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ARBITRATION AND ACCESS TO JUSTICE IN INDIA: A CRITICAL ANALYSIS OF PROCEDURAL AND CONSTITUTIONAL CONCERNS

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ABSTRACT

*Arbitration in India has, over the past three decades, been progressively positioned by legislature and judiciary alike as the preferred mechanism for resolving commercial disputes, prized for its promise of party autonomy, procedural flexibility, confidentiality and expedition relative to an overburdened civil court system. Yet this preference for arbitration sits in an uneasy and under-examined relationship with the constitutional guarantee of access to justice, understood as encompassing not merely formal availability of a forum but substantive, equal and affordable access to effective dispute resolution. This paper undertakes a critical, doctrinal analysis of the procedural and constitutional tensions that arise at the intersection of arbitration and access to justice in India, examining the framework of the Arbitration and Conciliation Act, 1996, as amended in 2015, 2019 and 2021, and the proposed further reforms contained in the draft Arbitration and Conciliation (Amendment) Bill, 2024, following the February 2024 report of the T.K. Viswanathan Expert Committee. It analyses the doctrine of minimal judicial intervention as developed in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* and refined through a substantial body of 2025-2026 Supreme Court jurisprudence, assessing whether the judiciary's pronounced pro-arbitration, non-interventionist trend adequately safeguards constitutional guarantees under Articles 14, 21 and 39A of the Constitution when arbitration's contractual, opt-in and party-funded character systematically disadvantages resource-constrained litigants, including micro, small and medium enterprises and individual consumers bound by standard-form arbitration clauses. The paper critically examines cost asymmetry in ad hoc arbitration, unequal bargaining power in contract formation, the tension between confidentiality and the public interest in transparent adjudication, and the narrow scope of judicial review under Section 34, before evaluating the 2024 Draft Bill's proposed reforms — including curtailment of Section 9 interim relief, statutory recognition of emergency arbitration, and delegation of fee-determination authority to the Arbitration Council of India — for their likely impact on access to justice for*

economically weaker parties. The paper concludes that meaningful reconciliation of arbitration's efficiency objectives with constitutional access-to-justice guarantees requires targeted procedural safeguards, differentiated treatment of consumer and employment arbitration, judicially and legislatively calibrated cost regimes, and continued vigilance against the erosion of minimum due-process protections in the pursuit of institutional efficiency.

Keywords: *Arbitration and Conciliation Act, 1996; access to justice; judicial intervention; Article 21; procedural fairness; arbitration costs; India.*

1. INTRODUCTION

Arbitration occupies a distinctive and increasingly central position within India's dispute resolution architecture. Conceived originally as a consensual, party-driven alternative to formal litigation, arbitration in India has, since the enactment of the Arbitration and Conciliation Act, 1996 (“the Act”) — itself substantially modelled on the UNCITRAL Model Law on International Commercial Arbitration — been progressively elevated by both Parliament and the higher judiciary to the status of a preferred, even institutionally favoured, mechanism for resolving commercial disputes.¹ This elevation has been driven substantially by considerations of docket relief for an overburdened civil court system and by India's ambition to present itself as an attractive seat for international commercial arbitration.²

Yet the very features that make arbitration attractive from an efficiency standpoint — its contractual, opt-in character, its reliance on party-funded arbitrator fees, its comparative procedural informality, and its confidentiality — sit in an under-examined tension with the constitutional guarantee of access to justice. The Supreme Court has recognised access to justice as a facet of the right to life and personal liberty under Article 21 of the Constitution, observing in *Anita Kushwaha v. Pushap Sudan* that “access to justice” is itself a fundamental right, comprising the right to approach a competent court, the right to speedy adjudication, and the right to affordable and effective legal remedy.³ Article 39A further directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity, and specifically mandates the provision of free legal aid to ensure that opportunities for

¹Arbitration and Conciliation Act, 1996, Preamble and Statement of Objects and Reasons.

²*Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552, at paras 1-15.

³*Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509, at paras 32-37.

securing justice are not denied to any citizen by reason of economic or other disabilities.⁴ Arbitration's structural reliance on party-borne costs, unequal contractual bargaining power in standard-form clauses, and comparative insulation from public scrutiny raises the question whether the institution, as currently structured and increasingly favoured by policy and judicial doctrine, is compatible with these constitutional guarantees for economically weaker parties. This tension has assumed renewed significance in the wake of the February 2024 report of the sixteen-member Expert Committee chaired by Dr. T.K. Viswanathan, former Secretary, Ministry of Law and Justice, constituted in June 2023 to review the working of the Act and recommend reforms, and the consequent draft Arbitration and Conciliation (Amendment) Bill, 2024, released for public consultation in October 2024.⁵ The Draft Bill proposes, among other changes, a marked reduction in the availability of court-ordered interim relief under Section 9 during the pendency of arbitral proceedings, statutory recognition of emergency arbitration, and delegation of arbitrator fee-determination to the Arbitration Council of India — reforms whose stated aim of reducing judicial intervention and institutionalising arbitration may, this paper argues, carry material and insufficiently examined consequences for access to justice among resource-constrained litigants.⁶

1.1 Statement of the Problem

India's arbitration law and jurisprudence have developed along a trajectory of progressively minimising judicial intervention, in service of efficiency, finality and India's attractiveness as an arbitral seat. This trajectory, while doctrinally coherent from an arbitration-law perspective, has not been systematically reconciled with the constitutional guarantee of access to justice, particularly for parties — individual consumers, employees, micro and small enterprises — who enter arbitration agreements with unequal bargaining power and who bear disproportionate cost burdens relative to well-resourced commercial counterparties.

