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**THE SCOPE OF JUDICIAL INTERVENTION IN SETTING ASIDE  
ARBITRAL AWARDS: A STUDY OF SECTION 34 AND ARBITRAL  
FINALITY**- Jainam Oswal<sup>1</sup>*Abstract*

*Arbitration has emerged as an important alternative to traditional litigation because it provides parties with a private, efficient and binding mechanism for resolving disputes. A fundamental principle underlying arbitration is finality, under which an arbitral award is expected to settle the dispute between the parties conclusively. However, the law also provides limited judicial remedies for challenging an award where serious legal, procedural or jurisdictional defects exist. The challenge lies in maintaining a proper balance between the finality of arbitral awards and the need for judicial supervision without allowing judicial intervention to defeat the very purpose of arbitration. The development of modern arbitration law has been directed towards reducing unnecessary judicial intervention and respecting the autonomy of arbitral tribunals. In India, the Arbitration and Conciliation Act, 1996 established a comprehensive framework for arbitration and incorporated internationally accepted principles of arbitration. Section 34 of the Act provides specific grounds for setting aside an arbitral award, reflecting the legislative intention that judicial intervention should remain limited and that arbitral awards should ordinarily attain finality. Indian arbitration jurisprudence increasingly recognises that proceedings under Section 34 are not intended to function as an appellate review of an arbitral award. Courts are generally expected to exercise restraint and should not re-appreciate evidence or substitute their own interpretation merely because another view is possible. However, prolonged challenges and an expansive interpretation of the grounds for setting aside may delay enforcement and weaken the certainty, efficiency and effectiveness associated with arbitration. This research*

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<sup>1</sup> LLM at DES Shri Navalmal Firodia Law College Pune

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*examines the relationship between the setting aside of arbitral awards and the principle of finality. It seeks to analyse whether the existing legal framework adequately balances the need for judicial supervision with the parties' expectation that an arbitral award will provide a final and binding resolution of their dispute. The study will particularly examine whether excessive judicial intervention in setting-aside proceedings undermines the autonomy of arbitral tribunals and the effectiveness of arbitration as an alternative dispute resolution mechanism. The existing framework for setting aside arbitral awards creates a tension between judicial supervision and the principle of finality, as prolonged or excessive judicial intervention may undermine the conclusiveness, certainty and effectiveness of arbitral awards and may cause arbitration to become another stage of prolonged litigation. The principle of finality can be effectively protected if courts adopt a narrow, consistent and restrained interpretation of the statutory grounds for setting aside arbitral awards, limiting judicial intervention to serious legal, procedural or jurisdictional defects and avoiding reconsideration of the merits of the dispute. The study aims to examine the principle of finality in arbitration and analyse the legal framework governing the setting aside of arbitral awards under the Arbitration and Conciliation Act, 1996. It further seeks to examine the development of judicial approaches towards interference with arbitral awards, assess the impact of setting-aside proceedings on the finality and effectiveness of arbitration, and evaluate whether the present framework strikes an appropriate balance between judicial supervision and arbitral autonomy.*

**Keywords:** Arbitration, Arbitral Awards, Finality, Judicial Intervention, Setting Aside.

## 1. INTRODUCTION

Arbitration is an important method of resolving commercial disputes. Parties choose arbitration because they may want a process that is private, flexible and binding. The purpose is not only to obtain a decision but to obtain a decision that brings the dispute to an end.

Finality is therefore one of the basic ideas of arbitration. If every award could be challenged like an ordinary civil judgment, arbitration would lose much of its practical value. At the same time, finality cannot mean that an arbitral tribunal is beyond all legal control. The law allows courts to interfere in limited circumstances where an award suffers from serious legal or procedural defects.

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Indian arbitration law tries to balance these two ideas through section 34 of the Arbitration and Conciliation Act, 1996. Section 34 provides the statutory remedy for setting aside an arbitral award. Section 35 then states that, subject to Part I, an arbitral award is final and binding on the parties and persons claiming under them.<sup>2</sup>

The main difficulty is the scope of judicial review. A court hearing a section 34 application must decide whether the award falls within one of the statutory grounds. It should not normally decide whether the arbitrator reached the best possible conclusion. The Supreme Court has repeatedly stated that a section 34 proceeding is not an appeal on the merits.<sup>3</sup>

This principle is easy to state but sometimes difficult to apply. Arbitration disputes can involve complicated contracts, large amounts of evidence and questions of law. When a court sees an interpretation that appears incorrect, the temptation to reconsider the matter can be strong. The legal challenge is to distinguish an error that remains within the tribunal's jurisdiction from an error that crosses a statutory ground for setting aside.

