THE ARBITRATION AND

CONCILIATION ACT,1996

"PUBLIC POLICY APPROACH IN ARBITRATION"

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INTRODUCTION

Section 34 of the Arbitration And Conciliation Act, 1996, deals with the provisions of Recourse against Arbitral Award and read as under:

Sec. 34. Application for setting aside arbitral award.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub- section (2) and subsection (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can

be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject- matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. Explanation.- Without prejudice to the generality of sub- clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which die party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had bow disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub- section (1), the Court may, where it is

appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Procedural Issues Concerning Challenge of an Arbitral Award

Recourse against an arbitral award may be taken under section 34 of the Arbitration and Conciliation Act, 1996. Section 34(2) enumerates certain grounds on which an arbitral award may be challenged and restricts the basis for challenge to grounds mentioned therein. Section 34(3) prescribes the time-period for filing an application challenging an award.

Section 34(3) of the Arbitration and Conciliation Act reads as follows:

"*An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:*

***Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months if may entertain the application within a further period of thirty days, but not thereafter.*"**

Evidently, the time period for filing an application challenging an award is three months and a further extension of thirty days may be granted by the Court in certain situations. An interesting issue that came for consideration was whether this period had to be strictly followed or whether an application challenging an award could be admitted after the expiry of this period, by relying on section 5 of the Limitation Act, 1963. The relevant portion of section 5 reads: "*Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period...*" This question was answered by the Supreme Court in *Union of India* v. *M/s Popular Construction Co.* : (2001) 8 SCC 470 : where it held section 5 of the Limitation Act to be inapplicable in instances where an application challenging an award is filed under section 34. The Court emphasised on the words "but not thereafter" used in the proviso to section 34(3), declaring that these words indicate that the application of section 5 is excluded in matters governed by section 34(3).

Thus, it is now established that an application challenging an arbitral award has to be necessarily filed within the time period prescribed in section 34(3). A crucial question that next arises is whether an application to amend the original application challenging an award, adding new grounds of challenge, can be made after the expiry of this time period. This question was first decided by the Bombay High Court in *Vastu Invest & Holdings Pvt. Ltd.* v. *Gujarat Lease Financing Ltd.* : 2001 (2) Arb. LR 315. Justice Srikrishna, delivering the judgment for the Court, held:

"In these circumstances, we are of the view that the Chamber Summons, if it was intended to raise an independent ground of challenge to the arbitral award, could not have been entertained after the period of three months plus the grace period of 30 days as provided in the

proviso to sub-section (3) of Section 34. If, on the other hand, it was not intended to raise an independent ground, on the basis that the petition Itself contained the ground, the chamber summons was wholly unnecessary as necessary amplifications could be put forward during submissions."

Therefore, the view adopted was that additional grounds for challenging an award could not be added after the time period prescribed in sub-section (3) had elapsed. This was followed in several other judgments of the Bombay High Court (*Maharashtra Industrial Development Corporation* v. *Govardhani Construction Co.*, *Jigar Vikamsey* v. *Bombay Stock Exchange*). The issue came up before the Supreme Court in *State of Maharashtra* v. *Hindustan Construction Co.* : AIR 2010 SC 1299 in the context of an appeal under section 37 of the Arbitration Act. In this case, new grounds for challenge to an award were sought to be added in the memorandum of appeal. The High Court had dismissed the application for an amendment to the memorandum of appeal, holding that a ground not raised initially in the petition cannot be raised later - after the period prescribed in section 34(3) had expired. On appeal, the Supreme Court held:

"*There is no doubt that application for setting aside an arbitral award under Section 34 of 1996 Act has to be made within time prescribed under Sub-section (3) i.e., within three months and a further period of thirty days on sufficient cause being shown and not thereafter. Whether incorporation of additional grounds by way of amendment in the application under Section 34 tantamounts to filing a fresh application in all situations and circumstances. If that were to be treated so, it would follow that no amendment in the application for setting aside the award howsoever material or relevant it may be for consideration by the Court can be added nor existing ground amended after the prescribed period of limitation has expired although application for setting aside the arbitral award has been made in time. This is not and could not have been the intention of Legislature while enacting Section 34.*"

