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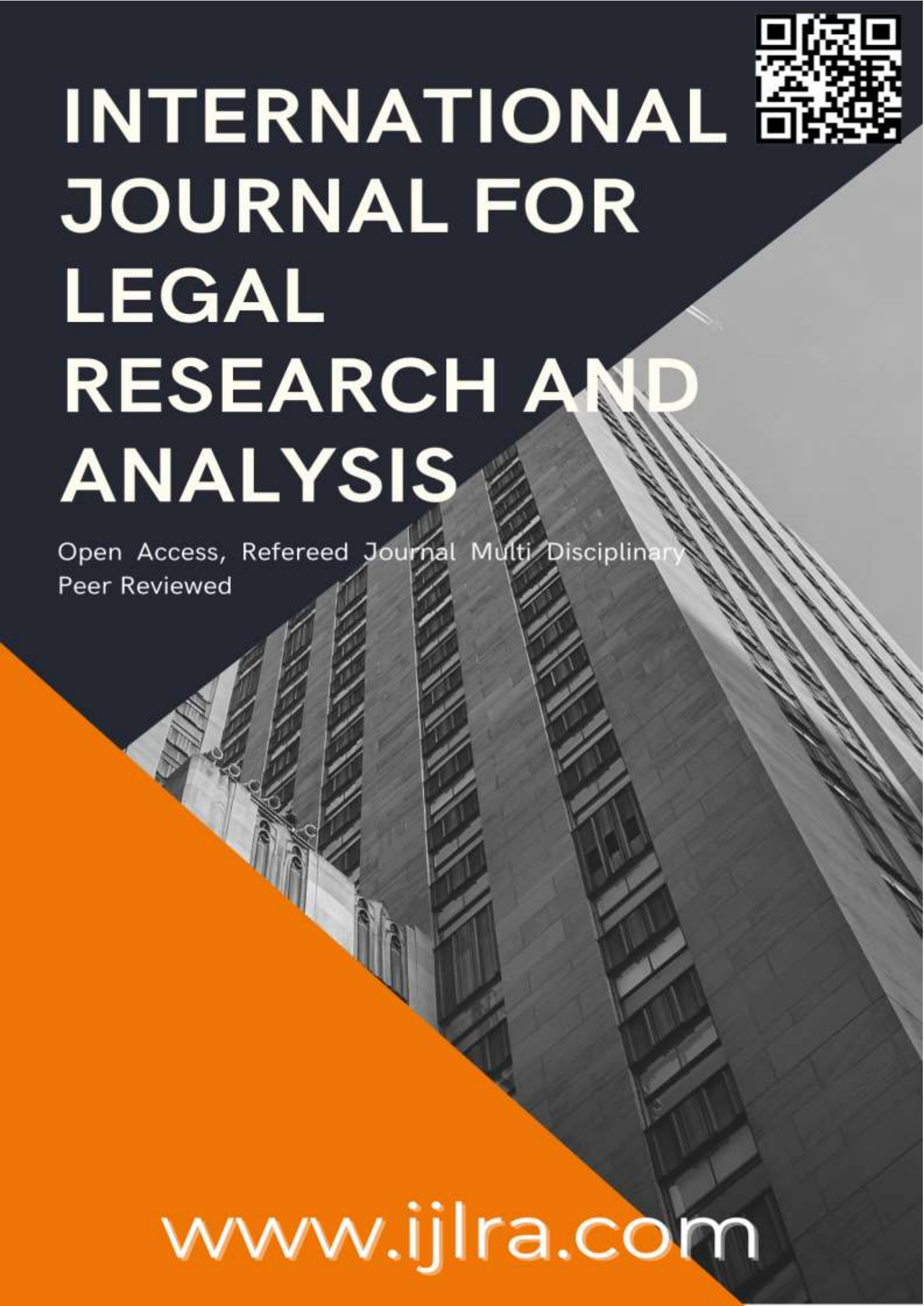

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CHALLENGE TO ARBITRAL AWARD

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Abstract

The growth of arbitration as a viable alternative to traditional litigation has been significant in India's evolving legal landscape. Central to this mechanism is the concept of the arbitral award, which offers finality to disputes resolved through arbitration. However, this finality is not absolute, as the Arbitration and Conciliation Act, 1996 provides specific grounds under which such awards may be challenged. This paper examines the legal framework governing the challenge to arbitral awards under Section 34 of the Act, emphasizing statutory provisions, judicial interpretations, and evolving doctrines, particularly in relation to public policy and procedural fairness. The study also explores the procedural nuances of initiating such challenges, the scope of judicial review, and the nature of summary proceedings. Through an analysis of case law and legislative developments, the paper aims to clarify the conditions under which arbitral awards can be set aside, the limits of judicial intervention, and the implications for the finality of arbitration in India.

