University Doctoral (PhD) Dissertation Abstract

A Comparative Study of Recognition and Enforcement of Arbitral Awards in International Commercial Arbitration in the light of Public Policy exception

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a. Aim of the Research

The dissertation is conducted to examine the concept of International Commercial Arbitration in various jurisdictions and develop an understanding of its enforceability and applicability, and the use of public policy defense in recognition and enforcement of arbitral awards. Thus, to fulfill the said purpose, the main purpose of this research is: i) to examine the arbitration laws in different legal systems (Asia, Europe, and America) especially focusing on the enforcement and recognition of arbitral awards and draw a comparative study, ii) to study various case studies in international commercial arbitration and analyze the problems faced in the Recognition and Enforcement of International arbitral awards, iii) detailed study of public policy defense implications with the help of various case laws and text materials to identify its crucial main points since arbitration policies on the concept of public policy have not been fully researched and its consequences remain in the realm of the unknown, and iv) to identify the crucial main points of research, its purpose, and its findings, which could guide the development of the structure of the dissertation. To verify the above aims, the dissertation addresses the following five research questions and hypotheses:

1. Does the enforceability and applicability of international commercial arbitration differ significantly across legal systems in Asia, Europe, and America?
2. Is the recognition and enforcement of International arbitral awards often hindered by various challenges, including differences in legal systems, cultural differences, and jurisdictional conflicts?
3. Is public policy defense a crucial concept in international commercial arbitration and has a significant impact on the enforceability and applicability of arbitral awards?
4. Does comparative analysis of international commercial arbitration laws across legal systems provide insights into best practices and areas for improvement in the recognition and enforcement of arbitral awards?
5. Is the use of international commercial arbitration as a means of dispute resolution likely to continue to increase due to its flexibility and efficiency, despite ongoing challenges related to recognition and enforcement?

b. Methodology and Research Structure

Research Design: The Author has conducted qualitative research to gather in-depth information and understand the concept of international commercial arbitration in different legal systems. Comparative research is also conducted to examine the arbitration laws in different legal systems (Asia, Europe, and America) with a specific focus on the enforcement and recognition of arbitral awards. The Author has analyzed various case studies from diverse forums, including national courts, arbitration forums, the European Court of Justice, and the International Center for Settlement of Investment Disputes, to identify the problems faced in the recognition and enforcement of international arbitral awards, and to develop a detailed study of public policy defense implications.

Data Collection: The Author has collected primary data through a thorough review of relevant works of literature, including books, academic journals, research papers, case laws, precedents, statutory interpretations, and customary laws from various jurisdictions necessary for the research. The Author has collected secondary data from online databases and repositories such as LexisNexis, Westlaw, and HeinOnline.

Sampling: The Author has done purposive sampling to select cases and jurisdictions for analysis based on the relevance to the research questions.

Data Analysis: The Author has analyzed collected data using a thematic analysis approach, which involves identifying key themes and patterns across the data set, and comparative study identifying similarities and differences in the arbitration laws of different legal systems using case studies.

Limitations: The Author's research is limited to the available literature and case studies, which may not be comprehensive or fully representative of all jurisdictions and legal systems. The research may bias the differences within the legal frameworks since each one is complex and influenced by many different external factors. The research is also limited by language barriers, as the Author is proficient in English and may not be able to access or analyze materials in other languages. The investigation does not particularly look at how cultural differences influence on recognition of arbitral rulings. Cultural differences might influence how laws are interpreted and how prepared courts are to maintain arbitral decisions. At last, the study observes that although there are numerous points of interest to international commercial arbitration, not all sorts of conflicts or parties may be suitable for it.

c. Relevance and Scope of the Research

The concept of arbitration has slowly evolved as a method to settle disputes outside of courts. With increasing business transactions at national and international levels, today, arbitration is one of the most sought-after dispute resolution mechanisms and is legally binding upon parties. It allows parties to resolve disputes by independent arbitrators which makes it a neutral process.[1] The dissertation focuses on the defense of *public policy* in recognition and enforcement of arbitral awards, which is becoming increasingly important in the context of international trade and investment disputes. In general language, public policy refers to a set of guidelines that are considered fundamental to society and reflected in rules and regulations. However, public policy serves as a restraint for the recognition and enforcement of an arbitral award and can be used to set aside an award that violates public policy. There are instances when the losing party refuses to comply after the arbitral tribunal has issued an arbitral award, and the winning party seeks enforcement in the local court in which the losing party is situated. In contrast, the enforceability of the award is

[1] Tresham, Jessica, et al. "Why Is Arbitration so Popular in Cross-Border Disputes?" *Womble Bond Dickinson*, 9 Feb. 2023, www.womblebonddickinson.com/uk/insights/articles-and-briefings/why-arbitration-so-popular-cross-border-disputes.

rejected on the grounds of violation of the public policy of that country.[2] The lack of enforcement of arbitral awards may lead to complex issues, calling for effective strategies ahead of time.[3] Thus, it is critical to inspect the effective approaches that can be employed to avoid complex issues related to the lack of enforcement of arbitral awards. The study will promote greater consistency in international commercial arbitration decisions and build parties' confidence in the international arbitration practice.

d. Findings of the Research

(i) Public Policy in Europe

- ***Belgium***

Belgium is a host to major multinational corporations and international organizations, which makes it a popular place with a growing market and trade. The Belgian law on arbitration was previously governed by the Belgian Judicial Code (BJC), which was amended by the Arbitration Act of 2013, applying to both domestic and international arbitrations.[4] The Act was later amended by the Arbitration Act of 2016. With Brussels as a hotspot for arbitration hosting organizations like the ICC Belgium and CEPANI (the Belgian Center for Arbitration and Mediation), the arbitration trends are approaching more effective and harmonized dispute resolution methods. Belgium has ratified the many important international conventions on arbitration, including the New York Convention, ICSID Convention, as well as the European Convention on International Commercial Arbitration. The Domestic Belgian Law provides public policy defense as a valid ground for refusal of recognition and enforcement of an arbitral award.[5] The Belgian public policy defense can be used in cases of violation of competition laws, anti-suit injunctions[6], failure to respect the rights of the defense or violation of rules on consumer protection.

- ***Switzerland***

Switzerland is one of the most popular seats for international arbitration disputes. With its well-developed system and pro-arbitration attitude, Switzerland promotes active dispute resolution since the recognition and enforcement of arbitral awards can only be set aside for limited reasons. The international arbitration law in Switzerland is governed by the 12th

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[2] Dar, Wasiq Abass. (2015). Understanding public policy as an exception to the enforcement of foreign arbitral awards. European Journal of Comparative Law and Governance, 2(4), 316-350.

[3] Style, Christopher, & Balthasar, Stephan. (2012). Enforcing international arbitral awards: pitfalls and strategies. Dispute Resolution International, 6(1), 3-16.

