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CONSTITUTIONALISM AND ALTERNATIVE DISPUTE RESOLUTION IN INDIA: EXAMINING THE LEGITIMACY OF ARBITRATION

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ABSTRACT

*Arbitration's traditional justification rests on private contractual consent: parties, exercising their autonomy, choose to resolve disputes outside the ordinary courts, and the resulting award binds them because they agreed it should. Yet arbitration performs a function structurally indistinguishable from public adjudication — determining legal rights, applying law to facts, and producing binding, court-enforceable outcomes — and does so with increasing frequency in disputes involving the State, State instrumentalities, and parties of starkly unequal bargaining power. This paper undertakes a critical, doctrinal examination of whether consent alone can sustain arbitration's legitimacy in the Indian constitutional order, or whether arbitration, particularly in public-private and asymmetric-power contexts, must additionally satisfy constitutional benchmarks ordinarily reserved for public adjudicative bodies. The paper traces this question through two of the most significant developments in recent Indian arbitration jurisprudence: the culmination, in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (2024), of a seven-year doctrinal saga over unilateral arbitrator appointment, in which a five-judge Constitution Bench held that arbitration clauses permitting one party unilaterally to appoint or curate the panel of arbitrators violate Article 14's equality guarantee even in ordinary commercial public-private contracts, thereby importing constitutional and administrative-law principles directly into private arbitration agreements; and the Constitution Bench's subsequent ruling in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025), which navigated the tension between arbitration's foundational commitment to finality and the competing imperative of correctability, holding that courts may sever discrete, severable errors from an arbitral award without converting Section 34 into an unauthorised appellate jurisdiction. Drawing on constitutional theory regarding the sources of adjudicative legitimacy, the paper argues that Indian arbitration jurisprudence has, particularly since 2024, moved decisively towards a hybrid legitimacy model, in which consent remains necessary but is no longer sufficient, and constitutional*

principles of equality, natural justice and proportionate judicial oversight now operate as independent, non-waivable legitimating constraints. The paper examines the doctrinal tensions this hybrid model generates, including the strong dissenting objection that importing public-law principles into private arbitration agreements erodes party autonomy, and concludes with an assessment of what a coherent, constitutionally grounded theory of arbitral legitimacy requires going forward.

Keywords: Arbitration; constitutionalism; legitimacy; Article 14; party autonomy; judicial review; India.

1. INTRODUCTION

Arbitration occupies an unusual constitutional position. It is, in origin and form, a creature of private contract: two parties agree, typically in advance of any dispute, to submit future disagreements to a tribunal of their own choosing rather than to the ordinary courts established by the State. This contractual foundation has traditionally supplied arbitration's complete justification: an arbitral award binds the parties not because the State has exercised sovereign adjudicative power over them, but because they themselves consented to be bound.¹ Yet arbitration's practical function is difficult to distinguish, in substance, from the public adjudicative function courts perform: an arbitral tribunal determines legal rights and obligations, applies substantive law to contested facts, and produces an outcome that, once rendered, is enforceable through the coercive machinery of the State with essentially the same force as a court decree.² This paper asks whether consent, standing alone, remains a sufficient foundation for this quasi-judicial function's legitimacy, or whether arbitration — particularly where it involves the State or a State instrumentality as a party, or where the bargaining power of the contracting parties is starkly unequal — must additionally satisfy constitutional benchmarks ordinarily associated with public adjudication.

This inquiry has moved from theoretical possibility to doctrinal reality in recent Indian jurisprudence. In November 2024, a five-judge Constitution Bench of the Supreme Court, in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (“CORE-II”), held that arbitration clauses permitting one party unilaterally to appoint a sole arbitrator, or to curate a restricted panel from which the counterparty must select, violate the equality

¹Arbitration and Conciliation Act, 1996, s. 7 (defining arbitration agreement); *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

²Arbitration and Conciliation Act, 1996, s. 36 (enforcement of arbitral awards as decrees of court).

guarantee under Article 14 of the Constitution — a holding the Court expressly applied even to ordinary public-private commercial contracts, not merely to disputes engaging some independent public-law dimension.³ This represents a striking doctrinal development: the direct importation of a constitutional equality norm into the formation and content of a private arbitration agreement, a move two dissenting judges characterised as an unwarranted intrusion of public law principles into a fundamentally private, consent-based dispute resolution mechanism.⁴ Less than a year later, in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025), a differently constituted five-judge Constitution Bench confronted a related but distinct legitimacy question: whether courts, in exercising their limited supervisory jurisdiction under Section 34, may modify the substance of an arbitral award, or whether such modification would illegitimately convert a narrow, closed-list setting-aside jurisdiction into the very appellate review arbitration was designed to avoid.⁵

This paper undertakes a critical, doctrinal examination of these two decisions, and the broader body of 2024-2026 Supreme Court arbitration jurisprudence surrounding them, to assess how Indian constitutional law is reshaping the theoretical foundations of arbitral legitimacy. It argues that Indian arbitration doctrine has moved towards what this paper terms a hybrid legitimacy model — one in which consent remains a necessary condition for arbitration's authority but is no longer treated as sufficient, and in which constitutional principles of equality, natural justice and calibrated judicial oversight now operate as independent, non-waivable legitimating constraints, particularly though not exclusively in the public-private contracting context.⁶

1.1 Statement of the Problem

India's arbitration jurisprudence has historically emphasised party autonomy and minimal judicial intervention as the twin pillars legitimating arbitration's authority. Recent Constitution Bench decisions, particularly *CORE-II*'s importation of Article 14 equality principles into arbitrator appointment, complicate this traditional consent-based account without offering a fully articulated alternative theory of arbitral legitimacy, leaving significant doctrinal uncertainty as to the scope and limits of constitutional principles' application to private arbitration agreements.

³Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), 2024 SCC OnLine SC 3219.

⁴Supreme Court Observer, “Equality in Public-Private Contracts: The Supreme Court's Judgment in the *CORE* Arbitration Case” (2024).

⁵*Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, 2025 INSC 605.

⁶*CORE-II*, supra note 3; *Gayatri Balasamy*, supra note 5.

1.2 Objectives of the Study

- To examine the traditional consent-based theory of arbitral legitimacy and its doctrinal and theoretical limitations, particularly in public-private and asymmetric-power contracting contexts.
- To critically analyse the Supreme Court's constitutionalisation of arbitrator appointment in CORE-II and the seven-year doctrinal saga preceding it.
- To examine the finality-correctability tension addressed in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* as a further dimension of arbitral legitimacy.
- To assess the coherence of the resulting hybrid legitimacy model and the doctrinal tensions it generates, including the dissenting objection regarding erosion of party autonomy.
- To propose a principled framework for understanding and further developing arbitral legitimacy within India's constitutional order.

1.3 Research Questions

- Can consent alone sustain the legitimacy of arbitration's quasi-judicial function, or does arbitration require additional, constitutionally grounded legitimating conditions, particularly where the State or a State instrumentality is a party?
- Does CORE-II's application of Article 14 to arbitrator appointment in ordinary public-private commercial contracts represent a principled extension of constitutional equality doctrine, or an unwarranted intrusion of public law into private arbitration as the CORE-II dissents contend?
- How does *Gayatri Balasamy*'s finality-correctability compromise reflect a distinct but related dimension of arbitral legitimacy, and is the resulting doctrinal balance coherent?
- What would a coherent, constitutionally grounded theory of arbitral legitimacy require going forward, and how should future doctrinal development proceed?

1.4 Research Methodology

This study adopts a doctrinal legal research methodology, involving critical analysis of the Arbitration and Conciliation Act, 1996, constitutional provisions, and Supreme Court precedent, particularly the CORE line of cases and *Gayatri Balasamy*, supplemented by secondary literature and practitioner commentary on 2024-2026 developments. The analysis draws on constitutional theory regarding sources of adjudicative legitimacy to structure the doctrinal examination.

1.5 Scope and Limitations

The paper is confined to domestic arbitration involving public-private contracts and the constitutional legitimacy question this raises, with reference to purely private commercial arbitration primarily for comparative contrast. It does not undertake detailed comparative analysis of foreign arbitration systems' legitimacy theories, nor does it address investor-State arbitration. Case law and commentary are current as of August 2026.

2. LITERATURE REVIEW

2.1 Traditional Consent-Based Theories of Arbitral Legitimacy

The dominant traditional account of arbitration's legitimacy rests squarely on party consent: because arbitration is founded on a voluntary agreement to submit disputes to a private tribunal rather than the ordinary courts, the resulting award's binding force derives entirely from that antecedent agreement, requiring no independent constitutional justification of the kind ordinary judicial power requires.⁷ This theory underlies the doctrine of minimal judicial intervention that has structured Indian arbitration jurisprudence since the 1996 Act's enactment, and finds continuing expression in the Supreme Court's repeated emphasis, across its 2025-2026 jurisprudence, on the sanctity of arbitration agreements and the correspondingly narrow scope for judicial interference with arbitral process or outcome.⁸

2.2 The Unilateral Appointment Saga: TRF to CORE-II

A distinct and increasingly prominent strand of scholarship traces the doctrinal instability surrounding arbitrator appointment clauses prior to CORE-II's 2024 resolution. In TRF Ltd. v. Energo Engineering Projects Ltd., the Supreme Court held that an arbitrator rendered ineligible by operation of the Section 12(5) disqualification provisions cannot nominate another person as arbitrator, since an ineligible party cannot indirectly perpetuate its influence over tribunal composition.⁹ Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd., decided the same year, took a more permissive view specifically for public-sector arbitrator panels, holding that a sufficiently broad-based, genuinely wide panel curated by a PSU did not offend fairness principles merely because it was PSU-curated, while cautioning against excessively narrow or restrictive panels.¹⁰ Perkins Eastman Architects DPC v. HSCC (India) Ltd. extended TRF's

⁷Bharat Aluminium Co., supra note 1.

⁸“Supreme Court Review 2025: Arbitration and the Limits of Judicial Repair,” Supreme Court Observer (2026).