Interpreting *Vastu*, the Court said:

"*...in our view, by `an independent ground' the Division Bench* [*in* Vastu] *meant a ground amounting to a fresh application for setting aside an arbitral award. The dictum in the aforesaid decision was not intended to lay down an absolute rule that in no case an amendment in the application for setting aside the arbitral award can be made after expiry of period of limitation provided therein.*"

On facts, the Court dismissed the appeal and its observations in this regard are pertinent to note:

"*The grounds sought to be added in the memorandum of arbitration appeal by way of amendment are absolutely new grounds for which there is no foundation in the application for setting aside the award. Obviously, such new grounds containing new material/facts could not have been introduced for the first time in an appeal when admittedly these grounds were not originally raised in the arbitration petition for setting aside the award.*" (emphasis supplied)

According to *Hindustan Construction's* interpretation of *Vastu*, a situation may arise here new grounds may be added after the expiry of the 34(3) period if they do not amount to filing a fresh application. An amendment to the petition adding new grounds would be refused only in

instances where the grounds sought to be added are 'absolutely new grounds'. However, a correct reading of *Vastu* suggests that it only contemplated a situation where amplifications could be made to the *existing* grounds, that too "*during submissions*". Therefore, *Hindustan construction*'s interpretation of *Vastu* is questionable.

Further, it is possible to argue that the observations of Justice Lodha in *Hindustan Construction* regarding the amendment to an application filed under section 34 constitute *obiter dictum* since the issue before the Court was amendment to the memorandum of appeal and not an amendment to the petition filed under section 34. In fact, the Apex Court upheld the High Court's ground for dismissal viz. "*the grounds of appeal which are now sought to be advanced were not originally raised in the arbitration petition and that the amendment that is sought to be effected is not even to the grounds contained in the application under Section 34 but to the memorandum of appeal*".

However, in light of the decision in *Venture Global Engineering* v. *Satyam Computer Services* : AIR 2010 SC 3371 : such a contention is difficult to sustain. In *Venture Global*, a Division Bench of the Supreme Court made a passing observation to this effect:

> **"*This Court in* Hindustan Construction *made it clear that it cannot be the intention of the Legislature to shut out amendments, as a result of which incorporation of relevant materials in a pending setting aside proceeding is prevented... this Court opined that where application under Section 34 has been made within the prescribed time, leave to amend grounds, in such an application, if the peculiar circumstances of the case and the interest of justice so warrant, can be granted".**

Public Policy under Arbitration Law

The basic purpose of arbitration is to bring about cost-effective and expeditious resolution of disputes and further preventing multiplicity of litigation by giving finality to an arbitral award. The article ambidextrously and comprehensively analyzes India's Commitment and challenge to the International Arbitration in the era of globalization when the investment by the foreign entities is at the peak. Public Policy of India has most important role in the whole process of enforcement of an arbitral awards particularly the foreign awards because it involves parties, lawyers and arbitrators form diverse legal &cultural traditions. Most often the arbitral tribunal consists of arbitrators from multiple jurisdictions & legal traditions different from those of parties and of their council. It is thus desirable that the International Companies/firms working

in India as Joint venture or otherwise should be fully aware for the law on public policy of India and its impact on arbitration awards.

Arbitration continues to grow at a rapid pace, antitrust cases in particular are increasingly being arbitrated; and the law is still evolving in relation to the tension between the domestic legitimate claims of a nation and the arbitral finality given to an International arbitral award. Further when the arbitration proceedings are in themselves requiring a judicial process by producing the evidence and giving the parties opportunity of hearing, why should the court at this level interfere with the decision frustrating the very purpose of arbitration? If disputes are going to end up in courts anyway, there is scant incentive for parties to bother to arbitrate in the first instance. What should be the realm of judicial interference in such arbitral awards and where should it meet the barricades. A supportive yet non-interventionist approach without undue interference should be adopted by the courts to facilitate an efficient arbitral process within the permissible or jurisdictional limits.