1.2 Objectives of the Study

- To trace the legislative and jurisprudential evolution of arbitration law in India, with particular reference to the trajectory of judicial intervention from the 1940 Act through the 1996 Act and its subsequent amendments.

⁴Constitution of India, art. 39A.

⁵Ministry of Law and Justice, Government of India, Report of the Expert Committee to Examine the Working of the Arbitration Ecosystem in India (T.K. Viswanathan Committee Report), February 2024.

⁶Draft Arbitration and Conciliation (Amendment) Bill, 2024.

- To critically analyse the procedural features of arbitration — cost structure, party autonomy in arbitrator selection, confidentiality, and the scope of judicial review — that bear on access to justice for resource-constrained parties.
- To examine the constitutional dimension of access to justice under Articles 14, 21 and 39A and assess arbitration's compatibility with these guarantees.
- To evaluate the 2024 Draft Bill's proposed reforms for their likely impact on access to justice.
- To recommend procedural and legislative reforms that reconcile arbitration's efficiency objectives with constitutional access-to-justice guarantees.

1.3 Research Questions

- Does the increasing judicial and legislative preference for minimal intervention in arbitration adequately safeguard the constitutional guarantee of access to justice for economically weaker parties?
- How do cost asymmetry and unequal bargaining power in standard-form arbitration clauses affect the substantive, as opposed to formal, availability of arbitration as a dispute resolution mechanism?
- Is the narrow scope of judicial review under Section 34 of the Act consistent with the due-process content of Article 21, particularly where an arbitral award reflects a plausible but erroneous view of law or fact?
- What legislative and procedural reforms would reconcile arbitration's efficiency and finality objectives with constitutional access-to-justice guarantees?

1.4 Research Methodology

This study adopts a doctrinal legal research methodology, involving critical analysis of the Arbitration and Conciliation Act, 1996 and its amendments, the 2024 Draft Bill, constitutional provisions, and judicial precedent, supplemented by secondary literature including expert committee reports and practitioner commentary. Descriptive illustrative data on arbitration costs and judicial trends is used to ground the doctrinal analysis empirically.

1.5 Scope and Limitations

The paper is confined to domestic commercial arbitration under the Act, with reference to international commercial arbitration only where it illuminates the domestic access-to-justice analysis. It does not undertake a comparative study of foreign arbitration statutes in detail, nor

does it address investor-State arbitration. Data and legislative developments are current as of August 2026; the 2024 Draft Bill had not, as of that date, been enacted into law.

2. LITERATURE REVIEW

2.1 The Doctrine of Minimal Judicial Intervention

The trajectory of Indian arbitration jurisprudence since 1996 has been dominated by a sustained judicial and legislative effort to curtail the scope of court intervention in arbitral proceedings. The Supreme Court's landmark ruling in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* overruled the earlier, more interventionist approach of *Bhatia International v. Bulk Trading S.A.*, holding that Part I of the Act (including Section 34's setting-aside jurisdiction) does not apply to arbitrations seated outside India, thereby substantially narrowing Indian courts' supervisory reach over foreign-seated awards.⁷ Commentary on the Supreme Court's 2025 arbitration jurisprudence documents a continuation and intensification of this trend: a comprehensive survey of twenty-five key 2025 rulings identifies a consistent judicial emphasis on “minimal judicial interference,” the sanctity of arbitration agreements formed even through conduct, and clear demarcation of court jurisdiction from arbitral autonomy.⁸ In *Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd.*, the Supreme Court held that High Court interference under Articles 226 and 227 of the Constitution with an arbitral tribunal's order is permissible only where the order is “completely perverse,” such that the perversity is apparent on the face of the record — a formulation setting an intentionally high threshold for judicial correction of arbitral error.⁹

2.2 Article 142 and the Limits of Curative Judicial Power

A significant and doctrinally contested strand of 2025-2026 jurisprudence concerns the Supreme Court's power under Article 142 of the Constitution to modify, rather than merely set aside or remit, an arbitral award. The Court's Half-Yearly Digest for 2025 records the holding that the Court's plenary powers under Article 142 may be cautiously exercised to modify arbitral awards to ensure complete justice and expedite protracted proceedings, provided such modification does not interfere with the award's merits or violate the Act's core principles, and remains aligned with fundamental rights and legislative intent.¹⁰ Notably, Justice K.V.

⁷*Bharat Aluminium Co.*, supra note 2.

⁸“Supreme Court on Arbitration: 25 Key Judgments From 2025,” LiveLaw (2026).

⁹*Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd.*, 2025 INSC 26.

¹⁰Supreme Court Half Yearly Digest 2025: Arbitration & Conciliation Act, LiveLaw, relying on *Shilpa Sailesh v. Varun Sreenivasan*, 2023 LiveLaw (SC) 375.

Viswanathan dissented from this position, holding that Article 142 cannot be deployed to modify arbitral awards, since Section 34 provides the exclusive statutory mechanism for challenging awards under the Act — a dissent that itself illuminates the access-to-justice stakes of the majority position: an expansive curative power, however well-intentioned, risks introducing unpredictability into what the Act otherwise structures as a narrow, closed system of review.¹¹