⁹TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377.

¹⁰Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Ltd., (2017) 4 SCC 665.

logic to invalidate unilateral sole-arbitrator appointment clauses generally, reasoning that a party with an interest in the outcome cannot be permitted unilateral control over the tribunal's composition even where that party does not itself sit as arbitrator.¹¹ *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (“CORE-I”), decided later the same year, diverged sharply from this trajectory, upholding a narrower, four-name PSU-curated panel on the reasoning that the contractor's ability to select from among four proposed names sufficiently “counter-balanced” the PSU's curatorial role, and holding TRF and Perkins inapplicable because the appointing official's own ineligibility was immaterial where the ultimate selection remained meaningfully contested between the four panel names.¹² *Union of India v. Tania Constructions Ltd.*, decided by a differently constituted three-judge bench in 2021, expressed express disagreement with CORE-I's reasoning, creating the direct doctrinal conflict that necessitated the five-judge reference culminating in CORE-II.¹³

2.3 CORE-II: Constitutionalising Arbitrator Appointment

The five-judge Constitution Bench's November 2024 decision in CORE-II, delivered by a majority comprising then-Chief Justice D.Y. Chandrachud and Justices J.B. Pardiwala and Manoj Misra, definitively resolved this doctrinal conflict in favour of the TRF/Perkins line, expressly overruling CORE-I and Voestalpine, and holding that any arbitration clause — whether mandating unilateral sole-arbitrator appointment or unilateral curation of a restricted panel — fails to provide the “minimum level of integrity required in authorities performing quasi-judicial functions such as arbitral tribunals,” and consequently violates Article 14's equality guarantee, applicable even in ordinary public-private commercial contracts rather than being confined to some narrower category of disputes engaging independent public-law considerations.¹⁴ Commentary describes the ruling as clarifying, for the first time with definitive Constitution Bench authority, that “the principle of equality of parties applies even at the stage of appointment of arbitrators,” a holding of considerable practical significance given the routine prevalence of unilateral-appointment clauses in government and PSU contracting practice across infrastructure, railways, and public-works sectors.¹⁵ The Court applied its ruling prospectively only, acknowledging that retrospective application would

¹¹*Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760.

¹²*Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, (2020) 14 SCC 712.

¹³*Union of India v. Tania Constructions Ltd.*, 2021 SCC OnLine SC 271.

¹⁴CORE-II, *supra* note 3; Supreme Court Observer, *supra* note 4.

¹⁵“Appointment of Arbitrators: Supreme Court Settles Balance Between Party Autonomy and Equality,” Bar and Bench (2024).

destabilise an enormous volume of existing commercial arrangements structured around the previously prevailing CORE-I position.¹⁶

2.4 The CORE-II Dissents: Party Autonomy and the Public Law Objection

The CORE-II majority's reasoning did not command unanimous support. Justices Hrishikesh Roy and P.S. Narasimha, in separate dissenting opinions, expressed strong objection on two related grounds: first, that the majority's approach illegitimately imports public law principles drawn from constitutional and administrative law into what remains, at its doctrinal foundation, a private, consent-based dispute resolution mechanism; and second, that this importation risks unsettling legitimate commercial bargains structured, often over decades, around the previously prevailing understanding that PSU-curated panels, properly constituted, satisfied fairness requirements.¹⁷ This dissenting position echoes the traditional consent-based theory of arbitral legitimacy examined in Part 2.1, and frames the central theoretical tension this paper examines: whether arbitration's private, contractual character categorically excludes the application of constitutional equality norms, or whether the quasi-judicial function arbitration performs, particularly in the public-private context, necessarily subjects it to constitutional benchmarks regardless of its contractual origin.¹⁸

2.5 Gayatri Balasamy: Finality and the Limits of Correction

A related but analytically distinct legitimacy question was addressed by a differently constituted five-judge Constitution Bench in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, which considered whether courts exercising jurisdiction under Sections 34 and 37 of the Act are confined to setting aside arbitral awards in whole or in part, or whether they possess authority to modify an award's substance.¹⁹ IndiaCorpLaw's analysis of the ruling explains that the Court “held that courts could not modify awards under section 34, except to sever discrete errors from an otherwise valid award,” reasoning explicitly that permitting broader modification “would convert section 34 into an appellate jurisdiction the statute never created.”²⁰ This holding represents a carefully calibrated legitimacy compromise: preserving arbitration's foundational commitment to finality and the narrow, closed-list character of

¹⁶Trilegal, “Supreme Court Holds Unilateral Arbitrator Appointments Not Permissible” (2025).

¹⁷Supreme Court Observer, *supra* note 4.

¹⁸Kluwer Arbitration Blog, “The End of the Unilateral Appointment Saga in India: Party Equality v. Party Autonomy — A Tale of Two Equals” (2024).

¹⁹*Gayatri Balasamy*, *supra* note 5.

²⁰“Judicial Self-Critique and Its Limits in Indian Arbitration,” IndiaCorpLaw (2026).

