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FOREWORD

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(May 2026 - August 2026)

RECONCILING FINALITY AND CORRECTION: THE JUDICIAL POWER TO MODIFY ARBITRAL AWARDS AFTER GAYATRI BALASAMY AND THE ENFORCEABILITY OF ‘COURT-MODIFIED’ AWARDS UNDER THE NEW YORK CONVENTION

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Introduction

Few questions in Indian arbitration law have proved as stubborn as the one the Constitution Bench resolved in *Gayatri Balasamy v ISG Novasoft Technologies Ltd* [**“Balasamy”**], i.e., whether a court hearing a challenge under Section 34 of the Arbitration and Conciliation Act 1996 [**“1996 Act”**] may modify an arbitral award, or whether its remedial choices are exhausted by annulment, affirmation and remission.¹ Section 34 of the 1996 Act, is, by design, a provision of restraint. It permits recourse to a court ‘only by an application for setting aside’ of the award, confining the grounds of challenge to an exhaustive list, and is reinforced by Section 5 of the 1996 Act, which forbids judicial intervention save except where Part I expressly allows it.² On a plain reading, the Section contemplates no power of modification. However, for two decades, the courts have been divided, with one line, anchored in *Project Director, NHAI v M Hakeem*, insisting that the deliberate omission of the 1940 Act’s modification power forecloses any such reading,³ and another quietly varying awards, chiefly as to interest and quantum, to avoid the injustice of an all-or-nothing remedy.⁴

In *Balasamy*, a five-judge Bench led by Khanna CJI brought the divergence to a head, holding by four to one that a limited power of modification subsists, to which Viswanathan J. dissented.⁵ The

¹ *Gayatri Balasamy v ISG Novasoft Technologies Ltd* 2025 INSC 605 (*“Balasamy”*).

² Arbitration and Conciliation Act 1996, ss 34, 5 (*“1996 Act”*).

³ Arbitration Act 1940, ss 15–16 (*“1940 Act”*); *Project Director, NHAI v M Hakeem* (2021) 9 SCC 1 (*“Hakeem”*).

⁴ *Larsen Air Conditioning and Refrigeration Co v Union of India* (2023) 15 SCC 472; *SV Samudram v State of Karnataka* (2024) 3 SCC 623.

⁵ *Balasamy* (n 1).

decision matters less for its result than for its method, which is the willingness to read a remedial power into a statute that, on its face and by legislative history, omits it. It concerns the enforceability of Indian awards in foreign jurisdictions under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards [**“New York Convention”**], and with it, the credibility of India as a seat.⁶ This article maps what the majority decided and where its test is unstable, before developing its principal and original claim: that a court-modified, India-seated award is vulnerable, at the point of export, to being treated abroad as a national judgment rather than an arbitral award - a gap India can close only by statute.

The decision: a limited power located in Section 34

The majority did not hold that Section 34 of the 1996 Act confers a general power to modify; it held that a limited power subsists in four situations - severance of a separable invalid portion, correction of clerical, computational or typographical errors, adjustment of post-award interest in defined circumstances, and, exceptionally, the exercise of Article 142 of the Constitution.⁷ From the proviso to Section 34(2)(a)(iv) of the 1996 Act, which allows partial setting aside of separable matters lying beyond the reference, the majority inferred a broader inherent power of severance. It invoked the maxim *omne majus continet in se minus* to fold the smaller power to modify into the greater power to annul; and it drew on Mustill and Boyd for the proposition that a court may vary an award where the variation ‘follows inevitably’ from the tribunal’s own legal conclusion, tying correction to legal logic rather than merits reconsideration, and analogising it to the slip-rule jurisdiction under Section 152 of the Code of Civil Procedure 1908 [**“CPC”**].⁸

Viswanathan J. accepted the severance and the correction of the patent error, but parted company on the modification. To modify, he held, is to ‘change, vary or qualify’ an award, whereas to sever is merely to ‘separate’ its parts. Absent express authority, a court cannot do the former, for that is ‘tantamount to exercising the power of merits review’, the very function the parties contracted out of when they chose arbitration.⁹ The hardship said to justify the power, that its denial forces parties into fresh arbitration, proves too much, for Section 43(4) of the 1996 Act excludes the time spent

⁶ UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006) art 34; Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38 (‘New York Convention’).

