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POST-AWARD JUDICIAL REVIEW UNDER INDIAN ARBITRATION LAW: FINALITY OR THE FIRST STEP ON A LADDER OF APPEALS?

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ABSTRACT

*This paper explores the scope of post-award judicial review under Indian arbitration law, with respect to Section 34 of the Arbitration and Conciliation Act, 1996 (the "**Act**"). It was initially designed as a narrow supervisory mechanism; however, Indian courts have broadened its application through interpretations on "public policy" and "patent illegality". The paper examines the evolution of judicial precedents from Bhatia International[2] and Venture Global Engineering[3] to BALCO[4] and Gayatri Balasamy[5] on the significance of the power to modify awards. The central argument is that while India's statutory framework aspires for arbitral finality, judicial intervention has transformed post-award review into a quasi-appellate process. The paper concludes by engaging with the reforms given in the 246th Law Commission Report and the Arbitration and Conciliation (Amendment) Bill, 2024, to assess whether India is on the right trajectory to achieve the requisite balance.*

PART I: INTRODUCTION- THE PARADOX

Arbitration is premised on the fact that the award that parties receive after a settlement will be final and binding and can be enforced like a decree of the Court, without the unnecessary delays and costs that often form a part of litigation. However, there is a fundamental tension of what is the extent of intervention by Courts because they are involved to enforce awards, challenge the appointment of arbitrators and arbitral awards, and provide a safety valve against errors, as articulated by the 246th Law Commission of India in its report, where it

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[2] *Bhatia International v. Bulk Trading SA*, (2002) 2 SCC 395.
[3] *Venture Global Engg. v. Satyam Computer Services Ltd.*, (2010) 8 SCC 660.
[4] *Bharat Aluminium Company v. Kaiser Aluminium Technical Service Inc.*, (2012) 9 SCC 552.
[5] *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, 2024 SCC OnLine SC 1681.

stated that the paradox arises because arbitration "seeks the co-operation of the very public authorities from which it wants to free itself". The Commission also quoted Lord Mustill that courts must act as "partners, not superiors or antagonists" during arbitration, essentially advocating for minimal intervention by the judiciary.[6]

The Act was enacted with the idea of minimal interference by the judiciary, which can be inferred from the Objects and Reasons of the 1995 Bill, the precursor to the Act.[7] Furthermore, Section 34[8], which provides the grounds for setting aside an award, was drawn from the UNCITRAL Model Law to keep the grounds narrow and unambiguous. However, Indian courts have not always adhered to the legislative intent and expanded their interpretations to "public policy" and "patent illegality", effectively examining the merits of the case, which precedents like *Pravin Electricals Pvt. Ltd.*[9] held that courts were limited only to a prima facie review of whether an arbitration agreement exists or not. Therefore, it is argued that arbitral awards are treated as "the first step in a ladder of appeals".

PART II: STATUTORY FRAMEWORK

SCHEME OF THE ACT

Section 34[10] is central to post-award judicial review for domestic-seated arbitration because it provides specific grounds where an award can be set aside by courts. It is argued that the language of the section was meant to be restrictive. This argument is supported by Justice Vishwanathan's reasoning in his dissent in *Gayatri Balasamy*[11], where he stated that the phrase "only if" preceding the listed grounds in the section indicatesthe legislative intent to limit courts' interpretation and that it should not be expanded. Also, the section only permits setting aside of awards and not their modification or variation, and this distinction has become an area of contention.

THE STRUCTURAL PROBLEM

An example of how the post-award review mechanism was prone to abuse can be seen through the original functioning of Section 36 of the Act before the amendment in 2015, where the enforcement of an award was automatically stopped until a challenge under

[6] Law Commission of India, *Amendments to the Arbitration and Conciliation Act 1996* (Law Com No 246, 2014) para 20, quoting Lord Mustill.
[7] 'Objects and Reasons, Arbitration and Conciliation Bill 1995' (Law Commission Report, para 10).
[8] Arbitration and Conciliation Act 1996, s 34.
[9] *Pravin Electricals Pvt Ltd v. Galaxy Infra and Engineering Pvt Ltd.,* 2021 SCC Online SC 190.
[10] ACA 1996, s 34.
[11] *Gayatri Balasamy* (n 4).