Keywords: Arbitration, Arbitral Award, Section 34, Judicial Review

Introduction

Arbitration, as a method of alternative dispute resolution (ADR), has become an increasingly central feature of India’s commercial legal landscape. It offers a private, consensual process of adjudication that is widely viewed as more efficient and party-friendly compared to conventional litigation. In a system plagued by procedural delays and judicial backlog, arbitration is often chosen for its relative speed, informality, confidentiality, and enforceability of outcomes.

The legal foundation of modern arbitration in India is the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”), which was enacted to align Indian arbitration law with international standards by adopting the principles of the UNCITRAL Model Law on

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International Commercial Arbitration, 1985[1]. The Act consolidated and replaced three earlier statutes: the Arbitration Act, 1940; the Arbitration (Protocol and Convention) Act, 1937; and the Foreign Awards (Recognition and Enforcement) Act, 1961[2]. These legislative developments marked a decisive move toward a modern and globally coherent arbitration regime.

Despite its contemporary statutory origins, arbitration in India has deep historical roots. Informal dispute resolution mechanisms—most notably the *panchayat* system—were embedded in Indian society long before codified laws emerged. Even during colonial rule, early efforts to incorporate arbitration included the Bengal Regulations of 1772, which permitted arbitration for commercial matters by consent of parties[3].

Yet, the central tension in arbitration lies in reconciling its core principle of finality with the need for judicial oversight to prevent procedural injustice or abuse of power. Section 34 of the Act exemplifies this balance. It allows a party to apply to set aside an arbitral award on narrow and enumerated grounds—such as incapacity of a party, invalidity of the arbitration agreement, procedural unfairness, excess of jurisdiction, or conflict with the public policy of India[4]. Importantly, these grounds do not permit a review on the merits of the case; they are safeguards, not appeals.

The judicial interpretation of Section 34 has undergone significant evolution. In *ONGC v. Saw Pipes Ltd.*[5], the Supreme Court controversially expanded the meaning of "public policy" to include "patent illegality," allowing courts to intervene more freely. While this move was intended to prevent unjust awards, it led to increased judicial interference and undermined the efficiency of arbitration. Consequently, the Arbitration and Conciliation (Amendment) Act, 2015 was introduced to restore equilibrium by narrowing the scope of "public policy" and reinforcing the non-appellate nature of Section 34 proceedings[6].

[1] UNCITRAL Model Law on International Commercial Arbitration, 1985, with amendments adopted in 2006.
[2] The Arbitration Act, 1940; the Arbitration (Protocol and Convention) Act, 1937; and the Foreign Awards (Recognition and Enforcement) Act, 1961, all repealed by Section 85 of the Arbitration and Conciliation Act, 1996.
[3] K. Ravi Kumar, "Alternative Dispute Resolution in Construction Industry," International Council of Consultants, www.iccindia.org.
[4] Arbitration and Conciliation Act, 1996, § 34(2)(a)–(b).
[5] (2003) 5 SCC 705.
[6] The Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016, Gazette of India, Extraordinary, Part II, Sec. 1.

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Further refinements came through judicial pronouncements in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*[7] and *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*[8], where the courts emphasized minimal interference and clarified that setting aside an award is justified only in cases of fundamental legal violations—not mere legal error or factual disagreement.

This paper aims to critically analyze the legal framework, judicial interpretation, and practical implications of Section 34 of the Act. It assesses how Indian arbitration law negotiates the complex balance between arbitral finality and judicial scrutiny. It also examines how legislative reforms and court decisions have shaped the contours of permissible challenges to arbitral awards, particularly in light of India's aspirations to become a global hub for arbitration.

Understanding the Nature and Legal Status of Arbitral Awards

An arbitral award refers to the final and binding decision rendered by an arbitral tribunal upon the conclusion of arbitral proceedings. It is the outcome of the dispute resolution process, determining the rights and liabilities of the parties involved, and is enforceable in the same manner as a decree of the court under the Arbitration and Conciliation Act, 1996 (hereinafter "the Act"). Section 2(1)(c) of the Act defines "arbitral award" to include an interim award, indicating that awards may not be limited to final determinations but may also address interim issues as necessary during the course of proceedings.

An arbitral award, by its nature, is adjudicatory and not merely procedural or administrative. It must resolve the substantive dispute referred to the arbitral tribunal, and its finality attaches upon delivery to the parties, subject to the limited grounds for challenge under Section 34. The Act confers wide discretion upon the arbitrators, who are not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, thereby enhancing procedural flexibility. However, such discretion is tempered by the requirement to act fairly and afford equal opportunity to the parties, as per Section 18 of the Act.

Notably, Section 28 distinguishes between domestic and international commercial arbitrations seated in India in terms of the applicable substantive law. In domestic arbitration, the tribunal must decide in accordance with Indian substantive law. In international commercial arbitration,

[7] (2012) 9 SCC 552.
[8] (2019) 15 SCC 131.

