

The Public Policy Exception in the Enforcement of Foreign Arbitral Awards: A Comparative Analysis Between Saudi Arabia and Two BRICS Countries

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ABSTRACT This paper examines the public policy exception under Article V(2)(b) of the 1958 New York Convention as a limit on enforcing foreign arbitral awards, comparing its treatment in Saudi Arabia, India, and China. It analyzes how each country defines and applies “public policy” to deny enforcement, referencing legal theories and case law. While all three states formally interpret public policy narrowly and support the Convention’s pro-enforcement stance, their practices differ: Saudi Arabia often invokes Sharia-based principles (e.g., prohibiting interest), though reforms are bringing more predictability; India limits the exception to serious violations of justice or morality, guided by key cases; and China rarely cites public policy, typically in matters of sovereignty or procedural issues. The jurisdictions show a trend toward narrower use of the exception, enhancing confidence in arbitration. The study calls for clearer legal definitions and more consistent judicial restraint as envisioned by Article V(2)(b).

KEYWORDS New York Convention 1958; public policy exception; enforcement; comparative arbitration law; Sharia.

1. Introduction

The recognition and enforcement of foreign arbitral awards remain the cornerstone of international arbitration, as affirmed by the 1958 New York Convention (“NYC”). Under this framework, enforcement is the rule, while refusal is the exception. One of the most debated exceptions appears in Article V(2)(b), which permits national courts to deny enforcement if doing so would contravene the forum state’s public policy¹. This clause reflects a delicate balance between promoting international uniformity and preserving each state’s sovereign right to uphold its fundamental legal and moral values.

However, the Convention deliberately leaves the term “public policy” undefined, which has prompted concerns about its potential misuse by domestic courts.

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¹ *Parsons & Whittemore Overseas Co. v. Société Générale de L’Industrie du Papier (RAKTA)*, 508 F.2d 969 (United States Court of Appeals, Second Circuit, 1974).

Broad or politically motivated interpretations risk undermining the Convention's pro-enforcement bias and eroding trust in the arbitral process.² To address this risk, courts and scholars have consistently emphasized that the public policy exception must be narrowly construed, operating as a "safety valve" reserved for exceptional circumstances – namely, when enforcement would violate the forum's most basic notions of morality and justice.³ Expansive reliance on public policy to protect national interests or reject disfavored awards would distort the Convention's intent and weaken the reliability of international arbitration.

This paper examines how the public policy exception is interpreted in Saudi Arabia, India, and China. Saudi Arabia bases its approach on Islamic Sharia, viewing public order through religious law. India treats public policy as a judicial concept shaped by precedent within its common-law tradition. China, with its socialist civil-law system, frames public policy around state sovereignty and judicial enforcement.

This research uses a comparative and doctrinal approach to examine statutory frameworks, key judicial decisions, and recent legislative changes. It presents practical cases involving public policy exceptions in enforcement to highlight how different jurisdictions interpret these rules. The study compares these interpretations to reveal similarities, differences, and evaluates their impact on cross-border contract enforcement and investor confidence in global arbitration. Structure of the Paper: After the Introduction, Part II discusses Article V(2)(b)'s legal scope and public policy distinctions. Part III reviews Saudi Arabia's judicial evolution, while Parts IV and V cover India and China's key cases and interpretations. Part VI compares common trends and differences, and Part VII offers policy recommendations to align domestic law with the Convention and improve arbitral enforcement predictability.

2. The Public Policy Exception under the New York Convention

2.1 Article V(2)(b): Text and Purpose

Article V(2)(b) of the 1958 New York Convention allows a court to refuse recognition or enforcement of an arbitral award if doing so would be "contrary to the public policy of that country." Unlike the party-initiated grounds listed in Article V (1), this exception may be invoked by the court itself, even if not raised by either party.⁴

The Convention was drafted to promote enforcement and limit domestic courts from blocking foreign awards for protectionist or political reasons. Article V(2)(b) provides a limited safeguard, allowing states to deny enforcement only

² Reportable in the Supreme Court of India, *Civil Appeal No. 3185 of 2020* (Arising out of SLP (Civil) No. 7172 of 2020), (16 Sept 2020) (India), https://www.newyorkconvention.org/media/uploads/pdf/7/3/732_india-2020-i.pdf.

