SANCTIONS AND THE LIMITS OF ENFORCEMENT: ASSESSING THE PUBLIC-POLICY EXCEPTION UNDER ENGLISH AND INDIAN ARBITRATION LAW

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I. INTRODUCTION

The intersection between public policy, the enforcement of arbitral awards, and sanctions imposed by states or international organisations, represents a complex and evolving area of law. Domestic courts have long grappled with the balance between the swift and effective enforcement of arbitral awards and the operation of the 'public policy' exception, an often-contested concept permitting the refusal of enforcement where it may contravene fundamental legal or economic principles. The growing use of economic and trade sanctions imposed by states or international organisations has further complicated this balance, raising questions about how far domestic courts should go in reconciling international obligations to enforce awards notwithstanding the operation of national or international sanctions regimes.

Within the Indian context, these questions assume fresh relevance in light of recent events surrounding the Chabahar Port, a strategically significant maritime gateway developed jointly by India and Iran pursuant to a bilateral agreement signed in 2016.[1] In particular, on 29 September 2025, the United States revoked a sanctions waiver which it had previously granted in respect of the port in line with its 'maximum pressure' policy on Tehran.[2] Whilst a temporary 6-month waiver has been reinstated as of 30 October 2025, allowing operations until April 2026, there still remains considerable uncertainty for Indian companies operating in or trading through Chabahar, exposing them not only to contractual disruption and compliance risks but also potentially to enforcement obstacles in arbitration. By way of example, in the case of disputes arise from Chabahar-related contracts, Indian companies may face difficulties in enforcing arbitral awards in sanctions-enforcing jurisdictions (such as the US, EU, or UK)

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[1] "*India and Iran sign 'historic' Chabahar port deal*", BBC News (World Asia, 23 May 2016) https://www.bbc.co.uk/news/world-asia-india-36356163 (last accessed 1 November 2016). See also *"US' Golden Gate move signals a likely shift in India strategy," The Economic Times* (Oct. 31, 2025) https://economictimes.indiatimes.com/news/economy/foreign-trade/chabahar-port-us-waiver-for-india-americas-golden-gate-move-signals-a-likely-shift-in-washingtons-india-play-amid-trump-tariffs-and-trade-deal-talks/articleshow/124987705.cms (last accessed 1 November 2025).
[2] Patel, Shivam, *U.S. grants India six-month sanctions waiver to run Iran's Chabahar port, New Delhi says*, Reuters (Oct. 30, 2025) https://www.reuters.com/world/india/us-granted-india-six-month-exemption-sanctions-chabahar-port-new-delhi-says-2025-10-30/ (last accessed 1 November 2025).

where courts could refuse enforcement on public policy grounds. Similarly, if awards are rendered against Indian entities in this context, enforcement in India could be challenged on the basis that it would contravene Indian public policy.

A key basis on which a sanctions-related enforcement challenge is likely to be raised is on the argument that enforcing an award involving sanctioned entities or transactions would contravene the forum state's public policy, by compelling conduct prohibited under domestic or international sanctions law. . The public policy concern arises because enforcement typically requires a court order directing payment to the award creditor, which, where that creditor is a sanctioned entity, could constitute a prohibited financial transaction under the forum state's sanctions regime, potentially exposing the award debtor to criminal or civil liability for sanctions violations. The Indian courts have not yet had to grapple with such questions, and given the historical uncertainty surrounding the scope of the public policy exception[3] under Indian law, there is little clarity on how such issues might be approached. By contrast, this issue has received some consideration by the English courts which arrives against the background of a consistently narrow and pro-enforcement stance on the public policy exception under English law.

This article examines the Indian and English courts' approaches to the public policy exception, the English case law on enforcement of arbitral awards impacted by sanctions and seeks to extrapolate how an Indian court might address similar questions were such issues to arise under Indian arbitration law.