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however, the parties are free to designate the applicable substantive law, failing which Indian law shall apply. The principle of party autonomy thus finds strong expression, though bounded by public policy limitations.

In *Sumitomo Heavy Industries Ltd. v. ONGC Ltd.*[9], the Supreme Court emphasized that when parties expressly choose Indian law as the proper law of the contract, the same will govern the arbitration agreement as well. This interpretation aligns with the doctrine that the arbitration clause is a component of the underlying contract and is not severable in terms of applicable law unless otherwise provided. Therefore, in such cases, the arbitral award must conform to Indian legal standards and is subject to challenge on the grounds laid out under Indian law.

Another important aspect is that the arbitrators may decide the dispute *ex aequo et bono*—that is, based on equity and good conscience—if expressly authorized by the parties under Section 28(2). This provision introduces an element of equitable discretion, allowing the tribunal to move beyond strict legal norms if the parties so desire, further demonstrating the flexibility inherent in arbitral proceedings.

Where the tribunal comprises multiple arbitrators, decisions must be made by majority, as prescribed under Section 29. This principle was reaffirmed in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, where it was held that the validity of arbitral reference must be examined with reasoned orders, and the outcome of the proceedings is binding on all members of the tribunal. The role of dissenting opinions, though not dispositive, may still hold persuasive value in post-award challenges or enforcement scenarios.

Importantly, Indian courts have treated arbitral awards with the presumption of validity, recognizing them as conclusive unless successfully challenged. This presumption reinforces the autonomy of the arbitral process and upholds the legitimacy of private adjudication. Nevertheless, for an award to acquire this presumptive finality, it must comply with formal requirements as stipulated in the Act—failure to do so may render the award vulnerable to annulment under Section 34.

[9] (1998) 1 SCC 305.

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Structural and Formal Requirements of Arbitral Awards

The legitimacy and enforceability of an arbitral award depend not only on the substance of the decision but also on its adherence to certain formal requirements. The Arbitration and Conciliation Act, 1996 lays down specific mandates regarding the form and contents of an award, primarily under Section 31. These requirements are designed to ensure procedural integrity, facilitate enforcement, and enable effective judicial scrutiny, where necessary.

To begin with, the award must be **in writing** and **signed by the members** of the arbitral tribunal. In cases of multi-member tribunals, signatures of the majority suffice, provided the reason for any omitted signature is stated. This provision strikes a balance between collective deliberation and procedural practicality. Once signed, the arbitrator becomes *functus officio*, implying that the tribunal's jurisdiction ceases with the delivery of the final award. This principle was affirmed in *Satwant Singh Sodhi v. State of Punjab*,[10] where the Supreme Court held that an award, once signed, is final and binding, regardless of whether it has been delivered or filed in court.

Further, unless the parties agree otherwise, the award must **state the reasons** upon which it is based. The requirement of a reasoned award serves several purposes: it enhances transparency, ensures fairness, deters arbitrariness, and enables the parties and reviewing courts to understand the logic and legal foundation of the decision. In *Union of India v. Mohan Lal Kapoor*,[11] the Supreme Court emphasized that reasons form a vital link between the facts and the conclusions, and their absence renders an award susceptible to challenge. However, the Act does not prescribe a rigid structure or detailed reasoning format, thus allowing arbitrators flexibility suited to the nature of the dispute.

In addition to reasoning, Section 31(4) requires that the award be **dated** and state the **place of arbitration**, which determines the juridical seat and thereby governs the applicable procedural law. The importance of these formal elements is not merely ceremonial—they can affect jurisdiction, enforcement, and limitation.

A **signed copy** of the award must be delivered to each party, as stipulated under Section 31(5).

[10] (1999) 3 SCC 487.
[11] (1973) 2 SCC 836.

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In *Union of India v. Tecco Trichy Engineers and Contractors*,[12] the Supreme Court held that the limitation period for setting aside the award under Section 34 begins only from the date on which a signed copy is delivered to the party directly involved in the arbitral proceedings. Thus, delivery is not a mere administrative step but a legally significant event.

The Act also permits the tribunal to include decisions on **costs** within the award. Under Section 31(8), the arbitral tribunal has discretion to determine not only the amount but also the apportionment of costs between the parties. This includes arbitrators' fees, witness expenses, legal costs, and administrative charges. In the event of non-payment, Section 39 provides that the tribunal may withhold the award, compelling parties to seek intervention of the court to secure its release upon deposit of the required sums.

Overall, the form and contents of the arbitral award are not merely technical formalities but vital elements that uphold procedural integrity and enable enforceability. They reflect the dual objectives of party autonomy and legal accountability, ensuring that the award is not only final but also fair and lawful.

