

ALGORITHMIC ARBITRATORS AND THE DUE PROCESS DEFICIT: REIMAGINING SECTION 34 FINALITY IN INDIA'S AI-ASSISTED ARBITRATION LANDSCAPE

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Introduction

Artificial Intelligence [“AI”] has prompted arbitral institutions such as the London Court of International Arbitration, International Chamber of Commerce, the Singapore International Arbitration Centre, Mumbai Centre for International Arbitration [“MCIA”], and Dubai International Arbitration Centre to implement AI support systems to advance cases more quickly and reduce costs.¹ These support systems flag precedents, synthesise evidence and generate recommendations which arbitrators routinely adopt with minimal revision.² This efficiency through AI conflicts with Article 21 of the Constitution of India,³ which provides parties with the right to receive a reasoned award from an unbiased human decision-maker.⁴ Section 12 of the Arbitration and Conciliation Act, 1996 [“Arbitration Act”]⁵ requires arbitrators to maintain ‘independence, impartiality and integrity’. There is no reference to AI in the statute, resulting in a grey area because arbitral institutions are using algorithmic tools that are not regulated or anticipated by law. Although wider frameworks like the India AI Governance Guidelines [“Guidelines”] of the Ministry of Electronics and Information Technology [“MeitY”]⁶ and the Digital Personal Data Protection Act, 2023⁷ [“DPDP Act”] provide for algorithmic accountability and require Data Fiduciaries to abide by rigorous protocols, these are not designed to address the

¹ Queen Mary University of London and White & Case, *2021 International Arbitration Survey: Adapting Arbitration to a Changing World* (2021).

² Maxi Scherer, ‘Artificial Intelligence and Legal Decision-Making: The Wide Open?’ (2019) 36(5) *Journal of International Arbitration* 579, 584.

³ Constitution of India 1950, art 21.

⁴ RS Bachawat, *Law of Arbitration and Conciliation* (6th edn, LexisNexis 2017) 412–15.

⁵ Arbitration and Conciliation Act 1996, s 12.

⁶ Ministry of Electronics and Information Technology, *India AI Governance Guidelines* (MeitY).

⁷ Digital Personal Data Protection Act 2023.

arbitral process. As a result, these instruments do not regulate arbitration processes, leaving tribunals unsupervised and potentially affecting the finality of awards.

The changes in India's system of algorithmic governance are due to India's AI Governance Guidelines published by the MeitY. These Guidelines include three major foundational principles: (1) the non-delegation principle, which emphasises the assignment of the decision-making authority only to humans; (2) the necessity of disclosing AI usage; and (3) the possibility of using AI in the administrative and analytical sectors only. While these guidelines create a strong policy foundation for algorithmic governance of AI, they do not present any specific standards on arbitral decisions and enforcement mechanisms within the Arbitration Act. It is the difference between general AI governance and AI governance in the field of arbitration that Section 12(7)-(8) is aimed at filling.

Section 34(2)(b) of the Arbitration Act states that an arbitral award may be set aside if it violates the public policy of India.⁸ This now includes due process established in Article 21, following the doctrine of the *Kaushal Kishor v State of Uttar Pradesh* [**“Kaushal Kishor”**] judgment.⁹ An award that is rendered by using an undisclosed, unexplainable AI system can potentially be set aside. An unexplainable AI system defies the requirement of a reasoned award; furthermore, if trained on biased data, that bias perpetuates, violating Article 21's impartiality mandate.¹⁰

This article argues that India must take proactive measures by amending Section 12 of the Arbitration Act to provide: (i) mandatory disclosure of high-risk AI usage; (ii) human oversight of all awards; and (iii) explainability for awards based on the principles demonstrated by the European Union [**“EU”**] AI Act, Singapore's SIAC model, and the United Kingdom's [**“UK”**] common law precedents.¹¹

The Doctrinal Collision: Algorithmic Omission, Article 21, and The Finality Threat

Article 21 of the Constitution guarantees the right to procedural due process, with the promise of fair hearings before a neutral arbitrator. The Supreme Court established in *Sunil Bharti Mittal v CBI* [**“Sunil Bharti Mittal”**] that due process necessitates an application of mind,¹² which means there

⁸ Arbitration and Conciliation Act, s. 34.

⁹ *Kaushal Kishor v State of Uttar Pradesh* (2023) 4 SCC 1.

¹⁰ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (Harvard University Press 2015) 18–24.