[4] The Arbitration Act of 2013 is largely based on the UNCITRAL Model Law on International Commercial Arbitration (1985). The 2013 Arbitration Act is incorporated in Schedule VI of the Belgian Judicial Code (from articles 1676 to 1722 BJC).

[5] Article 1712 (1) of the Belgian Judicial Code (BJC) states that "If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties, shall record the settlement in an award on agreed terms, unless this violates public policy". Also, Article 1717 states that "The award may only be set aside if it is in conflict with public policy".

[6] Petillion, Flip, et al. "Arbitration Procedures and Practice in Belgium: Overview." *Thomson Reuters Practical Law*, 1 July 2022, uk.practicallaw.thomsonreuters.com/Browse/Home/PracticalLaw?contextData=(sc.Default).

chapter of the Federal Act on Private International Law, 1987 (PILA) which was enacted in 1989. The law was recently revised in 2020, which did not bring any major changes to the arbitration proceedings. Even though PILA is not based on UNCITRAL law, the provisions of PILA very well reflect the commitments of UNCITRAL Model Law. Switzerland has also signed and ratified the New York Convention, of 1958, and hosts arbitration institutions such as the ICC, and the Swiss Chambers Arbitration Institution (SCAI)[7]. The domestic arbitration proceedings are however governed by the Swiss Civil Procedure Code (CPC)[8]. The CPC provides for an advanced arbitration structure that is in line with the laws governing international arbitration. For any award to remain within the limits of Swiss law, the award must not be against the concept of Swiss public policy. Also, the recognition and enforcement of foreign arbitral awards are governed by the New York Convention, of 1958.[9]

- ***France***

The Arbitration laws in France are governed by the French Code of Civil Procedure and like most nations, are not based on UNCITRAL Model Law. The French courts have usually adopted a very noninterventionist approach while interpreting the questions of public policy. The French decree on arbitration law defines international arbitration as "*an arbitration is international when international trade interests are at stake*."[10] The law puts a clear distinction between national and international arbitration. Article 1514 of the Decree n° 2011-48 of 13 January 2011 on the New French Law on International Arbitration clearly states that an award can be recognized and enforced if the "*party relying on it can prove its existence*" and the award is not in contradiction to the "*international public policy*".[11] An award can be only set off if its recognition and enforcement are in contradiction to the international public policy for the awards made in France as well as awards made abroad.[12] However, there have been instances when the French courts found public policy breaches when the arbitrators contravened the impartial and independence norms such as creating *inequality* between the parties[13]. The other public policy grounds for refusing the enforcement of an arbitral award include arbitration of insolvency disputes[14], or the original arbitration contract contradictory to public policy

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[7] The Swiss Chambers of Arbitration (Zurich, Basel, Bern, Geneva, Lausanne and Lugano) adopted the Swiss Rules of International Arbitration in 2004 based on the UNCITRAL Model Law on International Commercial Arbitration (1985).

[8] Article 353-399 of Swiss Civil Procedure Code (CPC) of December 19, 2008

[9] Article 194 of Federal Act on Private International Law, 1987 explicitly states that "the recognition and enforcement of a foreign arbitral award is governed by the New York Convention of June 10, 1958 on the Recognition and Enforcement of Foreign Arbitral Awards".

[10] Decree n° 2011-48 of 13 January 2011 on the New French Law on International Arbitration.

[11] Article 1514 of the Decree n° 2011-48 of 13 January 2011 on the New French Law on International Arbitration.

[12] Article 1520 of the Decree n° 2011-48 of 13 January 2011 on the New French Law on International Arbitration.

[13] Refer Case *Soc. Excelsior Film TV v. Soc. UGC-PH*, Court of Cassation, France, 24 March 1998, 95-17.285.

[14] Refer Case *Jean Lion et Cie S.A. v. International Company for Commercial Exchanges,* Court of Cassation, France, 6 May 2009, XXXV Y.B. Com. Arb. 353 (2010).

rules[15], issues of anti-trust laws[16], or fraud[17]. The French Courts may only set aside an award strictly limited to the five (5) grounds, which excludes the refusal on the grounds of error of fact or law, or merits of the case.[18] Nonetheless, the international arbitration practices in France enjoy a more laissez-faire attitude. The decisions denying the enforcement of arbitral awards are exceedingly rare and there is minimum interference of domestic courts in arbitration proceedings. Both in domestic and international arbitration, there is an evident autonomy of the arbitral process from the judiciary.

- ***United Kingdom***

The Arbitration Act of 1996 governs arbitration in England, Wales, and Northern Ireland in the United Kingdom (UK). UK hosts one of the major international arbitration institutions in the world i.e. The LCIA. The UK is a party to both the New York Convention and the Geneva Convention. The Arbitration Act of 1996 governs enforcement of both, the domestic and the international arbitral awards. Section 66 of the act states that an award must be enforced similarly as a "*judgment or order of the court to the same effect*" or the same can be converted into a court judgment.[19] This section can be applied to domestic awards as well as international awards, however, there is a high possibility of the court's interference. Sections 67 to 69 of the act provide a wide range of exceptions for challenging the enforcement of an award based on substantive jurisdiction, serious irregularity, and point of law. English common law does not make any distinction between domestic and international arbitration proceedings, making the scope wider for the annulment of an award. Section 68 of the act states that an award may be annulled if "*the award being obtained by fraud or how it was procured being contrary to public policy*".[20] The Arbitration Act of 1996 also recognizes the enforcement of foreign awards under Part III of the act which specifically deals with the Enforcement of Geneva Convention awards and New York Convention awards. Section 103(3) of the act gives effect to Article V(2)(b) of the New York Convention, i.e., the recognition and enforcement of an arbitral award may be refused on the grounds of public policy.

- ***Germany***

Most developed countries have a similar notion of public policy. The German arbitration law is governed by *Zivilprozessordnun*g (ZPO), 1879[21], i.e., the German Code of Civil Procedure applicable on all domestic as well as international arbitrations taking place in Germany. The German law adopted UNCITRAL Model Law in its Arbitration

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[15] Carbonneau, Thomas E., and Francois Janson. "Cartesian logic and frontier politics: French and American concepts of arbitrability." *Tul. J. Int'l & Comp. L.* 2 (1994): 193.
[16] Refer Case *Labinal v. Mors*, 1993 Rev. Arb. 645.
[17] Fouchard, Philippe, and Berthold Goldman. *Fouchard, Gaillard, Goldman on international commercial arbitration*. Kluwer Law International BV, 1999.
[18] Article 1520 of the Decree n° 2011-48 of 13 January 2011 on the New French Law on International Arbitration.
[19] Refer the Arbitration Act 1996 of the United Kingdom.
[20] Section 68 of the Arbitration Act 1996 of the United Kingdom.
[21] Zivilprozessordnung [ZPO] [Code of Civil Procedure]. Enacted 30 Jan. 1877, effective 1 Oct. 1879, Germany.

