BEYOND THE AWARD: RATIONALIZING SECTION 34 & REVIEW OF INSTITUTIONAL ARBITRATIONS

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INTRODUCTION

"Justice within families, friendships, and commercial relationships is most effective when it preserves the underlying bond while resolving the dispute itself. Arbitration embodies this principle by addressing the problem without dismantling the relationship, ensuring that resolution strengthens continuity rather than causes rupture."

Dispute resolution through consensual and community-based mechanisms is not a modern phenomenon in India. Long before the formal codification of arbitration law, ancient Indian society relied upon informal yet structured systems of adjudication rooted in custom, morality, and collective wisdom. References to arbitration-like mechanisms can be traced to ancient legal and political texts, including the *Manusmriti*, *Yajnavalkya Smriti*, and Kautilya's *Arthashastra*, which recognized non-judicial settlement of disputes through appointed elders or neutral decision-makers.[1] These mechanisms emphasized reconciliation, speed, and social harmony rather than rigid adjudication.

The *Panchayat* system, functioning as a village-level dispute resolution forum, served as a proto-arbitral institution wherein respected community members resolved civil, commercial, and familial disputes.[2] Decisions of the Panchayat, though informal, commanded social legitimacy and compliance due to moral authority and communal consensus. Kautilya acknowledged the role of guilds (*shrenis*), traders' associations, and councils in resolving commercial disputes, thereby institutionalizing arbitration within economic life.[3] India's historical reliance on consensual dispute resolution underscores a longstanding preference for alternatives to adversarial litigation. Colonial rule replaced indigenous systems with formal courts, culminating in statutory arbitration. The Arbitration and Conciliation Act, 1996, aligned with the UNCITRAL Model Law, sought to modernize dispute resolution by promoting party autonomy, efficiency, and minimal judicial intervention.[4] Despite this legislative intent, the Indian arbitration regime has, for a considerable period, remained vulnerable to intrusive judicial review, **particularly at the post-award stage.**

At the heart of post-award judicial scrutiny lies **Section 34 of the 1996 Act**, which provides the exclusive statutory mechanism for setting aside arbitral awards. Section 34 was consciously

1 *Manu Smriti* ch. VIII (G. Bühler trans., Sacred Books of the East Vol. 25, Oxford Univ. Press 1886); *Yajnavalkya Smriti* Bk. II.

2 Marc Galanter, **Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law**, 19 J. Legal Pluralism, 6–9 (1981)

3 Kautilya, *Arthashastra* bk. III, ch. 1 (R. Shamasastry trans., Govt. Press 1915).

4 Statement of Objects and Reasons, Arbitration and Conciliation Act, 1996.

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designed as a **supervisory remedy**, not an appellate one, permitting judicial interference only on limited and exhaustively enumerated grounds such as incapacity of parties, procedural unfairness, and excess of jurisdiction, and conflict with the public policy of India.[5] The provision mirrors Article 34 of the UNCITRAL Model Law and embodies the principle of minimal curial intervention, which is central to modern arbitration jurisprudence.[6]

However, the practical application of Section 34 in India has often departed from its theoretical foundations. Judicial interpretations most notably during the early years of the Act expanded the scope of review under the guise of "public policy of India," enabling courts to revisit findings of fact, contractual interpretation, and even errors of law. [7] This expansion substantially diluted the finality of arbitral awards and resulted in arbitration being perceived as a mere prelude to prolonged litigation. Empirical observations, including Law Commission analyses, have consistently highlighted how excessive Section 34 challenges have contributed to delay, cost escalation, and erosion of party confidence in arbitration as an effective dispute resolution mechanism.[8]

In response to sustained criticism from the arbitral community and international observers, Parliament undertook a series of amendments to the 1996 Act, most notably in 2015, 2019[9], and 2021, with the explicit aim of recalibrating the balance between judicial oversight and arbitral autonomy. These amendments sought to narrow the scope of public policy, introduce strict timelines for challenges, and promote institutional arbitration as a preferred mode of dispute resolution. The proposed **Arbitration and Conciliation (Amendment) Bill, 2024** continues this reform trajectory by attempting to further streamline arbitral processes, reinforce enforceability of awards, and address structural concerns impeding India's ambition to become a global arbitration hub.[10]

