

# The Public Policy as Ground for Exception in Enforcing Foreign Commercial Arbitral Awards: A comparative Analysis in context of Pakistan and the UK

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## Abstract

This analysis discusses whether the involvement of public policy in the execution of foreign commercial arbitral awards should serve as a ground for exception (Pakistan and UK) under the New York Convention (NYC) and UNCITRAL Model Law (UML). Judicial practices have been attacked in scholarly work for reading narrowly the public policy exception to make it consistent with the shifting expectations of an increasingly international trade economy. This paper addresses challenges of enforcement, particularly in a globalized context through the methodological perspective of doctrinal legal research. Instead, our results indicate the importance of nuance and more informed public policy in enforcing arbitration agreements as the dispute resolution mechanism of choice for modern-day commerce.

**Keywords:** New York Convention: Refusal: Recognition: Enforcement: arbitration agreement: Interpretation

## 1. Introduction

One of the most difficult issues to enforce, with reference to foreign commercial arbitral an award is public policy (PP) and can be argued before a domestic court by either side of the judgment. According to Gary Born, the public policy principle has grown into a major defense (and in and of itself) against efforts to enforce the FCAAs.<sup>1</sup> The PP is as wide as applied that offers an almost Masonic lock on governmental regulation decisions. It may be hard to know what is and isn't within the purview of PP. If the FCAAs conflict with a state's national policy, national courts have jurisdiction to nullify these and not enforce them. The requirements are included in international arbitration instruments like NYC and UML, which govern and encourage the enforcement of FCAAs. These instruments recognize that the states and their domestic courts have the final authority over the implementation of the FCAAs when permitting PP as a defense. They may choose not to implement the FCAA's regulations if they believe it contradicts their interpretation of the PP.<sup>2</sup>

The doctrine of PP is a fluid concept that changes depending on the state, time period, and specific location. A nation's legal system adjusts to social, political, economic, and cultural pressures, leading to many interpretations that might vary from broad to narrow or restricted. Despite the dynamic nature of this field, governments have not adopted transnational PP due to the prevalence of the term "state PP" in key international accords. PP operates within two main contexts: political and legal. Government policy is referred to as such in the former, while state policy is termed as such in the latter.<sup>3</sup>

## 2. Materials and Methods

This study investigates the comparative application of the public policy doctrine as a basis for exception in enforcing FCAAs in Pakistan and the UK. Employing the doctrinal legal research method, primary data are collected from the statute laws of both countries, while secondary data are gathered from case studies, journal articles, relevant books, and other scholarly resources.

## 3. Key Provisions Regarding Exceptions to Public Policy (PP) in NYC and UML

The NYC provides an exception concerning PP.<sup>4</sup> Domestic courts may reject FCAAs if enforcing them would contradict the PP of the country where enforcement is sought. Articles 34(2)(b) and 36(2)(b) of the UML include the same exception as in

<sup>1</sup> Born, Gary. *International commercial arbitration: commentary and materials*. Brill, 2021.

<sup>2</sup> Bahta T. H., (2011) "Recognition and Enforcement of Foreign Arbitral Awards in Civil and Commercial Matters in Ethiopia". *Mizan Law Review*, Vol. 5:1 pp. 106-140.

<sup>3</sup> Maniruzzaman AFM & Chishti I.A, (2019), "International Arbitration and Public Policy Issues in the Indian Subcontinent: A Look through the English Common Law and International Lenses", *Manchester Journal of International Economic Law*, Vol. 16, Issue 2: 183-212

<sup>4</sup> The New York Convention, 1958, Art, V(2)(b)

Article V(2)(b) of the NYC.<sup>5</sup> National courts may reject enforcement of FCAAs if they go against the PP of the state. The phrase "state public policy" (SPP) is causing a difference in the application of the PP defense, particularly in the realm of global legal diversity. International arbitration mechanisms have not attempted to define the PP defense or set a globally standardized criterion for it.<sup>6</sup>

