the agreed quantity. To address this shortfall, NAFED initially committed to supplying the remaining 3,100 metric tons during the subsequent 1980-181 season. Nonetheless, NAFED later rescinded this commitment, citing two primary reasons: the expiration of its export license and an Export Control Order issued by the Government of India, which prohibited the export of specific agricultural commodities, including groundnuts. Alimenta challenged NAFED's refusal, contending that the failure to deliver constituted a breach of contract. The dispute was subsequently referred to arbitration under the rules of the Federation of Oils, Seeds and Fats Associations Ltd. (FOSFA), as stipulated in the contract. After examining the evidence and arguments presented, the arbitral tribunal ruled in favour of Alimenta, holding NAFED liable for breaching the contract by failing to supply the remaining groundnuts. The tribunal awarded damages to Alimenta to compensate for the losses incurred due to NAFED's non-performance.

When Alimenta sought to enforce the foreign arbitral award in India, the matter was brought before the Indian judiciary, culminating in a landmark decision by the Supreme Court of India. The court's ruling raised significant questions regarding the enforcement of foreign arbitral awards and the interpretation of the public policy exception under Indian law.

On 22 April 2020, the Supreme Court of India issued a judgment that declined to enforce a foreign arbitral award in favour of Alimenta. The court's decision was based on the public policy exception outlined in Section 48 of the Arbitration and Conciliation Act 1996, which permits Indian courts to reject the enforcement of a foreign award if it contravenes India's public policy. The court deemed the arbitral award to be "ex facie illegal" and in violation of India's "fundamental law". It specifically noted that the Export Control Order issued by the Government of India, which prohibited the export of groundnuts, made NAFED's performance of the contract legally impossible. The court emphasised that enforcing an award requiring NAFED to act against Indian law, by exporting goods without the necessary government authorisation, would violate India's public policy. This violation was grounded in the doctrine of impossibility of performance under section 56 of the Indian Contract Act 1872, which relieves a party from fulfilling a contract when it becomes impossible due to unforeseen events or changes in law. The court's interpretation enabled it to examine the merits of the arbitral award, evaluating whether the tribunal's findings were consistent with

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Indian law. This approach marked a significant shift from the principle of minimal judicial interference in arbitration, which is a fundamental tenet of the Arbitration and Conciliation Act 1996 aimed at promoting arbitration as an efficient and autonomous mechanism for dispute resolution.

1.4 RECENT DEVELOPMENTS AND INFLUENTIAL JUDICIAL RULINGS IN INDIAN ARBITRATION.

The judiciary's stance on the public policy exception in the execution of arbitral awards, particularly following the case of *NAFED v. Alimenta SA*, illustrates an ongoing albeit occasionally inconsistent effort to clarify its scope. In the case of *Gemini Bay Transportation Pvt Ltd. V. Integrated Sales Service Limited (2021)*¹⁰, the Supreme Court of India reaffirmed the pro-enforcement bias inherent in Indian arbitration law. The court stressed that the public policy exception under section 48 of the Arbitration and Conciliation Act 1996 should be interpreted narrowly, enabling the refusal of enforcement of a foreign award only when it fundamentally "shocks the conscience of the court". While this ruling appears to advocate for a more restrictive interpretation of the public policy exception, it did not explicitly overrule *NAFED*.

The Supreme Court of India in the case of *PASL Wind Solutions Pvt Ltd v. GE Power Conversion India Pvt Ltd (2021)*¹¹ did not directly tackle the public policy exception; it represents a significant advancement in Indian arbitration law by affirming that two Indian parties may legitimately choose a foreign seat of arbitration. This decision reflects a broader judicial intent to cultivate a pro-arbitration environment in India, aligning the nation with global arbitration practices. However, the lasting impact of *NAFED* precedent introduces a degree of unpredictability as its expansive interpretation of public policy continues to challenge the consistent application of the pro-enforcement framework. These cases collectively illustrate the judiciary's efforts to balance the promotion of arbitration as a dispute resolution mechanism with the imperative to safeguard public policy considerations. Nonetheless, the lingering influence of *NAFED* highlights the need for greater clarity to ensure predictability and coherence in the enforcement of arbitral awards in India.