Against this backdrop, institutional arbitration assumes particular significance in India's contemporary dispute resolution framework. Unlike ad hoc arbitration, institutional arbitration functions within a structured and professionally administered system governed by established arbitral institutions such as the International Chamber of Commerce (ICC), Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA), Mumbai Centre for International Arbitration (MCIA), and the Delhi International Arbitration Centre (DIAC). These institutions provide predefined procedural rules, administrative supervision, arbitrator accreditation mechanisms, and, in many cases, scrutiny of draft awards.[11] Such institutional safeguards substantially minimize procedural irregularities and concerns of arbitrariness that traditionally justify judicial intervention under Section 34 of the Arbitration and Conciliation Act, 1996.

Despite the growing preference for institutional arbitration, a persistent paradox continues to characterize the Indian arbitral landscape. Arbitral tribunals constituted by leading institutions routinely comprise retired judges of the High Courts and the Supreme Court, senior advocates, and subject-matter experts with considerable legal and commercial experience. Yet, awards rendered by such highly qualified tribunals are frequently subjected to challenge under Section 34 and, in several instances, set aside or materially interfered with by courts, often at the district court level. This pattern raises serious concerns regarding arbitral finality, judicial consistency, and the credibility of institutional arbitration as an effective alternative to conventional litigation.

Recent Supreme Court jurisprudence reflects an increasing awareness of these concerns. Decisions reaffirming that courts lack appellate powers under Section 34 and cannot modify arbitral awards underscore a renewed commitment to arbitral finality.[12] Yet, inconsistencies persist at

5 Arbitration and Conciliation Act sec. 34(2) (India).

6 UNCITRAL Model Law on International Commercial Arbitration art. 34 (1985, amended 2006).

7 ONGC v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).

8 Law Comm'n of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 sec. 34–38 (2014).

9 Justice B.N. Srikrishna Committee, Report of the High Level Committee to Review the Institutionalization of Arbitration Mechanisms in India (2017).

10 Arbitration and Conciliation (Amendment) Bill, 2024, Bill No._ of 2024 (India) (as proposed).

11 Gary B. Born, International Commercial Arbitration 224–30 (2d ed. 2014

12 Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corp. Ltd., (2022) 1 S.C.C. 131 (India).

the subordinate judiciary level, where Section 34 continues to be invoked as a mechanism for re-litigation. This tension between doctrinal clarity at the apex level and uneven application on the ground necessitates a re-examination of the theoretical foundations and practical operation of Section 34, particularly in the context of institutional arbitration.

This article undertakes a **doctrinal, comparative, and policy-oriented analysis** of Section 34 with the objective of rationalizing judicial review of institutional arbitral awards. It examines the evolution of Section 34 jurisprudence, analyzes recent legislative and judicial developments including the proposed 2024 Amendment Bill and situates the Indian experience within broader international arbitration trends. The central thesis advanced herein is that institutional arbitration constitutes a distinct adjudicatory ecosystem deserving calibrated judicial deference, and that a failure to recognize this distinction risks perpetuating inefficiencies that arbitration seeks to eliminate.

2. AMENDMENTS THAT CHANGED THE LANDSCAPE (2019 AND 2024)

2.1 The Arbitration and Conciliation (Amendment) Act, 2019

- The 2019 amendment responded to concerns about delay and the need for centralized institutional control. Its key changes include:
- Arbitration Council of India: Formed to grade arbitral institutions and accredit arbitrators.[13]
- Streamlined Appointments: Power to appoint arbitrators transferred from courts to recognized institutions for greater autonomy.
- Strict Timelines:
    - Section 23(4): Limiting completion of pleadings (six months from tribunal's constitution).
    - Section 29A: Imposing a 12-month timeline for the tribunal to render an award, extendable for another six months.
    - Section 34(6): Mandating disposal of Section 34 applications within one year.[14]
- Exemptions: International commercial arbitrations enjoy more flexibility, highlighting India's bid for global competitiveness.

