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EDITOR'S NOTE

New Year is the time when we take new resolutions. It is also the right time to review and refresh our thoughts. As Alternative Dispute Resolution professionals, do we really administer justice in its real sense? I think all of us need to take some time to reflect and review and set a fresh set of eyes and ears to understand the need of the parties to resolve the disputes in a way different from the normal way.

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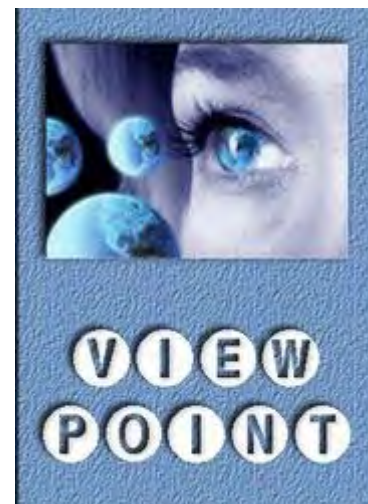
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THE ASPECT OF JURISDICTION IN INDIAN ARBITRATION - II

SHEFALI ROY



This article focuses on the provisions vis-à-vis the divergence of jurisdiction between courts and arbitral tribunals. It looks at the doctrine of kompetenz-kompetenz, which provides tribunals with the power to examine and determine its own jurisdiction. The conflicting issues which arise while deciding on the jurisdiction is considered liberally, postulating on the question of “Who decides?” in the second part, the article also evaluates the stance of law concerning the enforcement of foreign arbitral awards in India. The authors conclude with some suggestions pertaining to the overall structure of Arbitration Act, while focusing primarily on the aspect of Jurisdiction.

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ENFORCEMENT OF FOREIGN AWARDS IN INDIA

Enforcement of the award is an essential feature in Arbitration. Under Section 36 of the 1996 Act, an arbitral award is enforceable as a decree of the court, and could be executed like a decree in a suit under the provisions of the Civil Procedure Code, 1908.¹

Prior to January 1996, the law of enforcement of arbitration awards in India was spread between three enactments. Enforcement of domestic awards was dealt with under a 1940 Act. Enforcement of foreign awards was divided between two statutes — a 1937 Act to give effect to the Geneva Convention awards and a 1961 Act to give effect to the New York Convention awards. As the Geneva Convention became virtually otiose (by reason of Art VII of the New York Convention), enforcement of foreign awards, for all practical purposes, came under the 1961 Act and domestic awards came under the 1940 Act. The enforcement regime between these two statutes was, however, quite distinct.²

Arbitration and Conciliation Act, 1996 provides framework for enforcement of foreign arbitral awards in India. It is pertinent to notice that only awards made under the New York Convention of 1960 or the Geneva

(Footnotes)

¹ Section 36 of the Arbitration and Conciliation Act, 1996 – Enforcement - Where the time for making an application to set aside the award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court.

² Kachwaha, Sumeet, Asian International Arbitration Journal, Volume 4, Number 1, Pages 64-82. © Siac, 2008

Convention of 1927 can be classified as foreign awards, which given in countries are signatories to these two statutes. New York Convention has wider applicability than the Geneva Convention.

The expression “arbitral award” has not been defined in Part I, but the expression “foreign award” has been defined in Section 44 of Part II, which reads as under:

“44. Definition — In this Chapter, unless the context otherwise requires, ‘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, made on or after the 11th day of October, 1960 –

- (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and
- (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.”

The case *Sukanya Holdings Pvt. Ltd. vs. Jayesh H. Pandya & Anr*³ was concerned with Section 8, Section 45 of Arbitration and Conciliation Act and Section 89 of CPC. The Supreme Court stated that, “Reliance was placed on Section 89 CPC in support of the argument that the matter should have been referred to arbitration. In our view, Section 89 CPC cannot be resorted to for interpreting Section 8 of the Act as it stands on a different footing and it would be applicable even in cases where there is no arbitration agreement for referring the dispute for arbitration. Further, for that purpose, the court has to apply its mind to the condition contemplated under Section 89 CPC and even if application under Section 8 of the Act is rejected, the court is required to follow the procedure prescribed under the said section”.