⁷ Manu Tiwari, ‘The Balasamy Judgment: The Fading Principle of Finality in Arbitration?’ (*IBA Litigation Committee*, 29 October 2025) <<https://www.ibanet.org/balasamy-judgment-fading-principle-of-finality-in-arbitration>> accessed 6 June 2026.

⁸ Code of Civil Procedure 1908, s 152.

⁹ 1996 Act (n 2) s 34(2)(a)(iv), proviso; Sir Michael J Mustill and Stewart C Boyd, *Commercial Arbitration* (2nd edn, Butterworths 1989) 617; Code of Civil Procedure 1908, s 152 (‘CPC’).

in set-aside proceedings from limitation precisely because the legislature foresaw and accepted that re-arbitration may follow annulment.¹⁰

Slippage: severance as modification, and the limits of Article 142

The instability of the majority's position becomes apparent once four operations that tend to run together are kept apart. To set aside is to annul, in whole or in separable part; to remit under Section 34(4) of the 1996 Act is to return the matter to the tribunal; to sever is to excise a self-contained offending portion; to modify is to alter what the tribunal decided. The first three are consistent with a supervisory jurisdiction, but the fourth is not. The characterisation, it should be noted, runs the other way. The majority does not treat severance as a species of modification, but derives the narrower power to modify from the broader power to set aside. Invoking *omne majus continet in se minus* (*the greater contains the lesser*), it reasons that the authority to annul an award in part necessarily carries the authority to vary it, and that the practical effect of a partial setting aside is itself a modification. The difficulty lies not in that derivation but in the width the majority then gives to severance, for its inquiry ceases to be the excision of a self-contained portion on the face of the award and becomes an assessment of how the award was built. In doing so, it slips from the disciplined Mustill and Boyd standard, which variation only where it 'follows inevitably' from a legal conclusion, to an open-textured 'structural interdependence' test that asks whether the valid and invalid portions are 'intrinsically intertwined'.¹¹ The first looks to the face of the award; the second invites the Court into the evidentiary and reasoning matrix - whether quantum was assessed as a package, whether one head of claim shaped another.

The danger is that severance, a subtractive tool, turns into a reconstructive one. Seeking to reduce a tribunal award through severance compels the court to examine how the damages were calculated and whether the claims were interdependent, an exercise functionally indistinguishable from a merits review.¹² The test in the Delhi High Court, adopted by the dissent and lacking in the majority's formula, supplies the discipline that severance is available only where the offending part is based on different facts and obligations and its removal does not have a cascading effect on the

¹⁰ *Balasamy* (n 1).

¹¹ *ibid* (Viswanathan J); 1996 Act (n 2) s 43(4).

¹² Devanshu Sajlan, 'Severability and Slippage: Rethinking Judicial Modification in *Gayatri Balasamy*' (American Review of International Arbitration Blog, 5 February 2026) <<https://aria.law.columbia.edu/severability-and-slippage-rethinking-judicial-modification-in-gayatri-balasamy/>> accessed 6 June 2026.

rest.¹³ Severability is not new; Indian courts had long applied it to partial setting aside, but its extension from setting aside to modification is.¹⁴

The most constitutionally troubled part of the judgment is the resort to Article 142 of the Constitution.¹⁵ The line of decisions from *Prem Chand Garg*¹⁶ to *Supreme Court Bar Association v Union of India*¹⁷ consistently holds that it may supplement, but cannot supplant, substantive law, and cannot do that which a statute forbids, whether expressly or by necessary implication. *Shilpa Sailesh v Varun Sreenivasan*¹⁸ reiterated that it must be exercised in consonance with the policy of the applicable regime. If the 1996 Act read with Section 5 and the lack of a power of modification reflects a policy against curial variation, it is difficult to see how Article 142 of the Constitution can do precisely what the 1996 Act prohibits, especially when the power resides solely with the Supreme Court, creating an asymmetry with every other Section 34 forum and a standing incentive to litigate upwards in the hope of a discretionary adjustment.¹⁹

The export problem: a court-modified award abroad

The most consequential dimension of *Balasamy* is one that the majority did not address, which is the enforceability abroad of an award an Indian court has been modified. India operates a dual enforcement regime, where India-seated awards fall under Part I, which houses Section 34, while foreign awards are recognised under Part II, which gives effect to the New York Convention. Under the territoriality principle in *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc*, a foreign award cannot be challenged under Section 34 at all.²⁰ The modification power, therefore, does not disturb the enforcement of foreign awards within India, which continues under the narrow, pro-enforcement grounds of Sections 48 to 49 of the 1996 Act. The difficulty lies in the mirror image: the enforcement abroad of an India-seated award that a Section 34 court has varied. Article V(1)(e) of the New York Convention, and Section 48(1)(e) which mirrors it domestically, were drafted on a binary assumption that a seat court will either leave an award standing or set it

¹³ *NHAI v Trichy Thanjavur Expressway Ltd* 2023 SCC OnLine Del 5183; *Balasamy* (n 1) (Viswanathan J).