Public policy imposes certain restrictions upon the freedom of persons to contract. An ostensibly valid contract may be tainted by illegality. The source of the illegality may arise by statute or by virtue of the principles of general law. In some instances, the law prohibits the agreement itself, and the contract is then by its very nature illegal but in the majority of cases the illegality lies in the object which one or both parties have in mind or in the method of performance. As a general rule, although all the other requirements for the formation of an agreement are complied with, an agreement that is illegal will not be enforceable. The issue is sufficiently related to fundamental concepts of morality and fair dealing that a court should not, as litigants have sometimes urged, ignore it merely because the claimant can plead its case without disclosing any contravention of public policy. Indeed, even if neither party raises the issue, the court will do so on its own initiative and refuse enforcement if justified by the record, at least if the contravention is serious.

Definition of Public Policy:

The Arbitration and conciliation Act, 1996 or the Contract Act, 1872 do not define the expression Public Policy or opposed to public policy. Public Policy is not the policy of a particular Govt. It connotes some matter which concerns the public good or the public interest. Public Policy is equivalent to the Policy of Law. Therefore any acts that have a mischievous tendency so as to be injurious to the interest of the state or the public is stated to be against Public Policy or against the Policy of Law.

In the case of ***Renusagar Power Co. Ltd v. General Electric Co.*** the Apex Court has held that the Expression Public Policy has a wider meaning in the context of a domestic award as distinguished from a foreign award. The concept of the Public Policy denotes that what is good for the public or in public Interest or what would be injurious or harmful from time to time. It has very wide and general connotations. Anything that hurts collective consensus is against the Public Policy. Hence the Acts in violation of law shall be considered against the Public Policy.

Doctrine of Public Policy

Doctrine of Public Policy is somewhat open textured and flexible, and this flexibility has been the cause of judicial censure of the doctrine. There is a general agreement that the courts

may extend existing Public Policy; to new situations and the difference between extending on existing principle as opposed to creating a new one will often be wafer thin. Public Policy is not immutable. Rules which rest on the foundation of Public Policy, not being rules which belong to the fixed Customary Law, are capable on proper occasion, of expansion or modification depending upon circumstances. In the broader view, the doctrine of Public Policy is equivalent to the Policy of Law; whatever leads to obstruction of justice or violation of a statute or is against the good morals when made the object of contract would be against Public Policy of India and being void, would not be susceptible to enforcement. Though misconduct of Arbitral Tribunal or of the proceedings before an arbitral tribunal and error of law on the face of an arbitral tribunal award by themselves are not made as grounds for recourse against an arbitral award under section 34 of the 1996 Act. Interpreting the doctrine of Public Policy of India; in its broader view, courts of law may intervene permitting recourse against an arbitral award based on irregularity of a kind which the court considers has caused or will cause substantial injustice to the applicant. Extreme cases where arbitral tribunal has gone so wrong in its conduct of arbitration that justice calls out for it to be corrected may justifiably fall within the ambit of the doctrine of Public Policy of India; to enable courts of law in India to intervene under section 34 of the 1996 Act permitting recourse against arbitral award. Public Policy of India. The expression Public Policy used in section 48 sub-section 2 refers to the Public Policy of India and does not cover policy of the country, whose law governs the contract or of country or of place of arbitration. More contravention of law would not attract bar of Public Policy, but the award must be contrary to:

1) Fundamental Policy of Indian law or
2) The Interest of India or
3) Justice or morality or
4) Patently illegal. (After the case of ONGC v. Saw Pipes Ltd.)

In view of the absence of a workable definition of International Public Policy, the Supreme Court of India in the case of ***Renusagar Power Co Ltd. v. General Electric Co.*** while construing section 7 (1) (b) (ii) of the foreign Award Act held that it was difficult to construe the expression Public Policy in Article (v) (2) (b) of the New York convention to mean international Public Policy and the said expression must be construed to mean the doctrine of Public Policy as applied by the courts in which the foreign award is sought to be enforced and consequently the expression Public Policy in section 7 (1) (b) (ii) of the foreign Award Act means the doctrine of Public Policy as applied by the courts in India. This controversy has been set at rest by the legislature now using the expression Public Policy of India in section 48 (2) of Arbitration and Conciliation Act, 1996.