³ *Civil Appeal No. 3185 of 2020* (India).

⁴ Nivedita Shenoy, "Public Policy Under Article V(2)(b) of the New York Convention: Is There a Transnational Standard?," *SSRN Electronic Journal*, (2018), accessed 3 November 2025, <http://dx.doi.org/10.2139/ssrn.3226757>.

if an award seriously violates their legal or moral standards, while preventing misuse of public policy as grounds for refusal.

Importantly, the drafters chose not to define the term *public policy* precisely, leaving it to national courts to interpret the concept within the boundaries of international practice. In principle, this discretion should be exercised sparingly and with restraint, limited to cases involving clear violations of the forum's core moral values, legal principles, or notions of justice.⁵

2.2 Narrow vs. Broad Conceptions of Public Policy

Article V(2)(b) of the 1958 New York Convention allows a court to refuse enforcement of a foreign arbitral award if enforcement “would be contrary to the public policy of that country.” In practice, this “public policy” ground has been construed either broadly or narrowly. A broad conception equates it with the forum's entire domestic public policy, potentially encompassing any mandatory law or moral interest. In contrast, the prevailing narrow conception confines it to the forum's international public policy – the fundamental norms and deeply-held principles of justice and morality from which no derogation is permitted. Under this narrow view, a mere violation of local law or public policy in abstracto is insufficient; the award must implicate the forum's most basic notions of morality or justice to justify refusal.

Both doctrine and jurisprudence overwhelmingly favor the narrow approach in applying Article V(2)(b). Leading commentators emphasize that the Convention's pro-enforcement bias demands a restrictive interpretation of the public policy exception. Courts around the world have likewise adopted a high threshold: for example, the U.S. Court of Appeals in *Parsons & Whittemore v. RAKTA* held that enforcement may be denied only when it would violate “the forum state's most basic notions of morality and justice.” Similarly, other national courts have limited “public policy” to fundamental public policy (order public international) rather than every domestic norm. As a result, attempts to resist enforcement on public policy grounds rarely succeed in practice.⁶

2.3 Comparative Context

Definitions and applications of “public policy” diverge by country, shaped by legal culture and domestic laws. For example, moral or religious norms influence some states' public policy (e.g., Islamic principles in Muslim-majority jurisdictions), while others focus more on procedural fairness or international comity. Against this backdrop, the following sections transition to a comparative analysis of how Saudi Arabia, India, and China—all parties to the New York Convention—have developed and applied the public policy exception. We examine relevant statutory provisions (or the absence thereof) and review notable cases in which courts have refused or granted enforcement despite public policy arguments.

⁵ *Parsons and Whittemore*, 508 F.2d 969 (2d Cir. 1974).

⁶ *Parsons and Whittemore*, 508 F.2d 969 (2d Cir. 1974).

3. Public Policy Exception in Saudi Arabia

3.1 Legal Framework in Saudi Arabia: Saudi Arabia joined the New York Convention in 1994, acceding with a reciprocity reservation⁷. For many years, enforcement of foreign awards in Saudi Arabia was viewed with skepticism. This was due to the primacy of Islamic Sharia law as the kingdom's public policy foundation. Saudi courts derived "public order" from Sharia, meaning any award provision contravening Qur'anic or Sunnah principles could be deemed unenforceable. Until 2012, Saudi arbitration was governed by the 1983 Arbitration Regime. Enforcement was overseen by the Sharia-based Board of Grievances, which had broad discretion. The landscape shifted with the 2012 Saudi Arbitration Law (Royal Decree No. M/34) and the 2013 Enforcement Law. These modernized procedures are aligned with international standards. Under the Enforcement Law, specialized enforcement judges were empowered to recognize foreign awards, subject to certain conditions. One of these is a check that the award "does not contain anything contrary to the Saudi public order."⁸ Notably, Royal Decree No. 44682 (Aug. 2021) clarified and *narrowed* the definition of public policy in Saudi arbitration. It is now essentially confined to the "general rules of Islamic law derived from the Quran and Sunnah."⁹ This clarification aims to curb the historically broad invocations of public policy and to clarify provide clarity on what constitutes a violation of Saudi public order.