The observations made in this case is that the matter concerned Chapter I of Part II of the 1996 Act, dealing with the arbitration under the New York Convention, the Supreme Court liberally interpreted Section 45 to attain the legislative intent preferring arbitration, as reflected in Section 45. The Court accorded priority to the Chapter I of Part II stating that it was unaffected by Part I of Act. The Apex court has also stated that considering the language used in Section 8, it is not necessary to refer to the decisions rendered by various High Courts interpreting Section 34 of Indian Arbitration Act, 1940 which gave a discretion to the Court to stay the proceedings in a case where the dispute is required to be referred for arbitration.

(Footnotes)

³ (2003) 5 SCC 531

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Indian courts have narrowly construed the ground of public policy in relation to foreign awards. The Supreme Court stated in one of its recent judgment that for foreign awards, the narrow definition of public policy, as previous defined in *Renusagar Power Co. vs. General Electric Co.*⁴, must be applied. This means that enforcement of a foreign award will only be refused on grounds of public policy, if the award is contrary to: (i) a fundamental policy of Indian law; or (ii) the interest of India; or (iii) justice or morality.

In *Oil & Natural Gas Corporation Ltd. vs. Saw Pipes*⁵, the issue was whether an award could be set aside on the ground that the arbitral tribunal had incorrectly applied the law of liquidated damages to the case. The question turned around the scope of Section 34 of the 1996 Act. Earlier, the Apex Court in the *Renusagar* case laid down the criteria for refusal to enforce a 'foreign award'. In the case of *Saw Pipes*, the Court added one more ground of 'patent illegality' that is when 'the award is contrary to the substantive provisions of law or the provisions of the (1996) Act or against the terms of the contract.' The Court in *Saw Pipes* case confined the expansion of public policy to domestic awards alone as an earlier larger Bench decision of the court in the case of *Renu Sagar* had construed narrowly this ground as limited to 'fundamental policy of Indian law'. However, a recent decision of the Supreme Court in the case of *Venture Global Engineering vs. Satyam Computer Services*⁶ held that the wider interpretation of 'public policy' would apply to foreign awards as well.

Enforcement Statistics of Foreign Awards

High Court and Supreme Court (1996 to September 2007)
(Foreign Awards)

Sl. No.	Grounds	Total No. of challenges	Allowed	Rejected	Modified
1.	Jurisdiction	5 29.41%	--	5	--
2.	Public Policy	3 17.64%	--	2	1
3.	Technical grounds (petition to be made under S.48 not under S.34)	3 17.64%	--	3	--
4.	Requirement of separate execution proceedings	2	--	2	--
5.	No grounds or reasons in award	1	--	1	--
6.	Petition filed for winding up on the basis of foreign award	1	--	1	--
7.	No arbitration Agreement	1	1	--	--
8.	1996 Act does not apply	1	--	1	--

Source: *Asian International Arbitration Journal*, 2008, vol.4, number 1, page 81

(Footnotes)

⁴ 994 Supp (1) SCC 644

⁵ (2003) 5 S.C.C. 705

⁶ CA No 309 of 2008 (10 January 2008)

Unenforceable awards

Under Section 48 and 57 of the Arbitration and Conciliation Act, an Indian Court can refuse to enforce a foreign arbitral award if it falls within the scope of following defenses:

- (i) the parties are under some incapacity;
- (ii) the agreement is void;
- (iii) the award contains decisions on matter beyond the scope of the arbitration agreement;
- (iv) the composition of the arbitral authority or arbitral procedure was not in accordance with the arbitration agreement;
- (v) the award has been set aside or suspended by a competent authority of the country in which it was made;
- (vi) the subject matter of dispute cannot be settled by arbitration under Indian Law, or
- (vii) the enforcement of the award would be contrary to Indian public policy.

EPILOGUE

The UNCITRAL Model, which has been adopted in India for establishing the arbitration laws, is commendable. It certainly is a positive step taken forward for settling conflicting issues. It can be noted that globalization of the Indian economy in the early nineties and the consequential economic reforms demanded the need and existence of an effective dispute resolution mechanism to quickly settle arising disputes. The 1996 Act was enacted to achieve this purpose of quick and cost-effective dispute resolution. It confers broad powers on arbitral tribunals with respect to determining their jurisdiction, embedding legal diversity. Considered on various criterions, India does have the potential to qualify as having an arbitration-friendly jurisdiction. There are noble opportunities, which have been utilized and also are ahead of us that we are yet to discover.