II. THE COMPARATIVE APPROACHES TO THE 'PUBLIC POLICY' EXCEPTION UNDER INDIAN LAW AND ENGLISH LAW

A. The 'public policy' exception under Indian law

The approach under Indian law in respect of enforcing arbitral awards has been marked by significant judicial oscillation and uncertainty. This is particularly true in respect of the 'public policy' exception to enforcement, which we describe below.

[3] Despite recent efforts to narrow the public policy exception under Indian law (which are explained below), there remains open questions as to the precise threshold of the 'public policy' exception, where even on the narrower formulation the identified tests are vague and subjective, affording courts significant discretion in individual cases.

The statutory framework governing arbitration and arbitration-related matters under Indian law is the Arbitration and Conciliation Act 1996 (the 'Indian Arbitration Act'). Section 34(2)(b)(ii) sets out the public policy exception in respect of domestic arbitral awards whilst Sections 48(2)(b) and 57(1)(e) codify this exception in respect of foreign arbitral awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the 'New York Convention') and the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (the 'Geneva Convention') respectively. Under Section 34(2)(b)(ii), a domestic arbitral award may be *set aside* where it conflicts with the public policy of India, but under Sections 48(2)(b) and Sections 57(1)(e), the court may only refuse enforcement.

The explanations to each of sections 34(2)(b)(ii), 48(2)(b) and 57(1)(e), clarify that an award is in conflict with the public policy of India only if (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 (which prescribes that any conciliation proceedings including any settlement agreement should be kept confidential) or section 81 (which renders inadmissible, the introduction of evidence relating to certain matters in the context of settlement and/or conciliation); (ii) is in contravention with the fundamental policy of Indian law or (iii) is in conflict with the most basic notions of morality or justice.[4] These particular explanations were introduced by way of an amendment to the Indian Arbitration Act through Act 3 of 2016 (the '2016 Amendments').[5]

The ambit of the phrase 'the public policy of India' has, historically, been the subject of much judicial debate under Indian law with two diverging strains of jurisprudence emerging in respect of how this exception should be construed.

The first was a narrow and restrictive approach, which was prescribed by the Indian Supreme Court in *Renusagar Power Co. Ltd vs General Electric Co* (which pre-dated the Indian Arbitration Act). In *Renusagar*, which concerned a US-law governed interim award under ICC Rules, the Court prescribed that the phrase 'public policy' must be given a narrower meaning such that the public policy bar to enforcement must invoke "*something more than the violation of the law of India*"; rather, enforcement of the award would need to be "*contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality*".[6]

[4] See Arbitration and Conciliation Act, No. 26 of 1996, § 34(2)(b)(ii), Explanation 2; § 48(2)(b), Explanation 2; §57(1)(e), Explanation 2 (India).
[5] Act 3 of 2016 (w.e.f. 23-10-2015).
[6] *Renusagar Power Co. Ltd vs General Electric Co* 1994 AIR 860 at [66].

The second strain of jurisprudence followed *Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd* , which concerned the enforcement of a domestic arbitral award challenged on the basis that it was 'patently illegal' since it did not comply with the substantive Indian law (including the Indian Contract Act). [7] In declining enforcement, the Supreme Court held that the term public policy must be interpreted widely to include where awards would be 'patently illegal' by reason of conflicting with substantive Indian law and noting that if a narrow meaning is given to it, it may render some of the provisions of the Indian Arbitration Act nugatory.[8] It should be noted that at the time of the *ONGC* decision, section 34(2A) of the Indian Arbitration Act, under which arbitral awards arising out of arbitrations other than international commercial arbitrations may be set aside on the basis of patent illegality on the face of the award, had not yet been inserted.[9] The Court also noted in *Saw Pipes* that awards should be set aside where they are "*so unfair and unreasonable*" that they would shock the "*conscience of the Court*".[10] This 'wider' public policy approach was then upheld and applied to foreign arbitral awards by the Supreme Court in subsequent decisions, both implicitly (*Venture Global Engineering v. Satyam Computers Services* (2008) 4 SCC 190[11]) and expressly (*Phulchand Exports Limited v. O.O.O. Patriot* (2011) 10 SCC 300).[12]