Section 34[12] was resolved. The Law Commission critiqued this in its report, where it stated that,

> *"Section 36 of the Act makes it clear that an arbitral award becomes enforceable as a decree only after the time for filing a petition under section 34 has expired or after the section 34 petition has been dismissed. In other words, the pendency of a section 34 petition renders an arbitral award unenforceable... Admission of a section 34 petition, therefore, virtually paralyzes the process for the winning party/award creditor."*[13]

Therefore, the party against whom the award was passed went to Court under this section to delay its enforcement, irrespective of the merits of their grounds. This made the statute a tool to prolong disputes, which was contradictory to the efficiency that arbitration promised. The amendment in 2015 removed the automatic stay, but the broader issue of using the section to delay persisted.

PART III: JUDICIAL EXPANSION

PUBLIC POLICY

The Supreme Court in *Renusagar Power Co. Ltd.*[14], read public policy in a restrictive manner, holding that it comprised only the fundamental policy of Indian law and violations of justice and morality. However, in *Saw Pipes Ltd.*[15], the Court introduced patent illegality, which stated that an award can be set aside if it was vitiated by a "patent error of law" and also expanded public policy to include compliance with the terms and legal principles governing the contract. This decision opened the floodgates for courts to interfere on wider grounds, and the line between supervisory jurisdiction and examination based on merits was significantly blurred, thus undermining the finality of arbitral awards.[16]

PATENT ILLEGALITY

This doctrine removed the distinction between review and appeal by allowing courts to examine legal errors. They were permitted to set aside awards when they disagreed with the arbitral tribunal's interpretation of the terms of the contract, essentially amounting to

[12] ACA 1996, s 34.
[13] Law Commission Report (n 5) para 43; see also ibid para 44.
[14] *Renusagar Power Co. Ltd. v. General Electric Co*., (1984) 4 SCC 679.
[15] *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705.
[16] G Sai Prasanna and Aditya Singh, 'Judicial Review of Arbitral Awards: Analyzing Section 34 Under the Arbitration and Conciliation Act' (2025) 7(3) IJLSI 1.

examining the merits of the case. Section 28(3) of the Act also creates this issue where arbitrators are required to decide only according to the contract and applicable trade usages, allowing courts to revisit the merits by alleging contractual compliance.[17]

PARALLEL ANNULMENT JURISDICTION

Bhatia International[18] and *Venture Global Engineering*[19]dealt with the extent of intervention in post-award review of foreign arbitral awards. In these cases, the Supreme Court held that Part I of the Act applied to foreign-seated arbitrations, unless it was expressly or impliedly excluded by the parties. This meant that the courts of the seat, which had supervisory jurisdiction, no longer held exclusive power over setting aside the award because it could be challenged under Section 34 of the Act before Indian courts, thus creating parallel jurisdictions, uncertainty, and increased costs and delays. Hence, foreign investors began to distrust the Indian arbitration framework.

This was overturned by *BALCO*[20], which held that Part I of the Act applies only to domestic arbitration, which aligned with the New York Convention and the UNCITRAL Model Law by recognising the seat court's exclusivity. However, the ruling applied prospectively, which meant that cases before 2012 were adjudicated according to the principle laid down in *Bhatia*.[21] Furthermore, domestic arbitration faced the issues of public policy and patent illegality grounds.

PART IV: CURATIVE JURISDICTION

The case of *Delhi Metro Rail Corporation Limited*[22] arose from a dispute in a public-private partnership regarding the operation of the airport metro line. Although the issues surrounding the award appeared to have been resolved, the Supreme Court reopened the case in response to a curative petition. A curative petition is an extraordinary jurisdiction that is invoked in cases of violations of natural justice or instances of bias and errors in jurisdiction.[23] However, in this case, it was used to revisit commercial matters that were already settled after three rounds of review by a Single Judge, a Division Bench, and through a special leave petition. This undermines the purpose of expert determination in arbitration, as the award was made

[17] Sai Prasanna and Singh (n 15).
[18] *Bhatia International* (n 1).
[19] *Venture Global Engg*. (n 2).
[20] *Bharat Aluminium Company* (n 3).
[21] *Bhatia International* (n 1).
[22] *Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited*, 2018 SCC OnLine Del 7549.
[23] *Rupa Ashok Hurra v. Ashok Hurra*, (1999) 2 SCC 103.

by engineers with appropriate expertise in the field. The application of Article 142[24] to reopen a settled commercial arbitration raises concerns as to whether the judiciary is overstepping its jurisdiction and acting as an appellate body. Therefore, this case proves that even after *BALCO*[25], and the restrictions under Section 34[26], judicial intervention in arbitration has increased.