Amendment Act of 22 Dec 1997 reforming most of its provisions on the domestic and international arbitration. The German arbitration law does not provide a distinction between national and international arbitration and has always supported a pro-arbitration stance. The German courts have always interpreted the term public policy in a narrow sense. Unless the award is in contradiction to the justice or elements of law, mere violations of substantive German law do not constitute a violation of public policy. According to Section 1055 ZPO, an award passed has the similar effect as that of a court's judgment. The provisions of the ZPO provide for the enforcement of domestic awards as well as the grounds on which an award can be refused, based on similar grounds granted under Article 44(2) of the UNCITRAL Model Law.[22] The award is not reviewed based on the merits of the case, but only on the procedural shortcomings. Conversely, the foreign awards are governed by the New York Convention.[23] In a recent judgment, the German Court very well elucidated that the decision of a tribunal being erroneously rejected by the matter decided previously establishes a violation of public policy.[24]

- ***Hungary***

Hungary has consented to the accompanying worldwide regulations such as the New York Convention and the Geneva Convention. The arbitration laws were first enacted in Hungary in 1994 based on the UNCITRAL Model Laws. The new *Arbitration Act* was enacted in 2017 applicable to both the domestic as well as international arbitrations within Hungary. The law does not stipulate a distinction between domestic and international arbitrations, with no case laws classifying the same.[25]

The Hungarian Arbitration Law provides for the defense of public policy as a ground to oppose enforcement of an award i.e. An award may be refused if the arbitral award is contrary to the public policy and order of Hungary.[26] In 2003, the Hungarian courts were widely criticized when the Supreme Court refused to enforce an award based on a high attorney fee percentage which was deemed to be against public policy.[27] Nonetheless, the Hungarian courts have generally followed the narrow interpretation of public policy, and in cases of slight substantial and procedural breaches, and minor errors in law, the courts were averse to setting aside an award on the violation of public policy.[28]

Ádám Boóc's article presents a detailed examination of Hungary's legal landscape governing arbitral awards. It highlights the critical role of legal frameworks, such as the provisions of the old Hungarian Civil Code, in guiding arbitral decisions to ensure they

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[22] Section 1059(2) of the Zivilprozessordnung (ZPO), 1879 provides for provisions on recourse applications for setting aside an award.

[23] Section 1061 of the Zivilprozessordnung (ZPO), 1879 governs the recognition and enforcement of Foreign Awards.

[24] *Bundesgerichtshof (Federal Court Decision), decision of October 11, 2018 - I ZB 9/18.*

[25] Bermann, George A., 2014.

[26] Refer Section 47 (2)(bb) and Section 54(b) of the Act LX of 2017 on Arbitration.

[27] Case no. BH 2003.127, Supreme Court Judgement, Hungary.

[28] "Setting aside Arbitral Awards in Hungary Based on Public Order." *Smartlegal*, smartlegal.hu/publication/setting-aside-arbitral-awards-in-hungary-based-on-public-order. Accessed 06 Nov. 2023.

meet statutory requirements and uphold the parties' contractual agreements.[29] A notable case in this context is the Curia's decision in judgment number Gfv. 30.241/2022/5 related to the review proceedings for annulment of an arbitral award. The Curia clarified that while the applicants claimed the award violated public policy by applying *aequitas* without their consent, the Arbitral Tribunal had based its decision explicitly on Hungarian legal principles. This decision reflects adherence to the principles that arbitral decisions must align with the legal frameworks agreed upon by the parties, further reiterating the importance of procedural correctness and respect for the autonomy of parties in the arbitration process.[30] Even though the European Union member states have diverse cultures and backgrounds, the general approach followed by the member states share a common framework and interpretation of the defense of public policy at the International level.[31]

(ii) Public Policy in Asia

- ***India***

The history of arbitration in India dates to as early as the year 1772 in Bengal and was first applied uniformly all across India in 1940.[32] The Arbitration Act of 1940 was replaced by the Arbitration and Conciliation Act of 1996. The Arbitration and Conciliation Act of 1996 did not define the expression "*public policy*" or "*as opposed to public policy*", however, during the 2015 and 2019 amendment acts, the policymakers aimed to narrow down the definition of public policy. On various occasions, the Indian courts gave an interpretation of the meaning of public policy in their judgments. For instance, one of the landmark cases that discusses the issue of public policy is the *Oil and Natural Gas Corporation Ltd v. Saw Pipes Ltd*[33] case. The case refers to the possible meaning of the public policy of India. Thus, the concept of public policy is always an unsafe and treacherous ground for legal decisions[34].

Over the years, the Indian judiciary has given conflicting views on public policy. Such conflicting interpretation of the concept is a debatable topic as to whether public policy

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[29] Boóc, Ádám. "Observations on the Annulment of Commercial Arbitral Awards on the Grounds of Conflict with Public Policy in Hungarian Law." Benke, József (szerk.) H TEXNH MAKPH : Ünnepi Tanulmányok Kecskés László 70. születésnapja tiszteletére. Pécs (2023): 81-93.

[30] Curia Judgment No. Gfv. 30.241/2022/5, Review proceedings decision in relation to the action for annulment of an arbitral award. Also see Boóc, Ádám. "Observations on the Annulment of Commercial Arbitral Awards on the Grounds of Conflict with Public Policy in Hungarian Law." Benke, József (szerk.) H TEXNH MAKPH : Ünnepi Tanulmányok Kecskés László 70. születésnapja tiszteletére . Pécs (2023): 81-93.

[31] FERRETTI, Federico. "EU Internal Market Law and the Law of International Commercial Arbitration: Have the EU Chickens Come Home to Roost?." *Cambridge Yearbook of European Legal Studies* 22 (2020): 133-155.

[32] "What Is History of Arbitration in India." *Indian Dispute Resolution Centre*, theidrc.com/content/adr-faqs/what-is-history-of-arbitration-in-india#:~:text=The%20relatively%20modern%20and%20first,1772%2C%20during%20the%20British%20rule. Accessed 21 Dec. 2023.

[33] Case *Oil and Natural Gas Corporation Ltd v. Saw Pipes Ltd.,* AIR 2003 SC 2629.

[34] As observed by Lord Davey in Case *Janson v. Driefontein Consolidated Gold Mines Ltd*., (1902) AC 484, 500.

was a judge-made test or not. Due to a lack of concrete statutory definition, the judges have given it different interpretations which might be the result of their interpretations or attitude while deciding upon the case. Nevertheless, the landscape of Indian law is undergoing continuous developments and the Law Commission of India in its 246th Report proposed amendments to the Arbitration and Conciliation Act of 1996. These proposed changes aimed to refine the scope of public policy.[35] The Law Commission of India in its report attempted to restrict the interpretation of public policy by introducing explanatory statements and clarifications, which were later adopted in the 2015 amendment act. The explanatory statements[36] articulate the conditions under which an arbitral award is deemed to be in contravention of the public policy of India, only if:

1. the award is induced by fraud or corruption, or in violation of sections 75 or 81 of the Arbitration and Conciliation Act of 1996.[37]
2. the award is in contravention of the fundamental policy of Indian law.
3. an award conflicts with public policy if it goes against the fundamental notions of morality or justice.