¹¹ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L2024/1689, Annex III (8).

¹² *Sunil Bharti Mittal v Central Bureau of Investigation* (2015) 4 SCC 609.

must be a judgment with respect to the context in which a decision was made.¹³ Mechanical application of predetermined rules without discretion violates Article 21's requirement that a decision be made based on a rationally articulated reason.¹⁴ Decades earlier, *Maneka Gandhi v Union of India* affirmed that a person is entitled to due process when making a decision involving weighing the law, facts, and equity of the situation with the assistance of a human being.¹⁵

Artificial intelligence systems currently fail this requirement, a flaw which violates Article 21.¹⁶ The quasi-judicial essence of arbitration brings it under the scrutiny of constitutional law, as the tribunals resolve disputes, restore losses and make court-enforceable decisions; they perform functions similar to those of the state, leading to the incorporation of the second principle laid down in *Kaushal Kishor* on the requirement for procedural fairness as stated in Article 21 within the horizontal applicability doctrine. Arbitration provides for the binding resolution of disputes and damages¹⁷ and produces decisions that can be enforced via litigation in Court,¹⁸ because of this state-like quality, the actions of an arbitral tribunal are subject to constitutional scrutiny. The Supreme Court in *Kaushal Kishor* has ruled that Articles 14, 15, 19 and 21 of the Constitution collectively apply horizontally to private bodies exercising governmental-like power.¹⁹ As such, the issuance of awards based on undisclosed or unexplainable AI technology violates Article 21 and is subject to being set aside upon an application under Section 34(2)(b) of the Arbitration Act as being contrary to the 'public policy of India'.²⁰

This constitutional baseline is critical to the nature of the procedural disability, and therefore non-waivable.²¹ An arbitrator cannot defend an AI-assisted award simply because both parties consented to its use as part of their arbitration agreement.²² While parties may choose to waive certain procedural formalities (i.e., document-only arbitration),²³ doing so will not necessarily prejudice the party's right to a fair decision.²⁴ However, if a neutral party uses an AI system to make a decision, the parties' right to receive a fair and reasonable decision would be violated. Outsourcing an unexplainable algorithmic basis for the entire reasoning process for dispute

¹³ *Kranti Associates (P) Ltd v Masood Ahmed Khan* (2010) 9 SCC 496, para 47.

¹⁴ *Tarun Prasad Chatterjee v Goutam Ray*, 2000 INSC 495.

¹⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

¹⁶ Harry Surden, 'Artificial Intelligence and Law: An Overview' (2019) 35 *Georgia State University Law Review* 1305.

¹⁷ Arbitration and Conciliation Act 1996, s 35.

¹⁸ Arbitration and Conciliation Act 1996, s 36.

¹⁹ *Kaushal Kishor v State of Uttar Pradesh* (2023) 4 SCC 1, paras 85–89.

²⁰ Arbitration and Conciliation Act 1996, s 34(2)(b).

²¹ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

²² *Central Inland Water Transport Corporation Ltd v Brojo Nath Ganguly* (1986) SCC (L&S) 429.

²³ Arbitration and Conciliation Act 1996, s 24(1) proviso.

²⁴ PC Markanda, *Law Relating to Arbitration and Conciliation* (10th edn, LexisNexis 2022) 284.

determination violates that basic right.²⁵ The constitutional requirement of due process is the jurisdictional minimum below which no arbitration agreement may fall.²⁶

The lack of due process rights is compounded by a significant statutory gap. Section 12 of the Arbitration Act provides that arbitrators must be independent, impartial, of good faith and disclose any conflict of interest.²⁷ While the DPDP Act establishes requirements for a notice regarding the processing of personal data, it has limited provisions for artificial intelligence in decision-making. Although the bill provides for transparency regarding data operations, it does not provide any information on whether it would cover AI features in the context of decision-making.²⁸ In addition, the DPDP Act fails to provide any guidance regarding what the disclosure requirements are, such as what type of training data must be disclosed or whether an unbiased audit must be conducted; while non-binding institutional soft law could help clarify these issues, it will not constitute a binding precedent for a court reviewing an arbitration award under Section 34 of the DPDP Act.²⁹ Instead, the reviewing court will look to the ‘public policy’ exception to set aside an award, an exception that has been broadly defined to include compliance with Article 21 of the Indian Constitution.³⁰

This doctrinal clash brings the issue of finality regarding algorithmic arbitration to a head. Indian jurisprudence in *ONGC v Saw Pipes* and *Ssangyong Engineering & Construction Co Ltd v National Highways Authority of India* defined “public policy of India” to include the fundamental right of due process.³¹ Thus, if an award is based on AI that is undisclosed or otherwise inexplicable, the reviewing court has a clear legal obligation under Article 21 to nullify it.