2.3 Cost and the Access-to-Justice Critique

A distinct and directly relevant strand of scholarship addresses the cost architecture of Indian arbitration and its access-to-justice implications. The Leap Blog's structural critique observes that ad hoc arbitration in India — which, notwithstanding two decades of institutional-arbitration promotion, remains the dominant mode of arbitration by volume — relies on a Fourth Schedule fee structure keyed to claim quantum, an approach the T.K. Viswanathan Committee's 2024 Report itself criticised as neglecting case complexity and procedural variation, noting that an ostensibly small claim may require extensive proceedings while a large claim may resolve summarily.¹² Scholarship analysing the Draft Bill's proposed Section 31-A costs regime — which extends adverse-costs sanctions to frivolous claims, not merely counterclaims — explicitly identifies an access-to-justice concern: “smaller or resource-constrained parties are particularly vulnerable to the chilling effect of negative costs,” with the risk that legitimate but complex or novel claims will be deterred by the prospect of adverse costs, particularly given the admittedly ambiguous statutory definition of “frivolous” conduct, which vests arbitral tribunals with wide interpretive discretion.¹³ The same literature contrasts this position with *ONGC v. Afcons Gunanusa JV*, in which the Supreme Court emphasised that frivolous conduct in arbitration should not go unpunished, illustrating the underlying doctrinal tension between deterring abuse of process and preserving access for good-faith but resource-constrained claimants.¹⁴

2.4 The 2024 Draft Bill: Institutional Promotion and Its Discontents

Comparative and critical commentary on the 2024 Draft Bill identifies a cluster of provisions

¹¹Id.

¹²The Leap Blog, “The Blind Spot in Indian Arbitration: Fees, Power, and Structural Oversights” (2025), discussing the T.K. Vishwanathan Committee Report, 2024.

¹³“Section 31-A and the Draft Arbitration Bill 2024: The New Costs Regime in Indian Arbitration,” RGNUL Financial and Mercantile Law Review (2025).

¹⁴*ONGC v. Afcons Gunanusa JV*, (2022) SCC OnLine SC 1122, as discussed in RGNUL FMLR, *supra* note 8.

with direct access-to-justice implications. White & Case's analysis notes the Draft Bill's overarching aim of promoting institutional arbitration, further reducing court intervention, and facilitating timely conclusion of proceedings, building on the momentum of the 2015, 2019 and 2021 amendments.¹⁵ The Kluwer Arbitration Blog's year-in-review identifies the Draft Bill's proposed amendment to Section 9 as particularly consequential: under the current Section 9, courts retain power to grant interim relief during the pendency of arbitral proceedings where tribunal-ordered relief under Section 17 would not be efficacious; the Draft Bill would confine court-ordered interim relief to the periods before commencement of arbitration and after the making of the award, removing the intervening-period power altogether.¹⁶ Critical commentary observes that this change, while consistent with the broader minimal-intervention trend, removes a safeguard of particular value to parties facing arbitrator bias, ineligibility or procedural irregularity mid-proceeding, where recourse to Section 17 before the very tribunal whose conduct is in question may not adequately protect the aggrieved party's interests.¹⁷ The Draft Bill also proposes statutory recognition of emergency arbitration and enforcement of emergency-arbitrator orders in India-seated arbitrations — building on the Supreme Court's 2021 recognition, in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, of the enforceability of a foreign-seated emergency arbitrator's order under Section 17(1) — a reform generally welcomed as strengthening interim protection, though scholarship cautions that emergency arbitration itself carries a cost premium that may be practically inaccessible to smaller parties.¹⁸

2.5 Constitutional Literature on Access to Justice

The constitutional foundation for this paper's analysis rests on the Supreme Court's recognition, in *Anita Kushwaha v. Pushap Sudan*, of access to justice as a component of the Article 21 right to life, alongside the Directive Principle under Article 39A mandating equal justice and free legal aid.¹⁹ Constitutional scholarship on alternative dispute resolution more broadly has long debated whether party autonomy — the foundational premise of arbitration — can be meaningfully exercised by parties with materially unequal bargaining power, a debate with

¹⁵White & Case LLP, “Keeping Up with the Times: The Government of India Proposes New Arbitration Law Reforms” (2024).

¹⁶Kluwer Arbitration Blog, “2024 Year in Review: Arbitration in India — Reset or Rewind?” (2025).

¹⁷“Reforming Arbitration in India: Analysing the Proposed Amendments in the 2024 Draft Bill,” The Arbitration Workshop (2025).

¹⁸*Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2021) SCC OnLine SC 557; DailyJus, “Emergency Arbitration under India's Proposed Bill” (2025).

¹⁹*Anita Kushwaha v. Pushap Sudan*, supra note 3.

particular salience for standard-form arbitration clauses embedded in consumer, employment and franchise contracts where the clause is not genuinely negotiated but imposed as a condition of contracting.²⁰

2.6 Research Gap

Existing literature substantially engages either with the technical doctrinal trajectory of arbitration jurisprudence (minimal intervention, seat theory, Section 34 review) or with cost- and reform-specific critiques of the 2024 Draft Bill, but rarely synthesises these strands within an explicit constitutional access-to-justice framework grounded in Articles 14, 21 and 39A. This paper addresses that gap by offering an integrated doctrinal-constitutional analysis, current through 2026, of arbitration's compatibility with India's access-to-justice guarantees.