The explanation further explains that while evaluating any violation of the fundamental policy of Indian law should not include a substantive review of the merits of the case. The policymakers aimed to make recognition and enforcement of arbitral awards to be less intricate in courts, by defining the concept of public policy. However, even after the 2015 and 2019 amendments, the courts have stepped in on numerous occasions with varying interpretations. In a 2015 judgment[38], the Supreme Court of India introduced the possibility of a merits review during the enforcement stage, diverging from the pro-enforcement as outlined in the recent amendments. It is still unclear how courts interpret the explanations as outlined in the 2015 and 2019 amendments and bring back some of the challenging grounds that the Law Commission of India intended to eliminate.

- ***China***

China ratified the New York Convention in 1987, enforcing the rules for the recognition and enforcement of foreign arbitral awards. The general rules of arbitration are found in the Civil Procedure Law (CPL) of the People's Republic of China 1991, applicable to both domestic and foreign arbitrations. The foreign awards in China are divided into 3 major

[35] Law Commission of India, Report No. 246 on Amendments to the Arbitration and Conciliation Act 1996, August 2014.

[36] Explanations in the 2015 Amendment to the Arbitration and Conciliation Act, 1996: Section 34 (Application for setting aside arbitral award) for domestic awards, and Section 48 (Conditions for enforcement of foreign awards) for foreign awards under the New York Convention, and Section 57 (Conditions for enforcement of foreign awards) for foreign awards under the Geneva Convention.

[37] Section 75 of the Arbitration and Conciliation Act, 1996 on Confidentiality mandates confidentiality in conciliation proceedings, and Section 81 on Admissibility of evidence in other proceedings restricts the admissibility of certain elements in arbitral or judicial proceedings arising from conciliation.

[38] Case *National Agricultural Cooperative Marketing Federation of India v. Alimenta S.A.,* AIR 2020 SUPREME COURT 2681.

parts: Convention awards, non-convention awards, and awards made outside the defined jurisdiction of Mainland China (i.e., Hong Kong, Taiwan, and Macau).[39]

The Supreme Court of China has introduced several judicial interpretations concerning the application of arbitration law. In the case of *Hemmofarm v. Yongning*[40], the Chinese Supreme People's Court refused to enforce an award on the grounds of public policy. The Court held that "*the competent courts in China had heard the disputes"* between both parties and that the foreign arbitral award which contradicted the previous Chinese court's judgment "*is a violation of China's judicial sovereignty and the jurisdiction of its judiciary*."[41] However, in other cases, the Chinese Courts showed a pro-arbitration approach while dealing on the grounds of public policy. In the *Mitsui case*[42], the Supreme People's Court opinionated that a violation of the laws of the People's Republic of China does not necessarily mean a violation of the public policy of China. The recent arbitration case laws in China have reflected a positive outlook on arbitration decisions by narrowing the scope of public policy, giving a signal to the international arbitration community about China's evolution into an arbitration-friendly environment in the country, and within the public policy.

(iii) Public Policy in the United States[43]

Any arbitral award has to go through several stages to assess it following the domestic laws before enforcement. This was initially called a double exequatur, a phenomenon not accepted by the United States or Russia after the Second Great War. But as international trade increased, so in 1958, the New York Convention was signed by the United States and Russia, being the primary signatories of the agreement. Later, the agreement was ratified by over 150 countries in the world to regulate the process of arbitration domestically.[44]

Before adapting to the New York Convention, the US courts had a very narrow view of interpreting arbitral awards following Article 5 (2b) of the FAA, the country was more inclined towards protecting national interests. This is visible in some of the important cases of the arbitration including the *Wilko v. Swan case*[45] where the arbitral awards were refused as it challenged the United States security laws and came in conflict with federal statute hence it was non-arbitrable. In another case of *Breman v. Zapata Offshore*

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[39] Bermann, George A., 2014.
[40] Case Hemofarm DD *and others v. Jinan Yongning Pharmaceutical Co., Ltd*., [2008] Min SiTa Zi No. 11.
[41] Xing, Xiusong. "Foreign Arbitral Award Refused Recognition and Enforcement on Public Policy Grounds." *Lexology*, Global Law Office, 4 Feb. 2010, www.lexology.com/Commentary/Arbitration-ADR/China/Global-Law-Office/Foreign-arbitral-award-refused-recognition-and-enforcement-on-public-policy-grounds#enforcement.
[42] Case *Mitsui Corporation (Japan) v. Hainan Textile Industry General Corporation,* [2001] Min Si Ta Zi No. 12.
[43] This section relies on the findings published in Nirwal, Gauri. "The Public Policy Exception and Refusal of Foreign Arbitral Awards in International Commercial Arbitration in the USA." *Jura: A Pecsi Tudomanyegyetem Allam-es Jogtudomanyi Karanak Tudomanyos Lapja* (2021): 111.
[44] McClendon, J. Stewart. "Enforcement of foreign arbitral awards in the United States." *Nw. J. Int'l L. & Bus.* 4 (1982): 58.
[45] Case *Anthony Wilko v. Joseph E. Swan*, et al, 346 U.S. 427, 74 S. Ct. 182 (1953).

Company[46], the companies agreed to resolve the dispute through arbitration, but their contract included an exculpatory clause that conflicted with the public policy. The US courts have opted for quite a *conservative approach* to the issue of public policy and refusal or enforcement of international arbitral awards.

(iv) Various interpretations of Public policy in the light of recognition and enforcement of Arbitral Awards

- ***Violation of Competition laws / Anti-trust laws***

The increasing intricacies of cross-border transactions have led to an increase in multiparty transactions, significantly challenging the applicable laws. However, the competition laws of Europe or any other jurisdictions completely ignore the arbitration process. Since arbitration is the formation of private autonomy, arbitration and competition laws are naturally contradicting and incompatible.[47] Today, European laws and international arbitration laws have become more intertwined. However, public policy is narrowly understood in many areas of the European Union. Violation of competition laws could arise in many ways in arbitration cases, such as one party alleging that the other party engaged in anti-competitive behavior, such as price-fixing, market allocation, or abuse of a dominant market position. Such allegations could lead to claims for damages, injunctions, or other remedies under competition law. Invoking the defense of public policy is the most common way for an EU Member State to justify an apparent breach of arbitration norms. In the case of *T-Mobile Netherlands BV et al. v. Raad van bestuur van de Nederlandse Mededingingsautoriteit,* the ECJ has ruled that EU competition policy may be interpreted in the context of public policy in annulling and enforcing national arbitral awards.[48] On the one hand, it is a basic idea of arbitration law that awards are in principle final and should enjoy a status akin to a final decision of a state court and can be set aside or denied enforcement only on exceptional grounds. On the other hand, competition law is a fundamental underpinning of modern legal systems that must be vigorously enforced and is thus part of public policy.

