



## THE LEGAL DICHOTOMY BETWEEN ARBITRAL AWARDS AND ORDERS IN INDIAN ARBITRATION

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### Introduction

The distinction between arbitral award and order is essential,<sup>1</sup> since it determines the available recourse against it, enforceability and jurisdiction of courts, thereby upholding objectives of Arbitration and Conciliation Act, 1996 [**“Arbitration Act”**].<sup>2</sup> The demarcation between the two is ambiguous, especially in cases involving cost awards, partial rulings, or preliminary decisions, leading to uncertainty about the appropriate legal remedy. For instance, if an award is treated as an order, it would affect parties’ right to approach court, rendering unappealable until the conclusion of arbitration proceedings.

It raises pertinent questions: whether challenge to an arbitral ruling that is neither purely procedural nor fully determinative of the substantive rights lies under Section 34<sup>3</sup> or by a way of an appeal under Section 37<sup>4</sup> of Arbitration Act; whether the imposition of costs by a court or tribunal in an order or award leads to finality of the proceedings on the substantive matter; and whether the imposition of cost can be determining factor in deciding if a challenge lies under Section 34 or Section 37 of the Arbitration Act. Answering these questions becomes essential, considering arbitration gaining global recognition as the preferred mechanism for resolving disputes.<sup>5</sup>

The paper addresses these conundrums through existing legal framework in India and other jurisdictions. The paper further proposes plausible recommendations that could be adopted to

<sup>1</sup> *ZCCM Investment Holdings PLC v Kansanshi Holdings PLC & Anor* EWHC 1285 (Comm).

<sup>2</sup> Arbitration and Conciliation Act 1996.

<sup>3</sup> Arbitration and Conciliation Act 1996, s 34.

<sup>4</sup> Arbitration and Conciliation Act 1996, s 37.

<sup>5</sup> Khushi Jain, ‘UK Arbitration Act 2025: Evolution or Missed Revolution’ (*CCADR*, 23 July 2025) <<https://ccadr.cnlu.ac.in/blog/arbitration/uk-arbitration-act-2025-evolution-revolution/>> accessed 4 October 2025.

address them. Towards the end, it suggests amendments to strengthen and clarify the current legal structure.

## Mapping the Legal Terrain of Awards, Orders and Interim Awards

The distinction between an order and an award primarily stems from two principles. The court accords the status of an award if the arbitral tribunal decides on substantive issue in arbitration and there is a final determination. The same principle has been affirmed<sup>6</sup> under Section 12 of English Arbitration Act<sup>7</sup> 1996 [**“English Arbitration Act”**] (legislation which has shaped the contours of India’s Arbitration regime).<sup>8</sup>

A substantive issue could be derived if the matter is decided on question of substance and merit and not merely procedure. Finality on decision includes capacity to conclusively resolve the issues submitted to the tribunal, thereby rendering the tribunal *functus officio*,<sup>9</sup> whether in its entirety or with respect to the particular issue or claim determined.<sup>10</sup>

Any order that decides merely on procedural directions and ‘*does not finally settle a matter at which the parties are at issue*’ is upheld as a procedural order rather than an award.<sup>11</sup> It includes termination of proceedings, whereas an award inculcates termination on merit.<sup>12</sup> In *Ssangyong Engineering & Construction Co. Ltd. v NHAI* [**“Ssangyong Engineering”**],<sup>13</sup> substantive finality of arbitral award was analysed. It held that finality is linked to adjudication of rights and not to ancillary consequences.

Section 2(1)(c) of the Arbitration Act includes an interim award within the ambit of arbitral award.<sup>14</sup> Section 31(6) of the Arbitration Act states that ‘*the arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.*’<sup>15</sup> Additionally, if the interim award is intended to finally determine the rights of the

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<sup>6</sup> *K v S* [2019] EWHC 2386 (Comm).

<sup>7</sup> Arbitration Act 1996, s 12.

<sup>8</sup> Ankit Konwar, Darshita Sethia and Nishi Kashyap, ‘Charting the Course of Arbitration Reform in India: A comparative study of the existing provisions vis-à-vis the Dr. T.K. Vishwanathan Expert Committee Report’ (*Hammurabi and Solomon*, 8 August 2024) <<https://www.hammurabisolomon.in/post/charting-the-course-of-arbitration-reform-in-india-a-comparative-study-of-the-existing-provisions-v>> accessed 4 October 2025.

<sup>9</sup> *Rhiti Sports Management Ltd v PowerPlay Sports & Events Limited* (2018) SCC OnLine Del 8678.

<sup>10</sup> *ZCCM Investment Holdings PLC v Kansanshi Holdings PLC & Anor* EWHC 1285 (Comm).