3. ANALYSIS AND DISCUSSION

3.1 The Legislative and Jurisprudential Trajectory

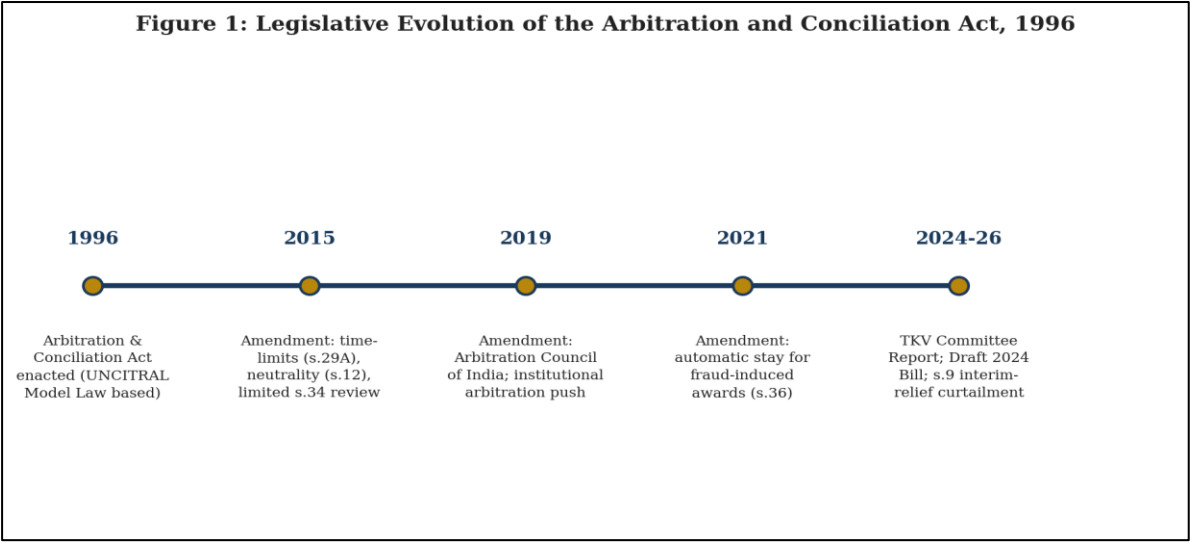
India's arbitration law has evolved through a series of legislative interventions and judicial pronouncements that together chart a broadly consistent trajectory towards minimising judicial intervention in arbitral proceedings, summarised in Figure 1. The 1996 Act replaced the more interventionist Arbitration Act, 1940, adopting the UNCITRAL Model Law's framework of party autonomy and limited court supervision.²¹ The 2015 amendment introduced statutory time-limits for rendering awards under Section 29A, strengthened arbitrator neutrality requirements under Section 12, and narrowed the scope of Section 34 review to curb the interventionist tendencies that had developed under *ONGC v. Saw Pipes Ltd.*'s expansive reading of “public policy” as a ground for setting aside awards.²² The 2019 amendment established the Arbitration Council of India to promote institutional arbitration, while the 2021 amendment introduced provision for automatic stay of enforcement where an award is shown to have been induced by fraud or corruption.²³ The most recent phase, from 2023 onward, is marked by the T.K. Viswanathan Expert Committee's February 2024 Report and the consequent Draft Bill, both explicitly oriented towards further reducing court intervention and institutionalising arbitration practice.

²⁰S.K. Verma & M. Afzal Wani (eds.), *Legal Research and Methodology*, Ch. 9 (Indian Law Institute, 3rd edn., 2013) (on party autonomy and bargaining inequality in ADR).

²¹Arbitration and Conciliation Act, 1996, s. 5 (“notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”).

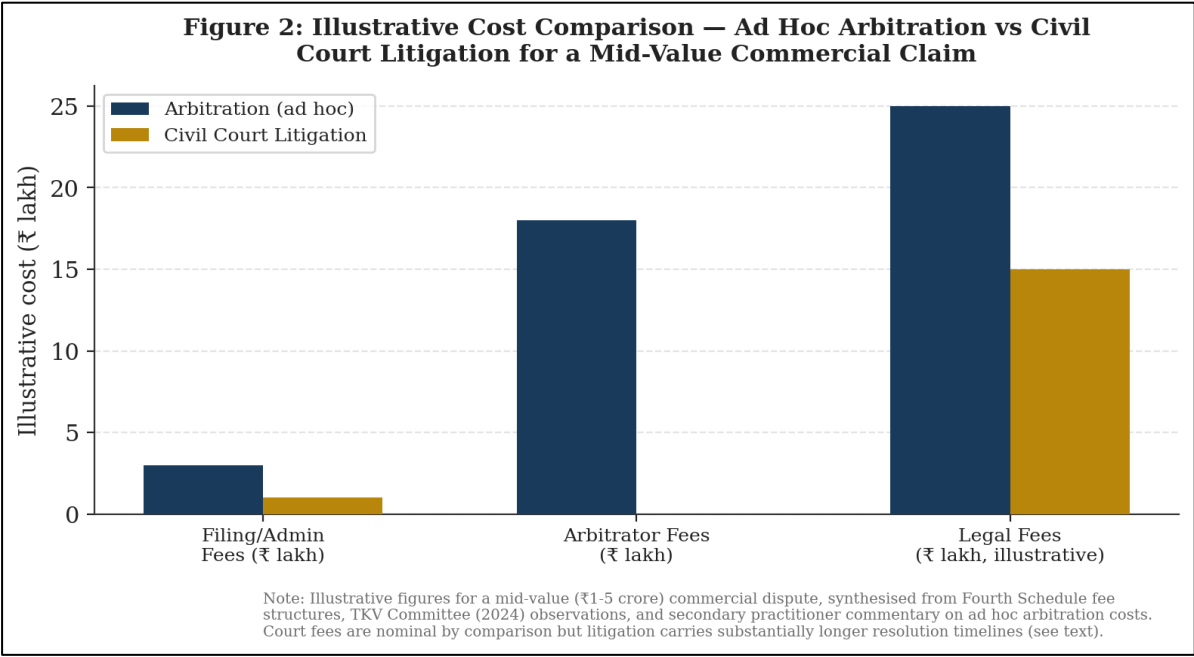
²²Arbitration and Conciliation (Amendment) Act, 2015.