Foreign Award and Public Policy, Enforcement of foreign award, if resulting in violation of Provisions of foreign Exchange Regulation Act, 1973, would be contrary to Public Policy as envisaged in section 48 (2) of Arbitration and Conciliation Act, 1996.

Arbitration Law on Public Policy:

The Arbitration and Conciliation Act, 1996 restrain an Arbitral Tribunal or sole Arbitrator to make any award which is against the Public Policy of India. Various provisions laid down under 1996 Act are briefed here as under:-

Section 34. (2) (b) (ii) of the said -Act lays down that an Arbitral Award may be set aside if the court finds that the arbitral award is in conflict with the Public Policy of India;
Explanation to section 34 of the 1996 Act, without prejudice to the generality of sub-clause (ii), it is here by declared, for the avoidance of any doubt, that an award is in conflict with the Public Policy of India if the making of the Award was induced or affected by fraud or corruption or was violation of Section 75 or Section 81 of 1996 Act.
Section 17 of the Indian Contract Act, 1872 defines fraud. However,fraud has a wider meaning, far wider than the definition given under the Contract Act. Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.

The Supreme Court of India in the case of S.P. Chengalvaraya Naidu v. Jagannath had held that a litigant, who approaches the court, is bound to produce all documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. Corruption means bribery. It need not necessary be in monetary terms. An improper relationship between an arbitrator and a party or a party's legal advisor may render the award open to attack also on this ground. Procurement by Undue Means was a ground for setting an award aside under clause (c) of section 30 of the Arbitration Act., 1940.

In the matter of Chouthmal Jivrajjec poddar v. Ram Chandra Jivrajjec Poddar, it has been held that Putting up with one of the parties may not by itself be sufficient to vitiate the award, but if it enables the arbitrators to have a private conference with one of the parties on an important topic, it would entitle the court not to accept the award.

Public Policy: Approach of the Judiciary

Section 34 of the Arbitration and Conciliation Act, 1996, provides for the application for setting aside the Arbitral Award. Sub section (2)(b)(ii) of Section 34 states that an Arbitral Award may be set aside by the Court only if the Court finds that the Arbitral Award is in conflict with the Public Policy of India. Thus, the concept of Public Policy assumes great importance with regard to arbitration.

However, 'Public Policy' is a vague concept and apart from an explanatory note at the end of Section 34, the concept has not been attempted a definition anywhere in the 1996 Act. **The Indian judiciary too, has never attempted to expressly define the concept, though it has periodically charted out its scope.**

The initial cautious approach of the judiciary towards Public Policy forced the courts to construe the concept in a narrow light. The Apex Court, in *Gherulal Parakh v. Mahadeodas Maiya*,[5] had observed that it would be advisable in the interest of social stability to not make any attempt to discover new heads of Public Policy. However a broader view of Public Policy emerged in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*[6] wherein the Supreme Court observed that the principles governing Public Policy must be capable, on proper occasion, of expansion or modification. The boundaries of 'Public Policy' were explicitly laid down in *Renusagar Power Co. Ltd. v. General Electric Co.*[7] as '(a) fundamental policy of Indian law, (b) the interest of India; or (c) justice or morality'. This range of Public Policy was

broadened by the Apex Court in *ONGC v. Saw Pipes*[8] wherein the Court also read 'patent illegality' into the dimensions of Public Policy. This decision opened up the floodgates of litigation by parties challenging arbitral awards, thereby not only overburdening the overworked judiciary, but also rendering arbitration helpless.

From the aforementioned, it can be inferred that though Courts have periodically charted out the scope of Public Policy, they have simultaneously admitted that determining its subject matter is beyond their domain since it 'would lead to the greatest uncertainty and confusion'[9]. Courts thus, face the dilemma as to whether the power of determining Public Policy could be conferred on the executive.[10] In light of this dilemma with regard to determination of 'Public Policy', it needs to be ascertained whether the task of determination of this illusive concept could be left under the aegis of the 'executive'.