<sup>11</sup> Sanjeev Kapoor and Saman Ahsan, ‘Challenging and Enforcing Arbitration Awards’ (*Global Arbitration Review*, 16 June 2025) <<https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/india>> accessed 4 October 2025.

<sup>12</sup> *Anuptech Equipments Pvt Ltd v Ganpati Co-op group housing society Ltd* AIR 1999 Bom 219.

<sup>13</sup> *Ssangyong Engineering & Construction Co. Ltd. v NHAI* (2019) 15 SCC 131.

<sup>14</sup> Arbitration and Conciliation Act 1996, s 2(1)(c).

<sup>15</sup> Arbitration and Conciliation Act 1996, s 31(6).

parties, it will have the force of a complete award and will have effect even after the final award is delivered.<sup>16</sup> Several courts have thus opined that an interim award determines substantive rights<sup>17</sup> or substantive disputes between the parties<sup>18</sup> at interlocutory stage.

### **Interplay Between Sections 34 (Setting Aside of Awards) and Section 37 (Interlocutory Appeals)**

A domestic award including an interim award, can be set aside by court only on grounds laid<sup>19</sup> under Section 34(2) of the Arbitration Act.<sup>20</sup> While adjudicating on setting aside an award under Section 34 of Arbitration Act,<sup>21</sup> court should refrain from appreciation or reappraisal of the factual and legal findings of the tribunal.<sup>22</sup> It reinforces the principle of minimal judicial intervention.<sup>23</sup> Thereby, role of courts is limited to ascertain whether the award and the conclusions it embodies are duly supported by the findings recorded.<sup>24</sup> A tribunal's procedural order does not qualify as an interim award and, thus, cannot be challenged under Section 34.<sup>25</sup>

An appeal lies from an order of the Arbitral Tribunal that falls within the statutory contours of Section 37 of the Arbitration Act.<sup>26</sup> An order that does not adjudicate the claim, any part of the claim, or any issue relating to liability cannot be characterised as an interim award.<sup>27</sup> Thus, no appeal is maintainable under Section 37 against such an order.

Furthermore, challenges related to jurisdiction<sup>28</sup> and arbitrability of dispute<sup>29</sup> should be raised before arbitral tribunal.<sup>30</sup> A court is not the correct authority to deal at the pre-award stage. It reflects *kompetenz-kompetenz* principle under Section 16 of Arbitration Act<sup>31</sup>, rooted in Article 16 of

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<sup>16</sup> *Satwant Singh Sodhi v State of Punjab* (1999) 3 SCC 487.

<sup>17</sup> *Shah Babulal Khimji v Jayaben D Kania* (1981) 4 SCC 8.

<sup>18</sup> *Goyal MG Gases Pvt Ltd v Panama Infrastructure Developers Pvt Ltd & Ors* 2023 SCC OnLine Del 1894.

<sup>19</sup> *MMTC Limited v Vedanta Limited* (2019) 4 SCC 163.

<sup>20</sup> Arbitration and Conciliation Act 1996, s 34(2).

<sup>21</sup> Arbitration and Conciliation Act 1996, s 34.

<sup>22</sup> *Delhi Airport Metro Express (P) Ltd v DMRC* (2022) 1 SCC 131.

<sup>23</sup> Arbitration and Conciliation Act 1996, s 5.

<sup>24</sup> *Kal Airways Pvt Ltd v Spicejet Ltd* 2025 INSC 885.

<sup>25</sup> Aditya Gupte and Manu Kumar, 'Order Determining Substantive Rights Of The Parties Can Be Challenged Under §34 of The Arbitration And Conciliation Act 1996' (*Mondaq*, 10 February 2025) <<https://www.mondaq.com/india/arbitration-dispute-resolution/1582976/order-determining-substantive-rights-of-the-parties-can-be-challenged-under-34-of-the-arbitration-and-conciliation-act-1996>> accessed 4 October 2025.

<sup>26</sup> Arbitration and Conciliation Act 1996, s 37.

<sup>27</sup> PC Markanda and ors, *Law Relating to Arbitration and Conciliation Act* (10th edn, Lexis Nexis 2022).

<sup>28</sup> *Indian Oil Corporation. Ltd v Shree Ganesh Petroleum* 2022 SCC OnLine SC 131.

<sup>29</sup> *Uttarakhand Purv Sainik Kalyan Nigam Ltd v Northern Coal Field* (2020) 2 SCC 455.

<sup>30</sup> *SN Malhotra v Airport Authority of India* (2008) SCC OnLine Del 442.