These changes sought to invigorate institutional arbitration and minimize procedural delays. However, enforcement remains inconsistent, with courts often accepting extensive evidence and allowing merits-based review in Section 34 petitions.[15]

2.2 The Draft Arbitration and Conciliation (Amendment) Bill, 2024

The pending 2024 Draft Amendment Bill represents a deeper overhaul, emphasizing party autonomy, efficiency, and reduced judicial involvement.[16] Key proposals include:

- Appellate Arbitral Tribunal (AAT): Institutions may allow parties to challenge awards before a specialist appellate tribunal, curbing courts' jurisdiction if chosen.[17][18]
- Emergency Arbitration: Statutory recognition modernizes the regime for urgent interim relief.
- More Stringent Timelines: Interventions and challenges to be decided rapidly, reducing backlog.[19]
- Expanded 'Patent Illegality' for ICA: Aligns with domestic standards but risks global enforceability if too broad.[20]
- Limited Partial Setting Aside/Modification: Explicitly allows courts and AAT to set aside "parts" of awards where possible clarifying Supreme Court guidance.[21]

This bill is ambitious, but concerns remain about jurisdictional clarity, consistent jurisprudence, and genuine finality if not strictly enforced.[22]

13 Arbitration and Conciliation (Amendment) Act, 2019, §§ 11, 29A.

14 Id., § 34(6).

15 Majmudar & Partners, Proposal to Redefine Arbitration in India, 2025.

16 Draft Arbitration and Conciliation (Amendment) Bill, 2024.

17 Arbitration and Conciliation (Amendment) Bill, 2024, § 34A; White & Case Analysis, Nov. 2024.

18 India's Draft Arbitration Amendment Bill, SCC Online, May 2025.

19 Future of Arbitration in India: Decoding the Draft Bill, SCC Online, Dec. 2024.

20 Draft Arbitration And Conciliation (Amendment) Bill, 2024 Analysis, TTA Law.

21 Supreme Court Observer, May 2025.

22 Key Insights, supra note 5.

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3. STATUTORY AND JUDICIAL FRAMEWORK OF SECTION 34: DESIGN, APPLICATION, AND ENDURING CHALLENGES

3.1 Legislative Architecture and Supervisory Character

Section 34 of the Arbitration and Conciliation Act, 1996 constitutes the sole statutory mechanism for judicial review of arbitral awards at the post-award stage. Modeled substantially on Article 34 of the UNCITRAL Model Law, the provision reflects a deliberate legislative commitment to restrict judicial interference and preserve arbitral autonomy, efficiency, and finality.[23] Unlike appellate remedies, Section 34 confers a narrowly circumscribed supervisory jurisdiction, enabling courts to intervene only where foundational procedural or jurisdictional defects undermine the legitimacy of the arbitral process.

3.2 Enumerated Grounds and Legislative Fine-Tuning

The statutory design of Section 34 is carefully stratified. Section 34(2)(a) addresses party-centric and procedural infirmities, including incapacity, invalid arbitration agreements, denial of natural justice, excess of jurisdiction, and improper constitution of the arbitral tribunal. Section 34(2)(b) permits interference where the award conflicts with the public policy of India, while Section 34(2A), introduced by the 2015 Amendment, limits the ground of patent illegality exclusively to domestic awards. The imposition of a rigid limitation period under Section 34(3) reinforces expedition and finality.[24] Significantly, courts are denied any general power to alter or rewrite arbitral awards, save for the limited curative discretion under Section 34(4).[25]

3.3 Judicial Trajectory: Expansion, Correction, and Restraint

Judicial interpretation initially diluted this restrained framework. In *ONGC v. Saw Pipes Ltd.*, the Supreme Court expansively construed public policy to include patent illegality and errors of law, effectively transforming Section 34 into a quasi-appellate forum.[26] This approach attracted sustained criticism for eroding arbitral finality. Legislative recalibration followed through the 2015 Amendment, which narrowed public policy and expressly prohibited re-appreciation of evidence. Subsequent Supreme Court decisions, notably *Ssangyong Engineering* and *Delhi Airport Metro Express*, reaffirmed that courts cannot reassess merits or substitute arbitral reasoning with judicial preferences.[27]

