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**THE ENFORCEMENT OF ARBITRAL AWARDS IN INDIA:  
CONTINUED CHALLENGES IN THE POST-AMENDMENT ERA**

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**ABSTRACT**

Arbitration has become the most desirable process for resolving commercial disputes, both in domestic and transnational settings. The statutory framework of India, with its roots in amendments in 2015, 2019 and 2021, embodies the legislative focus on minimising judicial intervention and enhancing the finality of awards. The paper is a critical review of the disjuncture between the intent and reality of enforcement in the post-amendment era, with special reference to judicial practice under Sections 34 and 36 of the Act. By conducting a comparative study of the enforcement cultures in Singapore, the UK, and Hong Kong, the paper reveals certain structural shortcomings of the Indian enforcement ecosystem and suggests specific reforms to move to the Indian arbitration practice towards internationally established pro-enforcement norms.

**Keywords:** *Arbitral Awards, Enforcement, Section 34, Section 36, Judicial Intervention, Public Policy, India, Singapore, Comparative Arbitration Law.*

**1. INTRODUCTION**

The ultimate test of whether arbitration as a system can be useful to the commercial requirements of modern economies is the enforceability of arbitral awards. The adjudicatory process resulting in outcomes that are unenforceable or conditional with regard to enforceability dispels the entire purpose of arbitration as opposed to regular litigation. This aspect of arbitral efficacy has been the focus of continuous scholarly interest in India, especially with the legislative revamp of 1996 and the subsequent amendments of 2015, 2019, and 2021. The initial Arbitration Act of 1940 was often criticised for allowing massive

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judicial oversight at various levels of arbitral proceedings before, during and after arbitration itself. Courts enjoyed extensive review authority, and award-holders frequently were stuck in protracted post-award litigation that practically eliminated any time advantage that arbitration was intended to provide. In its turn, the Arbitration and Conciliation Act of 1996, which is based on the Model Law on International Commercial Arbitration (1985) was introduced to substitute this inefficient regime with an assurance of party autonomy, finality of the procedure, and deference to the court. The paper critically and comparatively explores the problem of enforcement during the post-amendment era. It examines the constitutional framework of the enforcement of the 1996 Act, surveys the development of judicial interpretation of Sections 34<sup>3</sup> and 36<sup>4</sup>, and places the Indian enforcement practice in a comparative context with Singapore, the United Kingdom and Hong Kong. The eventual goal is not to enumerate the shortcomings, but to determine the structural and interpretive reformation, which can be of benefit to the Indian desire to become a globally reputable arbitral seat.

## **2. LEGISLATION ARCHITECTURE OF ENFORCEMENT OF ARBITRAL AWARDS.**

### **2.1 The 1996 Act: Framework based on the UNCITRAL Model Laws.**

The ‘Arbitration and Conciliation Act, 1996’, is a groundbreaking breakaway from its predecessor. Contrary to the 1940 Act, which was based on the concept of integrating arbitral proceedings with the supervision of the civil court, the 1996 statute was developed with the principle of structural independence: arbitration as a self-sufficient method of adjudication, with the role of the court being limited to facilitation and supervision, in place of direction. This philosophy is directly expressed in section 5 that none of the judicial authorities shall interfere with issues regulated by the statute unless it is explicitly allowed in the statute. The Act is divided into four Parts. This formal separation is a legislative decision to subject domestic and international award enforcement to different normative regimes, although this is consistent with India's international treaty commitments. In Part I, the enforcement regime works under two connecting provisions. Section 34 presents the sole basis of a domestic arbitral award that might be struck down by a competent court, thus providing the boundaries of judicial review. As initially passed and later amended, section 36 specifies that an award

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<sup>3</sup> The Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

<sup>4</sup> The Arbitration and Conciliation Act, 1996, § 36, No. 26, Acts of Parliament, 1996 (India).