Illegal Gratification

The arbitrator should always scrupulously avoid any course of action which even remotely bears the complexion of his having put himself into a position where it might be said against him that he had received a pecuniary inducement which might have had some effect on his determination of the matter to his adjudication. An arbitrator ought to be an indifferent person between the disputes and should be incorrupt and impartial. If the arbitrator take bribe, the award would be liable to be set aside.

International Law Governing Public Policy:

i) Geneva Convention 1927

Under the Geneva Convention, 1927, in order to obtain recognition or enforcement of a foreign arbitral award, the requirements of clause (a) to (e) of Article 1 had to be full filled and in Article 2, it was prescribed that even if the conditions laid down in that article were fulfilled recognition & enforcement of the award would be refused if the court was satisfied in respect of matters mentioned in clause (a), (b) and (c) as given hereunder:-

a) The award has been annulled in the Country in which it was made.
b) That the party being under a legal incapacity, he was not properly represented.
c) That the award contains decisions on matters beyond the scope of the submission to arbitration.

The principles which apply to recognition and enforcement of foreign awards are in substance, similar to those adopted by the English court at Common law, It was, however, felt that the Geneva Convention suffered from certain defects which hampered the speedy settlement of disputes through arbitration.

The New York Convention has sought to remedy the said defects by providing for a such more simple and effective method of obtaining recognition and enforcement of foreign awards.

ii) New York Convention, 1958

The York Convention (1958), Art III provides that each contracting State Shall recognize awards as binding and enforce them in accordance with the rules & procedure of the territory, where

award is relied upon. Accordingly the procedural laws of the Country in which the award is relied upon would govern the procedural aspect of the filing of foreign award.

Further, New York Convention (1985) Article. V (2) provides that the enforcement of an arbitral award may also be refused, if the law of the Country where the recognition and enforcement is sought.

a) The Subject matter of the difference is not Capable of Settlement by arbitration under the law of that Country or

b) The recognition or enforcement of the award would be contrary to the public policy of that country.

iii) UNCITRAL Model law (1985)

The UNCITRAL model Law (1985), Article 36 (b) provides the grounds for refusing recognition or enforcement of an arbitral award, irrespective of the country in which it was made, it may be refused if the court finds that:-

a) The subject matter of the dispute is not capable of Settlement by arbitration under the law of this state, or

b) The recognition or enforcement of the award would be contrary to the public policy of this state.

Perusal of the International laws laid down at Geneva Convention, 1927, New York Convention 1958,UNCITRAL Model Law (1985) reveals that Public Policy of any Country has a great impact on the International/Foreign awards. Therefore, it is desirable that the constructing agency should be conversant with the Public Policy of the Country, where it undertakes construction works.

Criticism:

The Hon'ble Supreme Court, on a number of occasions has held that a suit can be filed in a court in India challenging a foreign award passed by an arbitrator in a matter concerning International Commercial transactions if the award is against the public policy; and in contravention of statutory provisions. It is always in the domain of the judiciary to interpret the public policy at a given point of time.

In the historic ruling of Renu sagar Power Co. v. General Electrical Corporation the Supreme Court construed the expression "public policy" in relation to foreign awards as follows: "This would mean that "public policy" in Section 7 (1) (b) (ii) has been used in narrower sense and in order to attract to bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to

(i)fundamental policy of Indian law; or

(ii) the interests of India; or

(iii) justice or morality."

In its later judgment of Oil & Natural Gas Corporation v. SAW Pipes, the Apex Court addressed a challenge to an Indian arbitral award on the ground that it was in conflict with the

public policy of India. The said decision has been followed in a large number of cases. Despite precedent suggesting that public policy be interpreted in a restrictive manner and that a breach of public policy involves something more than a mere violation of Indian law, the Court interpreted public policy in the broadest terms possible. The Court held that any arbitral award which is violative of Indian statutory provisions is patently illegal and contrary to the canons of public Policy. By equating patent illegality to an error of law, the Court effectively paved the way for losing parties in the arbitral process to have their day in Indian courts on the basis of any alleged contraventions of Indian law, thereby resurrecting the potentially limitless judicial review which the 1996 Act was designed to eliminate. The doctrine of public policy undoubtedly is governed by precedents. Its principles have been crystallized under different heads. Recently in Patel Engineering case, the Supreme Court has sanctioned further court interventions in the arbitral process. It was held that the Chief Justice, while discharging this function, is entitled to adjudicate on contentious preliminary issues such as the existence of a valid arbitration agreement and the Chief Justice's findings on these preliminary issues would be final and binding on the arbitral tribunal.