National courts may not enforce the FCAA by referring to a violation of the state's core values. These provisions show that the drafters of the Convention did not establish a uniform definition or set of regulations for public policy. They declined to enforce international arbitrators' decisions, citing SPP. The PP defense should only be used in exceptional cases when a foreign arbitral decision contradicts the core principles of the state's legal framework. Although the drafters supported a stricter and more limited use of the PP argument, they did not establish globally uniform rules for refusing to enforce foreign arbitral rulings.<sup>7</sup> National courts have subjective discretion in defining the word "state public policy." National courts have the authority to use their discretion during hearings to enforce international arbitral rulings. They may reject awards that they find objectionable or conflicting with their interpretation of SPP.<sup>8</sup>

Contesting the enforcement of FCAAs sometimes hinges on PP concerns, especially when no other valid reasons for objection exist. The lack of a defined and universally agreed concept of PP in international arbitration instruments contributes to this misunderstanding. The NYC and the UML do not provide a precise description of PP. The UN offered assistance on this topic in a 1994 explanatory note that came with the UML. National courts can decline to FCAAs if the arbitrators have strayed significantly from fundamental procedural justice rules when making the decision, citing PP grounds.<sup>9</sup>

Neither the NYC nor the UML present a definition for public policy (PP). The United Nations (UN) in 1994 defined the concept of PP under Article 25 of the UML by providing guidance on the interpretation thereof which can be applied to deny enforcement of a foreign arbitration award. If the arbitrators veer significantly from basic principles of procedural justice, domestic courts may deny enforcement of FCAAs under public policy (PK) grounds.

Significant difficulty arises due to the lack of a clear and precise definition of PP with regard to the refusal on enforcement of foreign arbitral awards as the international treaties do not contain an explanation, or a summary, for this term. In the context of enforcement of a foreign arbitral award, it is up to the domestic courts to determine whether such judgment may be considered as being contrary to state-sanctioned public policy. May not enforce judgment if contrary to principles of comity abuse of judicial authority, or law impact of principles to respect - PP Each state has right to follow their own decisions can interpret it broadly domestic judgment imposed by the court in enforcing states given effect as final under either full faith and collateral estoppel Law of the case conceding a civil judgment made without personal jurisdiction may be less than willing under certain circumstances may refuse to enforce judgment if goes against its public policy.<sup>10</sup>

#### 4. Approaches to Public Policy (PP) Exception

It is possible to interpret the PP exception rule from two different perspectives: that it goes too far, or that it needs to expand. With international PP is promoting pro-enforcement policies of FCAAs, and domestic PP protecting national interests by a more widespread strategy of defense Domestic criminal law deals with the basic principles, attitudes and beliefs that are necessary to make certain a nations legal system and its financial stability in country. It additionally comprises norms which are deeply rooted within the countrywide legal and social shape of a society, representing its collective conscience.<sup>11</sup>

Domestic PP refers to the key concepts, attitudes and beliefs necessary for the functioning, as well as sustainability of a nation state in terms of the legal system and socioeconomic structure within its borders. Include rules deeply embedded in the legal and social structure of the state, which reflect the conscience of society and are rooted in awareness of human dignity. Domestic public policy in arbitration can well be called upon to refuse the enforcement of FCAAs which run against those fundamental principles and norms considered as a life blood for domestic legal system.<sup>12</sup>

International PP or, loosely speaking, transnational or universal PP (like life, liberty and property) is common concepts that many legal systems accept as constraints on governmental authority. This comprises of not less ideals and norms whose respect shall be considered essential for the upholding of international order, human rights and basic justice. International PP in arbitration potentially allows rejecting the enforcement of FCAAs if they violate international standards or norms.<sup>13</sup>

<sup>5</sup> The UNCITRAL Model Law Art 34(2)(b) and 36(2)(b)

<sup>6</sup> Ghodoosi Farhad, (2017) *International Dispute Resolution and the Public Policy Exception*, London & New York: Riutledge.