Section 34 review, while carving a limited correctability channel — confined to severable, discrete errors — to prevent manifestly defective outcomes from standing entirely unreviewed.²¹

2.6 Post-CORE-II and Post-Gayatri-Balasamy Doctrinal Development

Subsequent 2025-2026 rulings illustrate both the entrenchment and the continuing contestation of these legitimacy principles. In *ASF Buildtech v. Shapoorji Pallonji and Company*, the Supreme Court explicitly urged the Union Government to “take a serious look” at the broader arbitration framework and expedite the pending Arbitration and Conciliation (Amendment) Bill, 2024, reflecting judicial acknowledgment that the existing statutory framework continues to generate delay and doctrinal uncertainty notwithstanding the CORE-II and Gayatri Balasamy clarifications.²² IndiaCorpLaw's July 2026 commentary on subsequent lower-court conduct notes a recurring pattern in which “each prior judgment articulated the correct statutory position” on the finality-correctability balance, yet “each was followed by continued lower court conduct that required another correction,” suggesting that doctrinal clarity at the Constitution Bench level has not yet translated into fully consistent application at the trial and appellate court level.²³ A May 2026 ruling further clarified that strategic mid-proceeding intervention followed by belated technical challenge is barred by estoppel and acquiescence principles, reinforcing procedural legitimacy through a distinct doctrinal route focused on party conduct rather than tribunal composition.²⁴

2.7 Research Gap

Existing literature substantially engages with CORE-II and Gayatri Balasamy as significant but discrete doctrinal developments within Indian arbitration law, without systematically situating them within a broader theoretical account of arbitral legitimacy or examining how they jointly reflect a shift towards a hybrid, constitutionally inflected legitimacy model. This paper addresses that gap, offering an integrated theoretical and doctrinal analysis of arbitral legitimacy in India current through 2026.

²¹Global Arbitration Review, “The Asia-Pacific Arbitration Review 2026” (2025).

²²Supreme Court Observer, *supra* note 4 (2026 review), discussing *ASF Buildtech v. Shapoorji Pallonji and Company*, 2025 INSC 616.

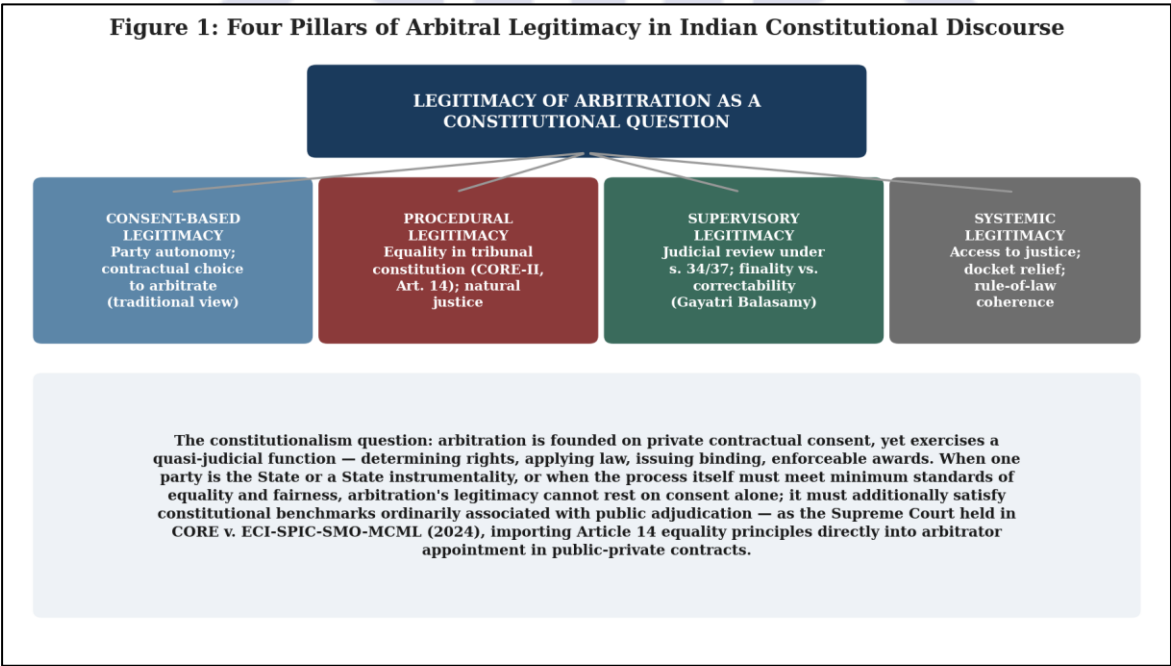
²³IndiaCorpLaw, *supra* note 13.

²⁴“Arbitration Law May (2026) Arbitration Law Updates and Judgments,” Mondaq (2026).