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can or cannot be enforced in the face of a setting-aside challenge. Collectively, these clauses regulate the most vital post-award stage where a winning party endeavours to convert an arbitral determination into a practical relief.<sup>5</sup>

### **2.2 Section 34: Scope of Setting-Aside Jurisdiction.**

Section 34 allows a court to quash an award on broadly defined grounds which fall into the broad group of procedural and substantive. The procedural grounds, which can be maintained by one party, are incapacity of the parties, inadmissibility of the arbitration agreement, the lack of sufficient notice or the possibility to argue in one's favour, and inappropriateness of the tribunal. The substantive grounds, which can be brought before the court by its own initiative, are associated with the inadmissibility of the arbitrability of the subject matter and the incompatibility with the Indian public policy. This issue was taken head-on in the 2015 amendment. The revised version makes it clear that an award can only be determined to violate public policy if it is induced by fraud or corruption, or is against the underlying policy of Indian law, or even against the most fundamental concepts of morality or justice. Also, the amendment explicitly narrows the illegality of patents to errors obvious on the face of the award expressly excluding reassessment of the factual finding or reassessment of the evidence by the reviewing court.

### **2.3 Section 36: Automatic Stay to Discretionary Stay.**

Before the amendment of Section 36 in 2015, it had the effect of making an arbitral award unenforceable by simply filing a Section 34<sup>6</sup> application to have it set aside. During this regime, the award-debtor was allowed to continue avoiding the enforcement indefinitely merely by bringing about a challenge to the same, irrespective of the merits of the challenge. This automatic-stay regime was massively criticised as giving a structural incentive to post-award litigation, where any dissatisfied party could do so at low cost by bringing a spurious or otherwise under Section 34. This structure was changed radically in the 2015 amendment. Particularly in its revised edition, Section 36 states that the act of submitting a setting-aside application under Section 34 does not, per se, make the award invalid. The default position now is enforcement; the stay that needs energetic judicial action and justified explanation. A

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*International Arbitration Act 1994 - Singapore Statutes Online*, <https://sso.agc.gov.sg/Act/IAA1994> (last visited Apr. 22, 2026).

<sup>6</sup> The Arbitration and Conciliation Act, 1996, § 36, No. 26, Acts of Parliament, 1996 (India).

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stay on the enforcement of an award may be granted at a separate application by a court but under conditions which the court may impose, such as posting the amount of the award or providing security.

### 3. JUDICIAL INTERVENTION – REFORM, INTENT AND GROUND REALITY

#### 3.1 The History of Public Policy Review.

Judicial interpretation under section 34 may be charted through three rough stages. During the initial period, which then began with the passage of the 1996 Act and extended to the mid-2000s, Indian courts took a comparatively pro forma approach to the review, generally in keeping with the supervisory model the legislation envisioned. The second step that was initiated largely by the *ONGC v. Saw Pipes*<sup>7</sup> case in 2003 involved an increase in the range of review that placed the courts dangerously near the level of appellate jurisdiction. The third and ongoing stage, influenced by the amendment of 2015 and further Supreme Court directions, is an attempt to move back to the disciplined supervisory model as a deliberate judicial activity. In the case of *Associate Builders v. Delhi Development Authority*<sup>8</sup>, the Supreme Court made it clear that the illegality of a patent as one of the reasons to set aside a domestic award does not allow a court to override the interpretation of the terms of a contract by the arbitral tribunal. The court restated that, provided there is a reasonable basis on which, on a reading of the contract, the view could have been taken, and that the arbitrator has taken one of the views which could have been taken, the decision made by the arbitrator cannot be set aside simply because the court might have thought it would have been preferable to have taken a different view.

#### 3.2 Discretionary Stay: Practice.

One of the leading structural changes in the post award enforcement system in India has been the transition to the discretionary stay system. Discretionary model. In theory, a discretionary model should involve a true appraisal by the courts: the likelihood of the award-debtor suffering harm on the award-holder by refusing to enforce the award is weighed against the interests of the award-debtor in not having the status quo disrupted by a genuine challenge being successfully resolved. This balance is to be operationalised by the imposition of a

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<sup>7</sup> Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 (India).