<sup>7</sup> Gibson, C. S. (2009) "Arbitration, Civilization and Public Policy: Seeking Counterpoise between Arbitral Autonomy and the Public Policy Defense in View of Foreign Mandatory Public Law", *Penn State Law Review*, 113:4, pp. 102-130

<sup>8</sup> Veena A., (2012) "Arbitrability and Public Policy in Regard to the Recognition and Enforcement of Arbitral Award in International Arbitration: The United States, Europe, Africa, Middle East and Asia", Unpublished PhD Diss (Golden Gate University School of Law, San Francisco, California 2012), 19. pp. 1-227

<sup>9</sup> Steinbruck Ben, (2015), *international Commercial Arbitration – A Handbook*, Munich: Beck, Hart, Nomos.

<sup>10</sup> Ghodoosi Farhad, (2016) "Arbitrating Public Policy: Why the Buck Should not Stop at National Courts", *Lewis & Clark Law Review*. pp 238-279.

<sup>11</sup> Garimella S.R., (2017), *Issues of Jurisdiction, Choice of Law and Enforcement in International Commercial Arbitration: An Indian Perspective*, in Sai Ramani Garimella and Stellina Jolly (eds.), *Private International Law: South Asian States' Practice*, Springer

<sup>12</sup> Hassan, T. (2012). *Judicial Policy and Precedents on Arbitration and Public Policy*, International Judicial Conference. <https://www.yumpu.com/en/document/view/31839191/international-judicial-conference-2012-law-and-justice>

<sup>13</sup> *ibid*

## 5. Expanding on the Public Policy (PP) Exception

At present, there is no precise and universal definition of the PP exception in accordance with these conventions. It has become difficult to articulate the definition of public purpose under PP due to the controversy surrounding its application and interpretation called as the Public Purpose exception. Different nations and their courts have interpreted and expressed the PP exception in numerous ways. Every state has its own interpretation of this idea, probably one view by a given state as opposed to another on what private policy and the recognition or execution of foreign arbitral decision entails is possible. In cases of international arbitral awards being contested, the dependably vague PP is used to convince local Courts to either rescind or prevent them from enforcement.<sup>14</sup>

National courts often enforce three types of public policy: transnational public policy (TPP), international public policy (IPP), or domestic Public policy (DPP). There is presently no precise and all-encompassing definition of the PP exception as outlined in international accords. The PP exception's application and meaning have become disputed, making it difficult to define. Nations and their respective courts have understood and stated the PP exemption in different ways. States vary in their approach to this concept.

For instance, one state may interpret PP differently and choose to acknowledge and uphold FCAAs while another state may endorse arbitration and promote its implementation. Parties disputing international arbitral rulings frequently seek annulment or denial of enforceability by persuading local courts to interpret PP more broadly. National courts often enforce three types of PP transnational PP international PP or domestic PP Neither the UML nor the NYC specifies a particular category of PP. They clearly mention "SPP as the reason for not enforcing FCAAs. However, courts in various countries generally acknowledge that the creators of the NYC intended to rely only on international PP as a basis for refusing to enforce FCAAs.

## 6. Sources of Public Policy in Pakistan

Firstly, the source of PP is Islamic law. The 1973 Constitution of the Islamic Republic of Pakistan sets forth the essential ideas that guide the country. The text's preface proclaims Almighty Allah's ultimate sovereignty over all creation and stipulates that elected state representatives must use their power within the boundaries set by the Almighty. Lawmakers strive to ensure that legislation adheres to the rigorous criteria of Shariah. <sup>15</sup>Any agreement or ruling that contradicts Shariah law is invalid. Former High Court of Sindh Judge Rana Bhagwandas said that a foreign ruling favouring a claim that goes against Shariah law cannot be recognized in Pakistan. <sup>16</sup>He emphasized the significance of the Quran and the teachings of the Prophet (the Sunnah).<sup>17</sup>