3.2 Scope of Public Policy (Sharia and Beyond): In Saudi Arabia, Sharia law constitutes the foundation of the entire legal and judicial system, forming the core of public policy and guiding all legislative and judicial activity¹⁰. Accordingly, the public policy exception in arbitration is deeply intertwined with Sharia prohibitions and mandatory principles. A primary example is *riba* (usury or interest): any arbitral award that orders the payment of interest – whether as compensation, damages, or late payment fees – is treated as a direct violation of Islamic public policy¹¹. Likewise, transactions involving *gharar* (excessive uncertainty) or *haram* (prohibited) elements, such as gambling, alcohol, or other illicit goods and services, cannot be enforced by Saudi courts.¹² Even certain categories of damages, particularly speculative or unjustified losses, may be rejected when viewed as inconsistent with Sharia principles of justice and fairness.

⁷ Jean-Benoît Zegers, *Arbitration Guide: Kingdom of Saudi Arabia*, IBA Arbitration Committee (Riyadh: The Law Firm of Salah Al-Hejailan in association with Freshfields Bruckhaus Deringer, updated January 2018).

⁸ Zegers, *Arbitration Guide: Kingdom of Saudi Arabia*, 2018.

⁹ DLA Piper, "Developments in Saudi Arabia as an Arbitral Seat."

¹⁰ A. Al-Fahad, "The Role of Sharia in the Saudi Legal System," *Arab Law Quarterly* 12, (1997): 229–246.

¹¹ Al-Samaan, H.: "The Enforcement of Arbitral Awards in Saudi Arabia: Challenges and Reforms," *Journal of International Arbitration* 31, (2014): 475–494.

¹² A. Redfern, and M. Hunter, *Law and Practice of International Commercial Arbitration* (Oxford: Oxford University Press, 2015), 601.

Saudi courts have consistently refused to enforce the interest components of foreign awards, considering them contrary to Islamic law and the kingdom's moral order¹³. Similarly, awards requiring the transfer of property not lawfully owned by a party have been deemed unenforceable under Islamic property rules¹⁴. Beyond Sharia, Saudi public policy also extends to matters of national law, such as contracts violating Saudi statutory provisions or involving dealings with entities prohibited under domestic law.¹⁵ However, there is no exhaustive list of public policy grounds in Saudi legislation; each case is determined individually, guided by Sharia principles, legal doctrine, and judicial interpretation.¹⁶ The 2021 Royal Decree No. 44682, issued to narrow the concept of public policy, clarified that it is now limited to "the general rules of Islamic law derived from the Qur'an and the Sunnah."¹⁷ This reform reflects a move toward greater precision and predictability in arbitration enforcement, ensuring that only fundamental violations of Sharia justify refusal.

3.3 Enforcement Practice and Case Examples: Historically, Saudi Arabia was often perceived as a challenging venue for the enforcement of foreign arbitral awards because of its broad interpretation of public policy.¹⁸ Before the 2012 Arbitration Law and 2013 Enforcement Law, courts frequently refused to recognize awards that contained interest or exemplary damages, considering such provisions incompatible with the principles of Islamic justice.¹⁹ In one early case, the Board of Grievances enforced only the principal amount of an award, striking out the interest component as contrary to *Riba* prohibitions – a compromise approach reflecting the courts' effort to respect both Sharia and the finality of arbitral decisions.

However, this position has evolved considerably over the past decade. Recent judicial statistics reveal that Saudi Arabia has become increasingly arbitration-friendly. In 2021 alone, Saudi courts enforced 204 arbitral awards (both domestic and foreign) valued at more than USD 2.1 billion, with most proceedings completed within weeks.²⁰ Of all challenges brought to set aside or resist awards, only around six percent succeeded, and within that figure, approximately three percent involved violations of Sharia or public policy. The few successful

¹³ *Case No. 34/T/4/1412H* (Saudi Board of Grievances, 1992), refusing enforcement due to interest payments (*riba*).