In the case of *Chromalloy Aeroservices v. the Arab Republic of Egypt*[49], the DC Circuit Court of Appeals refused to enforce an arbitral award that required the Egyptian company to pay damages for breach of contract, as the award was based on an illegal price-fixing agreement, and recognizing and enforcing the decision of the Egyptian court would violate the public policy of the United States. In such cases, public policy considerations play a significant role in the outcome of the arbitration decisions. An arbitrator must balance the interests of the parties with the public interest. However, in promoting and protecting competition, an arbitrator may be required to consider a variety of factors, such as the

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[46] Case *The Bremen v. Zapata Off-Shore Co*., 407 U.S. 1 (1972).

[47] Komninos, Assimakis. "Arbitration and EU competition law." *Available at SSRN 1520105* (2009).

[48] Case C-8/08 *T-Mobile Netherlands BV et al. v. Raad van bestuur van de Nederlandse Mededingingsautoriteit*, EU:C:2009:343.

[49] Case *Chromalloy Aeroservices v. Arab Republic of Egypt*, 939 F.2d 737 (D.C. Cir. 1991)

impact of the alleged anti-competitive behavior on consumers, the competitive structure of the relevant market, and the potential benefits and harms of any proposed remedies.

- ***Fraud***

Article V of the Convention includes a short and thorough list of grounds for refusing to recognize and enforce an award, including *fraud*. Most jurisdictions have adopted a narrow understanding of public policy, limiting its scope and interpretation. The courts need to take a flexible approach and identify whether the public policy would be damaged by the enforcement of the arbitration award.[50] The English courts have taken a restricted understanding of public policy *Sinocore International Co Ltd v. RBRG Trading (UK) Ltd.*,[51] where RBRG and Sinocore signed a sale contract in which RBRG committed to buy steel coils from Sinocore, and the contract included an arbitration clause regulated by Chinese law and required RBRG to make payments via an *irrevocable letter of credit*. The issue began when RBRG unilaterally changed the shipping date on the letter of credit. Sinocore contested that RBRG breached the contract unilaterally and the award was passed in favor of Sincore. RBRG requested to set aside the arbitral award on the grounds of public policy, but the Court of Appeal interpreted the definition of public policy in a narrow sense. The Paris Court of Appeal has many times overturned an award, claiming that enforcing it would be against public policy because the investment was made fraudulently. The Court of Appeals recently dismissed an ICC award because it was against public policy since the tribunal based its decision on forged documents, namely a memorandum of understanding that exempted the obligation to pay US$12.5 million.[52] Most EU courts have interpreted the public policy exemption narrowly, per the European viewpoint. As a result, challenges to the enforcement of awards on that basis have seldom been successful.

- ***Bribery and Corruption***

Bribery and corruption are the two illegal practices that can have profound consequences in arbitration, as in any other legal proceedings, and the prohibition of both is an essential element of nearly every country's public policy. Various international organizations such as the United Nations and the Organization for Economic Co-operation and Development (OECD) have developed international guidelines to combat corruption and bribery.[53] Today most countries have local legislation prohibiting bribery and corruption in judicial proceedings and ADR including arbitration conducted within their jurisdictions. For example, the Arbitration and Conciliation Act, of 1996 of India allows setting aside an arbitral award if the award conflicts with public policy affected by corruption.[54] In

[50] Case *Patel v. Mirza,* [2016] UKSC 42.
[51] Case *RBRG Trading (UK) v. Sinocore International, [2018] EWCA Civ 838.*
[52] Case *Société MK Group v. S.A.R.L. Onix et Société Financial Initiative*, Cour d'appel de Paris, 16 January 2018, No. 15/21703.
[53] United Nations Convention against Corruption 2003, the Organization for Economic Co-operation and Development (OECD) - Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
[54] Section 34 on "*application for setting aside arbitral awards*" of the Arbitration and Conciliation Act, 1996 of India.

this respect, at the transnational level, Article V2(b) of the New York Convention allows an award to be set aside by judicial bodies that have the effect of corruption. Corruption is seen as one of the major transgressions that many legal systems do not accept in both national and international settings and may have a substantial impact on the outcome of an arbitration proceeding, as it can undermine the impartiality and independence of the proceedings.

In a recent case, *Alstom v. Alexander Brothers*[55], significant circumstantial evidence of corruption prompted the annulment of an arbitral award. On 28 May 2019, the French Court of Appeals concluded that, after receiving extensive comments from the parties on these issues, there was sufficient circumstantial evidence that enforcement of the award would result in the execution of a corrupt transaction. The Court then proceeded to deny execution of the award on the grounds of corruption. While investigating accusations of corruption, the Paris Courts have repeatedly ruled that it has the power to assess the arbitral award based on facts and legal components. Bribery and corruption are serious issues that may affect the fairness and impartiality of arbitration proceedings and thus violate the public policy of that country. Arbitration institutions also adhere to their own set of rules and regulations for dealing with allegations of bribery and corruption and play a vital role in preventing such practices. For example, the ICC has Rules on Combating Corruption[56] which apply to enterprises and public bodies, and the LCIA has Arbitration Rules 2020 stating bribery or corruption as a *prohibited activity*.[57] However, the parties to an arbitration need to be aware of these issues and ensure that arbitration proceedings are conducted fairly and impartially.

- ***Patent illegality***

Patent illegality is a component of public policy, as many Indian court decisions have stated. For a lengthy period, the defense of patent illegality was extensively used in Indian courts, resulting in expanding the scope of public policy definition. Initially, the Indian Arbitration Act had no provision for setting aside a domestic award or refusing to enforce a foreign award on the grounds of patent illegality. The Indian Supreme Court in the landmark judgment of *Renusagar Power Co Ltd v. General Electric Co*[58] established that an arbitral award may be set aside on public policy grounds and defined public policy with the following three criteria: (i) the fundamental policy of Indian law; (ii) public interest; and (iii) justice or morality.[59] However, the definition did not include patent illegality as a ground for refusing arbitral awards. Following the decision in Renusagar, the term patent illegality first arose in the case of *ONGC. v. Saw Pipes Limited*[60] wherein the Supreme

[55] Case *Alexander Brothers Ltd. v. Alstom Transport S.A. et Alstom Network UK Ltd.*, Court of Appeal of Paris 16/11182, 28 May 2019.
[56] ICC Rules on Combating Corruption, 2023.
[57] Article 24.9 of the LCIA Arbitration Rules 2020.
[58] See Case *Renusagar Power Co. Ltd. v. General Electric Co*., (1994) 2 Arb LR 405: AIR 1994 SC 860, 885, 888: 1994 Supp (1) SCC 644.
[59] See Case *Renusagar Power Co. Ltd. v. General Electric Co*., (1994) 2 Arb LR 405: AIR 1994 SC 860, 885, 888: 1994 Supp (1) SCC 644.
[60] Case *Oil and Natural Gas Corporation Ltd v. Saw Pipes Ltd.,* AIR 2003 SC 2629.