¹⁴ *RS Jivani v Itron International Ltd* 2009 SCC OnLine Bom 2021.; *JG Engineers (P) Ltd v Union of India* (2011) 5 SCC 758.

¹⁵ Constitution of India 1950, art 142(1).

¹⁶ *Prem Chand Garg v Excise Commr* AIR 1963 SC 996.

¹⁷ *Supreme Court Bar Association v Union of India* (1998) 4 SCC 409 [47]–[48].

¹⁸ *Shilpa Sailesh v Varun Sreenivasan* 2023 SCC OnLine SC 544; *Balasamy* (n 1) (Viswanathan J).

¹⁹ K Agarwal and T Dubey, ‘Arbitration’s USP at Stake? Supreme Court Settles the Debate Over Judicial Modification of Awards in India’ (*Kluwer Arbitration Blog*, 25 July 2025) <<https://legalblogs.wolterskluwer.com/arbitration-blog/arbitrations-usp-at-stake-supreme-court-settles-the-debate-over-judicial-modification-of-awards-in-india/>> accessed 6 June 2026.

²⁰ *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552 (*BALCO*); 1996 Act (n 2) Pt II, ss 44–52.

aside. They do not contemplate a *tertium quid*: an award neither left intact nor annulled, but altered. When such a hybrid is tendered abroad, the award-debtor has a respectable objection that what is presented is not the tribunal's award but the court's judgment. The New York Convention governs the recognition of awards, not of foreign judgments.²¹ To this, the award-creditor, and the majority, have a ready answer that the doctrine of merger, on which the court's variation is read into the award so that a single, enforceable instrument survives. This objection is qualified, though not defeated, by Article VII of the New York Convention – the 'more favourable right' provision, which preserves any right an award holder may have to rely on the enforcement law of the country where recognition is sought. A foreign court could therefore, in principle, enforce a court-modified award under its own domestic law even where the New York Convention route is doubtful, but that avenue turns on the law of the enforcing forum, varies from state to state, and offers no assured or uniform solution.

This is the concern Viswanathan J. found convincing. Enforcement abroad will run into complications because objections will be taken that what is sought to be enforced is the judgment of the court, not the award. Enforcement of foreign judgments and enforcement of foreign awards are distinct legal concepts.²² Foreign awards travel on the New York Convention's near-automatic track across more than 170 Contracting States, whereas foreign judgments depend on the patchwork of reciprocity and comity, which in India, under Section 44A and Order XXI of the CPC, is confined to notified reciprocating territories.²³ Two points of precision are owed here. First, although Viswanathan J. was persuaded that enforcement abroad would run into complications, he did not decide the doctrine of merger. Having concluded that Section 34 confers no power to modify at all, he recorded the argument that merger has no application to an order of a Section 34 court, pressed on the strength of the holding in *Kunhayammed v State of Kerala*²⁴ [**Kunhayammed**], that the doctrine is not of universal or unlimited application. However, he expressly found it unnecessary to rule upon it. Secondly, the majority reached the opposite conclusion, and ruled that the contention that a court-modified award would be unenforceable under the New York Convention is misconceived, holding that the varied award is read as 'modified by the judgment/order' into a single instrument, and that recognising a limited power of modification leaves the enforcement of awards abroad unaffected. The dissent thus supplies no

²¹ New York Convention (n 5) art V(1)(e); 1996 Act (n 2) s 48(1)(e).

²² *Balasamy* (n 1).

²³ CPC (n 8) s 44A, O XXI rr 22–23.

²⁴ *Kunhayammed v State of Kerala* (2000) 6 SCC 359 [44].

reasoning on merger to be borrowed; the objection developed here must therefore meet the majority's holding on its own terms, which the following paragraph attempts.