3.4 Section 34 in Practice: Delay and Overreach

Despite doctrinal clarity at the apex level, the practical operation of Section 34 reveals persistent institutional challenges. Post-award petitions routinely remain pending for several years, even before designated commercial courts. Factors such as expansive pleadings, admission of extraneous material, and inconsistent enforcement of timelines undermine the commercial utility of arbitration. Prolonged judicial scrutiny at this stage weakens enforceability and compromises the principle of finality that underpins arbitral dispute resolution.

3.5 The Enforcement Dilemma under Section 36

Although the 2015 Amendment abolished the regime of automatic stay, conditional stays under Section 36(3) often secured through bank guarantees or substantial deposits—continue to be granted as a matter of routine. In high-value commercial disputes, such conditional stays substantially delay award realization, thereby neutralizing the legislative intent behind swift enforcement.

3.6 Patent Illegality, Public Policy, and the Limits of Modification

Notwithstanding judicial efforts to confine patent illegality to manifest and self-evident defects, the ground is frequently invoked to reopen contractual interpretation and factual assessment. Public policy challenges similarly continue to operate as conduits for merit-based review. The Supreme Court's recent

23 UNCITRAL Model Law on International Commercial Arbitration art. 34 (1985, amended 2006).

24 Arbitration and Conciliation Act, 1996, §§ 34(2), 34(3) (India).

25 McDermott Int'l Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181 (India)

26 ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705 (India).

27 Ssangyong Eng'g & Constr. Co. Ltd. v. NHAI, (2019) 15 SCC 131; Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 1 SCC 131 (India).

clarification in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd*_-that courts lack a general power to modify arbitral awards—reasserts doctrinal discipline, though such intervention must remain exceptional and strictly severability-based.[28]

3.7 Implications for Institutional Arbitration

Section 34 remains formally neutral between ad hoc and institutional arbitration. Consequently, awards rendered through institutionally administered processes often involving retired constitutional judges and senior experts and subjected to internal scrutiny are exposed to the same level of judicial interference as ad hoc awards. The absence of institution-sensitive review standards, including in the proposed 2024 Amendment Bill, leaves it to judicial discretion to evolve calibrated deference an objective that remains only partially realized.

4. INSTITUTIONAL ARBITRATION AND LEGISLATIVE REFORMS: RECALIBRATING SECTION 34 THROUGH THE 2019, 2021 AND 2024 AMENDMENTS

4.1 Institutional Arbitration as a Structured Adjudicatory Ecosystem

Institutional arbitration operates within a structured, rule-based adjudicatory framework administered by permanent arbitral institutions such as the ICC, LCIA, SIAC, MCIA, and ICA. Unlike ad hoc arbitration where procedural design, timelines, and administrative functions are left largely to party autonomy institutional arbitration ensures procedural certainty, neutral appointment mechanisms, ethical oversight, and continuous administrative supervision.[29] These institutional features significantly reduce procedural defects, jurisdictional excesses, and due process violations, which otherwise form the core grounds for judicial intervention under Section 34 of the Arbitration and Conciliation Act, 1996.

Although the Act does not statutorily distinguish between ad hoc and institutional arbitration, the functional realities of institutional arbitration justify a differentiated judicial approach at the post-award stage.

4.2 Procedural Safeguards and Pre-Award Scrutiny

A defining characteristic of institutional arbitration is internal award scrutiny prior to issuance. Under the ICC Rules, draft awards are examined by the ICC Court to ensure jurisdictional consistency, procedural compliance, and enforceability, without encroaching upon merits.[30] Similar safeguards exist under the MCIA Rules, which mandate institutional oversight to ensure compliance with due process and arbitral standards.[31]

These ex ante scrutiny mechanisms operate as quality control filters, substantially minimizing the risk of patent illegality or procedural impropriety. Consequently, institutional awards carry a higher presumption of procedural regularity than ad hoc awards—an aspect largely overlooked in Section 34 adjudication.