This paper studies that balance. It focuses on the legal framework, judicial development, practical problems and the principle of finality.

## 2. CONCEPT OF FINALITY IN ARBITRATION

Finality means that the arbitral award should ordinarily bring the dispute to an end. The parties choose a tribunal to decide the dispute, and the decision is intended to bind them.

Finality has practical value. It reduces the cost and time of dispute resolution. It also allows businesses to plan their affairs. If an award can be reopened repeatedly, the parties may face uncertainty even after the tribunal has finished its work.

The statutory structure reflects this principle. Section 35 declares the final and binding nature of arbitral awards. Section 36 deals with enforcement. Section 37 provides limited appeals from certain orders, including orders dealing with setting aside.<sup>4</sup>

The idea of finality is not absolute. Arbitration is a creature of law. The tribunal derives its authority from the arbitration agreement and the statute. If the tribunal acts outside that authority, violates basic procedural fairness or produces an award that falls within a statutory ground for setting aside, the court has a supervisory role.

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<sup>2</sup> Arbitration and Conciliation Act, 1996, No. 26 of 1996, §§ 34–35 (India).

<sup>3</sup> Law Commission of India, Report No. 246, Amendments to the Arbitration and Conciliation Act, 1996 (2014).

<sup>4</sup> Arbitration and Conciliation Act, 1996, supra note 1, § 34(2).

Therefore, finality and judicial review are not complete opposites. The purpose of section 34 is to define the limited circumstances in which the court may intervene. The problem begins when that limited review becomes a second hearing on the dispute.

### 3. HISTORY OF INDIAN ARBITRATION LAW

India's earlier arbitration regime was mainly governed by the Arbitration Act, 1940. The 1940 law was often criticised for allowing substantial court intervention. The 1996 Act was enacted to create a more modern framework and to bring Indian arbitration law closer to international standards.

The Law Commission of India examined the need for reform in Report No. 246. The report supported measures aimed at reducing delays and limiting unnecessary court intervention.<sup>5</sup>

The 1996 Act contains a clear structure. Section 34 provides the remedy for setting aside. Section 35 provides finality. Section 36 deals with enforcement. Section 37 limits appeals. This structure indicates that a Section 34 challenge is intended to be exceptional rather than a routine appellate stage.<sup>6</sup>

The 2015 amendments were particularly important. They clarified the meaning of public policy and introduced the statutory ground of patent illegality for domestic awards. They also attempted to make the court's role more controlled.

Later Supreme Court decisions have interpreted these provisions and have repeatedly emphasised that the court does not sit in appeal over an arbitral award.

### 4. SECTION 34: STATUTORY FRAMEWORK

Section 34 begins by allowing a party to apply for setting aside an arbitral award. Subsection (2) lists specific grounds. Some grounds concern the arbitration agreement, capacity of parties, notice and the ability to present a case. Other grounds concern the scope of the submission to arbitration, the composition of the tribunal and the arbitral procedure. The court may also interfere where the subject matter is not capable of settlement by arbitration or where the award conflicts with the public policy of India.<sup>7</sup>

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<sup>5</sup> Id. § 34(2A).

<sup>6</sup> Id. § 35.

<sup>7</sup> Id. § 36

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For domestic awards, section 34(2A) provides an additional ground of patent illegality appearing on the face of the award. The statute also makes clear that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.<sup>8</sup>

The statutory language is important. The court does not receive a general power to correct an award. It receives a limited power to set aside an award where the specified conditions exist.

This is the foundation of finality. The parties do not get a general right to appeal against the tribunal's findings. They get a limited right to challenge the award on the grounds provided by Parliament.

## 5. PUBLIC POLICY AND ITS NARROWING

Public policy was once a broad and uncertain ground in Indian arbitration law. The Supreme Court's earlier decisions sometimes gave it a wide meaning. The legislative amendments and later judgments narrowed the scope.