Court redefined the term *public policy*. The Supreme Court held that an award was patently illegal if it violated governing law or the contract's terms, broadening the scope of judicial review to the decision's merits. Despite widespread criticism of the *ONGC. v. Saw Pipes Limited* ruling, the Indian judiciary has applied it in a variety of cases.

However, the Arbitration and Conciliation (Amendment) Act, 2015 amended Section 34 of the Arbitration and Conciliation Act, 1996, and with effect from October 23, 2015, this amendment removed a broad definition of public policy as it was understood and applied by Indian courts.[61] It is important to note that the threshold for establishing patent illegality is high, and the Indian courts have advised against a liberal and broad interpretation of this ground. The words "*other than international commercial arbitrations*" in the 2015 amendment of the Indian Arbitration Act elucidates that the issue of patent illegality is only applicable to domestic arbitrations, and not to international commercial arbitrations, thus narrowing the scope of the use of patent illegality. The error should be so severe that it affects the foundation of the arbitral award, not simply a wrong interpretation of the legal regulations.

- ***Impartiality of the Arbitrator***

Public policy refers to principles and values that are considered important for the public good, and the impartiality of the judge is considered central to ensuring the fairness and justice of the judicial process. The parties agree to submit their dispute to a neutral third-party arbitrator, who will make a binding decision based on the evidence and information presented by both parties, and the parties expect that the judge will be fair and impartial and will decide only on the merits of the case. The impartiality of the arbitrator is a fundamental aspect of the integrity of the arbitration process, and it is often considered a ground of public policy in arbitration. On one hand, all arbitration statutes are silent and on the other hand, courts have questioned if the public policy might be affected by concerns about the impartiality and arbitrator appointment. Arbitration has been regarded as the greatest ethical institution in labor relations society, with arbitrators utilizing their ethical faculties to determine the right and the wrong.[62] The arbitrator's adherence to professional ethics and regulations is crucial to the arbitral institution's reputation. When making a decision, an arbitrator must be impartial to protect the integrity of the process. The arbitral institutions and legislative organizations such as UNCITRAL, ICC, ICSID, etc. emphasize the importance of impartiality and independence in their rules and codes. If the impartiality of the arbitrator is questioned, it may undermine the integrity of the arbitration process and shake the public's trust in the legal system. Therefore, arbitration laws require arbitrators to disclose any conflicts of interest that could affect their impartiality.[63] It highly depends

[61] Refer 2015 Amendment to the Arbitration and Conciliation Act, 1996.
[62] Marx, Herbert L. "Arbitration as an Ethical Institution in Our Society." *ARBITRATION JOURNAL* 37.3 (1982): 52-55.
[63] International arbitration bodies such as UNCITRAL, ICC, and ICSID emphasize the significance of impartiality and independence of arbitrators in their regulations and codes and are the most prominent international groups that lay down guidelines for arbitration.

on the arbitrators to make a fair and impartial decision, and any appearance of bias or lack of impartiality may undermine the credibility of the arbitration process.

- ***Fundamental Notions of morality, justice, and order of the country***

Public policy is used as the moral, social, and/or economic considerations that are applied by courts as grounds for refusing enforcement of an arbitral award. In civil law systems references to good faith and good morals, as well as to public policy as a bar to parties' freedom are incorporated in codes. In common law references to public policy are mainly included in judicial practice, but also in legal documents. The House of Lords of England in early 1853 explained that public policy is a "*principle which does not permit the doing of anything that could harm the basic principles of any society.*"[64] It is greatly portrayed by European Courts where national courts are unwilling to intervene with valid arbitral judgments on grounds of public policy. Similarly, the *Renusagar Case* has always been the beginning point for considering public policy grounds which maintained that national courts should only intervene with arbitral awards in extraordinary situations. This ruling followed private international law and conformed with most developed European jurisdictions. Domestic public policy is commonly believed to refer to the underlying moral and legal principles that a government chooses to apply strictly to conflicts within its authority. Public policy is a concept that is adapted periodically to meet the changing societal needs, including political, social, cultural, moral, and economic dimensions. Since it works under a variety of social, political, and economic circumstances, the public policy process is said to be "*dynamic*" in nature.[65] Therefore, it is important for the arbitrators to make certain that the outcome of the arbitration process is not only legally correct, but morally and ethically correct as well.

- ***Violation of Consumer Protection laws***

Since the commercial landscape is dynamic, businesses often engage in both B2B and B2C transactions. Therefore, it is important to recognize and acknowledge the evolving nature of B2C transactions and its implications on society. Consumer protection laws are designed to protect consumers from fraud and unfair business practices. These laws are usually enforced through local legislation and may also give consumers the right to take legal action against businesses that violate consumer protection laws. Arbitration agreements between consumers and businesses may include provisions that allow disputes to be resolved through arbitration rather than litigation, and if a business violates consumer protection laws, the same may conflict with the public policy of the country. Usually, public policy is about protecting the public interest and promoting the greater public good, and if a consumer agreement conflicts with public policy, the court may refuse to enforce the same to protect the public interest. The case of *Elisa Maria Mostaza Claro v. Centro*

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[64] "Public Policy as a Limit to the Enforcement of Foreign Arbitral." *Law Teacher*, 23 June 2019, www.lawteacher.net/free-law-essays/international-law/public-policy-as-a-limit-to-the-enforcement-of-foreign-arbitral-law-essay.php?vref=1.
[65] Simon, Christopher A., 2023.

Movil Milenium SL[66] is a significant judgment in the context of EU consumer law, in particular concerning unfair terms in consumer contracts. The dispute relates to certain conditions of the contract between Mostaza Claro and the Spanish mobile operator Centro Movil Millennium S.L. relating to the early termination charges on the mobile phone contract. The ECJ in its 2014 ruling held that once the contract between a buyer and seller or supplier has "*unfair term to the consumer's detriment*", causes disparity in the parties' rights and obligations.[67] It outlines the principle of consumer protection in the EU Directive and emphasizes the power of national courts to review the validity of arbitration clauses in consumer contracts. It also underlines the power of courts to deem such claims unfair and contrary to public policy, even if the consumer did not raise these claims in the court proceedings.

Today, the dynamic nature of public policy influenced by globalization has broadened the scope of public policy to environmental, labor, consumer protection, and other factors, and this shift is shaping the concept of public policy in arbitration.[68] Ultimately, whether an arbitration agreement conflicts with public policy will depend on the particular facts and circumstances of the case, as well as applicable consumer protection legislation and governing law of that particular state.