²³Arbitration and Conciliation (Amendment) Act, 2019; Arbitration and Conciliation (Amendment) Act, 2021.



3.2 Cost Asymmetry as an Access-to-Justice Concern

A central, if under-examined, access-to-justice concern in Indian arbitration lies in its cost structure. Unlike civil court litigation, where court fees are nominal and typically ad valorem but capped, and where judicial salaries are publicly funded, ad hoc arbitration in India requires parties to bear the full cost of arbitrator fees, venue hire, and often tribunal-secretary and administrative support, in addition to legal representation.²⁴ Figure 2 presents an illustrative cost comparison for a mid-value commercial dispute, indicating that ad hoc arbitration can involve materially higher upfront and cumulative costs than equivalent civil court litigation, notwithstanding arbitration's promise of time savings.



²⁴The Leap Blog, supra note 8.

The Fourth Schedule to the Act, which prescribes a model fee scale for arbitrators (applicable, since the relevant 2019 amendment provision remains unnotified, only informally and inconsistently in practice), bases arbitrator remuneration primarily on claim quantum — an approach the T.K. Viswanathan Committee itself identified as a significant structural flaw, since it fails to account for case complexity, the number of hearings required, or procedural intricacy, potentially either underpaying arbitrators handling complex low-value disputes or overpaying those handling straightforward high-value ones, with cost implications that fall disproportionately on resource-constrained parties in either scenario.²⁵ The Draft Bill's proposed delegation of fee-determination authority to the Arbitration Council of India, while intended to introduce greater flexibility and complexity-sensitivity, has been criticised for concentrating rate-setting authority in a body whose independence from government influence has itself been questioned, and for potentially reducing the transparency and predictability that the existing (if imperfect) Fourth Schedule at least notionally provides.²⁶

3.3 Unequal Bargaining Power and Standard-Form Arbitration Clauses

A second structural access-to-justice concern arises from the near-universal practice of embedding arbitration clauses within standard-form contracts — employment agreements, consumer contracts, franchise agreements, and business-to-business contracts between parties of significantly disparate size and resources. Because such clauses are typically presented on a take-it-or-leave-it basis, the weaker party's "consent" to arbitration, and to the attendant waiver of access to ordinary civil court remedies, is frequently more formal than substantive. Indian courts have generally upheld such clauses provided they meet the Act's formal requirements under Section 7, without a developed doctrine of substantive unconscionability review comparable to that found in some foreign jurisdictions' consumer-arbitration jurisprudence, leaving individual consumers and small businesses with limited recourse to challenge an arbitration clause's fairness independent of challenging the underlying contract as a whole.

3.4 The Narrow Scope of Judicial Review under Section 34

Section 34 of the Act confines the grounds for setting aside a domestic arbitral award to a closed and narrowly construed list — incapacity of a party, invalidity of the arbitration agreement, denial of proper notice or opportunity to present one's case, matters beyond the scope of submission, improper composition of the tribunal, and conflict with the "public policy

²⁵The Leap Blog, *supra* note 8; T.K. Viswanathan Committee Report, *supra* note 4.

²⁶*Id.*

of India” (itself narrowly construed, post-2015, to exclude mere erroneous application of law).²⁷ Recent Supreme Court jurisprudence has reinforced this narrow construction: courts have repeatedly held that if an arbitrator's interpretation of a contractual clause represents a plausible view, a reviewing court cannot substitute its own view merely because an alternative interpretation is also possible.²⁸ While this deference serves arbitration's finality objective and reduces the risk of courts using Section 34 as a backdoor merits appeal, it also means that a party who has received an erroneous, but not “perverse” or jurisdictionally defective, award has no meaningful avenue for correction — a consequence with disproportionate impact on parties who, due to resource constraints, may not have been able to present their case as effectively as a well-resourced counterparty during the arbitral proceeding itself.

3.5 Article 142 and the Curative Power Debate

The Supreme Court's 2025 recognition of a cautious Article 142 power to modify (rather than merely set aside or remit) an arbitral award represents a partial, if constitutionally unusual, response to the access-to-justice concern raised by Section 34's narrow review scope — offering a mechanism, available only at the Supreme Court's own discretion, to correct manifest injustice without requiring a full re-arbitration.²⁹ Yet the dissenting position of Justice K.V. Viswanathan — that Section 34 provides the Act's exclusive review mechanism and that Article 142 cannot properly be used to rewrite an award's substance — highlights the doctrinal instability of relying on an extraordinary, discretionary constitutional power as a substitute for a principled, generally available statutory remedy.³⁰ From an access-to-justice perspective, a remedy available only through Supreme Court special leave, itself a discretionary and resource-intensive process, offers limited practical protection to the resource-constrained litigants whose interests are most acutely at stake.

3.6 Confidentiality, Transparency and the Public Interest

Arbitration's confidentiality, while valuable for protecting commercially sensitive information, carries a distinct access-to-justice cost at the systemic level: because arbitral awards are not, as a rule, publicly reported or subject to appellate precedent-building in the manner of civil court

²⁷Arbitration and Conciliation Act, 1996, s. 34, as amended in 2015.

²⁸Supreme Court Quarterly Digest 2026 — Arbitration and Conciliation Act, LiveLaw, relying on *Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd.*, 2025 SCC OnLine SC 2578, and *Consolidated Construction Consortium Ltd. v. Software Technology Parks of India*, 2025 INSC 574.

²⁹LiveLaw, *supra* note 5, relying on *Shilpa Sailesh v. Varun Sreenivasan*, *supra* note 5.

