**Introduction**

With reference to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the UNCITRAL Model Law on International Commercial Arbitration 1985 (Model Law), the point of this paper is to critically discuss as whether public policy a legitimate impediment to enforcement of foreign arbitral awards or whether it delay the smooth operation of international commercial arbitration. For conducting this critical discussion firstly the concepts related are defined, then the issues related are critically discussed in relation to the obtainable research literature. Finally some empirical evidences relates case study findings are discussed with reference to evidences obtained from various countries. In the end, based on the discussion of the paper, own conclusions are made.

**Main Body**

Involving in international commercial or business dealings might create the parties experience unsure and tentative as regards the effect of a disagreement, which in most cases direct them to consign arbitration clauses in their agreements as one of the possessions to seek to have a just prospect in the ruling of the row. Noticeably, one of the foremost gains sought by the parties with arbitration in the global domain, above and beyond its comparative alacrity and less expensiveness comparing legal action, is the choice of the ceremonial and substantive law that tends to rule and manage their rows. In this context, the New York Convention sets up the justification upon which a court might repudiate to put into effect the award, where public policy as a provision works as exception to recognition and enforcement of arbitral awards[[1]](#footnote-1).

Public policy is the central legal concept enshrined in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the UNCITRAL Model Law on International Commercial Arbitration 1985 (Model Law)[[2]](#footnote-2) (Ma, 2006). These are two of the most well-known global mechanisms for promoting and regulating worldwide commercial arbitration. In this framework, public policy is one of the justification in relation to which a party might dispute the putting into effect of a foreign arbitral award. In fact public policy is one of the most vital armaments in the hands of the country court which permits it to snub putting into effect of an arbitral award which is or else legitimate. From this perspective public policy, for the most part, is described as disreputable considering the defense as powerless of being exactly established and is completely reliant on the laws of particular states for its putting into effect. Therefore, it diverges from one country to another. More importantly, the New York Convention fails to give any direction for the national courts as to how the public policy defense ought to be construed. So, country courts might take to mean public policy utterly at their own good judgment and a good deal will depend on the stance of the country court and the particular judge at the time. From this perspective questions have been raised against the idea of public policy exemption in relation to impeding the enforcement of foreign arbitral awards.

Legal enforcement of arbitral awards is obligatory where there is no intended conformity by the concerned parties. Courts internationally might turn down to put into effect arbitral awards if such enforcement would be opposing to their countries public policy. This is described as the public policy omission to the enforcement of arbitral awards.[[3]](#footnote-3) Worth to mention here that the public policy omission is one of the most contentious omissions to the enforcement of arbitral awards, creating judicial discrepancy and for that reason capriciousness in its submission. The New York Convention the Recognition and Enforcement of Foreign Arbitral Awards has had already conducted the journey of several decades, but the role of public policy in foreign arbitral awards is yet to be established as conclusive by the researchers and practitioners.

Even today public policy continues to be a vastly argued, contentious and compound issue so far as enforcement of foreign arbitral awards is concerned. This is due to the varied approach taken by courts in the countries as regards the conception of public policy in worldwide arbitration. Even though with the passage of time, arbitration laws and practice have had attempted to bring into line the conception of public policy so that parties might take benefit from a across the world acknowledged and established impression of public policy, the variation in stance of country courts has had made this job in effect unattainable. Over the years, the divergence in stance has had been most high up in the countries, where a chain of court decisions have had impeded the advancement of a globally acknowledged conception of public policy.[[4]](#footnote-4) Meanwhile, on the argument is that public policy is a legitimate impediment to enforcement of foreign arbitral awards, on the other hand the argument is that public policy delays the smooth operation of international commercial arbitration. It is in this context that the paper in hand conducts a critical discussion with reference to the issue as whether public policy is a legitimate impediment to enforcement of foreign arbitral awards or whether delays the smooth operation of international commercial arbitration.