The doctrine of merger does not rescue the modified award; it restates the problem, for it concedes that the operative instrument is the court's order. The basis for that concession lies in the internal logic of merger itself. If the doctrine operates, the arbitral award does not stand alongside the Section 34 court's order; it merges into that order, which then becomes the sole operative instrument, much as a decree of a superior court subsumes the decision under appeal. What is then available to be carried abroad is, on the doctrine's own terms, the court's order and the New York Convention provides for the recognition and enforcement of arbitral awards, not of the judgments or orders of national courts. The majority's contrary assurance, that the varied award is simply read as modified and remains an award, is a proposition of Indian law about how an Indian instrument is to be characterised. It may bind courts within the Indian hierarchy, but it cannot bind an enforcing court abroad, which will apply its own law and Article V of the New York Convention and decide for itself whether what is tendered is the tribunal's award or the variation of a national court. Nor is merger the automatic solvent that the argument assumes. As was pressed before the Court, and as *Kunhayammed* confirms, the doctrine is not of universal or unlimited application, and it is at its weakest where the reviewing forum's jurisdiction is not co-extensive with that of the body under review, as a Section 34 court's supervisory jurisdiction is not co-extensive with the arbitral tribunal's adjudicatory mandate.²⁵ Where the modification is mere severance, the surviving residue is genuinely the tribunal's award and the objection is weak, but for variations of quantum or interest, which are the very modifications the majority sanctioned, the instrument carried abroad is materially the court's product, and the risk the dissent identified is real and unresolved.

The fix India lacks: a statutory deeming provision

The jurisdictions that confer an express power to vary an award have not left this consequence to chance. They pair the power with a deeming provision that re-clothes the varied instrument as the tribunal's award. The paradigm is Section 71(2) of the English Arbitration Act 1996, under which a variation has effect as part of the tribunal's award; New Zealand and Kenya also have clauses that are functionally identical.²⁶ The 1996 Act contains no such provision. The majority recognised a power of modification without enacting, because a court cannot enact a mechanism that would

²⁵ *Kunhayammed v State of Kerala* (2000) 6 SCC 359 [44]; *Balasamy* (n 1) (Viswanathan J).

²⁶ Arbitration Act 1996 (UK), s 71(2); Arbitration Act 1996 (New Zealand), sch 2, cl 5(7); Arbitration Act 1995 (Kenya), s 39(5).

make the power workable transnationally, which is precisely why the dissent thought the matter best left to Parliament.²⁷

A comparative survey also punctures the rhetoric that *Balasamy* merely aligns India with arbitration-friendly jurisdictions. England permits a court to confirm, vary, set aside or remit, but only on the tightly defined grounds of want of jurisdiction, serious irregularity or a point of law, and couples any variation with the Section 71(2) deeming clause.²⁸ The United States is stricter still. The Federal Arbitration Act permits confirmation, vacatur on enumerated grounds and correction of clerical or computational error only, and *Hall Street Associates v Mattel* holds those grounds exclusive and incapable of contractual expansion.²⁹ Singapore, whose law tracks the Model Law, confines curial intervention to setting aside and has repeatedly disclaimed any appellate or merits-review function.³⁰

The jurisdictions India aspires to emulate either deny a modification power or confer it by statute with an enforcement-preserving clause. *Balasamy* does neither - it creates the power judicially and omits the safeguard. The anomaly is sharpened by India's own foreign-award jurisprudence, from *Renusagar* to *Vijay Karia*, which has been studiously pro-enforcement and minimalist.³¹ An interventionist turn at the seat, unaccompanied by the architecture that keeps a varied award enforceable abroad, sits awkwardly with that record.

Recommendations and the way forward

The deficiencies are of legislative architecture rather than of judicial good faith, and the moment is opportune: the Expert Committee chaired by Dr. T K Viswanathan has recommended a recalibration of the framework, and a draft amendment bill is under consideration.³² The Committee's relevance to the present argument is direct rather than incidental. It did not leave modification untouched but recommended that the courts be conferred an express power to set aside or vary an award, framed broadly by reference to the ends of justice, and the draft bill carries that proposal forward. That the reform vehicle already contemplates a power of variation is

²⁷ *Balasamy* (n 1).

²⁸ Arbitration Act 1996 (UK) (n 22) ss 67–69, 71(2).

²⁹ Federal Arbitration Act, 9 USC ss 9–11; *Hall Street Associates LLC v Mattel Inc* 552 US 576 (2008).

³⁰ International Arbitration Act 1994 (Singapore), s 24, First Schedule (Model Law) art 34; *AKN v ALC* [2015] SGCA 18 [37]–[39].