In *Associate Builders v. Delhi Development Authority*, the Supreme Court explained several principles connected with public policy, including fundamental policy of Indian law, natural justice and patent illegality. The decision became an important reference point for later cases.<sup>9</sup>

In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, the Supreme Court considered the effect of the 2015 amendments. The Court stressed that the court should not undertake a review on the merits under the amended section 34. The focus is on the statutory grounds and not on whether the court would have reached the same result.<sup>10</sup>

*MMTC Ltd. v. Vedanta Ltd.* also emphasised that a court does not sit in appeal over the award. The Court stated that the scope of interference is limited.<sup>11</sup>

These cases show the movement from broad judicial review toward a narrower supervisory role.

## 6. PATENT ILLEGALITY

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<sup>8</sup> *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49 (India).

<sup>9</sup> *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131 (India).

<sup>10</sup> *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 (India).

<sup>11</sup> *Project Director, National Highways Authority of India v. M. Hakeem*, (2021) 9 SCC 1 (India)

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Patent illegality is a ground available for domestic awards under section 34(2A). It does not mean every legal error is a reason to set aside an award. The illegality must be patent and must fall within the statutory meaning.

The Supreme Court has explained that patent illegality can include a clear violation of substantive law, the Arbitration Act or the terms of the contract. But a mere alternative interpretation of the contract is not enough. The tribunal may have more than one possible view, and the court should not substitute its own view simply because it prefers it.

In *Associate Builders*, the Court developed principles that later cases used while explaining patent illegality. In *Ssangyong*, the Court placed these principles within the amended statutory framework.<sup>12</sup>

This distinction is essential for finality. If every incorrect legal interpretation were treated as patent illegality, section 34 would become an appeal in practice.

## 7. NATURAL JUSTICE AND PROCEDURAL FAIRNESS

Finality cannot protect an award that is produced through serious procedural unfairness. Arbitration must still follow basic principles of natural justice. Parties should receive a fair opportunity to present their case.

Section 34 recognises grounds relating to notice and the ability of a party to present its case. These grounds are not designed to encourage technical objections. They protect basic fairness.

The Supreme Court has treated natural justice as part of the fundamental policy of Indian law. A tribunal that ignores a party's right to a fair hearing may produce an award that cannot be protected by the principle of finality.<sup>13</sup>

The important point is that procedural review is different from merits review. The court may examine whether a party was denied a fair hearing. It should not use that question as a route to reconsider every piece of evidence.

## 8. REASONED AWARDS AND SECTION 31

A reasoned award is important because it allows the parties and the court to understand how the tribunal reached its conclusion. Section 31 requires the arbitral award to state the reasons upon which it is based, subject to specified exceptions.<sup>14</sup>

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<sup>12</sup> *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1 (India)

<sup>13</sup> *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Power Transmission Ltd.*, (2019) 20 SCC 1 (India).

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In *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Power Transmission Ltd.*, the Supreme Court considered the importance of reasons in an arbitral award. The Court recognised that an award should show a rational path from the issues to the conclusion.<sup>15</sup>

However, the requirement of reasons does not mean that an award must resemble a lengthy judicial judgment. The question is whether the reasoning is intelligible and sufficient to show the basis of the decision.

This approach also supports finality. If reasons are clear, the court can identify whether a statutory ground exists without conducting a fresh trial.

## 9. CAN A COURT MODIFY AN AWARD?

A major issue is whether a court hearing a section 34 application can modify an award. In *Project Director, NHAI v. M. Hakeem*, the Supreme Court held that section 34 did not give courts a general power to modify an arbitral award. The statutory remedy was to set aside the award, not to rewrite it.<sup>16</sup>

This decision is important for finality and arbitral autonomy. If courts could routinely modify awards, they would be performing a function that belongs to the arbitral tribunal. It would also make it harder to identify the boundary between judicial review and appeal.

The issue has continued to receive attention. Later legislative proposals have considered limited modification in exceptional circumstances, but such proposals do not change the basic principle that any modification power must remain within strict statutory limits.<sup>17</sup>

As of the date of this paper, the safer statement is that the court's ordinary section 34 jurisdiction remains a setting-aside jurisdiction and not a general appellate power to rewrite awards.