<sup>8</sup> Associate Builders v. Delhi Dev. Auth., (2015) 3 SCC 49 (India).

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security deposit (as a condition of stay) which, at the same time, must guarantee the award-debtor a financial price to request suspension and safeguard the award-holder against dissipation. Several complications, however, occur in practice. In deciding whether or not to stay, courts would be required to determine the level of scrutiny to give to the merits of the underlying Section 34 application. A too casual glance can lead to the grant of stays that offer coverage of any dilatory challenge; a more comprehensive review of the merits will convert the stay application into a preliminary hearing of the merits trial, taking up judicial resources, and risking the prejudice effect. At the stay stage, the general common law practice has been a prima facie methodology, where today the questioner limits its inquiry to whether the challenge presents a serious or arguable question; it does not enquire into the merits. The government and other entities in the public sector are common respondents in arbitral cases where they respond to major awards in infrastructure and construction disputes.

### **3.3 Implementation Process:**

The Last-Mile Problem. Although an arbitral award has survived a Section 34 challenge or no challenge is made, the award-holder must go on to enforce the award like a civil decree under the Code of Civil Procedure, 1908. Attachment applications must be processed, motions to disallow by the judgment-debtor confronted, claims of third parties to property attached, and issues concerning jurisdiction as to the situs of property addressed by execution courts. The discovery and seizure of attachable property may take up to lengthy satellite proceedings in areas where the award-debtor has complicated corporate forms or holds assets in diverse jurisdictions. Effective attachment may require financial disclosure applications, questions about the ownership of assets, coordination with regulatory authorities and more. The Insolvency and Bankruptcy Code, 2016, provides a yet another complexity to the imposition of an arbitral award in an insolvency context because the framework of collective creditor resolution can override the enforcement procedure of an arbitral award. Arbitration law/insolvency law Intersection.

## **4. COMPARATIVE ANALYSIS: INDIA, SINGAPORE, THE UNITED KINGDOM AND HONG KONG**

**4.1 Framing the Comparison There is methodological caution in comparing the enforcement structure of India to that of Singapore, the UK and Hong Kong.**

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These are jurisdictions that have developed arbitral reputations over decades, and that their reputations of reliability in enforcement are a matter of decades of judicial experience, of institutional habit, of commercial confidence--not simply of statutory design. An equitable analysis should thus go beyond analysis of black-letter to include the quality of enforcement experience which the award-holders are reasonably entitled to. On the formal architecture level, all four jurisdictions have significant structural similarities. Both are signatories or practitioners of the 'New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)'<sup>9</sup>. All of them limit the reasons to dismiss or deny enforcement of an award to a specified and restricted list. And both acknowledge in principle the suggestion that arbitral finality is a value to be upheld, and that the post-award process should not be used to re-litigate the merits.<sup>10</sup>

#### **4.2 Singapore Has Proven Itself To Be Among The Arbitral Seats**

In the world, a feat that has been made possible due to the efficiency and predictability of its enforcement system. Statutory basis is found in the 'International Arbitration Act (IAA) and the Arbitration Act (domestic)', with the former directly incorporating the UNCITRAL Model Law into Singapore domestic law. The Singapore courts have been very generous to arbitral tribunals in matters of fact and contractual interpretation, only interfering under Article 34 of the Model Law in instances of procedural deficiency having been established, or of unequivocal jurisdictional overreach. What commentators have termed as a culture of minimal curial intervention is a unique aspect of the enforcement culture in Singapore, in that arbitration is a consensual process and parties have bargained over the finality of the arbitral determination, and courts should be wary of receiving appeals that, in essence, are requests to give a second opinion on the merits. The consequence is a much more stable and predictable enforcement environment where the likelihood of successful challenge is low, and the enforcement proceedings take relatively short periods.