¹⁴ A. Al-Jarbou, "Judicial Independence and the Rule of Law in Saudi Arabia," *Arab Law Quarterly* 21, (2007): 191–227.

¹⁵ Royal Decree No. M/34 of 2012 (Saudi Arbitration Law); Royal Decree No. M/53 of 2013 (Enforcement Law).

¹⁶ H. Al-Khalaf, "Public Policy and the Enforcement of Foreign Arbitral Awards in Saudi Arabia," *Arab Law Quarterly* 36, (2022): 50–72.

¹⁷ Royal Decree No. 44682, dated 18/08/1442H (31 March 2021).

¹⁸ Ahmed Alsirhani, *The Refusal of Foreign Arbitral Awards in Saudi Arabia on the Grounds of Public Policy – An Issue of Fairness and Justice* (PhD thesis, Victoria University, Melbourne, 2019).

¹⁹ Zegers, *Arbitration Guide: Kingdom of Saudi Arabia*, 2018.

²⁰ DLA Piper, "Developments in Saudi Arabia as an Arbitral Seat."

annulments were based on clear and specific breaches, including (1) the charging of interest (*riba*), (2) disguised interest labelled as “compensation for holding money,” and (3) the sale of property without lawful ownership. Notably, no award was rejected on broader or unrelated grounds, suggesting that Saudi courts now apply the public policy exception narrowly and consistently with international standards. This more predictable approach places the Kingdom closer to arbitration-supportive jurisdictions worldwide.²¹

3.4 Analysis – Evolution and Current Outlook: Saudi Arabia’s approach to the enforcement of foreign arbitral awards has evolved from early skepticism to growing acceptance. In the past, public policy was often invoked to protect domestic parties from awards considered inconsistent with Sharia, especially those involving interest (*riba*). However, with the 2012 Arbitration Law and the creation of dedicated enforcement courts, judicial practice has become far more consistent. Today, courts generally presume enforcement unless an award clearly violates a core Sharia principle or contradicts a final Saudi judgment.²²

This trend was reinforced by the 2021 clarification of public policy’s scope, which confirmed that only serious breaches of fundamental Islamic norms justify refusal.²³ Recent data from the Saudi Center for Commercial Arbitration also demonstrates a strong pro-enforcement pattern, with most awards executed swiftly and very few annulled on public-policy grounds. Collectively, these developments indicate that Saudi Arabia now applies Article V(2)(b) of the New York Convention with restraint and transparency, aligning the Kingdom with arbitration-friendly jurisdictions and supporting its Vision 2030 objective of becoming a regional center for dispute resolution.

4. Public Policy Exception in India

4.1 Legal Framework and Doctrinal Stance: India has been a party to the New York Convention since 1960. The enforcement of foreign arbitral awards is regulated under Chapter II of the Arbitration and Conciliation Act, 1996, which reproduces the Convention’s refusal grounds in Section 48.²⁴ Indian courts – most notably the Supreme Court – have maintained a restrictive interpretation of “public policy” in matters of foreign-award enforcement. The landmark case *Renusagar Power Co. Ltd. v. General Electric Co.* (1994 Supp (1) SCC 644) marked a turning point: the Court held that enforcement could be denied only if it would violate the fundamental policy of Indian law, the interests of India, or justice or morality. The judgment further clarified that mere breach of domestic law is insufficient; the violation must strike at the core principles or moral fabric of the legal system.

²¹ DLA Piper, “*Developments in Saudi Arabia as an Arbitral Seat.*”

²² Al-Khalaf, “Public Policy and the Enforcement of Foreign Arbitral Awards in Saudi Arabia,” 51.

²³ *Royal Decree No. 44682*, dated 18/08/1442H (31 March 2021).

²⁴ *Arbitration and Conciliation Act 1996*, s. 48 (India Code, 1996), available at: <https://www.indiacode.nic.in>

This restrictive stance was later codified through the Arbitration and Conciliation (Amendment) Act 2015, whose Explanation 1 to Section 48(2)(b) limits refusal of enforcement to cases involving fraud or corruption, or where the award contravenes fundamental policy, or offends India's most basic notions of morality or justice. Explanation 2 explicitly prohibits courts from reviewing an award on its merits under the pretext of applying public policy.²⁵ Collectively, these provisions confirm India's commitment to a Convention-consistent, pro-enforcement framework.