3. ANALYSIS AND DISCUSSION

3.1 A Four-Pillar Framework for Arbitral Legitimacy

As illustrated in Figure 1, this paper's analysis is organised around four analytically distinct, though interrelated, sources of legitimacy potentially available to arbitration as a quasi-judicial mechanism: consent-based legitimacy, resting on party autonomy and contractual choice; procedural legitimacy, resting on equality and fairness in the constitution and conduct of the tribunal itself; supervisory legitimacy, resting on the availability and appropriate calibration of judicial review; and systemic legitimacy, resting on arbitration's contribution to overall access to justice and rule-of-law coherence within the broader dispute-resolution ecosystem. The traditional theory of arbitral legitimacy, reflected in the CORE-II dissents and in the doctrine of minimal judicial intervention generally, treats consent-based legitimacy as both necessary and sufficient. CORE-II and Gayatri Balasamy, considered together, mark a doctrinal shift towards treating consent as necessary but insufficient, with procedural and supervisory legitimacy operating as independent, non-waivable constraints, particularly in the public-private contracting context.²⁵



3.2 CORE-II and the Constitutionalisation of Procedural Legitimacy

As Figure 2 illustrates, the seven-year doctrinal instability preceding CORE-II — the oscillation between TRF's and Perkins' more protective approach and CORE-I's and Voestalpine's more permissive treatment of PSU-curated panels — reflects precisely the

²⁵CORE-II, supra note 3; Gayatri Balasamy, supra note 5.

underlying theoretical tension this paper examines. TRF and Perkins implicitly treated procedural legitimacy (equality in tribunal composition) as an independent constraint on party autonomy, refusing to enforce unilateral-appointment clauses regardless of the parties' antecedent contractual agreement to them. CORE-I and Voestalpine, by contrast, implicitly treated consent as more nearly sufficient, provided some residual, even if attenuated, element of counterparty choice remained available within the appointment process. CORE-II's resolution of this tension in favour of the TRF/Perkins approach, and its explicit invocation of Article 14, represents a definitive doctrinal choice: procedural legitimacy, grounded in constitutional equality principles, now operates as an independent, non-waivable constraint on arbitration agreements in the public-private contracting context, regardless of the parties' contractual consent to a unilateral-appointment structure.²⁶

3.3 Evaluating the Dissenting Objection

The CORE-II dissents' objection — that importing public law principles into private arbitration agreements is theoretically unsound and practically destabilising — merits serious engagement rather than summary dismissal. The strongest version of this objection observes that arbitration's entire *raison d'être* is to offer parties an alternative to public adjudication precisely because they wish to opt out of certain features of public process; treating constitutional equality norms as automatically applicable to arbitration agreements risks eroding the very distinction between public and private dispute resolution that justifies arbitration's existence as a separate institution in the first place.²⁷ Yet this objection is less persuasive when the specific context of CORE-II is considered closely: the dispute did not involve two commercially sophisticated private parties freely negotiating an arbitration clause on equal footing, but rather a public sector undertaking exercising its structurally superior bargaining position to impose a unilateral-appointment structure on a private contractor with limited practical capacity to negotiate alternative terms.²⁸ In this specific context — State or State-instrumentality party, standard-form contract, asymmetric bargaining power — the consent underlying the arbitration clause is considerably more attenuated than the paradigm case of two equally resourced commercial parties freely negotiating dispute-resolution terms, weakening the dissent's core premise that robust, meaningful consent alone should suffice to legitimate the resulting procedural structure.²⁹

²⁶CORE-II, *supra* note 3, at paras summarised in Bar and Bench, *supra* note 9.

²⁷Kluwer Arbitration Blog, *supra* note 12.

²⁸CORE-II, *supra* note 3.

²⁹Supreme Court Observer, *supra* note 4.



3.4 Gayatri Balasamy and Supervisory Legitimacy

As illustrated in Figure 3, Gayatri Balasamy addresses a distinct but related dimension of arbitral legitimacy: the appropriate scope of supervisory judicial review under Section 34 and Section 37. The competing legitimacy claims here are finality (arbitration's value depends substantially on parties' ability to treat an award as genuinely final and binding, rather than as merely the first stage of a longer litigation process) and correctability (a dispute-resolution mechanism whose outcomes are entirely immune from correction, however manifestly erroneous, risks legitimating clearly unjust results simply because they were reached through an agreed-upon private process).³⁰ The Constitution Bench's resolution — permitting severance of discrete errors while foreclosing broader merits modification — reflects a considered attempt to accommodate both legitimacy claims without allowing either to entirely dominate the other: finality remains the default position, consistent with arbitration's foundational bargain, while a narrow correctability channel guards against the most egregious cases of manifest, severable error.³¹

The continuing lower-court difficulty in consistently applying this calibrated standard, documented in 2025-2026 commentary, illustrates a broader challenge for supervisory legitimacy: a legitimacy compromise that depends on a fine-grained, case-specific distinction between severable error (correctable) and non-severable merits disagreement (not correctable) is inherently more difficult to apply consistently than a bright-line rule at either extreme, creating a continuing risk that supervisory legitimacy's practical content will vary

³⁰Gayatri Balasamy, *supra* note 5.