Doctrinal Categories of Arbitral Awards

The Arbitration and Conciliation Act, 1996 (hereinafter "the Act") recognizes that arbitration is not a monolithic process and permits the issuance of different types of awards depending on the procedural context, nature of disputes, and intention of parties. The categorization of arbitral awards serves both practical and doctrinal purposes, assisting courts and parties in understanding their enforceability, challengeability, and legal effect.

Primarily, arbitral awards may be classified into four broad types: **final awards**, **interim awards**, **partial awards**, and **additional awards**.

A **final award** is the conclusive determination of all issues submitted to arbitration. It disposes of the dispute entirely and renders the tribunal *functus officio*, save for limited residual powers such as correction or interpretation under Section 33. The finality of such awards is affirmed in Section 35 of the Act, which declares that an arbitral award shall be binding on the parties and persons claiming under them, subject to the provisions of Part I of the Act.

[12] (2005) 1 SCC 230.

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An **interim award**, as recognized under Section 31(6), allows the tribunal to dispose of one or more discrete issues during the course of arbitral proceedings. Unlike procedural orders or directions, an interim award has a binding effect and is enforceable in the same manner as a final award. The distinction lies in its scope: it resolves only a part of the claims or issues, leaving the remainder to be adjudicated subsequently. For instance, liability may be decided at the interim stage, with quantification of damages deferred to the final award. This enables efficient case management, especially in complex, multi-issue disputes.

A **partial award** is closely related to an interim award, but is typically issued when one or more claims or counterclaims are fully adjudicated and separated from the rest. It is final in respect of those matters and enforceable independently. The distinction between interim and partial awards is often jurisdiction-specific and sometimes overlapping, but both are recognized in practice and supported by judicial interpretation.

An **additional award** is contemplated under Section 33(4). If the arbitral tribunal fails to address certain claims submitted during the proceedings, a party may, within thirty days of receiving the award, request the tribunal to issue an additional award. This provision safeguards against accidental omissions and ensures that the award comprehensively adjudicates all referred matters. If the tribunal finds the request justified, it must make the additional award within sixty days.

In cases where parties settle the dispute during the course of arbitration, Section 30(2) empowers the arbitral tribunal to record the settlement in the form of an award on agreed terms. Though derived from party consensus rather than adjudication, such awards have the same status and enforceability as regular arbitral awards.

In *Bhatia International v. Bulk Trading S.A.*[13], the Supreme Court held that the term "domestic award" under Part I includes awards rendered in India, even if arising from international commercial arbitration seated domestically. Additionally, it clarified that awards rendered in non-convention countries do not fall under the definition of "foreign awards" under Part II, and thus, for enforcement, must be tested under domestic principles.

[13] AIR 2002 SC 1432.

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The tribunal also has the power to terminate the proceedings without rendering an award under certain circumstances. As per Section 32(2), if the tribunal finds the continuation of proceedings unnecessary or impossible—due to lack of arbitrability, frustration of contract, or mutual agreement of parties—it may terminate the proceedings by an order, not an award.

These multiple categories of awards serve distinct procedural functions, while maintaining legal equivalence in terms of enforceability, unless specifically limited by statute or agreement. Understanding this taxonomy is essential not only for parties and tribunals but also for courts when called upon to enforce or set aside an award.

Judicial Annulment of Arbitral Awards under Section 34

While arbitral awards are intended to be final and binding, the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") permits limited judicial intervention in the form of an application to set aside such an award. This remedy, provided under Section 34 of the Act, is not in the nature of an appeal but is a narrowly tailored mechanism to prevent the enforcement of awards that are legally flawed or contrary to fundamental norms of justice.

Section 34(1) states that recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3). The grounds for setting aside are exhaustively laid out under Section 34(2), divided into two primary categories: those that the applicant must prove, and those that the court may invoke *suo motu* upon finding a conflict with public policy or non-arbitrability.

Under clause (a) of sub-section (2), the party challenging the award must establish one of the following:

- Incapacity of a party;
- Invalidity of the arbitration agreement under the applicable law;
- Lack of proper notice of the appointment of an arbitrator or arbitral proceedings;
- Inability to present one's case;
- Decision on matters beyond the scope of submission to arbitration;
- Defects in the composition of the tribunal or procedure not in accordance with party agreement.

Each of these grounds embodies foundational principles of procedural fairness and party autonomy. For instance, failure to provide notice of arbitral proceedings violates the principle

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of *audi alteram partem* and renders the process fundamentally unfair.

In addition, clause (b) empowers the court to set aside an award if:

- The subject matter of the dispute is not capable of settlement by arbitration under Indian law;
- The award is in conflict with the public policy of India.