Theoretically, public policy is the reflection of protecting moral, social, economic or legal principles, where public policy exception is elucidated as a mechanism that corrects the choice of law title for sustentative reasons, that is to say the defense of the forum’s deep-seated legal principles and moral values. Moreover, public policy is acknowledged as the ultimate stricture of law and normally uttered by legislative and constitutional declaration of law. From this perspective, public policy has three diverse ranks namely domestic, international and transnational. However, at the same time as, a fourth rank is as well included by several scholars in the form of multinational public policy.[[5]](#footnote-5) The domestic public policy all concerns to the laws and principles that legalize and control the countryside issues and concerns. Whilst just one country is connected with the arbitration, domestic public policy applies. On the other hand, international public policy is an extension of domestic public policy and all concerns to the rules of a country’s countryside public policy applicable in the international context. In the case of seeking out enforcement of a foreign arbitration award, the courts ought to look to the international public policy and set of scales of interests of its own domestic public policy with the public policy of the interested countries and the needs of international trade. Last but not the least, transnational public policy, perceived as universal standards of established rules of conduct common to the international public or society, all concerns to the basic rules of natural law, principles of universal justice and as well the common principles of morals established by civilized countries.

From the perspective of protecting moral and legal principles public policy is imperative for establishing order in every society, country or the world order as we perceive today in the age of globalization. However, in the case of commercial arbitration, public policy exception is taken as the stand of promoting and regulating international commercial arbitration. There is a contradiction in enforcing public policy exception in international commercial arbitration. However, the argument is that public policy works as a legitimate impediment to enforcement of foreign arbitral awards and even delays the smooth operation of international commercial arbitration. If this argument is being validated then public policy exception in international commercial arbitration is quite justified, nonetheless, if fails to be validated, public policy exception in international commercial arbitration turns out to be a litigious. This requires to be examples all the way through illustrative cases and firm arguments.

The part of obligatory regulations in worldwide commercial arbitration is distinctively intricate for the reason that they place the benefit of countries and parties in straight disagreement. Moreover, disagreements or clashes in the midst of countries’ interests might come to pass. Two or more countries might have either incompatible obligatory regulations, or contradictory benefit in the result of an arbitration where their corporate citizens are entailed. The real issue in this context is as how arbitrators ought to settle the disagreement amid country and private party benefit, and act in response to the opposing good of countries (Barraclough and Waincymer, 2005).[[6]](#footnote-6) It would be worth to mention here that arbitration is one of the oldest legal arrangements of settling clashes and rows, even though, it was uncomplicated and devoid of any authority to put into effect the effect of the court decision. In our days, arbitration has had transformed to a more intricate and difficult arrangement of settling worldwide trade disputes. Over the decades, enforcement of court award helped from a range of conventions where the most important is New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), although the enforcement of provisions is yet challenging job all over the world. One predicament in this context is linked to the enforcement of the award in various countries or nations. With reference to Article V (2(b)) of New York Convention, countries might make illegal enforcement of award if it is opposing or resisting public policy of that country.[[7]](#footnote-7) Despite all odds international commercial arbitration’s is growing in significance as a means of disagreement ruling, as gradually more pressure on dispute resolving courts to put to rights the abrasion created whilst foreign parties take divergent legal cultures to a solo legal proceeding. Paradoxically international commercial arbitration’s incidence is to a degree because of the fact that overseas parties might concur to apply manifold legal codes to a solo legal row.[[8]](#footnote-8) These suggest that international commercial arbitration is on rising trend considering the recent rapidity in moving of businesses or commercial entities from one country to another under the liberal force of globalization and internationalization. Foreign international arbitral awards are inducements to the trades and businesses in the countries, but there are a lot of disputes, disagreements and conflicts are associated. In order to sole these disputes, disagreements and conflicts, country and parties in the regions of the world look towards New York Convention with hopeful eyes. However, the issue of public policy exemption creates the provisions of New York Convention as disputed. In the obtainable research literature we find the arguments and case illustrations presented both in favour and against the provision of public policy exemption under New York Convention. Both arguments, given in favour and against as own merits and demerits, yet a great deal of arguments based on empirical evidences justify the public policy exemption and find nothing devalued or useless New York Convention provisions for settling the disputes relating to international commercial arbitral awards. However, prior to coming to a conclusive position we need to critically assess the findings and arguments of various researchers and practitioners with reference to the cases of different countries.