4.3 Legislative Reform Trajectory: 2019 and 2021 Amendments

The Arbitration and Conciliation (Amendment) Act, 2019 marked a decisive policy shift toward promoting institutional arbitration by emphasizing structured administration, accreditation, and time-bound proceedings. The legislative intent was to reduce procedural infirmities that often trigger Section 34 challenges.[32]

Similarly, the 2021 Amendment reinforced enforceability by narrowing judicial discretion in granting stays under Section 36, particularly in cases involving allegations of fraud or corruption. Together, these amendments sought to realign judicial practice with the principle of minimal intervention enshrined in Section 5 of the Act.

4.4 The Arbitration and Conciliation (Amendment) Bill, 2024: Indirect Recalibration of Section 34

The proposed 2024 Amendment Bill continues

28 Gayatri Balasamy v. ISG Novasoft Techs. Ltd., 2025 SCC On-Line SC (India).

29 Redfern & Hunter, Law and Practice of International Commercial Arbitration 78–82 (6th ed. 2015).

30 International Chamber of Commerce, ICC Arbitration Rules art. 34 (2021).

31 Mumbai Centre for International Arbitration, MCIA Rules r. 35 (2016).

32 Arbitration and Conciliation (Amendment) Act, 2019, Statement of Objects and Reasons (India).

this reform trajectory without directly amending Section 34. The Statement of Objects and Reasons identifies excessive post-award litigation and inconsistent judicial standards as systemic deterrents to arbitration.[33] Instead of expanding or redefining judicial review, the Bill adopts an indirect reform strategy strengthening institutional arbitration frameworks, procedural discipline, and administrative integrity.[34]

By reinforcing institutional governance and transparency, the Bill implicitly supports a more restrained approach to Section 34 review, particularly where awards emerge from robust institutional processes.

4.5 Time-Bound Efficiency and Judicial Restraint

Delays in Section 34 adjudication remain a critical concern, with awards often stalled for years despite the absence of automatic stay. Law Commission reports and judicial commentary have repeatedly emphasized that prolonged post-award litigation erodes the commercial value of arbitration.[35] The 2024 Bill introduces procedural incentives to discourage frivolous challenges, reinforcing the Supreme Court's consistent position that Section 34 is not an appellate mechanism.[36]

4.6 Continuing Gap: Absence of Express Institutional Differentiation

Despite its progressive orientation, the 2024 Bill stops short of expressly recognizing institutional arbitration as a distinct category for the purpose of judicial review. An explicit statutory presumption of procedural compliance for institutional awards could have provided clearer guidance to courts exercising jurisdiction under Section 34. In its absence, effective reform remains contingent on judicial discipline particularly at the trial and High Court levels, where Section 34 challenges are first adjudicated.[37]

4.7 Prospective Impact

If implemented alongside consistent judicial restraint, the combined effect of the 2019, 2021, and proposed 2024 reforms has the potential to recalibrate Section 34 practice in favor of finality, efficiency, and institutional confidence. Such alignment is essential if India is to realize its ambition of becoming a globally competitive hub for institutional arbitration.

5. COMPARATIVE INTERNATIONAL PERSPECTIVES ON JUDICIAL REVIEW OF ARBITRAL AWARDS

A comparative examination of leading arbitration jurisdictions reveals a shared judicial commitment to minimal intervention in arbitral awards, particularly those rendered through institutional mechanisms. Mature arbitration systems consciously restrict judicial review to exceptional circumstances, thereby preserving arbitral finality, party autonomy, and enforceability. India's evolving interpretation of Section 34 of the Arbitration and Conciliation Act, 1996 must be assessed against these global benchmarks.