PART V: MODIFICATION

A recent development is the case of *Gayatri Balasamy*[27], where the majority held that courts also have the power to modify awards apart from setting aside, because the power to modify is a part of the broader power of setting aside. This ruling was dissented to by Justice Vishwanathan on several grounds.

First, he argued that modification is not a part of setting aside, that is, both powers are not "of the same genus". Setting aside is where the courts remove the award, and it ceases to exist, as a result of which parties may need to re-arbitrate. On the other hand, modification allows the courts to rewrite the award, thus substituting their own judgment against that of the arbitrator. The power to remove does not amount to the power to rewrite.

Second, he focused on the language of Section 34 to show the Parliament's intent to confine the courts to the grounds under the section using the phrase "only if", as argued earlier.

Third, he compared the statute to the UNCITRAL Model Law, since it was the template based on which the domestic law was drafted. It has a similar provision which does not permit modification. Other countries that followed the Model Law have added the power to modify through an express statute. India does not have any such provision; hence it cannot be included merely through judicial interpretation if it needs to adhere to international standards.

Lastly, he also clarified the difference between partial setting aside and modification. Section 34 allows striking out a portion of the award without impacting the rest of it. However, this does not amount to modification because the courts are only removing something, not rewriting or substituting.

This does not imply that there is no requirement for modification powers; in fact, the opposite is true. The parties do not have to re-arbitrate merely because of an error that does not require

[24] Constitution of India, art 142.
[25] *Bharat Aluminium Company* (n 3).
[26] ACA 1996, s 34.
[27] *Gayatri Balasamy* (n 4) (Vishwanathan J, dissenting).

complete annulment, which will lead to an increase in costs and delays.[28]The problem was that in *Gayatri Balasamy*[29], the majority gave the courts powers that the Parliament had not granted, not that modification powers are undesirable. Therefore, the Vishwanathan Committee Report recommended that the Parliament consider amending Section 34 to incorporate a clear framework allowing for the modification of awards in certain situations to align India's law with international standards. It stated that the power to modify must expressly arise from a statute, and the Parliament should contemplate an amendment.[30]

PART VI: THE 2024 AMENDMENT BILL

The Parliament has recently introduced the Arbitration and Conciliation (Amendment) Bill (the "Bill") in 2024to reduce judicial intervention. Section 34(2A) of the Act places a restriction on the ground of patent illegality to exclusively extend to domestic arbitrations, thereby excluding international commercial arbitrations. It was included through the 2015 Amendment to align the framework of the Act with the UNCITRAL Model Law. This was done to ensure stricter standards for the review of international awards. The Bill, however, sought to delete the term "international commercial arbitrations" from the section, thereby expanding the power of judicial review to cover international commercial arbitrations on the ground of patent illegality, effectively contradicting its objective.[31] This type of scrutiny is discouraged by the international framework and portrays India as an arbitration-unfriendly jurisdiction.

PART VII: THE GAP BETWEEN THEORY AND PRACTICE

There is a disconnect between the principle of minimal interference in theory and its implementation during post-award review. Courts affirm this principle in theory, but they also expand on grounds like public policy and patent illegality, and also reopen previously settled cases through curative jurisdiction, thus contradicting established precedent and statutes.[32]

The 246th Law Commission observes that the problem is doctrinal and cultural in nature. This is because arbitration proceedings in India are affected by practices that are similar to