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If wrinkles must be written upon our brows, let them not be written upon the heart.
The spirit should never grow old.
~James A. Garfield~

However, there are few recommendations, which need to be addressed. The Arbitration Act is complex and thus simple interpretation is required than making it more multifaceted. Few suggestions are mentioned hereunder:

- All stakeholders - arbitrators, judges and lawyers- should make efforts to change general attitude towards arbitration. Despite the 1996 Act's prohibition of judicial intervention, (i.e. 'no judicial authority shall intervene except where so provided in [that] part.')
- The government should propagate knowledge of the benefits of alternate dispute resolution mechanisms to foster growth of domestic and international arbitration culture amongst lawyers, judges and national courts. There must not be lack of awareness.
- The judicial interventions with arbitral proceedings and awards in India have established a discrete division of law, which is the 'law of arbitration'. This tendency clearly aggravates the foundational aim of providing for arbitration clauses - which is to ensure speedy and efficient dispute-resolution in the commercial context.
- One of the main issues is that an arbitral tribunal has no mechanism to enforce its own direction. For this reason, it can be stated that the arbitral tribunal does not have any coercive authority to secure implementation of its interim measures, which is not fair in itself. This can be considered as a major defect that weakens the entire arbitration mechanism, and at times makes it appear spiritless. If a tribunal has competence to rule on its own jurisdiction, it should also have competence to enforce its rule.
- Independent institutions should engage into training for development of competent professionals who want to get trained.
- The Government shall realize without failure that use of arbitration can help in reducing the burden of litigation on judiciary and thus promote it at a larger level.

Arbitration in India reveals that arbitration as an institution is still evolving, and has not yet reached the stage to impart accelerated justice. The interventionist instincts and expanded judicial review may cause an issue. The Indian courts are in ambiguity concerning their own interference and sometimes restrain themselves or not from interfering with arbitral awards. A subtle equilibrium is required so as the efficiency of arbitration process is not adversely affected. It is essential to maintain a balance along with safeguarding the foundational pillars of the arbitration. This can only happen when you look at each circumstance with a different perspective and take out an apposite solution for it. The Arbitration field in India is very much green and growing. It is the responsibilities of the judiciary to provide an effective mechanism to render justice and to make sure that everyone is treated equally and are not deprived of their rights.

(Footnotes)

⁷ Source: Arbitrating Commercial and Construction Contracts' published in ICA

The three things that are needed for success.
 TALENT, LUCK, DISCIPLINE
 DISCIPLINE is the ONLY one that you can control.
 ~Michael Chabon~

PUBLIC POLICY – CREATION OF LEGISLATURE OR JUDICIARY - II

SONAL SRIVASTAVA & PURNIMA SRIVASTAVA



How to make and shape “Public Policy” when no definite definition has been given till date. Judges do intervene in defining what constitutes public policy by interpreting it, so can we call it judicial legislation. If yes, then does it offend the principle which says that policies should be framed by legislature? In this article, the authors scrutinize the issue of defining the term ‘public policy’ by judicial pronouncement and analyses whether public policy is the creation of judiciary and not by the legislature. This is the second part of the article.

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Judicial Interpretation of Public Policy: Fraud, Misconduct or Corruption as a Ground for Setting Aside the Arbitral Award.

Section 34(2)(b)(ii) provides that an award induced or affected by fraud or corruption is in conflict with the public policy of India and the same can be set aside by the court under section 34(2)(b)(ii). Fraud is defined under section 17 of the Indian contract act. Fraud includes

- (i) The suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
- (ii) The active concealment of a fact by one having knowledge or belief of the fact;
- (iii) A promise made without any intention of performing it;
- (iv) Any other act fitted to deceive;
- (v) Any such act or omission as the law specially declares to be fraudulent.

Silence does not amount to fraud but where there is a duty to speak and the person intentionally keeps silence then its deliberate act of not speaking amounts to fraud.

Misconduct on the part of the arbitrator is a ground under Explanation to section 34(2)(b)(ii) for setting aside

an arbitral award so far such misconduct lies in fraud or corruption. In *Payyavule v. Payyavule Kesanna*¹, the Supreme Court set aside an award where the arbitrator took statements from each of the parties in the absence of

(Footnotes)

¹ AIR 1953 SC 21

the other and made the award. In *Dewan Singh v. Champat Singh*², it was held that it is a misconduct on the part of an arbitrator to use personal knowledge for deciding the dispute before him unless so authorised by the reference.