5.1 UNCITRAL Model Law: The Global Reference Point

The UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended in 2006), constitutes the normative foundation of modern arbitration statutes worldwide, including the Indian Act. Article 34 permits annulment of arbitral awards only on narrowly circumscribed procedural and jurisdictional grounds, categorically excluding any review on merits.[38] The preparatory works of the Model Law underscore that judicial intervention must remain exceptional, as broader review would defeat arbitration's objectives of efficiency and finality.[39] While Indian courts have acknowledged this framework, early Section 34 jurisprudence diverged from the Model Law's restrictive philosophy.

5.2 England and Singapore: Judicial Restraint in Practice

The English Arbitration Act, 1996 embodies

33 Arbitration and Conciliation (Amendment) Bill, 2024, Statement of Objects and Reasons (India).

34 Ministry of Law & Justice, Consultation Paper on Arbitration Law Reforms 14–18 (2023).

35 Law Commission of India, 246th Report ¶¶ 53–56 (2014).

36 Fiza Developers & Inter-Trade Pvt. Ltd. v. AMCI (India) Pvt. Ltd., (2009) 17 SCC 796 (India).

37 Julian D.M. Lew et al., Comparative International Commercial Arbitration 703–06 (2003).

38 UNCITRAL Model Law on International Commercial Arbitration art. 34 (1985, amended 2006).

39 U.N. Commission on International Trade Law, Travaux Préparatoires of the Model Law ¶¶ 297–302 (1985).

judicial restraint by confining challenges to jurisdictional defects, serious procedural irregularities, and limited appeals on questions of law subject to strict controls.[40] In *Lesotho Highlands Development Authority v. Impregilo SpA*, the House of Lords emphasized that courts must not re-evaluate arbitral reasoning merely because an alternative interpretation is possible.[41] Institutional awards administered under LCIA or ICC rules are consequently accorded heightened deference.

Similarly, Singapore's International Arbitration Act strictly prohibits merit-based review. The Singapore Court of Appeal in *PT Asuransi Jasa Indonesia v. Dexia Bank SA* held that judicial interference is impermissible even where an arbitral tribunal may have erred in law or fact.[42] This consistent pro-arbitration stance has been central to Singapore's emergence as a preferred arbitral seat.

5.3 Lessons for India

Comparative experience demonstrates a clear international consensus: courts must function as guardians of procedural integrity, not appellate forums. While India's post-2015 jurisprudence reflects growing alignment with this philosophy, inconsistent application persists. A contextual application of Section 34 particularly recognizing the procedural robustness of institutional arbitration would harmonize Indian practice with global standards and strengthen India's arbitration framework.

6 PERSISTENT CHALLENGES AND THE NEED FOR RATIONALISATION OF SECTION 34

Despite legislative reforms and Supreme Court guidance, Section 34 adjudication under the Arbitration and Conciliation Act, 1996 continues to face systemic challenges. These are both doctrinal and institutional, undermining arbitration's efficiency, finality, and commercial credibility in India.

6.1 Delay in Disposal of Section 34 Petitions

A primary concern is the protracted pendency of Section 34 applications. Empirical studies show that petitions often remain unresolved for three to five years, even in commercial courts, converting post-award review into a de facto appellate process.[43] Delays compromise the commercial efficacy of arbitration, negating its time-sensitive advantage. The absence of statutory timelines for adjudication allows strategic prolongation, despite the Supreme Court repeatedly cautioning against such trends.[44]

6.2 Inconsistent Judicial Standards

Inconsistency in judicial interpretation across High Courts and trial courts remains a challenge. While the Supreme Court emphasises minimal interference, lower courts often expand grounds such as "patent illegality" or "perversity" to reassess facts or re-interpret contracts.[45] This inconsistency is compounded by the lack of specialised arbitration benches and uneven judicial training in arbitration law.