[28] Samruddhi Shastri, 'Judicial Review Under Section 34 of the Arbitration and Conciliation Act 1996: An Analysis of the Courts' Power to Modify Arbitral Awards' (2025) 4(1) CMR UJDSA 114.
[29]*Gayatri Balasamy* (n 4) (Vishwanathan J, dissenting).
[30] Shastri (n 27).
[31] Ammad Manzur, 'Judicial Review of Arbitral Awards in India: A Second Look or Second Guessing' (*Daily Jus*, 2025) https://dailyjus.com/world/2025/06/judicial-review-of-arbitral-awards-in-india-a-second-look-or-second-guessing accessed 8 May 2026.
[32] Sai Prasanna and Singh (n 15).

litigation, such as fee structures according to each sitting, which cause prolonged proceedings and often matters end up getting adjourned. Furthermore, lawyers prioritise court cases over arbitrations.[33]In the Indian context, retired judges act as arbitrators, and there is no limit on how many cases an arbitrator can take, as a result of which they are overburdened, hence undermining the exclusivity promised by arbitration.

The Law Commission also highlighted the structural issue of increased admissions of Section 34[34] petitions due to the ease with which Indian courts can intervene. Arbitration matters in court were kept pending for years, since the judiciary is already burdened with existing litigation, and specialised benches dealing with arbitration matters were also absent.[35]Therefore, the Commission stipulated a time limit of one year within which the case was to be disposed of.

PART VIII: COMPARATIVE JURISPRUDENCE WITH OTHER UNCITRAL MODEL LAW JURISDICTIONS

A comparison of how key states that follow the UNCITRAL Model Law and are often chosen as seats for international arbitrations deal with post-award review will highlight the differences seen in India and how it diverges from international practice. The states that will be analysed are Singapore and Germany.

SINGAPORE

Singapore serves as the hub for international arbitration because it incorporates the Model Law in the International Arbitration Act, 1994 ("**IAA**"), with minute modifications. The grounds for setting aside are given in Section 24 of the IAA, which is interpreted narrowly by the courts.

The state never recognised "patent illegality" as a ground, and public policy as a ground was interpreted by the courts to be implemented only if it "shocks the conscience" or is "clearly injurious to the public good".[36] The Singapore Court of Appeal also held in *Dexia Bank SA*[37]that the court cannot act as an appellate tribunal by getting into the merits, and mere errors of law or fact are not sufficient to set aside awards. Furthermore, there is no question

[33]Law Commission Report (n 5) para 15.
[34] ACA 1996, s 34.
[35] Law Commission Report (n 5) para 22-23.
[36] United Nations Commission on International Trade Law, 'Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with Amendments as Adopted in 2006' (UNCITRAL) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status accessed 8 May 2025.
[37] PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA (2007) 1 SLR(R) 597.

of curative jurisdiction, because there is no chance of relitigating after the award was upheld. The Singapore International Arbitration Centre also created its own institutional rules, also called the SIAC Rules, which provide legitimacy to the finality of arbitral awards issued by the institution.

GERMANY

Germany adopts the Model Law in its Code of Civil Procedure, called the Zivilprozessordnung ("**ZPO**"), which creates a clear separation between reviewing the arbitral proceedings and reviewing the merits. German courts have held that setting aside cannot be done on the basis of errors that occurred during the application of the substantive law.[38]

The ground of public policy, articulated in Section 1059(2)(2)(b) of the ZPO, is interpreted narrowly by applying the standard of whether the award violates a fundamental principle of German law and is contrary to the basic values underlying its legal order. Germany also does not provide courts with the power to modify awards, and the only options that are permitted are either partial or complete setting aside or remission to the tribunal.

GAPS CONCERNING INDIA

The first gap is that of the public policy ground. In Singapore and Germany, it is reserved only for awards that violate legal values at the fundamental level. However, in India, it was expanded in Saw Pipes[39] to include compliance with the terms of the contract. Second, both countries do not make an implicit conclusion that the power to set aside includes modification, which was made by the majority in Gayatri Balasamy.[40] Third, Singapore has a sound institutional infrastructure that helps manage proceedings and encourages the finality of outcomes. India's institutional arbitration system is yet to develop to achieve its aspirations to be an international seat.[41] Lastly, the legal culture in the sample countries has embedded the fact that the chances of succeeding in post-award challenges are low, coupled with speedy

[38] Zivilprozessordnung (ZPO) (Germany), ss 1025–1066; see also Rolf Schuetze, 'Judicial Review of Arbitral Awards in Germany' (2015) 32(1) J Intl Arb 1, for analysis of the ordre public standard in German arbitration law.
[39] *Saw Pipes* (n 14).
[40] *Gayatri Balasamy* (n 4).
[41] Law Commission Report (n 5) para 15-16.

dispute resolution. This is not the case in India, where a Section 34[42] petition is treated as the general rule, and not the exception.