Thereafter, in 2013, the Supreme Court appeared to briefly reverse the 'expansive' trend, at least in respect of foreign arbitral awards, in *Shri Lal Mahal Ltd. v. Progetto Grano Spa* (2013) (3) ARBLR 1 (SC) noting that the wider approach in *Saw Pipes* was not applicable foreign award enforcement under Section 48(2)(b)".[13]

However, at the same time, the meaning of 'public policy' continued to be expanded. In *ONGC Ltd. v. Western Geco International Ltd.* (2014) 9 SCC 263, the Supreme Court significantly broadened the exception, holding that "*fundamental policy of Indian law*" would encompass (i) a particular judicial approach, (ii) principles of natural justice, and (iii) the standard of 'Wednesbury' reasonableness (ensuring decisions are not so perverse that no reasonable person

[7] *Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd* (2003) 5 SCC 705 at [31]-[34].
[8] *Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd* (2003) 5 SCC 705 at [21], [30].
[9] Arbitration and Conciliation Act, No. 26 of 1996, § 34(2A) (India). This carve out for arbitral awards in the context of international commercial arbitrations suggests a pro-enforcement stance in relation to foreign (commercial) arbitral awards in contrast to domestic commercial arbitrations.
[10] *Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd* (2003) 5 SCC 705 at [30].
[11] *Venture Global Engineering v. Satyam Computers Services* (2008) 4 SCC 190 at [52].
[12] *Phulchand Exports Limited v. O.O.O. Patriot* (2011) 10 SCC 300 at [13].
[13] *Shri Lal Mahal Ltd. v. Progetto Grano Spa* (2013) (3) ARBLR 1 (SC) at [27].

would reach them).[14] The court further stated that if arbitrators fail to draw proper inferences from proven facts or draw untenable inferences resulting in miscarriage of justice, the award may be challenged and set aside.[15] In *Associate Builders v. Delhi Development (*2015) 3 SCC 49, the Supreme Court further added that 'public policy' comprises the "*interests of India*" in the sense of it "*as a member of the world community in its relations with foreign powers".*[16]

Following the insertion of the explanations to the public policy provisions by way of the 2016 amendments (as described at page [3] above), there appears to have been a slightly greater consistency in the jurisprudence in favour of the narrow approach to public policy (albeit it is not clear whether there is a causative effect between the amendments, and this renewed approach). Nonetheless, there have still been outliers in the apex court's decisions, continuing to leave behind some uncertainty.

The decision of the Supreme Court in *Vijay Karia v Prysmian Cavi* AIR 2020 SC 1807 appears to have initiated the paradigm shift. There, the Court took a pro-enforcement stance, noting that *"a person who belongs to a* (New York) *Convention country,…must then be able to get such award recognised and enforced in India as soon as possible*".[17] Significantly, the Court narrowed the scope of fundamental public policy, observing that it must be read to mean *"the core values of India's public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the Courts"* and will be considered to have been contravened only where there is a *"a breach of some legal principle or legislation* ***which is so basic to Indian law that it is not susceptible of being compromised****"* (emphasis added).[18]

However, only 2 months afterwards, in *NAFED v Alimenta S.A* AIR 2020 SC 2681 the Court refused to enforce an arbitral award handed down against the National Agricultural Cooperative Marketing Federation of India on the basis that its enforcement would be inconsistent with Indian export laws and a particular provision of the Indian Contract Act, 1872 (the '**ICA**') relating to the enforcement of contingent contracts; and that this was in turn sufficient to contravene the public policy of India.[19] The court did not make any reference to the decision

[14] *ONGC Ltd. v. Western Geco International Ltd.* (2014) 9 SCC 263 at [26]-[30].
[15] Ibid at [30].
[16] *Associate Builders v. Delhi Development,* (2015) 3 SCC 49.
[17] Ibid at [24].
[18] Ibid at [83] citing the decision in *Renusagar*.
[19] *National Agricultural Co-Operative Marketing Federation of India (NAFED) vs. Alimenta S.A*., AIR 2020 SC 2681 at [68].

in *Vijay Karia,* nor elaborate on why it considered that the contravention of these specific legislative provisions would contradict Indian public policy. The decision in *NAFED* appears to be much more consistent with the *Saw Pipes* strain of jurisprudence, rather than the narrower *Renusagar* approach.