The government could not endorse the award's interest-based conditions due to their conflict with Shariah law, leading to the non-enforcement of the FCAA in Pakistan<sup>18</sup>. Ultimately, this line of reasoning was used by the court to ensure that judgments, including interest, were enforced. Section 29 of the Arbitration Act, 1940, permits the addition of interest in awards given in Pakistan, thereby facilitating their enforcement. The Federal Shariat Court of Pakistan may consider such awards illegal according to Islamic law. Non-Muslims can conduct business based on their religious beliefs, despite the restrictions imposed by Islamic law. Individuals may adhere to alcohol-related agreements and uphold related decisions, as shown in the El-Ahdab (2011) case. Contracts with Muslims are subject to Islamic law. Therefore, the court cannot uphold any award resulting from a contract that includes prohibited acts, like purchasing alcohol, as it goes against Islamic PP.<sup>19</sup>

Secondly, the provisions of the constitution of the Islamic Republic of Pakistan serve as the primary legal framework and social agreement of the country, reflecting its national policy. Maintaining the stability and order of the nation is crucial. The Supreme Court has determined that where clear precedents are lacking, courts should regularly consult the norms and values outlined in the Constitution, particularly in matters concerning fundamental rights and guiding principles. Similarly, courts in other countries, such as Kenya and Germany, have emphasized the need to align awards with PP. In the case of *In Christ for All Nations v. Appolo Insurance Co. Ltd.* (1999), the Kenyan High Court ruled that awards conflicting with the Kenyan Constitution are not bound by PP concerns. In 2010, a German court in Karlsruhe ruled that awards contradicting basic human rights are unjust and not in the public's best interest.

Thirdly, the award does not fall under fraud, correction, etc. The Supreme Court of Pakistan emphasized that elected authorities must priorities the country's sovereignty, dignity, welfare, and progress. Politicians' contracts must adhere to legal requirements and uphold principles of openness and free competition as outlined in Human Rights Cases, 2012. The *Tool Company v. Narris* (1864) ruling established that pursuing contracts solely for economic advantage violates PP. Contracts should priorities the most efficient and cost-effective solutions for addressing public requests without considering other criteria. Contracts related to the employment of government officials, the administration of justice, public funds, or the legislative process is deemed invalid and contrary to public policy. Throughout the bidding process, public contracts must adhere to integrity and accountability standards, ensure timely contract completion, and guarantee the quality of products and services. In the famous HUBCO case, Pakistan's PP prohibited arbitration of contracts obtained by fraud or corruption,

<sup>14</sup> Jagusch Stephen (2014) Issues of Substantive Transnational Public Policy, Chapter-3 of International Arbitration and Public Policy by Devin Bray

<sup>15</sup> Sharif, Ammara, Shan Ali, and Sumaira Baloch. "Public Policy In Pakistan A Roadblock To The Execution Of Foreign Arbitral Award." *Pakistan Journal of Social Research (PJSR)* (2022): 2710-3137.

<sup>16</sup> In the *Grosvenor Casine Ltd. v. Abdul Malik Badruddin* (1998)

<sup>17</sup> Sharif, Ammara, Shan Ali, and Sumaira Baloch. "Public Policy In Pakistan A Roadblock To The Execution Of Foreign Arbitral Award." *Pakistan Journal of Social Research (PJSR)* (2022): 2710-3137.

<sup>18</sup> *Flame Maritime Limited v. Hassan Al* (2004).

<sup>19</sup> Sharif, Ammara, Shan Ali, and Sumaira Baloch. "Public Policy In Pakistan A Roadblock To The Execution Of Foreign Arbitral Award." *Pakistan Journal of Social Research (PJSR)* (2022): 2710-3137.

deeming them invalid. The Supreme Court has a distinct viewpoint on private agreements that include fraud or corruption between individuals.