<sup>31</sup> Arbitration and Conciliation Act 1996, s 16(1).

United Nations Commission on International Trade Law [“**UNCITRAL**”] Model Law<sup>32</sup> and Article 21 of the UNCITRAL Model Rules.<sup>33</sup> In *Indian Farmers Fertilizers Cooperative Limited v Bhadra Products* [“**Farmers Fertilizers**”],<sup>34</sup> court held that judicial authorities must abstain from intervening in arbitral proceedings where the arbitral panel has been granted exclusive jurisdiction.<sup>35</sup> The Parliament has restricted judicial intervention pertaining to jurisdiction and arbitrability except as provided under Section 16(5)<sup>36</sup> and 16(6)<sup>37</sup> of the Arbitration Act, until rendering of final award or at interlocutory stage.<sup>38</sup> Any premature interference would negate the legislative intent of minimal intervention by courts.<sup>39</sup> Therefore, the aggrieved party has to wait for the award and no remedy is available till then.<sup>40</sup>

## Doctrinal Inconsistencies in the Subsisting Legal Framework

### *i. Understanding Substantive Questions of Law*

The term “substantive issue” has not been defined clearly. It has been devised by courts from time to time, largely depending on the facts and circumstances of each case. Supreme Court held that question of law determining rights of parties and affecting general public would constitute substantial.<sup>41</sup> Later, in *Hero Vinoth v Seshammal* [“**Hero**”], it was clarified that a substantial question of law must be debatable, materially impact the rights of parties, and not be covered by existing statutes or binding precedents.<sup>42</sup> In contrast, Supreme Court later determined that questions framed by the High Court were not substantial since they were covered by settled law, and thus, interference was unwarranted.<sup>43</sup> It has also recognised situations where substantial questions of law arise due to wrongful application or misinterpretation of legal principles, even when statutory provisions exist. It remarks divergent judicial opinions from restrictive interpretation to wider scope, resulting in inconsistency and uncertainty.

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<sup>32</sup> United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, art 16.

<sup>33</sup> United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, art 21.

<sup>34</sup> *Indian Farmers Fertilizers Cooperative Limited v Bhadra Products* 2018 SCC Online SC 38.

<sup>35</sup> *Secur Industries Ltd v Godrej & Boyce Mfg Co Ltd* (2004) 4 BOM CR 49.

<sup>36</sup> Arbitration and Conciliation Act 1996, s 16(5).

<sup>37</sup> Arbitration and Conciliation Act 1996, s 16(6).

<sup>38</sup> *BASF Styrenics Pvt Ltd v Offshore Industrial Construction Pvt Ltd* AIR 2002 BOM 289.

<sup>39</sup> *Babar Ali v Union of India* (2000) 2 SCC 178.

<sup>40</sup> *Nav Sansad Vihar Coop Group Housing Society Ltd (Regd) v Ram Sharma and Associates* 1999 SCC OnLine Del 741.

<sup>41</sup> *Sir Chunilal V. Mehta and Sons Ltd v Century Spinning and Manufacturing Co Ltd* AIR 1962 SC 1314.

<sup>42</sup> *Hero Vinoth v Seshammal* 2006 SCC OnLine 555.

<sup>43</sup> *Biswanath Ghosh v Gobinda Ghose* AIR 2014 SC 152.

*ii. The Grey Zone: Burden of Determining Finality*

A key challenge lies in determining the finality of arbitral rulings. While Section 34 provides remedies against awards and Section 37 permits appeals against certain orders, there is persistent ambiguity when a decision does not fit neatly into either category. Rulings that are neither purely procedural nor fully determinative of the dispute create uncertainty regarding the appropriate forum for challenge and the scope of judicial intervention. This grey zone raises critical questions about the consistency, predictability, and efficiency of the arbitration regime, highlighting the need for clearer doctrinal guidance on what constitutes a “final” arbitral determination.

*iii. Section 31A and the Conundrum of Cost Orders*

Section 31 of the Arbitration Act includes form and content of Arbitral Award.<sup>44</sup> Section 31A of Arbitration Act introduces a comprehensive regime on costs, empowering the arbitral tribunal to determine liability and quantum of costs, guided by principles of fairness and efficiency.<sup>45</sup>

In *ONGC Ltd. v Afcons Gunanusa JV* [“**ONGC**”], Supreme Court held that an award of costs forms part of final award.<sup>46</sup> Similarly, in certain cases where the award of costs accompanies a decision on merits and the parties accept and pay the costs, it signifies consent and finality. However, a tribunal has the power to issue cost orders relating to specific procedural steps. For example, it may impose costs on a party that sought an adjournment without sufficient cause.<sup>47</sup> In these instances, costs are merely ancillary or penal in nature and do not affect the final adjudication of substantive rights. The lack of uniformity demonstrates the need for a clear precedent on whether costs alone establish finality rendering it award, or whether such orders should be treated as ancillary and procedural, falling outside the scope of Section 34.