The situation presents a contradiction: the use of AI to streamline arbitration actually results in the possibility of appeals against arbitral awards as per Section 34 (2) (b), which undermines the very finality upon which the commercial success of arbitration is dependent. As a result of this development, foreign investors may think twice before agreeing to conduct arbitrations in India, with the court invalidating awards achieved through the use of AI, a problem that can be avoided with transparency tools.

²⁵ Chartered Institute of Arbitrators (CI Arb), *Guideline on the Use of AI in Arbitration* (2025) Guideline 3.

²⁶ *Associate Builders v Delhi Development Authority* (2015) 3 SCC 49.

²⁷ Arbitration and Conciliation Act 1996, s 12(1), Fifth Sch and Seventh Sch.

²⁸ Digital Personal Data Protection Act 2023, s 5.

²⁹ *PASL Wind Solutions Pvt Ltd v GE Power Conversion India Pvt Ltd* (2021) SCC OnLine SC 331.

³⁰ *Venture Global Engineering v Satyam Computer Services Ltd* (2008) 4 SCC 190.

³¹ *Oil and Natural Gas Corporation Ltd v Saw Pipes Ltd* (2003) 5 SCC 705; *Ssangyong Engineering & Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131.

Comparative Global Framework

The European Union

The EU AI Act (Regulation 2024/1689) takes a preventive stance by putting in place *ex-ante* obligations for high-risk AI systems.³² Article 6(2), in conjunction with Annex III, defines AI that is utilised in the court of law as high-risk.³³ Hence, Article 13 advises that there should be sufficient justification to enable those who deploy AI systems to understand the output correctly. More importantly, Article 14 requires the availability of human-machine interface tools which allow people to monitor, explain, and even override AI output. This structure ensures human supervision at the key stages of decision-making.

The Singapore Model: Institutional Disclosure as a Fiduciary Obligation

The SIAC Responsible AI Framework fills the crucial void left by the EU model by allowing parties to tackle the issue of AI deployment that was not previously made known and for which they had no recourse.³⁴ In particular, Principle 1 creates a fiduciary duty for arbitrators to divulge any substantial dependence on AI. This duty is turned into reality through Rule 20 of the Arbitration Rules of the Singapore International Arbitration Centre 2025, where the concept of general disclosure is consequently developed in relation to AI.³⁵ In case a party objects, there are several remedies available to initiate the process of challenge, as indicated in Rules 26 and 27, where specific time limits are established in Rules 11 and 12. Should the party complete the process of the challenge, the arbitrator will be replaced as mentioned in Rule 30.³⁶ The benefit of the SIAC model is that it combines normativity and procedure, thus establishing an effective model for the amendment of Section 12 in the case of India.

The English Position

English law views the intelligibility of an award as one of the preconditions for the award being legally valid. An award will be challenged under Section 68 of the English Arbitration Act 1996³⁷ [“**1996 English Act**”] based on a ‘serious irregularity’ on the basis that there was a failure by the

³² Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L2024/1689.

³³ *ibid.*

³⁴ Regulation (EU) 2024/1689 (n 32); Singapore International Arbitration Centre, ‘SIAC Responsible AI Framework’ (2025).

³⁵ SIAC Responsible AI Framework Principle 1; Singapore International Arbitration Centre, *Arbitration Rules of the Singapore International Arbitration Centre* (7th edn, 2025) r 20.1; Singapore International Arbitration Centre, ‘SIAC Code of Ethics for Arbitrators’ (2025) r 20.

³⁶ *Arbitration Rules of the Singapore International Arbitration Centre* rr 11–12, 26–27, 30.

³⁷ Arbitration Act 1996, s 68(2)(d).

tribunal to address all of the essential issues,³⁸ or the tribunal's reasons for making the award are such that one of the parties has been unable to meaningfully engage with them. An AI-generated award that has not been fully explained will be a clear example of the kind of award that could give rise to an application for setting aside under Section 68 of the 1996 English Act.