6.3 Overuse of Patent Illegality and Perversity

Although narrowed by jurisprudence, patent illegality and perversity continue to be invoked for merit-based grievances. Scholars note that these grounds are frequently used to relitigate awards, particularly impacting institutional arbitration where internal safeguards already ensure procedural compliance.[46]

6.4 Enforcement Bottlenecks

Post-award enforcement remains unpredictable. Even after the 2015 amendment abolished automatic stay, courts often grant discretionary stays under Section 36, delaying award realization and allowing Section 34 proceedings to be used strategically to gain negotiation leverage.[47]

6.5 Impact on Institutional Arbitration and Investor Confidence

The combined effect of delay, inconsistent

40 Arbitration Act, 1996, §§ 67–69 (U.K.).

41 Lesotho Highlands Dev. Auth. v. Impregilo SpA, [2005] UKHL 43 (Eng.).

42 PT Asuransi Jasa Indonesia v. Dexia Bank SA, [2007] 1 S.L.R. 597 (Sing.).

43 Vidhi Centre for Legal Policy, Strengthening Arbitration in India: An Empirical Study 31–34 (2020).

44 State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472.

45 Justice B.N. Srikrishna, Arbitration Reform in India: A Reality Check, 7 Indian J. Arb. L. 1, 9–11 (2018).

46 Sumeet Kachwaha, The Indian Arbitration Landscape, 35 Arb. Int'l 467, 478–80 (2019).

47 Arbitration and Conciliation (Amendment) Act, 2015, § 36 (India).

standards, and over-intervention discourages reliance on domestic institutional arbitration. Empirical surveys indicate that both domestic and foreign commercial actors prefer foreign arbitral seats due to predictability and enforcement certainty.[48]

6.6 Proposed Doctrinal and Institutional Reforms

Rationalisation requires a multi-pronged approach:

- **Context-sensitive judicial review**: Institutional awards should attract higher deference due to internal scrutiny and procedural rigour.[497]
- **Narrow construction of patent illegality**: Courts should intervene only in cases of manifest and self-evident illegality.
- **Prohibition on modification**: Section 34 must remain a "set aside or uphold" mechanism.[50]
- **Specialised arbitration benches**: Training and bench specialisation would improve consistency and expertise.
- **Procedural discipline and cost sanctions**: Deterring frivolous challenges preserves enforceability.
- **Data-driven monitoring**: Systematic collection of Section 34 outcomes can inform policy and judicial practice.[51]

Collectively, these measures would align practice with legislative intent, restore arbitral finality, and enhance India's position as a reliable arbitration hub.

7 CONCLUSION AND RECOMMENDATIONS

India's arbitration framework stands at a critical juncture. Despite sustained legislative reforms and consistent judicial guidance aimed at reinforcing arbitral autonomy, the expansive application of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996 continues to dilute arbitral finality and efficiency. The 2019 Amendment and the proposed 2024 reforms, particularly the introduction of the Appellate Arbitral Tribunal and stricter procedural discipline, offer meaningful corrective potential. However, their success ultimately depends on restrained and consistent judicial implementation.[52] Persistent intervention at the post-award stage undermines institutional arbitration and commercial confidence. Aligning judicial practice with the Supreme Court's emphasis on minimal interference is essential for India's emergence as a credible global arbitration hub.

7.2 Recommendations

- **Judicial Restraint:** Courts must reaffirm Section 34 as a supervisory remedy and resist merit-based reassessment of arbitral awards.
- **Deference to Institutional Arbitration:** Enhanced procedural safeguards in institutional arbitration should warrant a higher threshold for judicial interference.
- **Effective Implementation of the 2024 Amendment:** Timelines and appellate mechanisms proposed under the Bill should be enforced in letter and spirit.
- **Judicial Capacity Building:** Specialized arbitration benches and structured judicial training should be institutionalized.
- **Global Benchmarking:** Indian arbitration practice must align with internationally accepted standards followed in leading arbitration jurisdictions.

By enacting bold reforms and learning from international leaders in the field of Arbitration, India can become a global hub for institutional arbitration.