4.2 Public Policy in Practice – Key Phases: in line with international arbitral standards.

Indian jurisprudence on public policy in arbitration has evolved through distinct phases. After *Renusagar Power Co. Ltd. v. General Electric Co.* (1994) which set a global-oriented tone, a divergence emerged in the domestic-award context: in *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* (2003) the Supreme Court of India expansively interpreted “public policy” under Section 34 of the Arbitration and Conciliation Act, 1996 to include patent errors of law or “patent illegality.”²⁶ That broad interpretation raised the concern that its logic might spill over into the enforcement of foreign awards. Indeed, in *Phulchand Exports Ltd. v. OOO Patriot* (2008) the Court momentarily applied the *Saw Pipes* reasoning to a foreign-award enforcement context, expanding the scope of public-policy intervention. However, the Court subsequently course-corrected in *Shri Lal Mahal Ltd. v. Progetto Grano Spa* (2013) where a three-judge bench overruled *Phulchand* and reaffirmed that the narrow test of *Renusagar* governs enforcement of foreign awards.²⁷ The Court held that while the phrase “public policy of India” appears in both Section 34 and Section 48, its application must be more restrictive under Section 48 to ensure finality and respect India's treaty obligations. This clarification ushered in a pro-enforcement era. Subsequent Supreme Court decisions, such as *Vijay Karia v. Prysmian Cavi e Sistemi SRL* (2020) and *Government of India v. Vedanta Resources Plc* (2020), have consistently applied the *Renusagar/Lal Mahal* principles – emphasising that foreign awards are not to be dissected on their merits under the cover of public policy, and enforcement may be refused only for truly egregious transgressions of fundamental legal tenets or morality.

4.3 Illustrative Cases and Judicial Application

Indian courts have gradually developed a consistent and restrained approach to public policy in the enforcement of foreign arbitral awards. The evolution is best illustrated through several landmark cases.

²⁵ *Arbitration and Conciliation (Amendment) Act 2015*, Explanation 1 and Explanation 2 to s. 48(2)(b), available at: <https://www.indiacode.nic.in>.

²⁶ *Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (Supreme Court of India) (introducing “patent illegality” as a fourth head of public-policy under § 34). Available at: <https://indiankanoon.org/doc/919241/>.

²⁷ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2013) 2 SCC 433 (Supreme Court of India) (overruling prior expansive approach to foreign-award enforcement and reaffirming narrow *Renusagar* test). Available at: <https://indiankanoon.org/doc/15591279/>.

In *Renusagar Power Co. Ltd. v. General Electric Co.* (1994), the Supreme Court adopted a *narrow interpretation* of public policy in addressing objections to enforcing an ICC award against an Indian company. The Court held that even if enforcement appeared to contravene certain foreign-exchange regulations, such a violation did not automatically amount to a breach of public policy unless it offended the fundamental policy of Indian law or justice. The award was therefore enforced, marking India's transition toward a Convention-aligned standard.²⁸

Subsequent rulings reaffirmed this limited scope. In *Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.* (2017), the Supreme Court approved enforcement of a two-tier arbitral procedure agreed by the parties, holding that procedural innovations are not contrary to public policy merely because they diverge from domestic practice. Conversely, in *Penn Racquet Sports v. Mayor International Ltd.* (Delhi HC 2011), enforcement was refused due to underlying illegality in import transactions—an exceptional case demonstrating that only clear violations affecting national economic interests trigger the public-policy defence.

The principle was reaffirmed in *Shri Lal Mahal Ltd. v. Progetto Grano Spa* (2013), where the Court rejected any merits review under Section 48 and restated that “public policy of India” in the enforcement context must be construed narrowly to preserve finality and international comity. The pro-enforcement stance reached maturity in *Vijay Karia & Others v. Prysmian Cavi e Sistemi SRL* (2020), where the Supreme Court dismissed objections alleging violations of exchange-control laws and imposed costs on the objectors for resisting enforcement without a substantive basis.²⁹ The Court emphasised that misuse of the public-policy defence undermines India's reputation as an arbitration-friendly jurisdiction.