For instance, an arbitral tribunal may reject the claim due to limitation clause and directs the respondent to pay costs of the application. Although the order is reasoned and imposes financial liability, it decides a distinct legal issue. The issue, therefore, is whether the incidental imposition of costs converts a ruling into an award, making it contestable under Section 34, or whether the challengeability should depend solely on the tribunal’s conclusive determination of the substantive legal issue.

## **Charting the Groundwork for Final and Enforceable Awards**

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<sup>44</sup> Arbitration and Conciliation Act 1996, s 31.

<sup>45</sup> Arbitration and Conciliation Act 1996, s 31A.

<sup>46</sup> *ONGC Ltd v Afcons Gunanusa JV* (2024) SCC 481.

<sup>47</sup> Mikhail Behl, ‘A Requiem for Costs’ (*SCC Online*, 6 February 2023) <<https://www.sconline.com/blog/post/2023/02/06/a-requiem-for-costs/>> accessed 4 October 2025.

There is need for clearer doctrinal guidance to establish what constitutes substantive. The definition should include reference to criteria including material impact on parties' rights, debatable legal points, and questions not conclusively settled by precedent. The issue must be a pure question of law, rather than a factual dispute or mixed question of law and fact. The question must materially affect the rights and liabilities of the parties involved. Additionally, it should have broader ramifications on the general public or legal system, justifying appellate scrutiny.

English Arbitration Act clearly lays down the distinction between arbitral award, provisional awards, partial award, cost awards and orders.<sup>48</sup> In *Emmott v Michael Wilson & Partners* [“**Emmott**”], it was held that partial awards are challengeable only to the extent of finality.<sup>49</sup>

In Singapore, under Section 38(2) of Arbitration Act, 2001 [“**AA**”], award must state the reasons on which it is based.<sup>50</sup> Section 2 of AA excludes procedural orders but accept partial awards.<sup>51</sup> It mirrors Article 2(c) of the UNCITRAL Model Law.<sup>52</sup> Procedural orders are non-final and non-challengeable, except where they amount to a *de facto determination of jurisdiction* or *denial of due process*.

Under French arbitration law, there exists a clear distinction between arbitral awards and procedural measures, with challenges permitted only against decisions that possess decisional finality.<sup>53</sup> Articles 1492<sup>54</sup> and 1520<sup>55</sup> of the French Code of Civil Procedure (domestic and international arbitration respectively) allow annulment only of an “award” (*sentence arbitrale*), defined jurisprudentially as a decision that involves the substantive dispute. French courts consistently laid down those procedural orders (*ordonnances de procédure*) including directions on conduct of proceedings or imposition of costs, are not independently challengeable, as costs are treated as accessory consequences of adjudication rather than determinants of rights. Even where a decision is reasoned or imposes financial liability, it does not attain the character of an award unless it conclusively determines a claim or defence. This functional and finality-based approach ensures minimal judicial interference.

Furthermore, in Hong Kong, the test of whether a decision constitutes an award often turns on how a reasonable recipient would perceive it. Such a recipient is understood to assess the objective attributes of the decision, including the tribunal's description of the ruling, the formality of its

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<sup>48</sup> Arbitration Act 1996.

<sup>49</sup> *Emmott v Michael Wilson & Partners* [2008] EWCA Civ 184.

<sup>50</sup> Arbitration Act 2001, s 38(2).

<sup>51</sup> Arbitration Act 2001, s 2.

<sup>52</sup> United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, art 2(c).

<sup>53</sup> French Code of Civil Procedure 1975.

<sup>54</sup> French Code of Civil Procedure, art 1492.

<sup>55</sup> French Code of Civil Procedure, art 1520.

language, and the extent of reasoning provided.<sup>56</sup> Consideration is also given to whether the decision satisfies the formal requirements for an award under the applicable arbitral rules, and to the broader procedural context, such as whether the tribunal intended the decision to be final and binding.<sup>57</sup> This approach, grounded in practical assessment rather than rigid formalism, could provide useful guidance for India as it continues to refine its arbitration jurisprudence, particularly in delineating the boundary between interim orders and final awards.