The parties agreed that the respondent would act as a commission agent for selling the commodities, and the appellant's mills would gin and press 24,000 bales of cotton. The Karachi Cotton Association shall mediate disputes as outlined in the arbitration provision of the agreement. The appellant sued the respondent corporations for allegedly exploiting commission agents by unfairly rejecting provided items while demand was high and only accepting them when market prices were low, leading to lesser payments for the goods. The appellant objected to the respondent's request for arbitration based on fraud. If the appellant objects to their alleged misconduct being disclosed to the public, the trial must be halted as per the Supreme Court ruling. Enforcing an arbitration agreement between two private parties cannot be justified solely based on fraud.<sup>20</sup>

## 7. Sources of Public Policy in the UK

In the UK, the sources of PP for the enforcement of FCAAs primarily stem from statutory provisions, case law, and international conventions. Here are the main sources:

Firstly, the Act of Arbitration is the primary legislation governing arbitration in the UK. Section 103(3) of the Arbitration Act 1996 allows the English court to refuse enforcement of a foreign arbitral award if it would be contrary to PP.<sup>21</sup> On the other hand, the UK ratified the NYC in 1975 and implemented its principles into legislation with the Arbitration Act of 1975. In 1996, England implemented the Arbitration Act to conform to the UML, which is the most recent arbitration law in the nation. The Arbitration Act of 1996 considers arbitral awards to be similar to court decisions. Section 68 of the Act allows any party to contest an arbitral judgment if it is considered to violate PP was acquired fraudulently, or if there are significant abnormalities in the arbitration process. Article 68(3) of the Arbitration Act, 1996, allows courts to refuse enforcement of the International Arbitration Agreement (IAA) if the dispute is not arbitral or contravenes public policy. English courts usually interpret the PP defense narrowly and restrictively, leading to a few cases where they refuse to implement the FCAAs.<sup>22</sup>

Secondly, judicial decisions play a crucial role in shaping the interpretation of PP in the context of arbitration. The English courts have established precedents in various cases where they have interpreted and applied the concept of PP in enforcement proceedings. The UK Supreme Court rejected the REFCAs because to the case's short facts being disclosed to the public. Details: The Romanian government provided incentives to the Micula brothers, who are investors in Romania, in return for their investments in undeveloped regions. The Miculas initiated arbitration under the Sweden-Romania BIT when Romania revoked the incentives; the arbitral tribunal decided in their favour and granted damages. After Romania joined the EU, the incentives were deemed illegal state aid according to EU standards. The arbitral verdict and EU law conflicted in this instance, particularly concerning state aid requirements. The main ideas discussed were the effectiveness of EU laws and the need for national courts to avoid making decisions that contradict EU law. The UK Supreme Court refused to enforce the arbitral award due to PP concerns, stating that it would breach EU state aid restrictions. The court emphasized the need of national courts to uphold EU legislation and highlighted its significance. It was determined that maintaining the judgment would hinder the EU's ability to effectively supervise state aid, which would contradict PP.<sup>23</sup>

The PP problems arose when Yukos Capital sought to enforce four arbitral awards against Rosneft in the Yukos Capital case, despite their annulment by Russian courts. The main issues were on the compatibility of maintaining cancelled prizes with principles of fairness, integrity, and national public standards. The Court determined that enforcement may be possible if charges of discrimination or violations were substantiated, based on justice and PP concerns. The case highlighted concerns about interest accrual under both Russian and English law, emphasizing the need of a consistent approach to resolving legal problems while upholding PP principles.<sup>24</sup>

The English Commercial Court to refuse REFCAs to an arbitration judgment on PP grounds while residing in London, Mrs. Zhang guaranteed a bond issued by Chong Sing Fin Tech Holdings Group Limited, a Hong Kong-based company, to Eternity Sky. Mrs. Zhang initiated arbitration proceedings to obtain declarations of the arbitration agreement's enforceability and/or guarantee. The arbitrator decided in favor of Eternity Sky, confirming the validity of the guarantee and approving Eternity Sky's complaint. Eternity Sky attempted to enforce it under Section 101 of the Arbitration Act. Mrs. Zhang objected, citing English PP as defined in Section 103(3) of the English Consumer Rights Act 2015 and CPR 62.18(9). She contended that some aspects of the guarantee were unjust, according to the CRA. The court assessed whether Mrs. Zhang met the criteria to be considered a consumer under the CRA, concluding that she behaved for personal use rather than for commercial objectives. The court determined that the CRA did not apply since there was not a "close connection" between the Guarantee and the UK, as it had extensive connections to Hong Kong.<sup>25</sup>