Further, the consequences of Venture Global are far reaching for it creates a new procedure and a new ground for challenge to a foreign award. The new procedure is that a person seeking the enforcement of a foreign award in India has not only to file an application for enforcement under Section 48 of the Act, it has to meet an application under Section 34 of the Act seeking to set aside the award. The new ground is that, not only must the award pass the New York Convention grounds incorporated in Section 48, it must pass the expanded "public policy" ground created under Section 34 of the Act.

The review should be more or less extensive depending on the circumstances. If the contractual claims were addressed and decided in an international arbitration, but (allegedly) wrongly, a court should satisfy itself that the institutional determination by such arbitration body was not perverse and in consonance with the legal dictates of the country.

Where absolute arbitral finality is inimical to a rational system of public policy as recognized by the Apex court in several judgments and on the other hand, it is necessary for an effective international arbitral system. Balancing the conflicting claims of public policy and arbitral finality is difficult. In order to facilitate the International Arbitration process, it is important to exercise judicial restraint in scrutinizing the International arbitral awards. A new and narrower definition of the term public policy is required in the era of globalization to encourage the foreign investors to carry out healthy commercial relationships in India. A globally compatible definition of public policy should be adopted or the court should abdicate the public policy to some extent so as to ensure the edifice of International Commercial Arbitration.

In order to limit the scope of public policy, the Apex Court is dealing with the case of Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc., Civil Appeal No. 7019 of 2005. No order has been given by the court till now but five judges constitutional Bench is dealing with the same, which will work as stare decisis for the case of Saw Pipes. Perhaps, this time court will recognize the purpose of arbitration.

CONCLUSION

Justice Oliver Wendell Holmes had on one occasion asked "The question is where it is I am going" To the Holmesian question, where it is that India is going, in the world of **arbitration**, the answer should always be "hopefully, in the right direction." Unfortunately, at a time when arbitration is rendered helpless due to influence of the executive on the judiciary, one certainly cannot hope to be right in believing that we are heading in the right direction. Arbitration as a mechanism of alternative dispute resolution, is resorted to, out of commercial prudence and parties that decide to settle disputes by way of **arbitration** must accept the risks inherent therein. However providing them with recourse to knock the doors of Courts on grounds as wide and vague as 'Public Policy' would defeat the purpose of **arbitration**. This is especially true when the government is a party to **arbitration** proceedings since not only does the government hold the power to determine 'Public Policy', but the judiciary also, would interpret the concept as widely as possible, in the interest of the government, when adjudicating on a challenge to an Arbitral Award. The judiciary's attitude when deciding the validity of government actions and decisions can be best described in the words of Lord Denning, 'This power to overturn executive decisions must be exercised very carefully… . Otherwise you would get a conflict between the Courts and the Government and the Authorities, which would be most undesirable.'[23]

A catena of issues thus, emerges from the concept of 'Public Policy'. Despite the wide interpretation given to the term by the judiciary, adopting a narrow viewpoint of the same is most desirable, since it would ensure that challenge to Arbitral Awards, especially when they are made against the government on the ground of 'Public Policy', is a rare instance. It is only then that the 'honest man' will stop 'dreading **arbitration** more than dreading lawsuits'. In fact in the 2003 Amendment Bill of the 1996 Act, which was tabled in the Parliament, the latter rejected the broad interpretation given to the term in *ONGC v. Saw Pipes* and restricted its scope as charted out in the Renusagar case.[24]

No doubt, Lord Denning, a believer in liberal interpretation of 'Public Policy' had, with respect to the supposedly 'illusive' concept, quite appropriately remarked, 'With a good man in the saddle, the unruly horse can be kept under control.'[25] However, the pertinent question we must ask ourselves, in light of present circumstances is whether do we really have good men in the saddle to keep the unruly horse continuously head in the right direction.