PART IX: REFORMS AND WAY FORWARD

STATUTORY CLARIFICATION OF "PUBLIC POLICY"

Though the 2015 Amendment established the constituents of public policy, there is a need to clearly define the term "fundamental policy of Indian law" to restrict judicial interpretation. This can be executed through the creation of a statutory clarification that excludes legal errors in the application of substantive law, contractual misinterpretation, or reappreciation of evidence, which will bring India closer to the approach taken by Singapore and Germany, and will also incorporate the Law Commission's recommendations.[43]

LEGISLATIVE FIXING OF MODIFICATION

The Parliament must amend Section 34[44] to expressly state the conditions under which courts will be permitted to modify arbitral awards, following the recommendations of the Vishwanathan Committee, which provided specific situations such as arithmetic errors or severable over-awards on interest,while prohibiting courts from revisiting the merits of the dispute.[45]

RECONSIDER THE BILL'S PROPOSAL ON SECTION 34(2A)

The Bill must be amended to retain the reference to "international commercial arbitrations" to prevent the extension of "patent illegality" to international commercial arbitrations. If this amendment is not made, foreign parties would be reluctant to choose India as a seat and would undermine the Government's ambitions to transform India into an arbitration hub.[46]

ADDRESS THE CURATIVE JURISDICTION ISSUE

Although it is difficult to limit the Supreme Court's curative jurisdiction through legislation, the Parliament needs to create statutory guidelines that articulate instances where this jurisdiction can be invoked in arbitration matters, such as cases of fraud, bias, or a

[42] ACA 1996, s 34.
[43] Law Commission Report (n 5) para 36–37; Arbitration and Conciliation (Amendment) Act 2015, Explanation 1 and Explanation 2 to s 34(2)(b)(ii).
[44] ACA 1996, s 34.
[45] Shastri (n 27).
[46] Ammad Manzur, 'Judicial Review of Arbitral Awards in India: A Second Look or Second Guessing' (*Daily Jus*, 2025) https://dailyjus.com/world/2025/06/judicial-review-of-arbitral-awards-in-india-a-second-look-or-second-guessing accessed 8 May 2026.

fundamental violation of due process, and not based on disagreement with the merits of the award.

INSTITUTIONAL DEVELOPMENT

India needs a robust institutional infrastructure that supports finality in practice. Arbitration benches can be established in every High Court dealing with commercial arbitrations, following the Law Commission's recommendations. It also needs to establish centres apart from the Mumbai Centre for International Arbitration and the Delhi International Arbitration Centre, which are in line with the international standards, like SIAC. There should be an increased focus towards developing institutional rules that follow a higher benchmark. Furthermore, the legal profession must engage differently with the notion of arbitral finality by abandoning approaches akin to litigation.[47] This culture must be uprooted from the grassroots level of bar associations and law schools to provide legitimacy to the arbitral process.

THE BIGGER PICTURE

These reforms are aimed towards aligning India's framework of post-award review with the Model Law and international standing. This ensures uniformity and places India at an economic advantage, because India seeks to attract foreign investment by positioning itself as a preferred seat for international commercial arbitrations, but this goal will be difficult to execute if international parties are apprehensive about Indian courts' expanded powers of judicial review. Additionally, the reforms need to be implemented consistently and not go back and forth between development and regression, like the 2024 Bill threatens to produce, to achieve credibility.

As the research paper argues, though India may have the statutory foundation and the judicial capacity, it needs political and institutional reforms to see the change.

[47] Law Commission Report (n 5) para 23 (on lack of dedicated arbitration benches); see also Arbitration and Conciliation (Amendment) Act 2015, s 34(5) (one-year disposal requirement).