³¹ *Renusagar Power Co Ltd v General Electric Co* 1994 Supp (1) SCC 644; *Vijay Karia v Prysmian Cavi E Sistemi SRL* (2020) 11 SCC 1.

³² Expert Committee to Examine the Working of the Arbitration Law (T K Viswanathan, Chair), *Report* (Ministry of Law and Justice 2024); Draft Arbitration and Conciliation (Amendment) Bill 2024.

precisely why the drafting choices urged here matter. An open, ends-of-justice formulation would reproduce at the statutory level, the very indeterminacy that afflicts the judgment, and the opportunity would indeed be missed were the power conferred without confining it and without the enforcement, preserving clause discussed below. Parliament should decide expressly whether a power of modification is to exist, and if it is conferred, tie it to a closed and narrow list, namely severance of separable invalid portions, and correction of patent computational or clerical error, with nothing that requires reconsidering the tribunal's reasoning. The fact that the 1940 Act conferred such a power, and that the 76th Law Commission Report did not recommend its retention, should be confronted squarely rather than circumvented by implication.³³

Any statutory power of variation must carry a deeming provision modelled on Section 71(2) of the English Act, without which the export gap will persist, and India-seated awards will bear a latent defect at the point of foreign enforcement.³⁴ The severability inquiry should be anchored to a disciplined, face-of-the-award test rather than an open-ended structural one. Moreover, the use of Article 142 to modify awards should be expressly disclaimed, or at least confined to genuine residual injustice the statutory grounds cannot reach. Where modification is unwarranted, the existing safety valves such as correction under Section 33 and remission under Section 34(4), now exercisable on an oral request and, where appropriate, *suo motu*, cure defects without compromising the award's arbitral character or its New York Convention enforceability.³⁵

Conclusion

Gayatri Balasamy is a landmark for what it settles and a cautionary tale for how it settles it. The majority's instinct that an all-or-nothing remedy can work real injustice, and that forcing parties into re-arbitration to cure a separable defect or a patent error is wasteful, is sound and humane. The execution is another matter. Section 34 nowhere grants a power to modify awards. The omission was deliberate, yet the Court has read one into the statute anyway, without settling on a single test for when it applies. Sometimes, the inquiry turns on legal error, sometimes on a vaguer question of whether the disputed portion is too interdependent with the rest of the award to be severed. Article 142 is then brought in as a backstop, with little said about its limits. Flexibility has been gained, but at a real cost to the predictability that arbitration exists to provide. A modification carried out at the seat, without a statutory clause deeming it equivalent to what the arbitrators themselves produced, risks more than mere doctrinal untidiness. It can turn a portable, New York

³³ Law Commission of India, *The Arbitration Act 1940* (Law Com No 76, 1978).

³⁴ Arbitration Act 1996 (UK) (n 22) s 71(2).

³⁵ 1996 Act (n 2) ss 33, 34(4).

Convention-backed award into something closer to a domestic judgment, and a domestic judgment does not travel the way an arbitral award does. Until that is done, the reconciliation of finality and correction will remain a work in progress rather than an accomplished fact.

FROM SPEED TO ENFORCEABILITY: ASSESSING THE ICC 2026 HIGHLY EXPEDITED ARBITRATION RULES WITHIN INDIA'S ARBITRATION FRAMEWORK

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Introduction

International commercial arbitration operates at the intersection of party autonomy, institutional efficiency, and domestic public policy.¹ But it has been found that cost and delay are amongst the most persistently cited drawbacks of the traditional arbitral process.² Moreover, minimising cost and securing quicker outcomes remain the principal reasons parties choose an expedited procedural mechanism over traditional arbitration.³ This gap between the promise and the practice of efficient dispute resolution is precisely what has driven arbitral institutions to redesign their procedural rules. The International Chamber of Commerce Arbitration Rules, 2026 [**ICC Rules**] are the latest instance of this institutional pursuit.⁴ ICC Rules have crucially introduced a third tier of arbitration, the Highly Expedited Arbitration Provisions [**HEAP**].⁵ It is structured in such a manner that it will yield the final award within three months, which will significantly alter the traditional method. It will also prevent any procedural flexibility, multi-party joinder, and document production, and will permit the use of unreasoned awards.⁶

¹ Fali S Nariman, 'Introduction' in SB Malik, *Commentary on the Arbitration and Conciliation Act* (8th edn, LexisNexis 2017).