The phrase "public policy of India," though originally undefined in the Act, has been the subject of extensive judicial interpretation. In *ONGC v. Saw Pipes Ltd.*,[14] the Supreme Court interpreted the term broadly to include violations of Indian law, justice, or morality, and introduced the concept of "patent illegality" as a subset of public policy. However, this expansive approach led to judicial overreach and diminished the finality of arbitral awards.

In response, the Arbitration and Conciliation (Amendment) Act, 2015 inserted an explanation to Section 34(2)(b)(ii), narrowing the scope of "public policy" to three limited grounds:

a) the award was induced by fraud or corruption,
b) it contravenes the fundamental policy of Indian law, or
c) it is in conflict with the most basic notions of morality or justice.

The amendment also clarified, through Explanation 2, that an assessment of the fundamental policy of Indian law shall not entail a review of the merits of the dispute.

Further, sub-section (2A), inserted by the 2015 amendment, allows for the setting aside of a domestic (non-international) award if it is "vitiated by patent illegality appearing on the face of the award." However, mere erroneous application of law or reappreciation of evidence does not constitute patent illegality. This provision is explicitly not applicable to international commercial arbitration, where grounds for judicial interference are even narrower.
In *Union of India v. Popular Construction Co.*,[15] the Supreme Court emphasized that the limitation period for filing an application under Section 34 is strict and not subject to extension under Section 5 of the Limitation Act, 1963. Section 34(3) prescribes that an application must be made within three months from the date of receipt of the award, with a further grace period of thirty days only if sufficient cause is shown.

The overall scheme of Section 34 reflects a legislative intent to respect arbitral autonomy and

[14] (2003) 5 SCC 705.
[15] (2001) 8 SCC 470.

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minimize post-award litigation. Challenges to awards must meet a high threshold, and courts have consistently reiterated that arbitral proceedings are not subject to appellate review. The jurisdiction under Section 34 is supervisory, not substitutive.

Hence, while the right to challenge ensures accountability in arbitral decision-making, the tightly circumscribed grounds serve to preserve the core objective of arbitration — final and binding resolution of disputes with minimal court interference.

Preconditions to Judicial Review under Section 34

The right to challenge an arbitral award is not inherent but statutory. Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") provides a limited and structured pathway to set aside an award, and applies only to those arbitrations that are seated within the territorial jurisdiction of India. This section is located in Part I of the Act, which governs both domestic arbitrations and international commercial arbitrations seated in India.

The applicability of Section 34 is strictly territorial. In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*[16], the Supreme Court authoritatively held that Part I of the Act, including Section 34, applies only where the seat of arbitration is in India. This ruling marked a significant shift from the position in *Bhatia International v. Bulk Trading S.A.*, which had previously permitted the application of Part I to foreign-seated arbitrations in the absence of an exclusion agreement. The post-*BALCO* position reinforces the seat-centric approach to arbitration, in line with international practice.

Section 34(1) stipulates that recourse to a court against an arbitral award may be made only by an application for setting aside such award, and only on the grounds specified in sub-sections (2) and (3). It is neither an appellate nor a revisional mechanism. The intent is not to allow a rehearing of the dispute but to provide a safeguard against awards that are either procedurally unfair or contrary to foundational principles of law.

Further, the opening language — "Recourse to a court... may be made only by an application..." — indicates that the procedure is exclusive and self-contained. The Supreme Court in *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.*[17] affirmed that the

[16] (2012) 9 SCC 552.
[17] Civil Appeal No. 14665 of 2015, decided on 6 January 2021.

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use of the word "only" suggests legislative finality, reinforcing the idea that no alternative means or procedures outside the framework of Section 34 can be invoked to set aside an arbitral award.

The Act does not permit challenge to an award before it is made. Premature or anticipatory challenges are not maintainable. Only after a signed copy of the award is received by the party, in accordance with Section 31(5), can an application under Section 34 be lawfully instituted. This ensures procedural certainty and triggers the limitation period of three months provided under Section 34(3).

Another critical prerequisite concerns the "seat" of arbitration. The selection of a juridical seat determines not just the venue of proceedings but also the law that governs judicial intervention. In *Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*,[18] the Supreme Court held that the designation of a seat of arbitration confers exclusive jurisdiction on the courts of that location. Thus, for the purposes of a Section 34 challenge, the competent court is the one that has jurisdiction over the seat, regardless of the location where the cause of action arose.
Hence, Section 34 is not merely a ground of challenge but a procedural gateway shaped by territoriality, finality, and specificity. Any party seeking to set aside an award must first satisfy these prerequisites before entering into the substantive grounds of challenge. The framework ensures that the sanctity and efficiency of the arbitral process are preserved, and that judicial oversight is exercised within clearly defined limits.