³⁰*Id.*

judgments, the body of interpretive guidance available to future litigants — particularly resource-constrained parties who cannot afford extensive independent legal research — develops far more slowly and unevenly than in litigated matters. This asymmetry compounds the cost and bargaining-power concerns discussed above: well-resourced repeat players in arbitration (large corporations, financial institutions) accumulate institutional knowledge of arbitrator tendencies and procedural practice that individual or first-time claimants cannot access, reinforcing rather than levelling the playing field that formal legal equality is meant to secure.

3.7 Constitutional Analysis: Articles 14, 21 and 39A

Read together, the cost, bargaining-power, review-scope and transparency concerns examined above raise a genuine, if underlitigated, constitutional question. Article 14's guarantee of equality before the law is in tension with a dispute resolution system in which the practical capacity to secure a fair hearing — through the ability to fund competent representation, contest arbitrator appointment, and bear the risk of adverse costs — varies systematically with a party's economic resources.³¹ Article 21's recognition of access to justice as embracing the right to an effective and affordable remedy, as articulated in *Anita Kushwaha*, sits uneasily with an arbitration regime in which the practical unavailability of a remedy (whether through prohibitive upfront cost, an unfavourable standard-form clause, or the narrow scope of post-award review) may leave a party without meaningful recourse notwithstanding the formal availability of the arbitral forum.³² Article 39A's directive that the legal system operate to promote justice on a basis of equal opportunity, including through free legal aid, has no developed counterpart within the arbitration framework: unlike civil litigation, where the Legal Services Authorities Act, 1987 provides a statutory mechanism for free legal aid to eligible litigants, no comparable public subsidy exists for arbitration, leaving economically weaker parties who are contractually bound to arbitrate (rather than litigate) without access to an equivalent support mechanism.³³

3.8 The Judicial Intervention Pendulum: A Synthesis

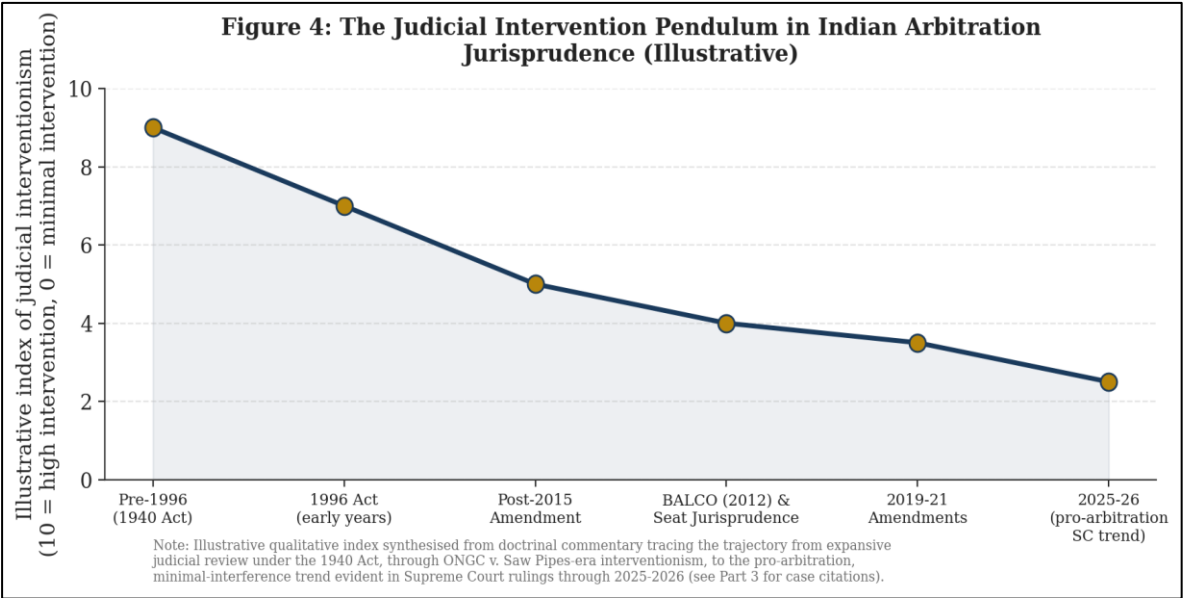
Figure 4 offers an illustrative synthesis of the doctrinal trajectory traced in this Part, depicting the qualitative shift from the more interventionist judicial posture of the pre-1996 and early

³¹Constitution of India, art. 14.

³²*Anita Kushwaha v. Pushap Sudan*, supra note 3.

³³Legal Services Authorities Act, 1987; Constitution of India, art. 39A.

post-1996 periods, through the expansive “public policy” review associated with *ONGC v. Saw Pipes Ltd.*, to the markedly non-interventionist trend consolidated by *BALCO* and its progeny and now firmly entrenched in the Supreme Court's 2025-2026 arbitration jurisprudence.