Hybrid Regulatory Framework

It is not possible for any one model to provide perfect protection. Therefore, India should use a model based on Section 12 which combines: the requirement of human supervision before deployment (European model); the requirement for disclosure in arbitration and party right to challenge (Singapore model); and the requirement for explanation as grounds for challenging the validity of an award under Section 34 (2)b of the English model.

The Indian Regulatory Blueprint

1. Proposed Amendment: Section 12(7)-(8) of the 1996 English Act

“Section 12(7) reads, ‘If the arbitrator uses an AI decision-making system that significantly affects a judgment on an award, the arbitrator must disclose that use to the parties within five days of the tribunal being formed.’³⁹ If a system has a significant influence on adjudication, due process fairness, or cannot provide an intelligible explanation for its judgment (‘high-risk system’), the arbitrator must also ensure that:

- (a) The system was subjected to a fair and unbiased audit before being commissioned⁴⁰
 - (b) The output of the system was independently reviewed and adopted, modified or rejected at the arbitrator's discretion, prior to the determination becoming binding
 - (c) The award records how the output of the system was assessed, incorporated or rejected.
- (8) Failure to disclose under sub-section (7) shall be treated as a failure to fulfil the arbitrator's functions, giving rise to justifiable doubts as to independence and impartiality under Section 12, and shall constitute grounds for an application under Section 34(2)(b) on the basis that the process violated the public policy of India. Failure to prove actual bias or prejudice resulting from the above-noted failures is not required.”

³⁸ *Reliance Industries Ltd v Union of India* [2020] EWHC 263 (Comm).

³⁹ Cary Coglianese and David Lehr, ‘Regulating by Robot: Administrative Decision Making in the Machine-Learning Era’ (2017) 105 *Georgetown Law Journal* 1147.

⁴⁰ Michael Legg and Felicity Bell, ‘Artificial Intelligence and the Core of Adjudication’ (2020) 46(1) *Monash University Law Review* 52.

The Bombay High Court and other courts in India have stated that the disclosure requirements of Sections 12 through 14 apply to both institutional and ad-hoc arbitration and cannot be adversely impacted by institutional rules.⁴¹ The link between AI disclosure and Section 12 ensures that the protections will now be able to benefit from the Indian courts' established history of enforcing disclosure obligations.

2. *Institutional Codification: Practice Directives MCIA*

MCIA Practice Directive No. [X] of 2026: Technology-Assisted Determination

- i. Technology Use Statement: Within five days after the tribunal has been established, the arbitrator must provide the Registrar with written notification of the use or proposed use of any type of artificial intelligence (AI) or algorithmic tool.
- ii. Fairness Certification: No high-risk technology will be utilised unless a Centre-certified fairness and unbiased audit has been conducted.
- iii. Non-disclosure Challenge: Non-disclosure of high-risk technologies constitutes grounds for challenge under the Mumbai Centre for International Arbitration Rules at Rule 14,⁴² on the basis that the arbitrator has failed to carry out their duties as per the rules. If an arbitrator's challenge is successful, a substitute arbitrator will be appointed under Rule 15.
- iv. Technology Appendix: For every award that uses a high-risk technology, a statement shall be appended to it indicating how the output of the technology was assessed before using or not using it.

Section 3 is the primary mechanism for enforcing these requirements, as it uses Rule 14's challenge framework to handle such claims through established procedures.

3. *Why This Works*

An arbitrator who acts in line with Section 12(7) eliminates the main ground of challenge under Section 34(2)(b). Receiving a communication at the outset means that no one can later complain of procedural transparency. Moreover, since Rule 14 is based on court rulings already supporting the disclosure obligation, the mechanism has already been provided the means for enforcement by the Indian judiciary.

⁴¹ *Era International v Aditya Birla Global Trading India Pvt Ltd* [2024] SCC OnLine Bom 835.

⁴² Mumbai Centre for International Arbitration (MCIA) Rules, 2016, r 14.

Conclusion

Arbitral awards produced by unknown systems of artificial intelligence may be invalidated under Section 34(2)(b) for violating public policy in India. Amendments introduced in Sections 12(7)-(8) of the Arbitration Act rest on the principles of judicial enforcement of disclosure obligations and MCIA Practice Directives, turning the flaw of finality into an advantage of compliance. India does not have to wait for its first refusals of AI-assisted awards. The EU AI Act and the SIAC system in Singapore, along with English jurisprudence already confirmed the ability of algorithmic transparency and arbitration speed to coexist.