Jurisdictional Competence for Challenges under Section 34

The challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") must be brought before a court of competent jurisdiction. Determining the correct forum is not a matter of procedural convenience but of legal necessity, as the jurisdictional competence of the court to entertain a challenge is closely tied to the **seat of arbitration**, the **nature of the award**, and the **pecuniary and territorial limits** prescribed by law.

Section 2(1)(e) of the Act defines "Court" for the purpose of Part I as:
"the Principal Civil Court of original jurisdiction in a district, and includes the High Court in

[18] (2017) 7 SCC 678.

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exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit." This definition is seat-specific rather than forum-neutral. The **designation of the seat of arbitration** confers exclusive jurisdiction upon the courts at that seat, a principle affirmed in *Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd.*,[19] where the Supreme Court held that the seat functions analogously to an exclusive jurisdiction clause. Once the seat is designated—whether expressly or by implication—courts at that location alone are empowered to hear applications under Section 34.

The jurisdictional scheme is further clarified in *Executive Engineer, Road Development Division No. III, Panvel v. Atlanta Ltd.*, where it was held that when both a High Court with original jurisdiction and a District Court satisfy the definition under Section 2(1)(e), preference must be given to the High Court.[20] Similarly, in *State of West Bengal v. Associated Contractors*, the Supreme Court reaffirmed that Section 2(1)(e) must be interpreted contextually with the concept of seat-based jurisdiction, and that multiple courts should not concurrently exercise authority over the arbitral process.[21]

From a procedural perspective, the application for setting aside must be filed in the court **exercising jurisdiction over the seat of arbitration**, regardless of where the agreement was executed, or where the cause of action arose. This aligns with the seat-centric approach adopted in Indian arbitration jurisprudence after *BALCO* and ensures consistency with international best practices.

It is also important to note that even where the arbitration clause is silent on the seat, courts have inferred the seat based on the place where hearings were held or where the award was made. In such cases, judicial inference of the seat becomes dispositive for deciding forum competence under Section 34.

Thus, identifying the correct forum is a jurisdictional threshold to maintain the integrity of the challenge process. A petition filed in a court lacking jurisdiction over the seat is liable to be dismissed at the threshold, and any delay in refiling before the correct forum may render the

[19] (2017) 7 SCC 678.
[20] (2014) 11 SCC 619.
[21] (2015) 1 SCC 32.

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challenge time-barred under Section 34(3).

Enumerated Grounds for Judicial Intervention in Arbitral Awards

A challenge to an arbitral award under the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") must be firmly anchored in the statutory grounds enumerated under Section 34(2). These grounds are exhaustive and are not to be expanded through judicial interpretation, as reaffirmed by the Supreme Court in several decisions post the 2015 amendment.[22] The provision balances finality in arbitral decision-making with minimum judicial interference and basic principles of procedural and substantive fairness.

Section 34(2) distinguishes between two categories of grounds:

- **Party-driven grounds**: which must be established by the applicant (Section 34(2)(a)); and
- **Court-invoked grounds**: relating to public policy and arbitrability (Section 34(2)(b)).

Each ground is addressed below:

I. Incapacity of a Party

Section 34(2)(a)(i) allows an award to be set aside if a party to the arbitration agreement was under legal incapacity. This refers primarily to minors, persons of unsound mind, or other legally disqualified individuals. It ensures that arbitral proceedings are not used to exploit parties lacking legal standing or cognitive ability to participate in informed decision-making.

II. Invalid Arbitration Agreement

Under Section 34(2)(a)(ii), the award may be annulled if the arbitration agreement is not valid under the law to which the parties have subjected it. For example, if the agreement is void due to lack of consent, coercion, or misrepresentation under the Indian Contract Act, 1872, the arbitral award cannot be sustained. This ground also covers cases where the arbitration clause is vague, unsigned, or incorporated improperly—as seen in cases where clauses are hidden within invoices or unsigned documents.[23]

[22] Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996, August 2014.
[23] *Harjinder Pal v. Harmesh Kumar*, 157 (2009) DLT 151.

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III. Lack of Proper Notice or Inability to Present Case

This is one of the most invoked grounds under Section 34(2)(a)(iii). An award is vulnerable if a party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present their case. This embodies the principle of *audi alteram partem* and requires that both sides are given a fair opportunity to be heard.[24] In *Alupro Building Systems v. Ozone Overseas*,[25] the Delhi High Court stressed that failure to serve a valid Section 21 notice invoking arbitration renders the entire proceeding invalid.

IV. Excess of Jurisdiction

If the tribunal decides issues that were not submitted to arbitration or renders decisions beyond the scope of the agreement, the award may be set aside under Section 34(2)(a)(iv). However, if the offending portion can be separated from the rest, only that part will be set aside, preserving the remainder of the award. This is crucial in multi-issue arbitrations, where not all claims fall within arbitral jurisdiction.