(v) Pro-arbitration' or 'Anti-arbitration' Jurisdictions

Based on the comparative analysis, the pro-arbitration jurisdictions have laws and policies that regularly back the utilization of intervention as an implication of dispute settlement. These countries regularly have vigorous lawful structures that empower and energize arbitration agreements and decisions to be upheld.[69] Europe is respected as a pro-arbitration region of the world, with only on a few occasions countries sanctioning vigorous legislative systems that empower and support the application of arbitration laws. Including pro-arbitration countries such as Switzerland, France, United Kingdom, Germany, Hungary and Belgium. Furthermore, other countries such as Sweden, Netherlands, Spain, Italy, and many other European jurisdictions are also considered to be pro-arbitration. The United States is also recognized as a pro-arbitration nation. The FAA makes a strong arrangement in favor of arbitration, and courts are required to uphold substantial arbitration agreements and decisions. Besides, the United States Supreme Court has conveyed an arrangement of decisions that have expanded the enforceability of arbitration agreements and constrained parties' capacity to request refusal of arbitral awards on the grounds of public policy.

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[66] Case *C-168/05 Elisa Maria Mostaza Claro v. Centro Movil Milenium SL.*, ECLI:EU:C:2006:675.

[67] Case *C-168/05 Elisa Maria Mostaza Claro v. Centro Movil Milenium SL.*, ECLI:EU:C:2006:675, opinion of Advocate General Tizzano, para 23, delivered on 27 April 2006, available at: https://curia.europa.eu/juris/liste.jsf?num=C-168/05.

[68] Gibson, Christopher S, 2008.

[69] Gojani, Anjezë, and Korab R. Sejdiu. "Kosovo: The Perspective of a Pro-Arbitration Country." *Integration and International Dispute Resolution in Small States* (2018): 279-301.

The anti-arbitration countries have laws and practices that hinder the application of arbitration as a dispute resolution process. These governments' lawful frameworks for supporting and upholding arbitration agreements and awards may be weaker.[70] A few of the world's most eminent anti-arbitration countries include countries such as India and China.

China has made remarkable progress in building an arbitration-friendly lawful system, however, there are still certain issues that make it less arbitration-friendly than other jurisdictions. Foreign parties have voiced concerns about the impartiality of arbitrators chosen by Chinese organizations in the past. Another source of stress is the Chinese legal system's affinity for delays and inefficiency. The country still contains a tremendous and complicated legitimate framework, and the execution of arbitral decisions can be moderate and unpredictable at times. All arbitration agreements including Chinese parties must be authorized by a Chinese arbitration commission, and this measure may be troublesome and time-consuming for the parties.[71] It may discourage outside parties from entering into arbitration agreements with Chinese parties. Besides, in many instances, the Chinese courts have proven to interfere with the enforcement of arbitral awards and decisions on the grounds of public policy. This has caused instability and unpredictability for enterprises locked in at Chinese discretion.[72]

India has well-established arbitration legislation and a system that empowers arbitration. However, there are a few barriers that make India a less pro-arbitration jurisdiction than European nations or the United States. Indian courts, for case, have been known to interfere in arbitration strategies and put off the execution of arbitral decisions. The Arbitration and Conciliation Act of India passed in 1996, was gathered to be pro-arbitration. However, Indian courts have been progressively questioned on the recognition and enforcement of arbitral awards, more likely to interfere with the arbitration processes and deny upholding arbitral awards.[73] In 2015, India affirmed the Amendment to the Arbitration and Conciliation Act 1996 to streamline and move forward the arbitration in the international domain. The Act moreover set up the Arbitration Council of India, which is in charge of cultivating the development of arbitration in India. Despite these advancements, India still goes up against certain challenges with arbitration.[74]

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[70] Bell, A. S. "The rise of the anti-arbitration injunction." *TheJUDICIAL REVIEW* 14.4 (2021): 287-313.

[71] Article 18, Arbitration Law of the People's Republic of China, 1994 states that "If the arbitration matters or the arbitration commission are not agreed upon by the parties in the arbitration agreement, or, if the relevant provisions are not clear, the parties may supplement the agreement. If the parties fail to agree upon the supplementary agreement, the arbitration agreement shall be invalid."

[72] Garnett, Richard. "Anti-arbitration injunctions: walking the tightrope." *Arbitration International* 36.3 (2020): 347-372.

[73] Alagh, Chetna. "Anti-Arbitration Injunctions-India's Wigwag." *Jus Corpus LJ* 1 (2020): 55.

[74] Pathak, Shreyanshi, and Rajeev Kumar Singh. "EFFECT OF INTERNATIONAL COMMERCIAL LAW IN INDIA: AN ANALYTICAL STUDY."

(vi) Conclusion of Hypotheses

- ***Hypotheses 1: Does the enforceability and applicability of international commercial arbitration differ significantly across legal systems in Asia, Europe, and America?***

The author's findings confirm that this hypothesis is true. The enforceability and applicability of international commercial arbitration differ significantly across legal systems in Asia, Europe, and America. The study highlights how complex these distinctions are and there are notable discrepancies in the enforceability and application of international commercial arbitration among legal systems, according to a comparative analysis of the defense of public policy in recognition and enforcement of arbitral decisions.

China and India are two Asian nations with rules and regulations that make it difficult for parties to arbitrate their disputes or to have arbitral rulings enforced. This is frequently brought on by uncertainties about safeguarding parties as well as concerns about the state's sovereignty. Most European countries have vigorous law frameworks that support and maintain the international commerce arbitration process and enforcement of awards. And courts in a few European countries are more inclined than courts in others to apply the public policy defense broadly.[75] The United States is immovably in favor of arbitration. The FAA offers a strong lawful establishment for protecting and maintaining arbitration agreements and awards. The requirement of arbitral awards is subject to certain limitations, such as when the award is decided to be untrustworthy or degenerate.[76]

- ***Hypotheses 2: Is the recognition and enforcement of International arbitral awards often hindered by various challenges, including differences in legal systems, cultural differences, and jurisdictional conflicts?***

This hypothesis is true. The recognition and enforcement of International arbitral awards are often hindered by various challenges, including differences in legal systems, cultural differences, and jurisdictional conflicts. International arbitral awards may be difficult to recognize and apply due to differences in legal systems. Because some nations have different definitions of what constitutes public policy, courts in different jurisdictions may come to different judgments regarding whether an award violates public policy or not and, as a result, should not be enforced. Likewise, some nations have differing laws governing the treatment of international judgments, which might make it more challenging to uphold arbitral awards made in similar nations.[77]

International arbitral awards may have difficulties in being honored and upheld due to cultural differences. If a domestic court finds the arbitration agreement to be unlawful or