This was then followed by the decision in *Government of India vs Vedanta Limited* (Civil Appeal No.3185 of 2020) where the Supreme Court once again advocated a narrow reading of 'public policy'[20], which was then further reinforced in *PASL Wind Solutions v GE Power Conversion India* (Civil Appeal No. 1647 of 2021) where the Court enforced an award in a Swiss-seated arbitration, notwithstanding public policy objections, noting in particular, the importance of party autonomy viz. public policy considerations.[21]

It may be seen from the above that the post-2016 jurisprudence appears to reflect a more consistent shift towards a narrower application of the public policy exception, albeit decisions like *NAFED* still suggest lingering inconsistency. Notwithstanding this, there remains uncertainty as to what constitutes the "*core values"* of India's public policy or principles "*so basic to Indian law*" that their breach would justify refusing enforcement; these standards are inherently subjective and provide limited predictability absent concrete judicial guidance on which specific principles or statutes qualify. The open-ended nature of these formulations means courts retain significant discretion in their assessment of the public policy exception.

B. The English law approach to public policy and the decision in MODSAF v IMS

The legal framework for enforcement of foreign arbitral awards in the United Kingdom is set out in the Arbitration Act 1996 (the 'UK Arbitration Act').[22] Section 103(3) of the UK Arbitration Act codifies the public policy exception derived from the New York Convention and permits enforcement (and recognition) to be refused where it would be contrary to public policy, such public policy being that of the '*lex fori*' i.e. UK public policy.[23] In addition, it should be noted that section 68(2)(b) also allows for challenges to arbitral awards on the basis of 'serious irregularity' *inter alia* where the way in which the award was procured was "*contrary to public policy*", albeit this provision is predominantly concerned with situations

[20] *Government of India vs Vedanta Limited* (Civil Appeal No.3185 of 2020) at [9].
[21] *PASL Wind Solutions v GE Power Conversion India* (Civil Appeal No. 1647 of 2021) at [59]-[60].
[22] Most recently amended by way of the Arbitration Act 2025.
[23] See *Dicey, Morris & Collins on the Conflict of Laws ¶ 16-114* (16th ed. 2022). See also *Consilient Health Ltd. v. Gedeon Richter Plc*, [2022] EWHC 1744 (Ch) [73].

where the arbitration process itself was fundamentally flawed (for example due to fraud, bias, or procedural misconduct) and seeks to uphold standards of procedural fairness and integrity in arbitral proceedings.[24]

In contrast to the approach taken by Indian courts, the English courts have consistently adopted a strict and narrow approach to public policy challenges. As a starting point, it has been well-recognised that, under English law, there is a strong public policy in favour of enforcing arbitral awards,[25] including New York Convention awards.[26]

As to what 'public policy' in respect of section 103(3) comprises, the UK House of Lords observed, in *Deutsche Schachtbau v Shell International Petroleum Co Ltd* [1990] 1 A.C. 295 that whilst "*considerations of public policy can never be exhaustively defined*", they should be "*approached with extreme caution*"; what must be shown, in order to succeed on this type of challenge is that "*there is some element of illegality or that the enforcement of the award would be clearly injurious to the public good or, possibly, that enforcement would be wholly offensive to the ordinary reasonable and fully informed member of the public on whose behalf the powers of the state are exercised.*".[27] Similarly, leading cases have noted that the public policy exception should be treated as a "*safety valve*" to be invoked only in a "*clear case*".[28]