V. Improper Composition or Procedure

Section 34(2)(a)(v) permits annulment of an award if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement violates non-derogable provisions of the Act. Challenges on this ground often arise when parties allege bias, procedural irregularities, or unauthorised substitutions in the tribunal. In *Lion Engineering Consultants v. State of MP*,[26] the Court held that the question of jurisdiction could still be raised under Section 34 even if not earlier raised under Section 16.

VI. Non-Arbitrability of the Dispute

Section 34(2)(b)(i) allows a court to set aside an award if the subject matter of the dispute is not arbitrable under Indian law. While most civil and commercial matters are arbitrable, disputes involving criminal offences, fraud, matrimonial rights, insolvency, or testamentary matters are generally excluded.[27]

VII. Conflict with Public Policy of India

Perhaps the most debated ground, Section 34(2)(b)(ii) permits annulment where an award is in

[24] *Sohan Lal Gupta v. Asha Devi Gupta*, (2003) 7 SCC 492.
[25] 2017 (162) DRJ 412.
[26] (2018) 16 SCC 758.
[27] *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532.

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conflict with the public policy of India. Prior to the 2015 amendment, this was interpreted broadly in *ONGC v. Saw Pipes* to include patent illegality. Post-amendment, the scope has been limited to:

a) awards induced by fraud or corruption,
b) contravention of the fundamental policy of Indian law, and
c) conflict with the most basic notions of morality or justice.

Explanation 2 clarifies that review of fundamental policy must not entail reassessment of facts or merits.

VIII. Patent Illegality (Domestic Awards Only)

Inserted through Section 34(2A), this ground applies exclusively to domestic, non-international awards. It allows courts to intervene where the award suffers from a patent illegality apparent on its face. However, errors of law that do not go to the root of the matter or involve re-appreciation of evidence do not suffice. The Supreme Court has clarified that contraventions such as complete absence of reasoning or reliance on material not presented to the parties can trigger this ground.[28]

In summary, the grounds under Section 34 aim to uphold procedural integrity, party autonomy, and the rule of law, while respecting the core philosophy of minimal judicial interference in arbitral proceedings. Each challenge must be rooted in a demonstrable and legally sustainable ground; otherwise, courts are bound to uphold the sanctity of the award.

Limitation and Filing Protocols in Award Challenge Proceedings

While substantive grounds under Section 34 define when a court may set aside an arbitral award, procedural compliance is equally essential to sustain such a challenge. The Arbitration and Conciliation Act, 1996 (hereinafter "the Act") prescribes a stringent timeline and filing structure under Section 34(3), emphasizing finality and efficiency in arbitral proceedings.

Under Section 34(3), an application for setting aside the arbitral award must be made **within three months** from the date on which the party receives a signed copy of the award, as mandated by Section 31(5). The statute provides an additional **grace period of thirty days**, but **only if the applicant demonstrates sufficient cause** for delay. This grace period is

[28] *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131.

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mandatory and **cannot be extended** by invoking Section 5 of the Limitation Act, 1963.

This principle was clearly enunciated in *Union of India v. Popular Construction Co.*,[29] where the Supreme Court held that the 120-day cap is absolute and not subject to any further extension. The Court emphasized that the language of Section 34(3) leaves no room for judicial discretion once the outer limit expires.

A crucial procedural requirement is that **limitation begins only upon delivery of a signed award to the party itself**, not to its counsel or representative. In *Tecco Trichy Engineers & Contractors v. Union of India*,[30] the Supreme Court clarified that the clock under Section 34(3) starts ticking only when the award is served directly to the concerned party.

In terms of filing, the application must include:

- A prayer seeking setting aside of the award;
- Specific legal grounds under Section 34(2) or 34(2A), as applicable;
- A certified copy of the award;
- All relevant documents relied upon during the arbitration;
- Court fees as per applicable rules.

Moreover, the burden lies on the applicant to clearly **plead and prove** each ground. Mere reproduction of statutory language without facts or justification has been held to be inadequate. Courts, including in *NHAI v. M. Hakeem*,[31] have reiterated that a Section 34 proceeding is not an appeal, and thus must not become a forum for re-arguing the entire arbitration.

Another key point is that **Section 34 proceedings are summary in nature**. Evidence is ordinarily restricted to the arbitral record, and parties are not permitted to lead fresh oral testimony unless exceptional circumstances exist. This ensures that Section 34 does not become a "second arbitration" before the courts.

Thus, strict procedural compliance is not a mere technicality but a statutory safeguard to preserve the finality of awards. A challenge may be competent in substance but can still be rendered infructuous due to procedural lapses — particularly those related to limitation and

[29] (2001) 8 SCC 470.
[30] (2005) 1 SCC 230.
[31] (2021) 9 SCC 1.

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form.