The court found that none of the terms fell of the Consumer Rights Act (CRA). Emphasizing congress never intended to make all arbitration provisions in consumer contracts per se unconscionable. The court rejected the argument that PP reasons on the Arbitration Act are supreme to those of the CRA, with an eye toward preventing circumvention of consumer protection laws. The court's decision is a clear example of the cautious way the English courts will approach enforcement of consumer

<sup>20</sup> In *Haji Soomar Haji Hajjan v. Muhammad Amin Muhammad Bashir Ltd.* (1981),

<sup>21</sup> Li, Siqi. "Intellectual Property Law and International Arbitration." (2024).

<sup>22</sup> Lal, H., Kaiding, J., Casey, B., Iakovenko-Grässer, T., & Defranchi, L. (2039). *International Arbitration Alert. Léa*, 41, 22-888.

<sup>23</sup> *Micula and others v. Romania (No. 2) [2018] case*

<sup>24</sup> *Yukos Capital (YC) S.a.r.L case [2012] EWCA civ 855 |*

<sup>25</sup> *The English Commercial Court in the case of Eternity Sky Investments Ltd v. Mrs Xiaomin Zhang [2023] EWHC 1964 (Comm)*



laws to contracts subject to foreign law and, importantly considering whether there is "a close connection" between the contract in question and England. The opinion underlines the courts' focus on close section 2 scrutiny in consumer contract arbitration provisions.<sup>26</sup>

Thirdly, the UK is party to various international conventions on arbitration such as the NYC in respect of the REFCAs. These conventions establish rules and norms for the enforcement of foreign decisions, including public policy. The English High Court refused to enforce a foreign arbitral award in *Symbion Power LLC v. Venco Imtiaz Construction Co., LTD*, on account of alleged fraud and corruption against the Claimant. According to the material, cheating methods were employed to secure award. The background premise identified was that the keystones of PP honesty and justice by definition are manifestly required in arbitration; this premise generated the supporting one. The opinion of the Court says that doing so would fly in the face of principles at the very heart of justice and undermine public confidence in the judicial process. Therefore, refusal of enforcement was expected to be part of protecting PP and maintaining a credible basis for arbitration.

## 8. The Comparative Study of Public Policy Exception in Pakistan and the UK

The idea of PP is a contentious and delicate matter in issues related to the implementation of FCAAs.<sup>27</sup> It is a common and controversial basis for contesting FAAs in NYC.<sup>28</sup> Thus, it often serves as a defensive tactic to hinder the enforcement of these awards in legal proceedings. Courts may consider various reasons beyond PP for rejecting enforcement under the NYC.<sup>29</sup> This study primarily focuses on the interaction between public order and other reasons for refusal.

Another crucial point to highlight about purchasing power is its inherent variability across different countries. Each country adheres to its unique interpretation of PP and establishes distinct standards from other areas. FAA may be successfully enforced in one country if it is in line with that State's public order, but it may be opposed in another State due to PP factors. PP issues are essential for the REFCAs. However, there are differences in the understanding and execution of REFCAs between Pakistan and the UK.

An important case that provided insight into Pakistan's judicial system was *Oil and Fuel Improvement Employer Ltd.*, which examined the concept of public policy within the framework of reference applications. The Pakistani Supreme Court said that a Reference Application might be rejected if it significantly undermined Pakistani national policy. The court stressed the need of applying the notion precisely and clearly, warning against using the public policy exception to evaluate the award's merits. Pakistan prioritizes public policy more than the UK, influencing the reassessment of arbitrator verdicts.<sup>30</sup>

The courts of Pakistan consider the interests of financial, social and public security including defense or protection of basic rights when defining public policy in a broad sense. Please be careful of applying this strategy in court especially to the enforcement of the international arbitration decisions for protecting intellectual property. In this case, different courts held that the argument on the grounds of public policy could have multiple meanings leading to paradoxical legal judgments.