³¹IndiaCorpLaw, *supra* note 13.

unpredictably across courts and cases despite the Constitution Bench's considered articulation of the governing principle.³²

3.5 Toward a Hybrid Legitimacy Model

Read together, CORE-II and Gayatri Balasamy support this paper's central thesis: Indian arbitration jurisprudence has moved towards a hybrid legitimacy model in which consent remains a necessary foundation for arbitration's authority, but is no longer treated as automatically sufficient, particularly where the arbitration involves a State or State-instrumentality party, or where the parties' bargaining power is sufficiently asymmetric that the quality of consent underlying the arbitration agreement is itself open to question. Procedural legitimacy (equality in tribunal constitution, per CORE-II) and supervisory legitimacy (calibrated judicial review preserving both finality and correctability, per Gayatri Balasamy) now operate as independent legitimating constraints, applicable regardless of, and in the CORE-II context even contrary to, the parties' original contractual agreement.

3.6 Systemic Legitimacy: Docket Relief and Institutional Coherence

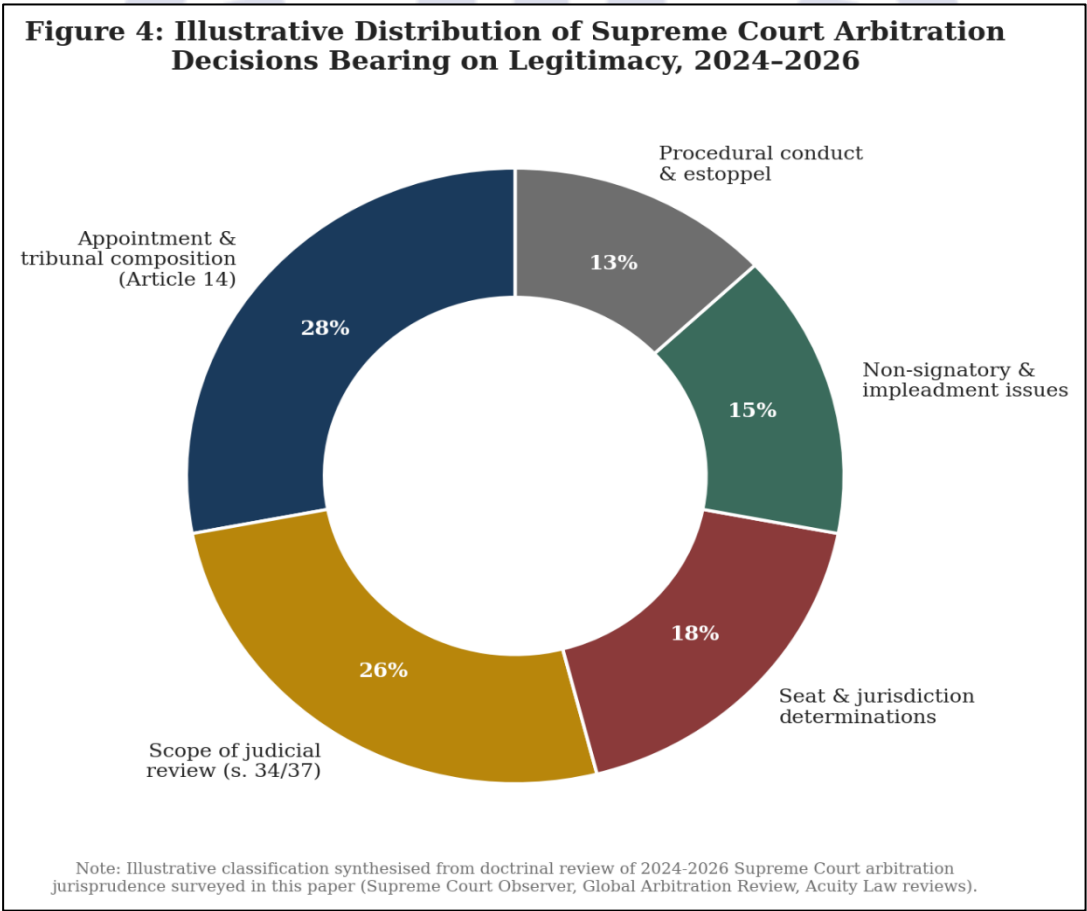
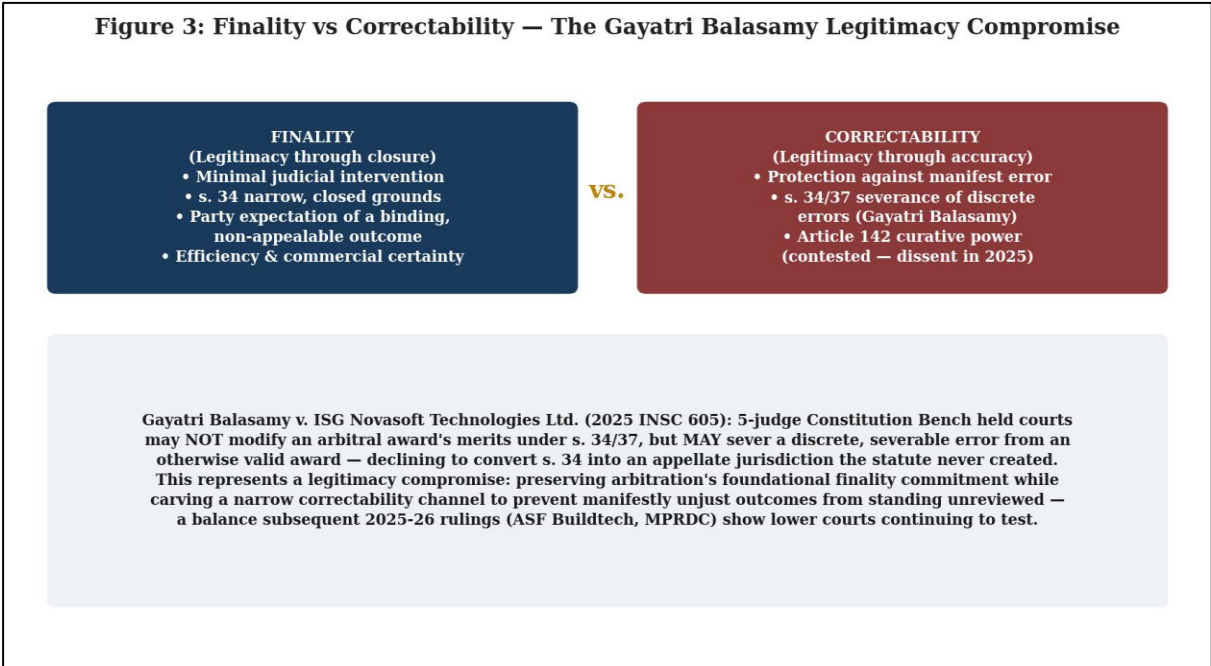
A further, less doctrinally developed dimension of arbitral legitimacy concerns arbitration's systemic contribution to the broader dispute-resolution ecosystem — its capacity to relieve pressure on an overburdened civil court system while maintaining sufficient institutional coherence and predictability to sustain confidence in commercial dispute resolution generally. The Supreme Court's own 2025-2026 acknowledgment, in *ASF Buildtech*, that the existing arbitration framework continues to generate delay and uncertainty, and its explicit call for legislative attention to the pending 2024 Draft Bill, suggests that systemic legitimacy concerns remain unresolved even as procedural and supervisory legitimacy have received significant doctrinal clarification through CORE-II and Gayatri Balasamy respectively. A fully coherent theory of arbitral legitimacy in India will need to address this systemic dimension more directly than current jurisprudence has yet done.