¹⁰*Gemini Bay Transcription Pvt. Ltd. V. Integrated Sales Servs. Ltd., (2021) 10 Sc 593 (India).*

¹¹*Pasl Wind Sols. Pvt. Ltd. V. Ge Power Conversion India Pvt. Ltd., (2021) 7 Sc 1 (India).*

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1.5 CONCLUSION

The Supreme Court's ruling in *NAFED v. Alimenta SA* has sparked considerable debate in the realm of international commercial arbitration, as it unveils certain structural weaknesses within India's arbitration framework. Although the judgment was delivered under Indian law, it raises significant concerns about the degree of judicial intervention in arbitral proceedings, particularly concerning the enforcement of foreign arbitral awards. Excessive scrutiny of arbitral awards, particularly through an expansive interpretation of the public policy exception, could undermine two fundamental objectives of arbitration: finality and certainty. Such intervention not only erodes the autonomy of the arbitral process but also introduces uncertainty for foreign investors and international commercial entities who depend on arbitration as an efficient and reliable mechanism for resolving disputes.

The recent decision has underscored the challenges arising from inconsistent judicial approaches to the enforcement of foreign awards. Despite significant reforms in Indian arbitration law, including amendments to the Arbitration and Conciliation Act of 1996 aimed at reducing court interference and establishing India as an arbitration-friendly jurisdiction, certain judicial pronouncements continue to create ambiguity regarding the scope of judicial review. The broad application of the public policy doctrine, as evidenced in some cases, may conflict with internationally accepted principles outlined in the New York Convention, which advocates for a narrow and exceptional application of public policy grounds for refusing enforcement. To effectively address these concerns and enhance India's standing in the global arbitration arena, comprehensive and well-structured reforms are necessary. First, clarity must be provided regarding the scope and interpretation of the public policy exception. Legislative amendments or authoritative judicial guidelines could help ensure that public policy remains a limited ground for review, consistent with international best practices. Second, conflicting judicial precedents concerning the enforcement of foreign awards should be harmonized to foster legal certainty and consistency. A predictable legal framework is essential for instilling confidence among both domestic and foreign commercial stakeholders. Moreover, institutional reforms are equally vital. Establishing specialized commercial courts and arbitration benches with expertise in international arbitration can lead to more efficient and well-informed resolution of arbitration-related disputes. Continuous judicial training in

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contemporary international arbitration principles, comparative jurisprudence, and global enforcement standards would further foster a legal culture that supports arbitration. Additionally, strengthening arbitral institutions, promoting institutional arbitration, and minimizing procedural delays can significantly enhance the overall effectiveness of India's arbitration ecosystem. In an era marked by increasing globalization and cross-border commercial transactions, the credibility of a country's arbitration framework is crucial for attracting foreign investment and facilitating international trade. Thus, India must persist in its efforts to align domestic arbitration practices with internationally recognized standards. By clarifying the parameters of judicial intervention, narrowing the scope of the public policy exception, ensuring consistency in judicial decision-making, and implementing essential legislative and institutional reforms, India can cultivate a more predictable, efficient, and investor-friendly arbitration environment. These measures would not only bolster the enforceability of arbitral awards but also enhance India's reputation as a preferred destination for international commercial arbitration, thereby improving its competitiveness in the global economy.

1.6 RECOMMENDATIONS FOR STRENGTHENING INDIA'S ARBITRATION FRAMEWORK

- Harmonise the judicial precedents by reconciling the rulings in the NAFED case as well as the case of VijayKaria to establish a consistent review standard for section 48 that aligns with the New York Convention
- Define a narrowly tailored public policy test for section 48, restricting award refusals to instances of fraud, corruption or violations of fundamental legal principles while steering clear of merits-based reviews.
- Reform the Arbitration and Conciliation Act 1966 by instituting strict timelines for award challenges, limiting Interim stays and creating specialised arbitration benches to enhance efficiency.
- Promote institutional arbitration through the MCIA and DIAC with government backing, offering tax incentives and mandating arbitration clauses in public contracts to ensure consistent outcomes.

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- Enhance capacity building through judicial training, the establishment of a national arbitrator accreditation body and the introduction of arbitration coursework in law schools.
- Strengthen investor confidence by globally promoting these reforms, establishing a transparent arbitration data portal and actively engaging with international business communities.
- Form a national committee tasked with monitoring reforms, gathering feedback and publishing annual reports to ensure transparency and facilitate continuous improvement.
- Adopt global best practices from jurisdictions such as Singapore, London and Hong Kong, focusing on minimising judicial interference, expediting enforcement and ensuring arbitrator impartiality.

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