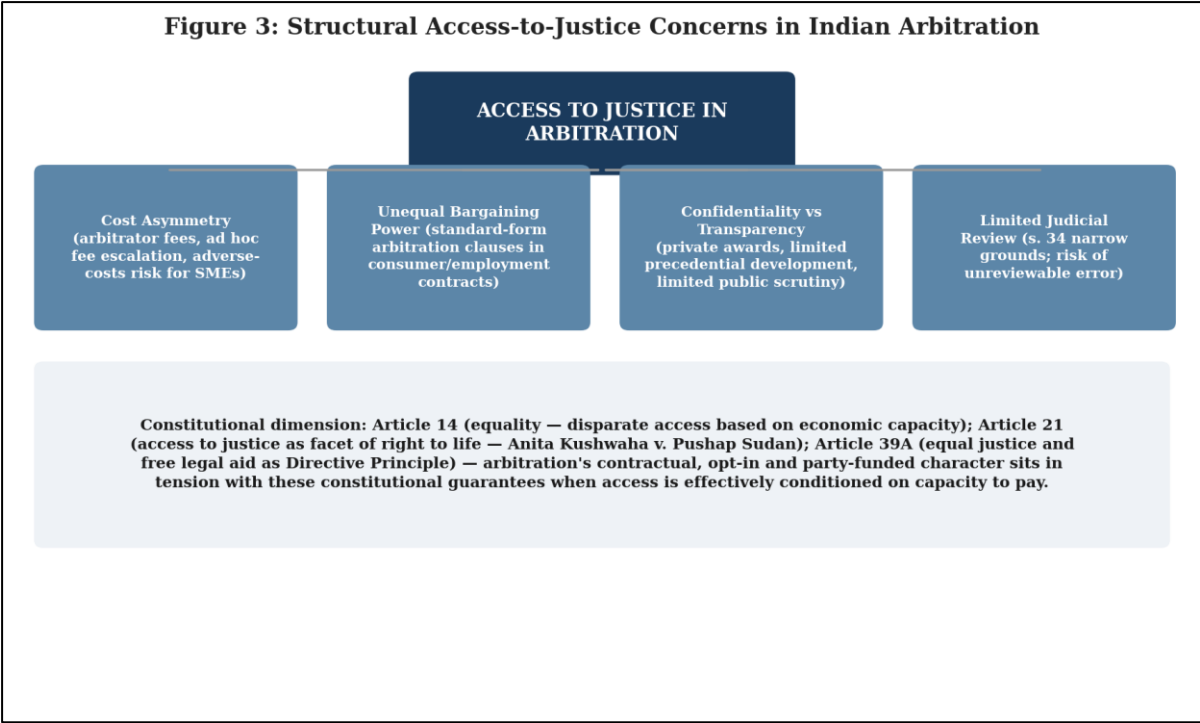
3.9 Evaluating the 2024 Draft Bill through an Access-to-Justice Lens

The Draft Bill's central reforms warrant assessment against the access-to-justice framework developed above. The proposed curtailment of Section 9 interim relief to the pre-commencement and post-award phases, removing the court's power to grant interim relief during the pendency of proceedings, would remove a safeguard of particular value where a party faces arbitrator bias, ineligibility or procedural irregularity mid-proceeding — precisely the scenario in which a resource-constrained party most needs recourse to an independent forum rather than the tribunal whose own conduct is in question.³⁴ The proposed Section 31-A costs regime, extending adverse-costs exposure to frivolous claims (not merely counterclaims), risks a chilling effect on legitimate but complex claims brought by smaller or resource-constrained parties who cannot confidently predict a tribunal's application of the admittedly ambiguous “frivolous” standard.³⁵ Conversely, the Draft Bill's statutory recognition of emergency arbitration would extend interim-relief availability to India-seated arbitrations without requiring recourse to foreign institutional rules, a change that is broadly access-enhancing in principle, though its practical benefit will depend on whether the associated cost

³⁴Kluwer Arbitration Blog, *supra* note 9.

³⁵RGNUL FMLR, *supra* note 8.

of emergency arbitration itself is calibrated to remain accessible to smaller parties.³⁶ The proposed delegation of fee-determination to the Arbitration Council of India carries genuine potential to introduce complexity-sensitive, and thus fairer, fee structures than the current claim-quantum-based Fourth Schedule, but realising this potential will depend on the Council's institutional independence and on transparent, consultative rate-setting processes.³⁷



3.10 Comparative Snapshot: Access-to-Justice Impact of Key Reforms

Table 1 summarises the likely access-to-justice impact of the principal reforms proposed in the 2024 Draft Bill.

Proposed Reform	Stated Objective	Illustrative Access-to-Justice Impact
Curtailment of s. 9 interim relief to pre-commencement/post-award phases	Reduce mid-proceeding court intervention; strengthen tribunal authority under s. 17	Negative — removes independent recourse for parties facing arbitrator bias or procedural irregularity mid-proceeding
Statutory recognition of emergency arbitration	Provide urgent interim relief in India-seated arbitrations without	Positive in principle; benefit conditional on emergency-

³⁶DailyJus, supra note 10.
³⁷The Leap Blog, supra note 8.

Proposed Reform	Stated Objective	Illustrative Access-to-Justice Impact
(proposed s. 9-A)	foreign institutional rules	arbitration cost remaining accessible
Extension of adverse-costs regime to frivolous claims (proposed s. 31-A)	Deter abuse of process; ensure equal accountability for claims and counterclaims	Mixed — risks chilling legitimate but complex claims by resource-constrained parties given ambiguous ‘frivolous’ standard
Delegation of fee-determination to Arbitration Council of India	Introduce complexity-sensitive, rather than quantum-based, fee structures	Potentially positive; contingent on ACI independence and transparent rate-setting
Promotion of institutional (over ad hoc) arbitration	Improve procedural consistency, administrative support and cost predictability	Positive for parties who can access institutions; institutional fees may remain a barrier for very small claims

Table 1: Illustrative access-to-justice impact of key reforms proposed in the 2024 Draft Bill.

4. FINDINGS

- India's arbitration jurisprudence has developed along a consistent trajectory of minimising judicial intervention, from BALCO's narrowing of Part I applicability through the pronounced non-interventionist trend evident across 2025-2026 Supreme Court rulings, without a commensurate, explicit doctrinal reconciliation with constitutional access-to-justice guarantees under Articles 14, 21 and 39A.
- Ad hoc arbitration's cost structure — party-funded arbitrator fees based on a claim-quantum model criticised even by the government's own Expert Committee — creates a material cost asymmetry disadvantaging resource-constrained parties relative to well-resourced commercial counterparties, an asymmetry not present to the same degree in civil court litigation.
- Standard-form arbitration clauses in consumer, employment and small-business contracts raise genuine concerns of unequal bargaining power that Indian arbitration jurisprudence has not developed a robust, arbitration-specific doctrine of substantive fairness review to address.