² School of International Arbitration, Queen Mary University of London and White & Case LLP, '2025 International Arbitration Survey: The Path Forward: Realities and Opportunities in Arbitration' (2025) 15–19, <<https://www.scobserver.in/wp-content/uploads/2025/02/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf>> accessed 6 September 2026.

³ *ibid.*

⁴ International Chamber of Commerce, 'Arbitration Rules 2026' (ICC Arbitration Rules 2026), <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2026-arbitration-rules/#block-accordion-94>> accessed 5 June 2026.

⁵ *ibid* Appendix VI.

⁶ *ibid* Appendix VI, arts 3, 6(2), 7(2).

At the same time, India is in the midst of a legal transformation with a view to making it a premier global arbitral seat.⁷ Motivated by suggestions made by the T.K. Viswanathan Expert Committee,⁸ the Draft Arbitration and Conciliation (Amendment) Bill, 2024, introduces statutory Appellate Arbitral Tribunals [“**AAT**”] under Section 34A and codifies emergency arbitration.⁹ The Supreme Court in *Cox & Kings Ltd. v SAP India Pvt. Ltd.* [“**Cox & Kings**”] has affirmed the ‘group of companies’ doctrine, letting non-signatories be bound by an arbitration agreement and permitting related disputes to be consolidated.¹⁰ HEAP’s prohibition on joinder and consolidation gives cause for concern. Parties opting for HEAP in an India-related contract could find that they are unable to rely on a remedy that Indian courts now recognise as settled law. Moreover, Indian courts have remained quite strict when it comes to awards without reasons, routinely striking these down as suffering from ‘patent illegality.’¹¹

Hence, it is argued in this article that, whilst HEAP holds commercial attraction for parties having simple bilateral disputes, its procedural restrictions create significant friction with India’s evolving arbitration framework. These restrictions seem to conflict with Indian mandatory law. To support this, the article first outlines the HEAP framework and its conflict with the expanding ‘group of companies’ doctrine. Secondly, it examines the annulment vulnerability of unreasoned awards under Article 7(2) and the time compression problem during institutional scrutiny. Thirdly, enforcement asymmetry for foreign-seated HEAP awards is discussed. Ultimately, India needs a calibrated statutory response to absorb HEAP’s efficiency gains without exposing India-seated awards to annulment.

Framework of ICC HEAP

HEAP is located in Article 33 read with Appendix VI of the ICC Rules.¹² It is set out to be distinct from the ICC’s existing Expedited Procedure Provisions [“**EPP**”].¹³ EPP may apply automatically upon satisfaction of the applicable threshold, subject to the parties’ right to opt out,¹⁴ whereas

⁷ Fali S Nariman, *Harmony Amidst Disharmony: The Indian Framework* (LexisNexis 2022) 181–192.

⁸ Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996, ‘Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act 1996’ (Ministry of Law and Justice, Government of India, February 2024) <<https://www.scobserver.in/wp-content/uploads/2025/02/report-of-the-expert-committee-members-on-arbitration-law-2-526205.pdf>> accessed 6 June 2026.

⁹ Draft Arbitration and Conciliation (Amendment) Bill 2024, ss 9A, 34A.

¹⁰ *Cox and Kings Ltd v SAP India Pvt Ltd* 2023 SCC OnLine SC 1634.

¹¹ *Dyna Technologies Pvt Ltd v Crompton Greaves Ltd* 2019 SCC OnLine SC 1656.

¹² ICC Arbitration Rules 2026, art 33 and Appendix VI.

¹³ *ibid* art 32 and Appendix V.

¹⁴ *ibid*.

HEAP operates only upon the express agreement of all parties.¹⁵ HEAP is suitable for parties who prefer speed, and its suitability depends on the complexity of the issues in dispute, not the value of the claim.¹⁶

HEAP is designed to shorten and compress the arbitral proceedings into a sequenced and time-bound procedure. The process commences with the Request for Arbitration, and it must contain the entire Statement of Claim, with all legal grounds and evidence.¹⁷ The Respondent is then given 30 days to file its complete Answer and Statement of Defence from the date of receipt of the Request.¹⁸ If a party wishes to challenge a sole arbitrator's appointment or confirmation, this must be done no later than seven days from the receipt of notice of the appointment or confirmation of the sole arbitrator, or no later than seven days from the receipt of notice of the facts and circumstances relied upon for such challenge, whichever is later.¹⁹