Corruption on the part of an arbitrator means moral obliquity. For an allegation of corruption, it is not always necessary that the arbitrator should have been bribed, nor is it necessary that there should be some other form of venality or gross immorality or flagitious conduct. Corruption may take a milder form. But there must be some privity of mind; some perversion of the moral feeling, either by interest or passion or partiality³.

Public Policy Creation of Legislature or Judiciary

The word public policy is not defined either in the Arbitration and Conciliation Act nor in any other Act. Therefore the construction and interpretation of this term has been entirely the work of the Judiciary. The court went on so far as to hold that since the expression "public policy" covers the field not covered by the words "and the law of India", which follow the said expression, contravention of law alone will not attract the bar of public policy and something more than contravention of law is required.⁴

The expression "in conflict with the public policy of India" is widely worded, and deliberately, so as to permit challenges which were not permissible earlier.⁵ However for reasons given earlier, this view is not justified. Inspiration is derived from the judgment in *Central Inland Water Transport Corporation Ltd. v. Braja Nath Ganguli*⁶ that as new concepts take place of old, transactions which were once considered against public policy are now being upheld by the Courts and similarly where there has been a well-recognized head of public policy, the Courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy and the observation of the Supreme Court that, lacking precedent, the Court can always be guided by the light of the preamble to the Constitution and the principles underlying the fundamental rights and the directive principles enshrined in our Constitution.⁷

(Footnotes)

² AIR 1970 SC 967

³ Cameron v. Menzies, [1868] 6 M 279

⁴ Renuagar Power Co. Ltd. v. General Electric Co.

⁵ Hindustan Petroleum Corporation Ltd. v. Batliboi Environmental Engineers Ltd., and Anr., Arbitration Petition No. 280 of 1999, dated 4.12.2000.

⁶ AIR 1986 SC 1571.

⁷ Vijaya Bank V. Maker Development Services Pvt. Limited, 2001(4) ALLMR143.



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Judicial interference against the arbitral award which has been time and again came up before the courts for consideration wherein the views of the courts including this court is consistent that the court while deciding Section 34 objection cannot culminate into the appellate court to decide every legal and factual issue. It is only those errors of patent illegality, without jurisdiction or biasness or against the Public policy where in the awards seems to be unsustainable, the courts are empowered to interfere and not in all other cases to correct errors committed by the Arbitrator.

It is equally trite that the court hearing the objections under section 34 of the Act shall not interfere in the arbitral award to substitute its own opinion or where there are two views possible, the court would have arrived at another view if the court were to hear the proceeding originally will not invite judicial interference under Section 34 of the Act.

In *Oil and Natural Gas Corporation's v SAW Pipes Ltd.*,⁸ the Supreme Court has considered the scope of interference of arbitral award on the ground of Public policy in great detail and observed that the phrase 'Public policy of India' is not required to be given a narrower meaning and that wider meaning is required to be given, so as to prevent frustration of legislation and justice, the Supreme Court has held thus:

Therefore, in our view, the phrase "Public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of Public policy connotes some matter which concerns Public good and the Public interest. What is for Public good or in Public interest or what would be injurious or harmful to the Public good or Public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in Public interest. Such award /judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "Public policy" in *Renusagar case*⁹ it is required to be held that the award could be set aside if it is patently illegal. The result would be -award could be set aside if it is contrary to:

- (a) Fundamental policy of Indian law; or
- (b) The interest of India; or
- (c) Justice or morality, or
- (d) In addition, if is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the Public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to Public policy and is required to be adjudged void."¹⁰

Public Policy: At International Level

Traditionally, domestic courts involves in arbitral proceedings when the agreement between the parties itself calls for it , finally when the matter is identified as the matter to refer for arbitration next question arises as whether the issue involves the area where public policy dictates, all such disputes are resolved by the courts.¹¹

Judicial review of foreign or even domestic awards is very rare in order to ensure arbitral finality and is limited to enforcement of the terms of the arbitration agreement and to ensuring that no violation of due process or public

(Footnotes)

⁸ AIR 2003 SC 2629.