## 10. I-PAY CLEARING SERVICES AND THE LIMITS OF REVIEW

In *I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.*, the Supreme Court considered whether a court could set aside an award on the basis of an issue that was argued to be connected with the merits of the dispute. The decision is useful because it shows the importance of respecting the limits of section 34.<sup>18</sup>

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<sup>14</sup> *I-Pay Clearing Services Pvt. Ltd. v. ICICI Bank Ltd.*, (2022) 3 SCC 121 (India)

<sup>15</sup> *UHL Power Co. Ltd. v. State of Himachal Pradesh*, (2022) 4 SCC 116 (India)

<sup>16</sup> *Indian Oil Corp. Ltd. v. Shree Ganesh Petroleum Rajgurunagar*, (2022) 4 SCC 691 (India).

<sup>17</sup> *NHAI v. P. Nagaraju*, (2022) 15 SCC 1 (India)

<sup>18</sup> *M/s. Larsen Air Conditioning & Refrigeration Co. v. Union of India*, 2023 SCC OnLine SC 982.

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The court must identify the statutory ground before interfering. A party cannot convert a disagreement with the tribunal's reasoning into a section 34 challenge simply by describing the disagreement as illegality.

This approach protects finality. If parties could restate merits arguments as statutory objections, nearly every award could face prolonged court proceedings.

## **11. VIJAY KARIA AND THE IDEA OF RESTRAINT**

In *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, the Supreme Court strongly emphasised the narrow approach required in the context of foreign awards. The judgment recognised the legislative policy of minimal intervention and limited grounds of refusal.<sup>19</sup>

Although foreign award enforcement is governed by different statutory provisions, the reasoning is useful for understanding the general arbitration policy. Arbitration is intended to provide a binding result. Courts should not create a second full merits proceeding.

The principle is especially important in commercial disputes. Businesses need to know that the decision of the chosen tribunal will have legal effect. Judicial supervision is necessary, but it should be predictable and limited.

## **12. SECTION 37 AND SECOND-LEVEL REVIEW**

Section 37 provides limited appeals against certain orders under the Act. It does not create a second unrestricted appeal on the merits.

In *MMTC v. Vedanta*, the Supreme Court stated that a section 37 court cannot go beyond the restrictions applicable under section 34.<sup>20</sup> The Court has repeated this position in later cases.

*UHL Power Co. Ltd. v. State of Himachal Pradesh* also stressed that appellate jurisdiction under section 37 is even more restricted when the court is reviewing a section 34 decision.

This two-level limitation is important. If section 37 became a full merits appeal, the finality of arbitration would be weakened twice. The appellate court should therefore check whether the section 34 court stayed within its statutory jurisdiction.

## **13. DELAY AND THE EFFECT ON FINALITY**

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<sup>19</sup> *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*, (2022) 1 SCC 131 (India).

<sup>20</sup> Constitution of India art. 227

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Finality is not only about the legal wording of sections 34 and 35. It is also about time. A successful party may have an award but still not receive the benefit if the setting-aside process continues for years.

The Act contains a limitation period for section 34 applications. Section 34(3) generally requires the application to be made within three months, with a limited additional period where sufficient cause is shown. Section 29A also places time limits on making the award, subject to the statutory scheme.<sup>21</sup>

Even with these provisions, court proceedings can be lengthy. Delay may increase legal costs, affect cash flow and reduce confidence in arbitration.

The solution is not to remove judicial review. It is to ensure that the review is focused. Courts can reduce delay by identifying the exact statutory ground, avoiding unnecessary evidence and refusing to re-hear factual issues unless the statute requires examination of them.

#### **14. ARBITRAL AUTONOMY**

Arbitral autonomy means that the parties have chosen the tribunal and procedure for deciding their dispute. Judicial review must respect that choice.

The tribunal is not independent of the law. It must act within the arbitration agreement, the statute and basic procedural standards. But within those boundaries, it should be free to decide the dispute.

This is why the distinction between “wrong” and “legally vulnerable” is important. An award may be debatable and still be valid. Courts should not replace the tribunal's decision merely because the court might have interpreted the contract differently.

The Supreme Court's section 34 jurisprudence increasingly reflects this idea. The court asks whether the award falls within a statutory ground. It does not ordinarily ask whether it would have decided the case differently.<sup>22</sup>

#### **15. BALANCING FINALITY AND JUDICIAL SUPERVISION**

A good arbitration system needs both finality and judicial supervision. Too much intervention can make arbitration resemble ordinary litigation. Too little supervision can allow serious injustice or jurisdictional error.

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<sup>21</sup> Arbitration and Conciliation Act, 1996, supra note 1, § 31(3).

<sup>22</sup> Law Commission of India, supra note 2.

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The balance can be understood through three questions.