Overall, Indian courts now rarely deny enforcement of foreign awards on public-policy grounds. Even the exceptional *NAFED v. Alimenta SA* (2020) decision – where enforcement was refused owing to export restrictions – remains an outlier in an otherwise stable, pro-enforcement jurisprudence firmly aligned with the *New York Convention* standard.

4.4 Summary of the Indian Approach

India's jurisprudence on the enforcement of foreign arbitral awards reflects a careful equilibrium—respecting the finality of international awards while safeguarding a narrow set of non-negotiable legal and moral principles. The “fundamental policy of Indian law” ground has been interpreted to encompass only the most serious violations – such as acts undermining India's core legal or economic framework, including extreme breaches of exchange-control or competition law.³⁰ Lesser statutory infractions are insufficient to trigger this exception. The “interests of India” prong is rarely invoked and is confined to circumstances implicating national security, foreign relations, or conflicts with

²⁸ *Renusagar* (Supreme Court of India, 1994).

²⁹ *Vijay Karia* (Supreme Court of India, 2020).

³⁰ *Renusagar* (1994) – Supreme Court of India (available on IndiaKanoon and SCC).

India's international obligations. Similarly, the "justice or morality" ground applies only where enforcement would shock the conscience of the court—such as awards tainted by fraud or the compelling performance of morally reprehensible acts.

Through sustained judicial discipline and legislative refinement, Indian law has moved toward a globally harmonised standard. Landmark decisions such as *Renusagar Power Co. Ltd. v. General Electric Co.* (1994) and *Shri Lal Mahal Ltd. v. Progetto Grano Spa* (2013) firmly established the narrow interpretation of public policy, while *Vijay Karia v. Prysmian Cavi e Sistemi SRL* (2020) reinforced the pro-enforcement stance and discouraged frivolous objections.³¹ The 246th Law Commission of India Report (2014), which led to the 2015 amendment to the Arbitration and Conciliation Act, expressly recommended codifying this limited view of public policy to bring Indian practice in line with the *New York Convention*.³²

Collectively, these developments confirm that India's courts now treat the public-policy exception as a safeguard against only egregious violations of fundamental law or morality. This predictability has bolstered investor confidence and strengthened India's reputation as an arbitration-friendly jurisdiction grounded in the rule of law.

5. Public Policy Exception in China

5.1 Legal and Institutional Context

The People's Republic of China (PRC) acceded to the *New York Convention* in 1987, with both reciprocity and commercial reservations, marking a decisive step in its integration into the international arbitration regime. The enforcement of foreign-related arbitral awards in China is primarily governed by the Civil Procedure Law (CPL) and supplemented by judicial interpretations and circulars issued by the Supreme People's Court (SPC).

Article V(2)(b) of the *New York Convention*—allowing refusal of enforcement where an award violates the forum's public policy—is reflected in Chinese legislation as contravention of the nation's "social and public interest" (社会公共利益). Chinese courts, acting under SPC supervision, have historically adopted a cautious and centralized approach to this exception, treating it as an extraordinary measure rather than a routine defence.

A distinctive institutional safeguard in China is the SPC Reporting Mechanism, introduced in the 1990s, which remains unique in global arbitration practice. Under this mechanism, if an Intermediate People's Court intends to refuse enforcement of a foreign or foreign-related award – including on public-policy grounds – it must first report its opinion to the Higher People's Court. Should the latter concur, the case is further submitted to the SPC for final review and approval before any refusal can be made. This multi-tiered supervisory process

³¹ Vijay Karia (2020) – Supreme Court judgment on IndiaKanoon.

³² Law Commission Report No. 246 (2014) – Official document of the Government of India.

has significantly curtailed arbitrary denials and has fostered a uniform, pro-enforcement national standard aligned with China's broader policy of judicial modernization and foreign investment promotion.³³

5.2 Interpretation of Public Policy in Chinese Law

Chinese legislation does not provide a detailed definition of “public policy” or “social and public interest.” Instead, the Supreme People's Court (SPC) has clarified through judicial interpretations that this notion must be applied narrowly and with restraint. In practice, Chinese courts understand public policy to cover three main categories: (i) the fundamental principles of Chinese law and governance—especially those reflecting socialist core values or essential state interests; (ii) matters of state sovereignty and national security; and (iii) serious violations of social morality or good customs.