⁹ 1994 Supp. (1) SCC 644.

¹⁰ Mahanagar Telephone Nigam Limited V. M/s Telephone Cables Ltd., 2012 VAD (Delhi) 784 , 190 (2012) DLT 227.

¹¹ Kenneth M. Curtin, An Examination of Contractual Expansion and Limitation of Judicial Review of Arbitral Awards ,Ohio State Journal On Dispute Resolution, Vol.15, No.2, 3371999-2000.

policy has occurred. While most states don't allow the judicial review of arbitral awards, public policy is one exception which has been accepted by most courts. There are conflicting opinions on the matter sometimes even within the country.

even in such jurisdictions whose courts have rejected the public policy exception, some potential exists so that totally unconscionable arbitral awards which are a violation of the public policy may be reviewed.

Enforcement of Foreign Arbitral Awards

Almost all the countries in the world unanimously agree that public policy is a ground on which a foreign award can be refused to be executed in a country even Art.5(2)(b) of The UNCITRAL Convention on the Recognition and Enforcement of Foreign Arbitral awards popularly known as the New York Convention states that *the recognition and enforcement of foreign arbitral awards may be refused on grounds of public policy*. This convention as of 2014 has been ratified and adopted by 149 countries including India and is one of the most followed convention on the subject of foreign arbitral awards. Replication of this provision (Art.5(2)(b)) is found in the domestic laws of many nations including India i.e., Sec. 48 of the Arbitration and Conciliation Act,1996.



VALUE OF THINGS!

A crow lived in the forest and was absolutely satisfied in life. But one day he saw a swan. "This swan is so white," he thought, "and I am so black. This swan must be the happiest bird in the world."

He expressed his thoughts to the swan. "Actually," the swan replied, "I was feeling that I was the happiest bird around until I saw a parrot, which has two colours. I now think the parrot is the happiest bird in creation."

The crow then approached the parrot. The parrot explained, "I lived a very happy life, until I saw a peacock. I have only two colours, but the peacock has multiple colours."

The crow then visited a peacock in the zoo and saw that hundreds of people had gathered to see him. After the people had left, the crow approached the peacock. "Dear peacock," the crow said, "you are so beautiful. Every day thousands of people come to see you. When people see me, they immediately shoo me away. I think you are the happiest bird on the planet."

The peacock replied, "I always thought that I was the most beautiful and happy bird on the planet. But because of my beauty, I am entrapped in this zoo. I have examined the zoo very carefully, and I have realized that the crow is the only bird not kept in a cage. So for past few days I have been thinking that if I were a crow, I could happily roam everywhere."

That's our problem too. We make unnecessary comparison with others and become sad. We don't value what we have. This leads to the vicious cycle of unhappiness. So live your life ahead valuing the things that you have.

However Insofar as the public policy defense to the enforcement of an award even under this convention the courts have interpreted it in a very narrow manner, such a defense will only be sustained if enforcement of the award would “offend most basic notions of morality and justice.”¹²

There might be some difference when it comes to common law and civil law countries especially when it comes to terminology. While most countries which are influenced by the British legal system adopt the terminology public policy some states adopt wordings like Public order, etc. However the change in the phraseology is not of any significant importance. In recognizing arbitral awards made in Taiwan, China, Hong Kong or Macau, regard is paid to public policy and similar concepts. The judiciary of the Hong Kong Special Administrative Region (HKSAR), out of the influences of the British legal system, employs the term of “public policy,” while the Court of Appeal of the Macau Special Administrative Region (MASAR) uses the term of “public order,” as set out in their Civil Procedure Code. With respect to Taiwan, while public order and good morals are different concepts, the courts tend to combine and examine these two concepts altogether. In the case of China, it points to the social and public interests which also slightly differs from the aforementioned concepts. However, except in the case of HKSAR, the courts seldom elaborate on these concepts.¹³

However, it is still very difficult to define what constitute public order or good morals. Courts precedents, despite not too many, may provide some directions in this respect. Because neither the New York convention nor any domestic law defines what public policy is, therefore sometimes the court go out of way to overturn an arbitral award. ¹⁴

Conclusion

The power to make the law is inherited with legislature and in case of dispute judiciary is there is interpret it and make it handy for the parties so that benefit can be given to the parties who rightfully claim it. Public policy as described above has no specified definition and the power is vested with judiciary to prescribed its limits and set its scope as per the requirement to find the amicable solution.