48 World Bank, Ease of Doing Business Report 2020: India Profile (Arbitration Indicators).

49 Ssangyong Eng'g & Constr. Co. Ltd. v. NHAI, (2019) 15 SCC 131.

50 Gayatri Balasamy v. ISG Novasoft Techs. Ltd., 2025 SCC (India).

51 Vidhi Centre for Legal Policy, Arbitration and Judicial Data in India 18–22 (2022).

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REFERENCES

A. CASE LAW

Gayatri Balasamy v. ISG Novasoft Techs. Ltd., 2025 SCC OnLine SC ___ (India).

Delhi Airport Metro Express (P) Ltd. v. DMRC Ltd., (2022) 1 S.C.C. 131 (India).

Ssangyong Eng'g & Constr. Co. Ltd. v. NHAI, (2019) 15 S.C.C. 131 (India).

ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 S.C.C. 705 (India).

ONGC Ltd. v. W. Geco Int'l Ltd., (2014) 9 S.C.C. 263 (India).

McDermott Int'l Inc. v. Burn Standard Co. Ltd., (2006) 11 S.C.C. 181 (India).

State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 S.C.C. 472 (India).

Lesotho Highlands Dev. Auth. v. Impregilo SpA, [2005] UKHL 43 (U.K.).

PT Asuransi Jasa Indonesia v. Dexia Bank SA, [2007] 1 S.L.R. 597 (Sing.).

Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576 (2008).

B. STATUTES, BARE ACTS & AMENDMENTS

Arbitration and Conciliation Act, 1996, No. 26 of 1996 (India).

Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016 (India).

Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019 (India).

Arbitration and Conciliation (Amendment) Bill, 2024 (India).

UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72 (Dec. 11, 1985), as amended in 2006.

Arbitration Act, 1996, c. 23 (U.K.).

International Arbitration Act 1994 (Sing.).

Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2018).

Code de procédure civile arts. 1520–1522 (Fr.).

C. BOOKS & TREATISES

REDERN & HUNTER, *Law and Practice of International Commercial Arbitration* (6th ed. 2015).

Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kröll, *Comparative International Commercial Arbitration* (2003).

Gary B. Born, *International Commercial Arbitration* (3d ed. 2021).

D. LAW COMMISSION & GOVERNMENT REPORTS

Law Comm'n of India, *246th Report on Amendments to the Arbitration and Conciliation Act, 1996* (2014).

NITI Aayog, *Institutional Arbitration in India: Status and Roadmap* (2021).

NITI Aayog, *Designing the Future of Dispute Resolution in India* (2021).

Ministry of Law & Justice, *Consultation Paper on Arbitration Law Reforms* (2023).

UNCITRAL, *Travaux Préparatoires of the Model Law* (1985).

BEYOND THE AWARD: RATIONALIZING SECTION 34 & REVIEW OF INSTITUTIONAL ARBITRATIONS

E. LAW JOURNAL ARTICLES

Sundaresh Menon, **The Role of the Courts in Supporting Arbitration**, 10 *Asian Int'l Arb. J.* 1 (2014).

Sundaresh Menon, **The Transnational Protection of Private Rights**, 43 *Fordham Int'l L.J.* 1 (2020).

Sumeet Kachwaha, **The Indian Arbitration Landscape**, 35 *Arb. Int'l* 467 (2019).

Justice B.N. Srikrishna, **Arbitration Reform in India: A Reality Check**, 7 *Indian J. Arb. L.* 1 (2018).

F. INSTITUTIONAL RULES

ICC Arbitration Rules art. 34 (2021).

Mumbai Centre for International Arbitration Rules r. 35 (2016).

G. EMPIRICAL & INTERNATIONAL REPORTS

Vidhl Ctr. for Legal Policy, *Strengthening Arbitration in India: An Empirical Study* (2020).

Vidhl Ctr. for Legal Policy, *Arbitration and Judicial Data in India* (2022).

World Bank, *Ease of Doing Business Report 2020: India Profile*.

H. AUTHORITATIVE WEBSITES

UNCITRAL, https://uncitral.un.org last visited on 15/12/2025

Supreme Court of India, https://www.sci.gov.in (Last visited on 17/12/2025)

NITI Aayog, https://www.niti.gov.in last visited on 16/12/2025