Public Policy in Pakistan features an intricate merge of the Contract Rules, Domestic Arbitration Mechanisms, and judicial pronouncements that creates potential difficulties to implement the process vis a vis FCAAs.<sup>31</sup>

The lack of a universally agreed-upon definition of public policy, coupled with its varying interpretations across legal systems, adds to the complexity. The ambiguity, subjectivity, and uncertainty surrounding public policy have posed continual challenges to the effectiveness of international commercial arbitration. The Constitution of the Islamic Republic of Pakistan serves as the supreme law, emphasizing principles of parliamentary democracy and sovereignty vested in Almighty Allah. Lawmakers are guided by constraints rooted in Islamic law principles, or Shariah, ensuring that contracts and practices align with Islamic tenets. Any agreements or contracts contrary to Shariah principles are not accepted.<sup>32</sup>

Mr. Justice Rana Bhagwandas said in the *Grosvenor Casino Ltd.* case that Pakistan cannot enforce a foreign ruling that contradicts Shariah principles. The case of *The Flame Maritime Limited v. Messers Hassan Ali Rice Export* brought attention to challenges in enforcing FCAAs in Pakistan. The arbitrator's decision to award interest was deemed to contradict Islamic law, as per a 2000 Supreme Court judgment. The Sindh High Court made a mistake by using a 1999 ruling that was overturned by the Supreme Court in 2002, emphasizing the ban on interest in Pakistan. The Supreme Court upheld the ruling but excluded the interest portion, indicating the court's commitment to following Islamic principles in Pakistan.<sup>33</sup>

Whether a religious contract complies with Islamic law is not important for Islamic law to acknowledge that non-Muslims may engage in such agreements. Non-Muslims may be bound by contracts that include alcohol or other prohibited substances, even if they do not follow the Islamic faith.<sup>34</sup> PP as Islamic law will be used if one of the parties is a Muslim. Enforcing a

<sup>26</sup> Ibid

<sup>27</sup> Audley Sheppard, "interim ila report on public policy as a bar to enforcement of international arbitral awards" (2003) 19 *arbitration int'l* 2, 217-248

<sup>28</sup> Judith Gill and David Baker, "the public policy exception under article v. 2 (b) of the New York Convention: lessons from around the world" (2016) 18 *Asian Dispute Review* 2.

<sup>29</sup> Lanfang Fei, "public policy as a bar to enforcement of international arbitral awards: a review of the chinese approach" (2010) 26 *arbitration int'l* 2.

<sup>30</sup> *Oil And Fuel Improvement Employer Ltd. v. Snamprogetti engineering and tech. S.P.A* [2004] PLD 557 (sc),

<sup>31</sup> Rana Rizwan Hussain, "enforcement of foreign award and public policy rules in pakistan" (2023) 1 *UCP journal of law & legal education* 2

<sup>32</sup> Ali Ijaz whether does the New York Convention 1958 still fit for the purpose in the UK and Pakistan?" (ll.m dissertation, university of essex, 2018/19),

<sup>33</sup> *Grosvenor Casine Ltd. v. Abdul Malik Badruddin*, PLD 1998 Karachi 104

<sup>34</sup> Ali Ijaz whether does the New York Convention 1958 still fit for the purpose in the Uk And Pakistan?" (ll.m dissertation, university of essex, 2018/19),

verdict based on a contract that breaches Islamic law, especially those involving alcohol, contradicts Islamic values and is not feasible. In Pakistan, contracts between non-Muslims are legally binding based on religious beliefs, but agreements between Muslims are subject to Islamic law. Rewards based on contracts that do not comply with Islamic principles are void.<sup>35</sup> PP was a social compact, which outlines the boundaries of government interactions between citizens and the state, is fundamental to every country. If the government reneges on its pledge, there might be civil unrest or terrible occurrences. All countries strive to safeguard the social contract to secure their existence. Pakistan's social contract is founded on the constitution that was approved in 1973. The constitution outlines the rights and obligations of every person, as well as the foundation of governance. Parliamentary privilege in Pakistan is restricted by the constitution.