3.7 Illustrative Mapping of Legitimacy-Bearing Disputes

Figure 4 presents an illustrative classification of the Supreme Court's 2024-2026 arbitration jurisprudence by the primary legitimacy dimension each decision engages, revealing that appointment and tribunal-composition disputes (procedural legitimacy) and judicial-review-

³²IndiaCorpLaw, *supra* note 13; Mondaq, *supra* note 15.

scope disputes (supervisory legitimacy) together account for the substantial majority of legitimacy-bearing arbitration jurisprudence in this period, consistent with this paper's identification of CORE-II and Gayatri Balasamy as the doctrinally central developments in contemporary Indian arbitral legitimacy discourse.



3.8 Comparative Snapshot: Consent-Based versus Hybrid Legitimacy Models

Table 1 summarises the principal differences between the traditional consent-based model and the hybrid model this paper argues Indian jurisprudence has increasingly adopted.

Dimension	Traditional Consent-Based Model	Post-CORE-II/Gayatri Balasamy Hybrid Model
Source of legitimacy	Party consent alone	Consent (necessary) + constitutional/procedural constraints (independently necessary)
Arbitrator appointment	Governed entirely by parties' contractual agreement	Subject to Article 14 equality constraint regardless of contractual terms (CORE-II)
Judicial review scope	Minimal intervention; finality strongly favoured	Calibrated: finality preserved for merits, narrow correctability for severable error (Gayatri Balasamy)
Treatment of unequal bargaining power	Not independently relevant if formal consent present	Relevant — attenuated consent in asymmetric public-private contracts weakens sufficiency of consent alone
Doctrinal risk	May legitimate structurally unfair processes if formally consented to	May unsettle commercial certainty and invite broader public-law scrutiny of private agreements (per dissents)

Table 1: Comparative snapshot of consent-based and hybrid legitimacy models in Indian arbitration.

4. FINDINGS

- Traditional consent-based theories of arbitral legitimacy, while doctrinally dominant for most of the post-1996 period, prove increasingly difficult to sustain without qualification once arbitration is examined in the public-private contracting context, where consent to specific procedural terms such as unilateral appointment clauses is frequently more formal than substantively voluntary.
- CORE-II's application of Article 14 to arbitrator appointment clauses represents a definitive doctrinal resolution of a seven-year jurisprudential conflict (TRF/Perkins

versus CORE-I/Voestalpine) in favour of treating procedural legitimacy as an independent, non-waivable constraint on arbitration agreements, at least in the public-private contracting context.