Drawing lessons from these jurisdictions, India should adopt a three-tier functional model distinguishing between final awards, partial or interim awards, and procedural orders. Final Awards would encompass decisions that conclusively determine all issues submitted to arbitration, such as final determinations on liability and quantum. These would remain challengeable under Section 34 and enforceable under Section 36 of the Arbitration Act. Partial or interim awards would include determinations that finally resolve some substantive issues such as findings on liability, limitation, or jurisdiction but not the entire dispute. These too would be subject to challenge under Section 34 and enforceable to the extent of their finality. In contrast, *procedural orders* would comprise directions regulating the conduct of proceedings, including scheduling, document production, or evidentiary rulings. Such orders, which do not finally determine any substantive rights or liabilities, should not be open to challenge under Section 34, except where expressly permitted under Section 37 of the Arbitration Act. They would remain internal to the proceedings and could be revisited by the tribunal before the final award.

Simultaneously, India should adopt a functional distinction between cost awards and procedural cost orders. A cost decision should be deemed an award when it conclusively determines the party's liability or quantum of costs, thereby having substantive impact on their financial rights and obligations. In contrast, interim or procedural cost directions imposed to regulate conduct or sanction non-compliance should be classified as *procedural orders* not challengeable under Section 34 and revisitable by the tribunal prior to the final award. Through this approach, India can ensure that judicial scrutiny is reserved only for determinative cost awards while preserving tribunal autonomy over procedural cost management.

## **Trajectory Post 2024 Draft Bill**

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<sup>56</sup> *G v N* [2023] HKCFI 3366.

<sup>57</sup> *W v Contractor* [2024] HKCFI 1452.

Draft Arbitration and Conciliation (Amendment) Bill, 2024 [**“2024 Bill”**],<sup>58</sup> does not directly address the persisting dichotomy. However, the bill enhances the cost regime under proposed Section 31-A by expanding the imposition of adverse costs to frivolous claims<sup>59</sup> and bypassing the prior requirement of delay.<sup>60</sup> While this strengthens sanctions and may incentivise greater decisional finality, it does not expressly provide that a cost-imposition order in arbitration becomes an “award”.

Similarly, in respect of interim relief and court interventions, the 2024 Bill limits the court’s power under Section 9<sup>61</sup> during arbitration and introduces emergency arbitration under Section 9-A, empowering an emergency arbitrator to make orders that the tribunal may confirm, modify or vacate.<sup>62</sup> However, the bill remains silent on whether such interim decisions including cost orders or emergency arbitrator orders, are to be treated as final “awards” or as “orders” subject only to Section 37 appeals.

Therefore, while the amendment changes the landscape, they fall short of clarifying the key interpretive question of when a tribunal’s decision attains the status of an award or order and likewise do not settle whether the imposition of costs converts a ruling into an award for challenge purposes.

## Conclusion and Suggestions

Specific legislative clarifications are required to operationalise the model. Section 2(1) of Arbitration Act may include a new clause defining ‘procedural order’ as *any ruling concerning the conduct of proceedings that does not finally determine the parties’ substantive rights or liabilities*, ‘cost award’ as *a final determination of costs affecting substantive rights* and ‘procedural costs’ as *a non-final direction incidental to the conduct of arbitration*. Section 31(6) may be amended to clarify that *an interim or partial award deciding any substantive issue shall be treated as an arbitral award for all purposes of the Act*.

Furthermore, an explanatory note under Section 34 should specify that *no application for setting aside an award shall lie against procedural orders or directions that do not constitute arbitral awards*. Collectively, these clarifications would establish a coherent and closed system of challenging instruments,

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<sup>58</sup> Arbitration and Conciliation (Amendment) Bill 2024.

<sup>59</sup> Khushi Jain, ‘Section 31-A and the Draft Arbitration Bill 2024: The New Costs Regime in Indian Arbitration’ (RFMLR, 15 October 2025) <<https://www.rfmlr.com/post/section-31-a-and-the-draft-arbitration-bill-2024-the-new-costs-regime-in-indian-arbitration>> accessed 23 October 2025.

<sup>60</sup> Arbitration and Conciliation (Amendment) Bill 2024, p 52.

<sup>61</sup> Arbitration and Conciliation Act 1996, s 9.

<sup>62</sup> Arbitration and Conciliation (Amendment) Bill 2024, p 7.



ensuring that judicial interference is confined to awards that finally determine rights, while procedural management decisions of the tribunal remain insulated.

This approach, also strengthens India's compliance with the New York Convention, facilitating recognition and enforcement of both domestic and foreign awards. It thus aligns Indian arbitration law with the foundational philosophy of the UNCITRAL Model Law<sup>63</sup> and promoting finality, efficiency, and autonomy in arbitral proceedings.

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<sup>63</sup> UNCITRAL Model Law on International Commercial Arbitration 1985.