#### **4.3 Hong Kong Arbitration Ordinance.**

Closely based on the UNCITRAL Model Law, it directly incorporates the Model Law and provides a consistent regime to both domestic and international arbitrations. Interpretation of

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New York Convention, *The New York Convention*, <https://www.newyorkconvention.org/> (last visited Apr. 22, 2026).

Expert Participation, *Arbitration Act 1996*, <https://www.legislation.gov.uk/ukpga/1996/23> (last visited Apr. 22, 2026).

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the setting-aside regime in Article 34 of the Model Law as applied in Hong Kong is quite strict: courts have repeatedly reiterated that their task at the setting-aside stage is not to determine substantive accuracy, but merely a procedural and jurisdictional one. The defence of the public policy is narrowly understood and is not seen as a call to the promise to reanalyse the merits of the conclusions made by the tribunal. In Hong Kong, enforcement proceedings are based on a leave-based system, as in Singapore, whereby the award-holder seeks leave to enforce the award as a judgment. The procedure is made fast, and it has been simplified by practice directions and the administration of the courts have been especially categorical in warning against efforts to transform enforcement or setting-aside cases and have shown steadfastness in affirming awards in even high-stakes commercial cases with significant monetary repercussions.<sup>11</sup>

#### **4.4 India in Comparative Perspective Compared to the Singapore, UK and Hong Kong**

Enforcement cultures, the post-amendment framework of India is a mixed scenario. On the formal architecture front, India has become a close follower of international standards: the reasons invoked to stay an award are fixed and restricted, the automatic-stay regime has been eliminated, and the 2015 amendment explicitly disowns a merits-review of patent illegality. By a succession of landmark decisions, the Supreme Court has attempted to bring about a doctrine of minimal intervention of the curia and has overturned both legislative and judicial history that threatened to recover the circumstances of the pre-amendment period. First, systemic judicial delay, which is not a policy issue of arbitration but a product of overall court congestion, implies that proceedings under Section 34 may take many years to run their course, and that the efficiency rationale of arbitration is defeated. Second, the disaggregation of pathways employs a variety of strategic delay: stay applications, interim orders, appeals of stay orders, and objections in execution proceedings all have the potential to generate individual litigation.<sup>12</sup>

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*Hong Kong E-Legislation,*

<https://www.elegislation.gov.hk/checkconfig/checkClientConfig.jsp?applicationId=RA001> (last visited Apr. 22, 2026).

*Arbitration and Conciliation Act, 1996,* Wikipedia (2026),

[https://en.wikipedia.org/w/index.php?title=Arbitration\\_and\\_Conciliation\\_Act,\\_1996&oldid=1345496410](https://en.wikipedia.org/w/index.php?title=Arbitration_and_Conciliation_Act,_1996&oldid=1345496410).

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## 5. STRUCTURE CHALLENGES AND IMPERATIVES OF REFORM

### 5.1.1 Judicial Capacity and Specialisation.

The cited structural weakness in the enforcement system in India that has persistently been cited is the lack of a dedicated, adequately staffed system of courts that specialize in arbitration issues. Although the jurisdiction of Commercial Courts, constituted under the Commercial Courts Act, 2015, includes an application to arbitration, of over a certain pecuniary value, the general workload of commercial litigation under the commercial court system ensures that arbitration-related issues do not always receive the expediency with which the nature of arbitration requires. The difference between the specialised arbitration chambers of the Singapore International Commercial Court or the Commercial Court in London where most enforcement applications are heard by a judge with considerable arbitration experience, is instructive and there must be a specific mechanism to escalate cases that have surpassed the stipulated time limits. The judicial training programmes would also bring consistency of judicial interpretation by ensuring that judicial training programmes keep up with the ever-changing nature of international arbitration standards.<sup>13</sup>