- The narrow scope of Section 34 review, while serving arbitration's finality objective, leaves parties who receive an erroneous but not perverse or jurisdictionally defective award without meaningful recourse, a consequence disproportionately affecting parties less able to present their case fully during the original proceeding.
- The Supreme Court's cautious 2025 recognition of an Article 142 power to modify arbitral awards offers only a discretionary, Supreme-Court-level remedy, of limited practical accessibility to resource-constrained litigants, and remains doctrinally contested, as reflected in Justice K.V. Viswanathan's dissent.
- Arbitration's confidentiality, while protecting legitimate commercial interests, slows the development of accessible interpretive precedent and entrenches an information asymmetry favouring well-resourced repeat players over individual or first-time claimants.
- No public legal-aid mechanism comparable to that available for civil litigation under the Legal Services Authorities Act, 1987 currently exists for parties contractually bound to arbitrate, leaving Article 39A's equal-justice mandate without a corresponding institutional mechanism in the arbitration context.
- The 2024 Draft Bill's reforms carry mixed access-to-justice implications: the proposed curtailment of Section 9 interim relief and extension of adverse-costs exposure to frivolous claims present identifiable risks to resource-constrained parties, while statutory recognition of emergency arbitration and complexity-sensitive fee-determination present potential, though conditional, benefits.

5. RECOMMENDATIONS

5.1 Legislative Reforms

- Retain, rather than curtail, courts' power under Section 9 to grant interim relief during the pendency of arbitral proceedings in cases involving allegations of arbitrator bias, ineligibility or serious procedural irregularity, preserving an independent recourse mechanism for such circumstances.
- Introduce a statutory, differentiated procedural track for consumer and employment arbitration, including a rebuttable presumption of unconscionability for arbitration clauses in non-negotiated standard-form contracts below a specified claim-value threshold, coupled with capped or subsidised arbitrator fees for such matters.
- Narrow the proposed Section 31-A frivolous-claims costs regime with a clearer, more precisely defined threshold for "frivolous" conduct, and consider a sliding-scale costs-

exposure cap calibrated to claimant resources for individual and small-enterprise claimants.

5.2 Institutional Reforms

- Ensure the Arbitration Council of India's fee-determination function, if enacted, operates through a transparent, consultative rate-setting process with periodic public review, to preserve the predictability presently offered (however imperfectly) by the Fourth Schedule.
- Establish a public, subsidised fee-waiver or fee-reduction scheme for arbitration involving individual consumers, employees or micro-enterprises below a specified claim-value threshold, analogous in principle to the Legal Services Authorities Act's civil-litigation legal-aid framework.
- Promote low-cost institutional arbitration options, including small-claims-oriented institutional tracks with capped fees, to reduce reliance on ad hoc arbitration for lower-value disputes involving resource-constrained parties.

5.3 Judicial and Doctrinal Development

- Develop a more calibrated, arbitration-specific doctrine of unconscionability review for standard-form arbitration clauses in consumer and employment contracts, distinct from the general contract-law unconscionability doctrine, to address the particular bargaining-power asymmetries characteristic of such contracts.
- Clarify, through express legislative provision rather than continued reliance on the discretionary and doctrinally contested Article 142 power, a principled and generally available mechanism for correcting manifest injustice in arbitral awards falling short of perversity but resulting in serious hardship.

5.4 Transparency Reforms

- Encourage, without compromising legitimate commercial confidentiality, the anonymised publication of arbitral awards or award summaries addressing significant or recurring points of law, to build accessible interpretive precedent for future litigants, particularly resource-constrained parties without access to extensive independent legal research capacity.

6. CONCLUSION

Arbitration's ascendance within India's dispute resolution landscape reflects genuine and legitimate policy objectives — reducing the burden on an overstretched civil court system, offering commercial parties procedural flexibility and expedition, and strengthening India's standing as an arbitration-friendly jurisdiction for international investment. Yet this analysis demonstrates that the sustained legislative and judicial trajectory towards minimal intervention, while doctrinally coherent on its own terms, has not been adequately reconciled with the constitutional guarantee of access to justice under Articles 14, 21 and 39A. Cost asymmetry in ad hoc arbitration, unequal bargaining power in standard-form arbitration clauses, the narrow scope of post-award judicial review, and the absence of any public legal-aid mechanism comparable to that available in civil litigation together constitute a structural access-to-justice deficit that disproportionately affects individual consumers, employees and smaller enterprises — precisely the parties Article 39A's equal-justice mandate is most directly concerned to protect. The 2024 Draft Bill, whatever its considerable merits in promoting institutional arbitration and procedural efficiency, risks compounding rather than resolving this deficit through its proposed curtailment of interim relief and extension of adverse-costs exposure, even as its emergency-arbitration and fee-reform proposals offer genuine, if conditional, promise. A dispute resolution system that is efficient for well-resourced commercial parties but effectively inaccessible, unaffordable or unreviewable for economically weaker litigants cannot be said to fully honour India's constitutional commitment to equal and substantive access to justice. Reconciling these objectives will require deliberate legislative differentiation between commercial and consumer/employment arbitration, calibrated cost and fee reforms, a more developed doctrine of unconscionability review, and sustained institutional investment in accessible, subsidised arbitration pathways for resource-constrained litigants.

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