First, did the tribunal have authority to decide the dispute? If not, judicial intervention may be necessary.

Second, was the procedure fair? If a party was denied a basic opportunity to present its case, the award may require judicial correction.

Third, does the award fall within a statutory ground such as public policy or patent illegality? If yes, the court may intervene. If no, the award should ordinarily stand.

This approach keeps section 34 connected to its statutory purpose. It also gives parties a clearer expectation of what a court challenge can achieve.

## 16. RECENT POSITION AND 2026 DEVELOPMENTS

The Supreme Court continues to emphasise limited review. Recent judgments have relied on earlier authorities such as MMTC, Ssangyong and UHL Power when describing the narrow scope of section 34 and section 37 review.<sup>23</sup>

There has also been legislative discussion about possible changes to section 34. A 2025 Supreme Court document discussing proposed amendments records a proposal to allow limited consequential modification in exceptional circumstances while keeping the strict parameters of section 34.<sup>24</sup> This should be distinguished from the law presently in force. A proposal is not the same as an enacted amendment.

The current position should therefore be understood through the existing Act and binding judicial decisions. Finality remains a central principle. The court's task under section 34 is supervisory, not a general appeal on the merits.

## 17. CRITICAL ANALYSIS

The Indian legal framework has moved toward stronger finality, but some practical problems remain.

First, the language of public policy and patent illegality can still create difficult questions. Even though the Supreme Court has narrowed the grounds, parties may continue to frame merits objections as statutory objections.

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<sup>23</sup> Vijay Karia, *supra* note 11.

<sup>24</sup> Project Director, NHAI v. M. Hakeem, *supra* note 10

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Second, section 34 proceedings can become document-heavy and lengthy. Courts may have to examine a large arbitral record to decide whether a limited ground exists. The size of the record can itself create delay.

Third, inconsistent application between courts can reduce predictability. A narrow and consistent approach is therefore important.

Fourth, the absence of a general power to modify can sometimes create an all-or-nothing result. However, this concern must be balanced against the need to preserve the tribunal's role. If modification is allowed, it should be carefully defined by legislation and used only in exceptional situations.

Fifth, the finality principle should not become a reason to protect an award that is fundamentally unfair or outside the tribunal's authority. Finality is a legal value, not a substitute for legality.

## **18. SUGGESTIONS**

First, courts should identify the precise section 34 ground at the beginning of the proceeding.

Second, merits review should be avoided unless the statutory language genuinely requires examination of the award on that issue.

Third, section 34 petitions should be managed through strict procedural schedules. Unnecessary adjournments should be avoided.

Fourth, courts should distinguish between errors of fact, errors of contract interpretation and patent illegality. Not every error is a ground for setting aside.

Fifth, arbitration agreements and institutional rules should encourage clear and reasoned awards. Good reasons can reduce the need for extensive judicial examination.

Sixth, parties should avoid filing section 34 applications merely to delay enforcement. Courts can use costs and other procedural tools where the challenge is clearly without proper basis.

Seventh, if Parliament considers any future power to modify awards, the power should be narrow, clearly defined and connected to exceptional circumstances. It should not become a substitute for an appeal.

Finally, training and consistent judicial guidance are important. The Supreme Court's principles should be applied in a uniform way across courts.

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## 19. CONCLUSION

The principle of finality is central to arbitration. Parties choose arbitration expecting the tribunal's award to settle the dispute. Section 34 of the Arbitration and Conciliation Act, 1996 provides a limited judicial safeguard. It does not create a general appeal.

Indian arbitration law has developed through legislation and Supreme Court decisions. Associate Builders helped explain public policy. Ssangyong reflected the narrower post-2015 framework. MMTC emphasised that courts do not sit in appeal. Vijay Karia highlighted the policy of minimal intervention. Project Director v. M. Hakeem explained the limits of court modification. Dyna Technologies and later cases show the importance of clear reasons. UHL Power and other decisions further confirm the narrow scope of appellate review.

The central balance is therefore clear. Courts must remain available to correct serious legal, procedural and jurisdictional defects that fall within section 34. But they should not use that power to rehear the dispute.

The hypothesis of this paper is supported. Finality is best protected through narrow and consistent interpretation of section 34, disciplined court procedure and respect for arbitral autonomy. Arbitration can remain an effective alternative to litigation only when an award is both legally accountable and capable of reaching a genuine end.



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