Minor breaches of ordinary statutes or contractual rules are not treated as public-policy concerns. To invoke this exception, an award must affect China's societal or sovereign interests at a fundamental level. Importantly, Chinese courts do not use public policy as a pretext to review an arbitral tribunal's reasoning or the interpretation of law or evidence, since doing so would undermine the finality of arbitration, which China recognises under its international commitments to the *New York Convention*.³⁴

Empirical evidence supports this cautious stance: between 2015 and 2017, out of more than 200 foreign-award enforcement cases, only one was refused on public-policy grounds.³⁵ This statistic underscores how rarely the exception is used and demonstrates that, when applied, it typically concerns conflicts with Chinese judicial sovereignty or outcomes contrary to the nation's fundamental legal order. The SPC has consistently emphasised that the purpose of the public-policy exception is to protect core national values and judicial authority – not to revisit the merits of arbitral awards.

5.3 Case Studies – Rare Invocations of Public Policy

Chinese courts have invoked the public-policy exception under the *New York Convention* only in exceptional circumstances, underscoring a strong presumption in favour of enforcement.

The first well-known instance occurred in the Hemofarm case (2008) before the Jinan Intermediate People's Court. This case is often described as the first where

³³ Supreme People's Court of the People's Republic of China, *notice on the Handling of Foreign-Related Arbitration and Foreign Arbitration Cases by the People's Courts* (Fa [1995] No. 18), 28 August 1995 — establishing the reporting mechanism for foreign arbitral award enforcement. Available at: <https://cicc.court.gov.cn/html/1/219/208/210/217/index.html>.

³⁴ Supreme People's Court of the People's Republic of China, *Notice on the Handling of Foreign-Related Arbitration and Foreign Arbitration Cases by the People's Courts* (Fa [1995] No. 18), 28 August 1995. Available at: <https://cicc.court.gov.cn/html/1/219/208/210/217/index.html>.

³⁵ Ling Yang & Weixia Gu, “The Public Policy Exception under the New York Convention: An Empirical Study of Chinese Judicial Practice (2015–2017),” *Asian International Arbitration Journal* 15, (2019): 1–29.

enforcement was refused on public-policy grounds. The dispute arose from an ICC arbitration between Serbian companies, with indirect involvement of a Chinese state-owned enterprise. The Jinan court declined enforcement because the award had imposed sanctions on a party for applying to a Chinese court for asset preservation. The court viewed this as an affront to China's judicial sovereignty and thus contrary to the country's *social and public interest*. The Supreme People's Court (SPC) subsequently endorsed the refusal through its reporting mechanism, confirming that a foreign award cannot penalise a litigant for exercising lawful procedural rights in Chinese courts.³⁶

By contrast, later cases showed a more measured approach. In the *Castel Electronics v. TCL Communication Technology Holdings Ltd.* (2013) decision, the SPC permitted enforcement of a foreign award even though a Chinese court had previously declared the arbitration clause invalid. The SPC reasoned that the domestic ruling came only after the foreign award had been rendered, and denying enforcement on that ground would be inconsistent with China's pro-arbitration policy. Another notable example is *Wicor Holding AG v. Taizhou Haopu Investment Co.* (2016), where the Taizhou Intermediate Court refused to enforce an ICC award that directly conflicted with an earlier binding judgment of the Jiangsu High Court invalidating the arbitration clause. The SPC endorsed this narrow refusal, stating that enforcing the award would "violate the societal and public interest of the PRC" by undermining judicial authority.³⁷

Outside these few examples, Chinese courts have almost never denied enforcement solely on public-policy grounds. Even in cases involving punitive damages or intellectual-property disputes, enforcement was allowed because the awards did not offend China's fundamental legal or moral order. This selective and cautious application reinforces that the public-policy defence in China remains a *last resort*, reserved only for conflicts that threaten national judicial sovereignty or essential public interests.