Suggestions and Recommendations

The evolution of arbitral jurisprudence in India—particularly under Section 34 of the Arbitration and Conciliation Act, 1996—has been both dynamic and uneven. While legislative reforms and recent judicial trends have aimed at limiting excessive court interference, practical challenges persist. To further streamline the challenge process and strengthen the reliability of arbitration in India, the following suggestions and recommendations are proposed:

i. Clearer Legislative Drafting to Avoid Judicial Overreach

Despite multiple amendments, Section 34 continues to be subject to expansive interpretation in lower courts. The language of key expressions such as "public policy," "patent illegality," and "fundamental policy of Indian law" still leaves room for ambiguity. To curb discretionary overreach, further legislative refinement is recommended. Statutory illustrations or detailed explanations could be appended to define these terms in a more exhaustive and restrictive manner.

ii. Mandatory Preliminary Scrutiny to Filter Frivolous Challenges

Indian courts currently entertain all Section 34 petitions without preliminary filtering, leading to delays and docket congestion. Introducing a mandatory **prima facie hearing** to determine whether the challenge raises substantial grounds can help screen out baseless petitions. This can be modeled on the *leave to appeal* mechanism found in several common law jurisdictions.

iii. Stricter Costs Regime to Deter Abuse

The challenge mechanism is frequently misused, particularly by state entities and large corporations, to delay enforcement. Courts should uniformly apply **punitive costs** against parties filing challenges lacking in merit. The current discretion-based cost system must be replaced with a structured, mandatory costs regime for unsuccessful challenges filed without reasonable cause.

iv. Institutional Specialisation and Dedicated Arbitration Benches

Challenges to arbitral awards should ideally be heard by **designated commercial courts or benches** with expertise in arbitration law. Arbitrary transfer of Section 34 matters to general civil judges results in inconsistent decisions and delays. Institutionalising **fast-track arbitration benches**, particularly in High Courts with original jurisdiction, will enhance

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predictability and professionalism.

v. Limitation Period Should Be Computed Uniformly

Judicial confusion regarding when the limitation period under Section 34 begins still persists. The Supreme Court has clarified that limitation begins upon receipt of a **signed copy** of the award by the party, not counsel. To avoid procedural wrangling, the Act could be amended to include a mandatory timestamping and dispatch mechanism through digital platforms or registered records.

vi. Express Bar on Re-arguing Merits Should Be Strictly Enforced

Despite clear precedent, courts still occasionally allow parties to reargue the merits of the dispute during challenge proceedings. The prohibition on **reappreciation of evidence and interpretation of facts** must be more clearly enforced through judicial training and mandatory procedural guidelines.

vii. Enhanced Role of Arbitration Institutions

To avoid post-award procedural challenges, arbitration institutions should be encouraged to enforce **compliance checklists** before issuing awards—ensuring that formalities under Section 31 are met. Institutional support in managing timelines and document delivery could also aid in pre-empting procedural lapses that form the basis of Section 34 petitions.

Hence, while India's legal framework for challenging arbitral awards is progressively aligning with global standards, gaps in implementation, judicial consistency, and procedural discipline continue to undermine its efficacy. These recommendations, if implemented through legislative, judicial, and institutional channels, would significantly reduce misuse of the challenge mechanism and foster greater trust in arbitration as a final and binding mode of dispute resolution.

Conclusion

Arbitration has established itself as a vital component of India's dispute resolution framework, promising speed, party autonomy, and finality. However, the effectiveness of arbitration depends not only on the strength of its procedural machinery but also on the integrity of its challenge mechanism. Section 34 of the Arbitration and Conciliation Act, 1996 serves as the sole statutory gateway for judicial review of arbitral awards, carefully designed to allow

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intervention only in exceptional cases where the award is legally or procedurally defective.

This paper has demonstrated that the scope of Section 34 is intentionally narrow. Judicial decisions, particularly after the 2015 amendment, now emphasize restraint and non-interference, upholding the sanctity of arbitral outcomes. Courts have consistently reiterated that Section 34 is not an appellate provision and should not become a forum for relitigating the merits of the dispute.

Despite these doctrinal advances, practical challenges remain. Procedural lapses, forum misuse, and expansive interpretations at the lower judiciary level still undermine the objective of finality. The grounds of "public policy" and "patent illegality," though now more precisely defined, continue to invite varied applications, leading to unpredictability.

Therefore, a robust challenge mechanism must operate with clarity, consistency, and purpose. It must preserve the limited right to challenge without compromising the core philosophy of arbitration. With appropriate legislative refinement, institutional discipline, and judicial vigilance, Section 34 can truly function as a protective filter — safeguarding justice without obstructing efficiency.

Thus the challenge to an arbitral award should remain an exception, not the norm. Courts must act as guardians of fairness, not as alternate forums of adjudication. Only then can arbitration achieve its full potential as a reliable and respected method of dispute resolution in India.

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