To illustrate the narrowness of this approach, one of the few decisions under English law where an award was set aside on the basis of public policy was the decision in *Soleimany v Soleimany* [1999] Q.B. 785 (CA). There, the court refused to enforce a Beth Din arbitral award because it was founded on the basis of an illegal contract to smuggle carpets from Iran. The enforcement of an award of this type, which referred "*on its face to an illegal object*" would be contrary to English public policy.[29]

Against this background, it is useful to consider the English High Court (Philips J) in *Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v International*

[24] *Russell on Arbitration* ¶ [8-112] (24th ed. 2023).
[25] *Westacre Investments Inc v Jugoimport-SPDR Ltd* [1999] QB 740 at 770-771, 773 per Colman J (upheld on appeal): see [1999] 2 Lloyd's Rep 65; *Process and Industrial Developments Ltd v Nigeria* [2019] EWHC 2241 (Comm) at [100].
[26] See *Eternity Sky Investments Ltd v Zhang* [2024] EWCA Civ 630 at [136].
[27] *Deutsche Schachtbau v Shell International Petroleum Co Ltd* [1990] 1 A.C. 295 at p.316 per Sir John Donaldson MR. See also See *Eternity Sky Investments Ltd v Zhang* [2024] EWCA Civ 630 at [136]. See also See *Dicey* at [16-114].
[28] *Carpatsky Petroleum Corp v PJSC Ukrnafta (No 1)* [2018] EWHC 2516 (Comm) at [41].
[29] *Soleimany v Soleimany* [1999] Q.B. 785 (CA) at p.804.

Military Services Ltd [2019] EWHC 1994 (Comm), which specifically concerned the question of sanctions. This case concerned two ICC Awards pursuant to which IMS, a UK Ministry of Defence-owned company, was required to pay the Iranian Ministry of Defence (or 'MODSAF'), a sum of £127.65 million plus interest from 1984 at LIBOR +0.5% for breaches of certain tank/armed vehicle supply contracts.[30] The final awards in both arbitrations were rendered in 2001;[31] there were subsequently various set aside/enforcement adjournment proceedings before the Dutch courts but by 2009, the awards had been substantively upheld (albeit quantum reduced in respect of one of them).[32] In the meanwhile, MODSAF had been added to the list of entities subject to sanctions imposed against Iran by EU Council Regulation 423/2007[33] (the 'EU Regulation'), which had taken effect on 24 June 2008.[34]

It was common ground that the sums due under the awards could not be paid to MODSAF given the sanctions; nevertheless, MODSAF asserted that there was no impediment to the English Court recognising and entering judgment in the terms of the awards[35] brought an application seeking *inter alia* judgment in terms of the Awards.[36] A key question before the Court was whether post-award interest could be enforced in light of Articles 38 or 42 of the EU Regulation and/or s. 103(3) of the UK Arbitration Act.[37] Article 38 provided that "*no claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation... shall be satisfied*" if made by designated persons while Article 42 stated that "*the freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind*" unless the funds were frozen or withheld negligently.[38]

IMS' reliance on the public policy exception in section 103(3) of the UK Arbitration Act hinged upon the EU Regulation its position being that it would be contrary to public policy to

[30] *Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v International Military Services Ltd* [2019] EWHC 1994 (Comm) at [4]-[6].
[31] Ibid at [5].
[32] Ibid at [10].
[33] At the time known as Regulation 267/2012.
[34] *Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v International Military Services Ltd* [2019] EWHC 1994 (Comm) at [11].
[35] Ibid at [12].
[36] Ibid.
[37] Ibid at [14].
[38] Ibid at [24]-[25].

recognise or enforce the Awards if Articles 38 or 42 of the regulation prevent the same.[39] Against this context and applying a purposive approach to the interpretation of EU law, Philips J found that all the elements of Article 38 were satisfied and it therefore prevented enforcement of the interest component of the arbitration award in respect of the sanctions period.[40] He also observed that Article 38's purpose was to prevent civil claims being brought against a party as a result of the fact that their performance of a contract or transaction was impeded by the operation of the sanctions.[41] In respect of Article 42, he construed this more narrowly and found that it was aimed at protection against liability from errors and did not apply.[42]