5.4 Characteristics of the Chinese Approach

China's application of the public-policy exception in foreign-award enforcement reflects three defining traits: central oversight, rare invocation, and a focus on protecting state and institutional interests. The Supreme People's Court (SPC) exercises supervisory control through its reporting mechanism, ensuring that refusals are exceptional and justified at the highest judicial level. This top-down review has produced a high rate of enforcement success and conveyed a consistent message that denying recognition under Article V(2)(b) of the *New York Convention* is a measure of last resort.

When public policy is raised, it frequently overlaps with sovereignty or non-arbitrability concerns rather than disagreements over substantive law. For example, in *Hemofarm* (2008) and *Wicor Holding AG v. Taizhou Haopu Investment Co.* (2016), Chinese courts linked public policy to judicial authority and the protection of procedural integrity rather than to any particular legal

³⁶ SPC Notice (Fa [1995] No. 18).

³⁷ Matthew S. Erie, "Public Policy and the Enforcement of Foreign Arbitral Awards in China," *Hong Kong Law Journal* 48, (2018): 655–684.

doctrine. This demonstrates that China's notion of public policy primarily safeguards the structure and dignity of its judicial system rather than domestic legal preferences.

Although "social morality" is formally included within the concept of "social and public interest," it has rarely appeared in practice – likely because commercial disputes seldom engage moral issues. Hypothetically, an award enforcing a contract involving bribery or illegal acts would certainly offend public policy, but such matters would also fall under the broader categories of illegality or non-arbitrability.

Empirical studies confirm that refusals on public-policy grounds remain extremely rare. Between 1994 and 2015, Chinese courts refused enforcement in only 5 of 85 cases, and only 1 involved public policy.³⁸ These findings underscore China's alignment with the narrow interpretation of the New York Convention. The SPC itself has repeatedly emphasised that enforcement should be refused only when it would "harm the public interest or good social customs of the PRC."³⁹ By maintaining this disciplined approach, China reinforces its reputation as an arbitration-friendly jurisdiction and a reliable partner in global commerce.

6. Conclusion

The comparative analysis of Saudi Arabia, India, and China demonstrates a gradual but clear movement toward harmonisation in applying the *public policy* exception under the *New York Convention*. Despite differing legal traditions – Sharia-based, common law, and socialist civil law—each system now recognises that "public policy" must function as a shield for fundamental values, not a weapon for protectionism. By embracing this principle, the Convention states collectively advance the Convention's goal: ensuring that arbitral awards are effective and predictable across borders, thereby strengthening international commerce and dispute resolution.

In practice, Saudi Arabia's 2012 Arbitration Law and 2013 Enforcement Law introduced a modern framework that limits refusal of enforcement to awards clearly contradicting Sharia or national sovereignty.⁴⁰ India's courts, from *Renusagar* (1994) to *Vijay Karia* (2020), have consistently narrowed the doctrine to exclude mere errors of law or fact.⁴¹ Similarly, China's centralised judicial review system – anchored in the *Supreme People's Court's 1995 Notice* – has made refusals on public-policy grounds exceedingly rare, reinforcing confidence among foreign investors.⁴²

³⁸ Yongqing Zheng, "Judicial Review and Enforcement of Foreign Arbitral Awards in China: Empirical Findings 1994–2015," *China International Commercial Court (CICC)*, 2018. Available at: <https://cicc.court.gov.cn/html/1/219/208/210/216/index.html>.

³⁹ *SPC Notice (Fa [1995] No. 18)*.

⁴⁰ Saudi Arbitration Law.

⁴¹ *Vijay Karia* (2020).

⁴² *SPC Notice (Fa [1995] No. 18)*.

These examples reveal a shared trajectory: codification of narrow definitions, judicial training, and the pursuit of consistency with international norms. As this trend continues, the likelihood of arbitrary refusals diminishes, and the rule of law in international arbitration grows stronger. The direction is unmistakable – toward a future where a foreign arbitral award, whether rendered in Paris, Mumbai, Beijing, or Riyadh, encounters the same high threshold before any court may deny its enforcement.