- The CORE-II dissents' objection that this approach illegitimately imports public law principles into private arbitration retains theoretical force in the context of genuinely negotiated agreements between commercially sophisticated, equally resourced private parties, but is less persuasive where, as in CORE-II itself, one party is a State instrumentality exercising structurally superior bargaining power.
- Gayatri Balasamy's finality-correctability compromise reflects a considered attempt to balance competing legitimacy claims through a severability-based distinction, but continuing lower-court inconsistency in applying this distinction, documented through 2026, indicates that doctrinal clarity at the Constitution Bench level has not yet fully translated into predictable application at first instance and intermediate appellate levels.
- Read together, CORE-II and Gayatri Balasamy support the identification of a hybrid legitimacy model now operative in Indian arbitration jurisprudence, in which consent remains necessary but insufficient, and constitutional and supervisory constraints operate independently, particularly where State or State-instrumentality parties or asymmetric bargaining power are present.
- Systemic legitimacy concerns — arbitration's contribution to overall access to justice and docket relief — remain comparatively underdeveloped in current doctrine, notwithstanding the Supreme Court's own acknowledgment that the existing framework continues to generate delay and uncertainty.
- The prospective-only application of CORE-II reflects a pragmatic judicial recognition that retrospective application of a newly constitutionalised legitimacy standard would destabilise a substantial volume of existing commercial arrangements, illustrating the practical tension between doctrinal principle and commercial certainty inherent in this area of law.

5. RECOMMENDATIONS

5.1 Doctrinal Development

- Encourage further Supreme Court or Law Commission articulation of a generally applicable framework distinguishing arbitration agreements warranting independent constitutional scrutiny (State/State-instrumentality parties, standard-form contracts, marked bargaining asymmetry) from those properly left to consent-based legitimacy

alone (genuinely negotiated agreements between commercially sophisticated equal parties), to provide clearer guidance than CORE-II's context-specific holding currently offers.

- Develop clearer appellate guidance on the severability standard articulated in *Gayatri Balasamy*, addressing the documented pattern of continuing lower-court inconsistency in distinguishing correctable severable error from non-correctable merits disagreement.

5.2 Legislative Reforms

- Consider express statutory codification of CORE-II's equality principle within the Arbitration and Conciliation Act itself, rather than relying solely on constitutional doctrine developed through case law, to provide clearer ex ante guidance to contracting parties, particularly government and PSU entities routinely engaged in public-private arbitration agreements.
- Expedite consideration of the pending Arbitration and Conciliation (Amendment) Bill, 2024, incorporating the CORE-II and *Gayatri Balasamy* principles into the statutory text, addressing the Supreme Court's own repeated calls for legislative attention to the framework's continuing sources of delay and uncertainty.

5.3 Institutional Reforms

- Develop model, genuinely broad-based arbitrator panel structures for government and PSU contracting practice, satisfying CORE-II's equality requirement while preserving legitimate institutional interests in appointing arbitrators with relevant sectoral expertise.
- Institute judicial training on the severability distinction central to *Gayatri Balasamy*'s finality-correctability framework, to promote greater consistency in Section 34/37 application across trial and appellate courts.

5.4 Theoretical Development

- Encourage continued academic and judicial engagement with the systemic legitimacy dimension of arbitration — its contribution to overall access to justice and rule-of-law coherence — as a distinct consideration warranting more explicit doctrinal attention than current jurisprudence, focused substantially on procedural and supervisory legitimacy, has yet provided.

6. CONCLUSION

The question of arbitration's legitimacy within India's constitutional order has moved, over the course of 2024-2026, from a largely settled matter of consent-based orthodoxy to a genuinely contested and actively developing field of constitutional doctrine. CORE-II's definitive constitutionalisation of arbitrator appointment in the public-private contracting context, and Gayatri Balasamy's careful calibration of the finality-correctability balance in judicial review, together mark a decisive, if incompletely theorised, shift towards a hybrid legitimacy model in which consent remains foundational but no longer sufficient on its own. This shift is neither uncontested nor without genuine theoretical difficulty: the CORE-II dissents' concern that importing public law principles into private arbitration agreements risks eroding the very distinction that justifies arbitration's existence as an institution separate from public adjudication deserves continued serious engagement, even as this paper has argued that concern carries less force in the specific context of State and State-instrumentality contracting than in genuinely negotiated private commercial agreements. Going forward, a fully coherent constitutional theory of arbitral legitimacy in India will need to articulate more clearly the boundary conditions under which constitutional constraints properly displace consent-based legitimacy, to develop more consistent lower-court application of the severability principles Gayatri Balasamy established, and to attend more directly to the systemic legitimacy dimension of arbitration's contribution to India's broader dispute-resolution architecture. What is clear, even at this relatively early stage of doctrinal development, is that Indian arbitration can no longer be understood, if it ever fully could be, as a purely private ordering mechanism standing entirely outside the constitutional order; it is, increasingly and rightly, understood as a quasi-public adjudicative function whose legitimacy depends on satisfying constitutional as well as contractual conditions.

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