With reference to the case of public policy concerns concerning enforcement of foreign international arbitral awards in the Middle East, Wakim (2008)[[9]](#footnote-9) finds that the term public policy is used with reference to New York Convention is neither clearly defined nor settled law, and as a result the term is defined by country’s courts which vary in accordance with the variations in country’s’ political, social, legal and economic state of affairs. In such a situation public policy exception creates uncertain situation of enforcement of foreign arbitral awards working as impediment, but definitely this is not legitimate impediment. On the other hand, might delay the smooth operation of international commercial arbitration, but this is not provisional. further it is argued that the New York Convention’s justification regarding public policy exemption lies in its capability to necessitate national courts to put into effect foreign arbitral awards that do not infringe the country’s internal public policy, an effect that, at the same time as conceivably accessible devoid of an international convention, has turned out to be more useful and clear. So the case and the argument make apparent that the arguments against exemption of public policy is due to lack of clarification and uniformity in the very idea of the concept under New York Convention, but in true sense it is smoothing the progress of enforcing of foreign international arbitral awards, and not impeding.

On the other hand, throwing light on the utility of public policy exemption in international arbitral awards with the case of Hong Kong Court ruling, Goldstein and Chin (2011)[[10]](#footnote-10), finds that under the New York Convention exemption of public policy is taken by several countries or parties as the last option for opposing enforcement of a foreign arbitral award, however if court of the land comes up with fair judgment, there is no resistance in real sense at all. further it is argued that it has had been tried unsuccessfully on several occasions in jurisdictions internationally, where a current Hong Kong court judgment gives some direction on when it may in fact work. As the Hong Kong court turned down to dismiss the summons seeking out a denial to recognise or put into effect the award, and permitted full argument on the query of whether the facts supposed offended against the fundamental ideas of morality and justice in Hong Kong. The judgment of Hong Kong is a landmark decision defending excemption of public policy under New York Convention.

More importantly, lately with reference to the case of US courts recognizing and enforcing foreign arbitral awards applying Islamic law under the New York Convention, Rizwan (2013)[[11]](#footnote-11) argues that with the aid of the New York Convention, international commercial arbitration is a cross-border device that bonds people, societies, countries, and commercial entities, and may well smooth the progress of trade in the midst of private entities from countries that have slight or no proper relationships with each other. In the case study there is cited a party from Israel and a party from the Islamic Republic of Iran may well arbitrate in the UK, and a US court might distinguish and put into effect the award delivered underneath the New York Convention’s enforcement-friendly set of laws. Truly public policy exemption rather smoothes the progress of coming into effect of New York Convention in real sense, and the issue of legitimizing impediment is misleading by the researchers, practitioners or those raising voice against the public policy exemption. At the same time as it is as well true that public policy exception under New York Convention can smooth the progress of international arbitral awards only is the countryside courts rulings pave the way for unification of local systems with the international systems.

**Conclusion**

Public policy is the central legal concept enshrined in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the UNCITRAL Model Law on International Commercial Arbitration 1985 (Model Law). Public policy is one of the justification in relation to which a party might dispute the putting into effect of a foreign arbitral award. In fact public policy is one of the most vital armaments in the hands of the country court which permits it to snub putting into effect of an arbitral award which is or else legitimate. From this perspective public policy, for the most part, is described as disreputable considering the defense as powerless of being exactly established and is completely reliant on the laws of particular states for its putting into effect. Therefore, it diverges from one country to another. The public policy omission is one of the most contentious omissions to the enforcement of arbitral awards, creating judicial discrepancy and for that reason capriciousness in its submission. Public policy is a legitimate impediment to enforcement of foreign arbitral awards, on the other hand the argument is that public policy delays the smooth operation of international commercial arbitration. It was in this context that the discussion was conducted in this paper.

The arguments against exemption of public policy is due to lack of clarification and uniformity in the very idea of the concept under New York Convention, but in true sense it is smoothing the progress of enforcing of foreign international arbitral awards, and not impeding. Justly public policy exemption rather smoothes the progress of coming into effect of New York Convention in real sense, and the issue of legitimizing impediment is misleading by the researchers, practitioners or those raising voice against the public policy exemption. At the same time as it is as well true that public policy exception under New York Convention can smooth the progress of international arbitral awards only is the countryside courts rulings pave the way for unification of local systems with the international systems. Hence, the discussion in this paper goes against the argument that public policy exemption is a legitimate impediment to enforcement of foreign arbitral awards or whether it delay the smooth operation of international commercial arbitration.

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    [↑](#footnote-ref-10)
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