The court almost thought the world unanimously recognized that they have no authority to review the award in relation to its substance. Each country has adopted its own way of interpreting public policy like Russia interpreted the term in such a manner that the recognition and enforcement of an arbitral award would be contrary to the *public policy* of the Russian Federation only if the enforcement of the award would violate the sovereignty and would endanger the security of the country, or contradict the fundamental principles of the Russian legislation.¹⁵ Therefore we can say that some countries have adopted a much liberal form while interpreting the word public policy. Although Art.5 of the New York convention makes public a universally accepted defence for the non enforcement of foreign arbitral awards no country has been able to come up with a satisfactory inclusive definition of what exactly public policy constitutes. The public policy exception is only to be employed “where enforcement would violate a forum state’s most basic notions of morality and justice.” ¹⁶

(Footnotes)

¹²Michael F. Hoellering, Arbitration in the United States, Proceedings of the Annual Meeting (American Society of International Law), Vol. 76 (APRIL 22-24, 1982), pp. 175-178.

¹³Chien-Huei Wu, Mutual Recognition of Arbitral Awards Among Taiwan, China, Hong Kong And Macau: Regulatory Framework And Judicial Development, 3 Contemp. Asia Arb. J. 65 2010.

¹⁴Pei-Kan Yang, Exploring A Recent Judicial Dilemma On Recognition And Enforcement Of People’s Republic Of China Arbitral Awards In Taiwan (Republic Of China, 2 Contemp. Asia Arb. J. 117 2009.

¹⁵Alexander S. Komarov, Enforcement of International Arbitral Awards on the Territory of the Russian Federation, US-China Law Review , Feb.2005, Vol. 2, No.2 (Serial No.3).

¹⁶Parsons & Whittemore Overseas Co. v. Societe Generale de L’Industrie du Papier (Rafta), 508 F.2d 969, 974 (2d Cir. 1974).

If you face the light,
the shadows MUST fall behind you.

In an international arbitration (i.e., an arbitration involving two or more nations and citizens of two or more nations), an enforcing court needs to take cognizance not only of its own public policy, but also the public policy of other interested nations and the special needs of international commerce. Consequently, international public policy consists of those national public policy concerns that also should be applied in an international context.¹⁷ One nation's public policy "should prevail only if warranted by the nature of the dispute," statute, or public policy objective involved, which should be determined by comparing the connections existing between the case at hand and each of the nations involved in the dispute.¹⁸

In domestic arena also public policy has been given an equivalent importance. The provision of overturning arbitral award on the basis of public policy could be termed as *judicial legislation* on the whole. Public policy in modern times is the judicial legislation in which the judges are required to indulge themselves for the benefit of the parties because ultimate aim of judiciary is making the uphold the claim of the needful party by recognizing their rights and giving them proper remedy against all the odds. Thus we could say that the public policy is the creation of the judiciary and not the legislature in strict sense.

(Footnotes)

¹⁷ Mark A. Buchanan, Public Policy and International Commercial Arbitration, AM. Bus. L.J. 511, 513 (1988).

¹⁸ Andreas Bucher & Pierre-Yves Tschanz, International Arbitration In Switzerland 105 (1989).

Lawyers should never ask grandmas a question if they aren't prepared for the answer!

In a trial, a small-town prosecuting attorney called his first witness, an elderly grandmother to the stand. He approached her and asked; "Mrs. Jones, do you know me?"

She responded, "Why, yes, I do know you, Mr. Williams. I've known you since you were a young boy, and frankly, you're a big disappointment to me. You lie, cheat on your wife, manipulate people and talk about them behind their backs. You think you're a big shot when you haven't the brains to realize you never will amount to anything more than a two-bit paper pusher. Yes, I know you."

The lawyer was stunned! Not knowing what else to do, he pointed across the room and asked, "Mrs. Jones, do you know the defense attorney (the opponent's lawyer)?"

She again replied, "Why, yes, I do. I've known Mr. Bradley since he was a youngster. He's lazy, bigoted, and has a drinking problem. He can't build a normal relationship with anyone and his law practice is one of the worst in the state. Not to mention he cheated on his wife with three different women. One of them was your wife. Yes I know him."