Notably, Philips J never expressly returned to confirm that the breach of Article 38 constituted a public policy bar but nonetheless refused enforcement in respect of the post-award interest component. This would suggest at least that if sanctions provisions apply, enforcement is *ipso facto* contrary to public policy, requiring no separate inquiry. Put another way, the decision treats EU sanctions as self-executing public policy where the sanctions breach *is* the public policy breach. This approach creates some degree of ambiguity given that the public policy exception under section 103(3) is normally construed narrowly and strictly, with awards being presumptively enforceable.

It also raises a number of other thorny issues:

(1) Would a breach of any sanctions provision then automatically contravene public policy (including for instance, more technical breaches such as delays in licence procurement or administrative mis-filings)? Indeed, there is certainly a risk that the application of a mechanistic rule deeming all breaches 'public-policy violations' would erode the narrow and discerning approach to public policy under English law. Whilst there is no specific English law jurisprudence on this point, a recent decision of a German Court[43] provides some guidance on this point. In that case, the Higher Regional Court in Stuttgart refused an application by a company domiciled in Russia, to recognise and enforce an arbitral award of the Russian Chamber of Commerce and Industry, on the grounds that to do so would contravene fundamental principles of the German legal system

[39] Ibid at [31].
[40] Ibid at [70].
[41] Ibid at [59].
[42] Ibid at [77]-[82].
[43] File number 1 Sch3/24. See the decision of the Court (in German) dated 13 May 2025: here

(namely that making the payment would violate EU sanctions), and that would itself be contrary to public policy. (It is of note that the Court recognised that the actual obtaining of the arbitral award was not objectionable or contrary to public policy).[44]

(2) Whilst *IMS* concerned a direct prohibition on payment to a designated entity, depending on the specific facts, it is likely that a similar approach would be taken in respect of potential indirect breaches: for example, payment through a non-designated subsidiary, or enforcement leading to funds ultimately benefitting a sanctioned person.

(3) Is the identity of the sanctioned party relevant? For instance, absent a licence from the appropriate body,[45] a sanctioned claimant will likely be precluded from receiving payments; but should sanctioned respondents be barred from relying on sanctions to resist enforcement to escape liability?

Collectively, these questions demonstrate that sanctions introduce a dynamic dimension to the public-policy exception which requires considerable further exploration. Whilst *IMS* provides a starting point, further testing is likely to be both necessary and helpful.

III. EXTRAPOLATING THE INDIAN COURTS' APPROACH TO QUESTIONS OF SANCTIONS, ENFORCEMENT AND PUBLIC POLICY

There does not currently appear to be any Indian jurisprudence dealing with the question of sanctions and the enforcement of arbitral awards (which is, at least in part, explicable by the fact that India, unlike the US or the EU, does not have a broad, autonomous sanctions regime). Specifically, there is no judicial guidance on questions such as whether enforcing an award involving sanctioned parties or transactions would violate the public policy exception, whether such assessment would differ depending on whether the sanctions were imposed by India/UN

[44] Reference should also be made to a decision of the Higher Regional Court of Cologne (Case no. 19 Sch 26/23), where the court issued a declaratory judgment which recognised a SCC arbitral award in favour of a Russian party (who was indirectly owned by a sanctioned person) and also declared that it was enforceable. However, enforcement was made subject to a condition that payment of the award would not breach any financial sanctions. The Court cited the exception in Article 7(1) of Regulation (EU) No 269/2014, which permits payment to a frozen account.

[45] In the UK, it is the Office of Financial Sanctions Implementation ("**OFSI**") which has the authority to grant licences.

versus foreign jurisdictions etc. However, in light of existing case law, we consider below, how such questions might be answered.