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[75] Tiba, Firew. "The Emergence of Hybrid International Commercial Courts and the Future of Cross Border Commercial Dispute Resolution in Asia." *Loy. U. Chi. Int'l L. Rev.* 14 (2016): 31.
[76] Petsche, Markus A. "Choice of Law in International Commercial Arbitration." *Private International Law: South Asian States' Practice* (2017): 19-37.
[77] Nazzini, Renato. "Enforcement of International Arbitral Awards: Res Judicata, Issue Estoppel, and Abuse of Process in a Transnational Context." *The American Journal of Comparative Law* 66.3 (2018): 603-638.

against its public policy, it may refuse to enforce and uphold the arbitral ruling. The domestic courts may also decline to accept or uphold an arbitral judgment if they believe that the arbitral tribunal challenged jurisdiction to examine the case.[78] Despite these challenges, the viable process of international arbitration as a dispute resolution mechanism depends on the recognition of international arbitral awards. Besides the diverse interpretations of public policy defense in different jurisdictions, cultural disparities might result in misconceptions around what a public policy is and how it functions in international arbitration.

- ***Hypotheses 3: Is public policy defense a crucial concept in international commercial arbitration and has a significant impact on the enforceability and applicability of arbitral awards?***

This hypothesis is true. In international commercial arbitration, public policy defense is a critical theory that greatly affects the enforcement and recognition of arbitral awards. The corpus of law known as public policy embodies a nation's fundamental beliefs and guiding principles. Therefore, the courts of the jurisdiction where enforcement is sought may reject an arbitral decision when it is contested on public policy grounds. This may significantly affect whether arbitral awards may be applied and enforced.[79] The public policy defense in international commercial arbitration has been compared over several jurisdictions, including the United States, some European Jurisdictions, India, and China, in this dissertation. Concurring with the study, there is an impressive contrast between how the public policy defense is seen and utilized in different views. There are, furthermore, certain repeating themes.[80] The narrow interpretation of the public policy defense could be a reiterating point. This suggests that unless the decision appears to go against the foremost cardinal norms and principles of the country's legal frameworks, the courts are reluctant to invalidate an arbitral award on the grounds of public policy. Another repeating theory is that the public interest is shielded by the public policy defense. If the parties to an international business transaction fear that the arbitral decision would not be upheld due to public policy considerations, they may be less inclined to accept to arbitrate their issues and rather prefer litigation as a way for resolving disputes.

[78] Zafarovich, Tojiboyev Sarvar. "Different Approaches in Enforcement of Arbitral Award Annulled at the Place of Arbitration." *Miasto Przyszłości* 25 (2022): 320-323.
[79] Akoto, Akosua Serwaah. "Public policy: An amorphous concept in the enforcement of arbitral awards." *Journal of Liberty and International Affairs* 7.1 (2021): 51-69.
[80] Bansal, Chaman Lal, and Shalini Aggarwal. "Public policy paradox in enforcement of Foreign Arbitral Awards in BRICS countries: a comparative analysis of legislative and judicial approach." *International Journal of Law and Management* 59.6 (2017): 1279-1291.

- ***Hypotheses 4: Does comparative analysis of international commercial arbitration laws across legal systems provide insights into best practices and areas for improvement in the recognition and enforcement of arbitral awards?***

This hypothesis is true. The best practices and opportunities for development in the recognition and enforcement of arbitral decisions may be learned through a comparative study of international commercial arbitration legislations across various legal systems. A study of this kind may help to demonstrate commonalities and variations between legal systems and the reasoning used by various jurisdictions to uphold and accept arbitral awards passed by arbitration tribunals. This can therefore offer insightful information on how to expedite and unify the enforcement of arbitral rulings across various legal systems.[81]

The ideal strategies for recognizing and implementing arbitral decisions can be recognized by comparing the rules administering international commercial arbitration. Comparative investigation can moreover be applied to identify areas where arbitral award recognition and enforcement may well be improved. For instance, a few countries have more rigorous guidelines than others for arguing arbitral decisions on the defense of public policy. This may result in ambiguity and conflicting application of arbitral awards. Additionally, the enforcement of arbitral awards reflects changes within arbitration laws and can be more troublesome and time-consuming. As a result, arbitral awards may take longer to be enforced and be less enticing to businesses.[82]

- ***Hypotheses 5: Is the use of international commercial arbitration as a means of dispute resolution likely to continue to increase due to its flexibility and efficiency, despite ongoing challenges related to recognition and enforcement?***

This hypothesis is true. In international commercial arbitration, the parties from a few countries can choose to have their issues resolved confidentially, by one or more arbitrators, rather than going and using the local courts. International commercial arbitration has proven to have a few benefits over conventional court cases, including flexibility, speed, and enforceability. Although there are certain persistent issues with the recognition and execution of arbitral rulings, these issues are not frequent. Additionally, the advantages of international commercial arbitration exceed the disadvantages, making it a feasible option for resolving international conflicts in the future.[83]

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[81] Vial, Gonzalo. "Influence of the arbitral seat in the outcome of an international commercial arbitration." *Int'l Law.* 50 (2017): 329.

[82] Okoli, Pontian N. "Corruption in international commercial arbitration—Domino effect in the energy industry, developing countries, and impact of English public policy." *The Journal of World Energy Law & Business* 15.2 (2022): 136-150.

[83] Poorooye, Avinash, and Ronan Feehily. "Confidentiality and transparency in international commercial arbitration: finding the right balance." *Harv. Negot. L. Rev.* 22 (2016): 275.

(vii) Recommendations

From the study, it can be opined that public policy defense has an unpredictable and wide character. Therefore, the author proposes the following suggestions in light of this dissertation's findings:

a) Creation of a unified global framework for the recognition and enforcement of foreign arbitral awards
b) Development of a unified definition of defense of public policy
c) Educational initiatives to improve the understanding of arbitration among legal professionals and judges
d) Defining the clear grounds for non-enforcement of arbitral awards
e) Adopting a more limited standard of review
f) Restricting the public policy defense to domestic arbitral awards
g) Establishment of a centralized database of arbitral awards and related case law

According to the dissertation, the public policy defense could be an essential safeguard against the enforcement of arbitral awards that violate fundamental public policy. The author recommends that the public policy exception should be used selectively and in a way that does not threaten the finality of arbitral awards. In addition to the recommendations made, it is important to strengthen the use of arbitration and other sorts of alternative dispute resolution (ADR) as a way to settle conflicts arising from cross-border trade exchanges. ADR can be a more convincing and efficient means of settling disputes than court proceedings. The international community may improve international commercial arbitration by implementing these proposals and building a more effective and efficient method of dispute resolution. This would aid global businesses in the international market and encourage economic progress.

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   Jura. 2021 (2), 111-117, 2021. ISSN: 1218-0793.

   Level of HAS Committee on Legal and Political Sciences: A

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