### 5.2 Streamlining Execution Proceedings

The complexity of the execution phase is a separate type of enforcement problem, which is not based on the law of arbitration, but on the overall structure of the civil procedure. Utilising the Code of Civil Procedure, 1908, to the enforcement of arbitral awards implies that the framework of objection, the asset attachment provisions and the avenues of appeal, as used in general civil proceedings, can all be applied to award-debtors in search of a sojourn in enforcement. The reforms in this area will have to involve the elements of arbitration-related and wider procedural issues. It would also be helpful to amend the Arbitration and Conciliation Act to confine the number of grounds in which an award-debtor can object to execution proceedings to those which directly affect the enforceability of the award as determined by the court and to eliminate issues which ought to have been, but were not, appealed in Section 34 proceedings. This would not allow the implementation step to be a second-level prelitigation of issues that have been or possibly might have been ventilated under Section 34. Also, any measures to enhance real-time tracking of the assets,

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*The London Court of International Arbitration (LCIA)*, LCIA - The London Court of International Arbitration, <https://www.lcia.org/Default.aspx> (last visited Apr. 22, 2026).

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including the disclosure of asset details as a prerequisite to any stay application, might diminish the length of the execution stage post-challenge fix.<sup>14</sup>

### 5.3 Institutional Arbitration and the Enforcement Culture.

A pattern in comparative legal research on arbitration is that the reliability of enforcement in major arbitral seats is not only linked to the quality of the judicial system, but also to the maturity and credibility of institutional arbitration. Procedural oversight of the entire arbitral process is given by institutional arbitral bodies, such as the Singapore International Arbitration Centre<sup>15</sup>, the London Court of International Arbitration, and the Hong Kong International Arbitration Centre, which minimises the occurrence of technical procedural aberrations that could otherwise be used to challenge the decision upon enforcement. Even the standardisation of proceedings that institutional administration has to offer helps to achieve consistency of awards and predictability of their enforceability. The 2019 amendment of India was indicative of such recognition of this institutional aspect by creating the Arbitration Council of India, as well as by granting the designated arbitral institutions the powers to appoint instead of courts previously.

## 6. CONCLUSIONS

The aspect of enforcing arbitral awards in India is in a unique and developing niche in the Indian legal arena. The political history since 1996 and especially since the 2015 amendment indicates a long-term and authentic effort towards bringing the arbitration regime in India to match the pro-enforcement policy in the international context. The abolition of the automatic stay default, the curtailment of the public policy ground of setting aside, the mechanisms of institutional arbitration promotion, and the judicial unification of minimal curial intervention as a working doctrine are all positive developments. Meanwhile, this paper has attempted to show that legislative reform, even of good quality, is not sufficient to change enforcement culture all by itself. The remaining enforcement infrastructure issues in India include interpretive discrepancies in Section 34, the unequal use of discretionary stay provisions, the complexity of the execution phase procedures, and the structural problems of enforcing against sovereign actors, which are largely of an operational nature. They need solutions

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*Rights of Persons with Disabilities Act, 2016.*, An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. (2016), <http://indiacode.nic.in/handle/123456789/2155>.

<sup>15</sup> Singapore International Arbitration Centre Rules (6th ed. 2022).

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beyond statutory revision to include the development of the judicial capacity, streamlining of the procedures, and maturation of the institutions. The relative study conducted in the present paper recommends that the distance between India and the established arbitral centres of Singapore, London and Hong Kong<sup>16</sup> has now become more a matter of efficiency than doctrinal inclination. The statutory structures are harmonising; the difference is standardised, velocity and predictability of the practical application of the common values of pro-enforcement arbitration law. It will take more than an additional refinement of law to close this gap, but it will take a concerted effort by the courts, arbitral institutions, practitioners, and policymakers to the practical realisation of the enforcement values that the amended Act reflect. The desire of India to be a globally competitive arbitral seat has a solid rationale, and the groundwork for such a development is in place. Whether or not the ambition can be realised will, however, be subject to how well the systemic and institutional improvements identified in this paper are prioritised and made consistently and with the long-term commitment required to build a durable enforcement reputation.

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<sup>16</sup> Hong Kong International Arbitration Centre Administered Arbitration Rules (6th ed. 2018).

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