In respect of sanctions which have been implemented as binding Indian law (such as, for example a UN Security Council measure which has been implemented domestically), we consider that an Indian court is more likely than not, to refuse enforcement. At the outset, in contrast to the approach taken by English courts, the Indian courts have historically been more interventionist and sought to employ the 'public policy' exception more readily. Whilst the jurisprudence following *Vijay Karia* signals a shift toward a narrower, pro-enforcement stance, even under this narrower test, enforcement is likely to be refused. This is because domestically implemented sanctions, particularly those deriving from binding UN Security Council resolutions, would plausibly satisfy the standard of the 'fundamental public policy of India'. Such sanctions are likely to reflect not mere technical or regulatory requirements but obligations which India has undertaken as a matter of international law, to prohibit. It follows that enforcement would *certainly* be refused if the Court were to employ the wider *Saw Pipes* and/or *NAFED* reasoning (which adopt the wider test of public policy and would see potential contraventions of statutes as sufficient grounds for public policy objections). Such an approach would be consistent with and mirror that taken by the English courts in *MODSAF v. IMS* (where enforcement was refused in respect of the post-award interest component).

Moreover, by particular analogy with *NAFED*, if the breach of export control legislation regulating the cross-border movement of commodities suffices to engage the exception, then the breach of sanctions legislation (which typically address more serious concerns) should similarly trigger the exception. Indeed, the policy objectives underlying sanctions regimes are arguably more fundamental than those underlying export controls, strengthening the case for treating sanctions violations as public policy matters.

A more complex scenario arises where the sanctions in question are foreign measures (most commonly, US sanctions) which have not been incorporated into Indian domestic law but nonetheless create severe practical consequences for Indian parties, such as exclusion from US dollar-clearing systems or correspondent banking relationships. In such cases, there is likely to be greater ambiguity.

On the one hand, under the strict logic of *Vijay Karia*, foreign sanctions not incorporated into Indian law would not engage Indian public policy. Allowing foreign sanctions to serve as

grounds for refusal would undermine the more pro-enforcement stance taken by the courts following 2016. On the other hand, it is possible that the courts may rely on the approach taken in *Associate Builders* the public policy of India encompassed the "*interests of India*" in the sense of India's position *"as a member of the world community in its relations with foreign powers*" to support a decision to refuse enforcement (see page [4] above). Practically, such an approach may also be favoured given that compliance with foreign sanctions may be important in preserving India's access to international financial infrastructure including, for instance, foreign currency-correspondent banking and international payment networks.

IV. CONCLUDING REMARKS

Public policy remains a significant yet unpredictable exception to the enforcement of arbitral awards. In the UK, it operates as a narrowly confined defence. The decision in *MODSAF v IMS* illustrates how sanctions can intersect with this doctrine, but it leaves open important questions, including, in particular, whether this exception might be triggered by any breach of sanctions law or whether further considerations need to be imported into this analysis. In India, whilst decisions such as *Vijay Karia* and *Vedanta* mark a clear movement toward international orthodoxy and a pro-enforcement stance, sporadic deviations such as those seen in *NAFED v Alimenta* leave the door open for potential divergence.

As discussed above, if faced with a public policy challenge in the context of sanctions, Indian courts are likely to refuse enforcement where sanctions incorporated into domestic law would be breached; on the other hand, the position in relation to foreign sanctions remains more uncertain. There is at least a possibility that practical or diplomatic considerations could prompt the Indian courts to revert, even inadvertently, to the wider formulation seen in earlier jurisprudence, thereby reintroducing inconsistency into the enforcement framework.

Going forward, both jurisdictions may need to articulate clearer guidance on how sanctions interact with enforcement and other aspects of arbitration. One way of doing this may be through legislative clarifications: for instance, statutory safe-harbour provisions for payments blocked by sanctions may offer some predictability without undermining the integrity of sanctions regimes. Until such clarification emerges, practitioners must navigate a delicate balance. The continuing challenge for both English and Indian courts will be to maintain their

pro-enforcement credibility while ensuring that such enforcement does not compromise the fundamental legal or policy principles of the State.