The defense attorney almost died.

The judge asked both lawyers to approach the bench and in a quiet voice said: "If either of you rascals asks her if she knows me, I'll send you to jail for contempt of court!!!"



NEWS & EVENTS



INDIAN ARBITRATION LAW AMENDED

The amendments to the Arbitration and Conciliation Act, 1996, aimed at sending a signal to the international community that settling commercial disputes in India is no more a difficult and costly proposition, was cleared by the Union Cabinet recently. One of the key amendments to curb delay in arbitration is to stipulate a condition that the arbitrator in a commercial dispute will have to settle the case in nine months unless the High Court grants an extension.

MEDIATION MANDATORY IN MATRIMONIAL DISPUTES

The High Court of Karnataka, India has held that not referring matrimonial disputes for mediation would amount to “breach” of the law that enables amicable resolution of such cases. Direction was issued to all the Family Courts in the State on noticing that a judge of a Family Court in Bangalore in August this year had refused to refer for mediation the plea of a 26-year-old man, based in Washington in US, to declare his marriage as “null and void *ab initio*”. The Court said that the Family Courts have “no discretion” whether to refer or not a matrimonial dispute for settlement through mediation.

ASIA PACIFIC INTERNATIONAL MEDIATION SUMMIT, NEW DELHI

The American Bar Association in association with UNCITRAL is conducting the International Mediation Summit at New Delhi from February 12-15. The Summit will engage a range of experienced dispute resolution practitioners, academics, judges, attorneys, mediation and arbitration professional organizations, and users such as international corporate representatives and government entities. The Summit will focus on a wide variety of topics including building sustainable mediation programs, best practices in court-connected and community mediation programs, commercial mediation, cross-border international mediation, the enforceability of international mediation agreements, and the future of mediation in Asia.

Details can be found at <http://www.arbitrationindia.org/htm/events.html>

CIARB – CENTENARY YEAR CONFERENCE, 2015

Chartered Institute of Arbitrators (East Asia Branch) is organizing a two day conference to celebrate its centenary year in 2015. The Conference is widely perceived as one of the major events on the international arbitration and dispute resolution calendar. It is used as a platform by many prominent members of the ADR community from across the globe to address important issues and developments in international arbitration. The theme for the Conference is: "A Century - Shaping the Future of Arbitration". This two day conference will be held on 20 & 21 March 2015 at Marriot, Hong Kong. Indian Institute of Arbitration & Mediation (IIAM) is a supporting organization for this event. Details can be found at <http://www.arbitrationindia.org/htm/events.html> and http://www.ciarbasia.org/Centenary_Celebration/

DIPLOMA IN INTERNATIONAL COMMERCIAL ARBITRATION

Chartered Institute of Arbitrators (Australia) is conducting the 'Diploma in International Commercial Arbitration' in Sydney from 18-26 April 2015, which is a pre-eminent tertiary international course offering a prestigious globally recognised qualification. During an intensive 9 day program, students will be taught the practice of international commercial arbitration, covering major forms of arbitration and arbitration institutions such as ACICA, ICC and CIETAC, and will gain the ability to appear in or act as an arbitrator or counsel in different contexts. IIAM is the supporting organization for the course. Details can be found at <http://www.arbitrationindia.org/htm/events.html> and <http://www.ciarb.net.au/sites/www.ciarb.net.au/files/files/ciarbdiplomacourse2015flyer.pdf>.

Upcoming Training Programs from

INDIAN INSTITUTE OF ARBITRATION & MEDIATION
institution for dispute resolution & management

CERTIFICATE IN DISPUTE MANAGEMENT (CDM)

CDM is an ongoing distance learning course of IIAM, valid for six months from the date of enrolment. You can enroll at any time of year and you study entirely at your own pace, submitting your assignments when you are ready. Your tutor will be available to mark your assignments and give feedback on your progress for a period of six months from the date of enrolment. You will be sent four 'reading and study assignments' with your course materials, and these form an essential part of your distance learning course. They are designed to help you to work through the course manual and understand the concepts. The course will provide a good basic knowledge of ADR – Negotiation, Mediation & Arbitration – in theory and practice. On successfully completing the assignments included in the course a certificate will be awarded. For more details mail to training@arbitrationindia.com

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