Legal systems of each country establish the bounds of private property. According to Section 30 of Pakistan's Contract Act, all contracts, including bets, are deemed invalid after the ruling in the Grosvenor Casino Ltd. Case. You cannot pursue legal action to reclaim any lost funds from these wagers. Tolerating such conduct would directly contradict the core objectives of the PP. The court must ascertain whether the purported legal duty is procedural or obligatory before enforcing the agreement.<sup>36</sup> Legal policy may be accurately described as a set of legally bound commitments. The Manzoor Hussain court rejected the accusation that a specific transaction violated the public interest by exceeding the limits established by the Foreign Exchange Regulation Act.

The Supreme Court ruled that the Foreign Exchange Regulation Act does not explicitly prohibit the formation of contracts that could violate its regulations as long as the State Bank of Pakistan has the authority to approve such conduct. The Court cautioned against establishing new categories or concepts of PP and upheld a stringent interpretation of Section 23 of the Contract Act. PP was Criminal cases are not suitable for arbitration. An arbitration agreement that involves criminal actions, such as the dismissal of criminal proceedings as part of the settlement, would be entirely addressed by the award, as shown in the Ali Muhammad case. The arbitrator's referral and ruling, which include addressing criminal issues and advising against pursuing criminal prosecution, are considered inconsistent with PP.

In the UK, PP is strictly defined, particularly in relation to rejecting FCAAs. English courts typically have a pro-enforcement stance in PP matters and are reluctant to intervene. Preserving party sovereignty and the conclusiveness of arbitration decisions is crucial. In a recent case involving a Request for Central Authority Assistance from Lesotho, the High Court took a strong stance in favour of enforcement, emphasizing the importance of complying with international anti-abuse accords and foreign account arrangements. The Court stressed that arbitration findings must be respected unless there are compelling public policy reasons to reject them, recognizing the importance of party sovereignty and the binding nature of FAAs.<sup>37</sup>

This is in streak with the UK commitment on international treaties including NYC and initiatives to avoid deforestation. The Court recognized that in certain circumstances PP reasons may explain why a FAAs has been rejected, which where they are inconsistent with fundamental moral, legal or equitable standards. It is seen that the PP is evolving and comprises elements from different legal systems and origin. Some of the factors that affect the enforcement of arbitral rulings in the UK include statutory law the arbitral award, precedents, international standards, human rights, public interest, integrity of the judicial system, fraud and national security. Finally, decisions are made to do justice and to protect rule of law founded on the cardinal principle, legal principles, moral and legal.

## 9. Conclusion

It is thus seen that while Pakistan subscribes to technology of non-recognition and enforcement of PP in connection with foreign arbitral awards, UK follows the opposite way. Applying the concept of PP in a broad sense, Pakistani courts consider numerous factors including financial benefits, safety of people, and rights which are inherent in every human. Due legal complexities, variations and uncertainty in the enforcement of international arbitral awards across various jurisdictions may pose a threat to their efficient enforcement. The first factor that enhances the complication of the subject matter includes business contracts and domestic arbitral procedures and the judicial recognition of those contracts. However, the UK has a tendency to give a strict definition to PP where priority is given to the fulfillment of the decisions and the party autonomy as well as finality of the award. Some of the major factors that define public procurement issues in the UK include statute law, case law, international treaties, human rights, public interest, criminal offences and breach of legal requirement, bias and national security. There is an attempt to evaluate the reasons behind the willingness of both countries to observe legal principles rather than enforcing the judgments in the given cases while focusing on the different approaches of the countries because of the peculiarities of their legal systems and governmental policies.

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<sup>35</sup> El-Ahdab, Jalal. *Arbitration with the Arab countries*. Kluwer Law international, 2011, pp. 1-52

<sup>36</sup> *Grosvenor Casine Ltd. v. Abdul Malik Badruddin*, PLD 1998 Karachi 104

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