As per the Rules, the tribunal is required to convene a Case Management Conference [“**CMC**”] within a week of receiving the file of the case.²⁰ An award must be made by the tribunal within a period of three months of the CMC.²¹ Unless the parties agree, time limits cannot be extended.²²

Most importantly, the need for speed necessitates a reduction in processes. Only a sole arbitrator shall decide all HEAP disputes, irrespective of any prior agreement to the contrary.²³ Evidentiary hearings may be waived altogether, empowering the tribunal to determine the dispute solely based upon documents.²⁴ However, the most legally sensitive features of HEAP and those most likely to trigger enforcement challenges in jurisdictions like India are the absolute prohibition on the joinder of additional parties and the consolidation of arbitrations (Article 3), and the authorisation for the tribunal to render an unreasoned award if the parties so agree (Article 7(2)).²⁵

The multi-party exclusion vs. the Indian corporate reality

¹⁵ *ibid* Appendix VI, art 1.

¹⁶ ICC, ‘Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions’ (21 May 2026), <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> accessed 3 August 2026.

¹⁷ ICC Arbitration Rules 2026, Appendix VI, art 2(1).

¹⁸ *ibid* Appendix VI, art 2(5).

¹⁹ *ibid* Appendix VI, art 5.

²⁰ *ibid* Appendix VI, art 6(1).

²¹ *ibid* Appendix VI, art 7(1).

²² *ibid* Appendix VI, art 2(9).

²³ *ibid* Appendix VI, art 4.

²⁴ *ibid* Appendix VI, art 6(3).

²⁵ *ibid* Appendix VI, arts 3, 7(2).

In contrast to value-capped EPP, HEAP is aimed at parties who prioritise absolute speed and finality over procedural completeness (particularly those in recurring contractual relationships), irrespective of the value of the dispute.²⁶ The ICC's prohibition on joinder and consolidation has thus been intentionally designed. A mechanism that is designed to deliver its final award within a period of three months cannot absorb additional pleadings, evidence and jurisdictional issues arising in multiparty arbitrations. This bar is a necessity rather than a design omission. The question is not whether the ICC erred, but whether this strictly bilateral mechanism remains as viable for India's increasingly complex corporate disputes.

The expansion of the group of companies doctrine

Commercial disputes in India are usually multilateral. The nation's arbitral docket, dominated by infrastructure, energy and joint-venture contracts, is seldom executed in a bilateral setting.²⁷ In *Cox & Kings*, the Supreme Court recognised this economic reality and affirmed that the 'group of companies' doctrine is part of Indian law.²⁸ It was held that the non-signatory affiliates may be bound by the arbitration agreement depending on the facts, which must show their involvement in negotiating, performing or terminating the contract as parties with the intent to be real parties to the dispute.²⁹ The Court established the doctrine on the ground of the implied consent of the parties.³⁰ Consequent decisions of courts in India also affirm that non-signatories may be bound on this basis, and may even be impleaded into a pending arbitration after the tribunal is already constituted.³¹ Consequently, Indian courts and India-seated tribunals are increasingly empowered and expected to join non-signatories to prevent fragmented litigation, so that all relevant actors are present before a single tribunal.

Fragmentation of Disputes under HEAP

The ICC's own EPP (Appendix V) permits joinder and consolidation, subject to the ICC Secretariat's approval.³² Other international rules, like the London Court of International

²⁶ Maria Hauser-Morel and Jan-Heiner Nedden, 'The 2026 ICC Arbitration Rules: A Practical Guide for Counsel to the Most Significant Overhaul in a Decade' (Kluwer Arbitration Blog, 8 June 2026) <<https://legalblogs.wolterskluwer.com/arbitration-blog/the-2026-icc-arbitration-rules-a-practical-guide-for-counsel-to-the-most-significant-overhaul-in-a-decade/>> accessed 7 September 2026.

²⁷ Bernard Hanotiau, *Complex Arbitrations: Multi-party, Multi-contract, Multi-issue* (2nd edn, Kluwer Law International 2020).

²⁸ *Cox and Kings* (n 10).

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *Mahanagar Telephone Nigam Ltd v Canara Bank* 2019 SCC OnLine SC 995; *Cheran Properties Ltd v Kasturi and Sons Ltd* (2018) 16 SCC 413.

³² ICC Arbitration Rules 2026, art 8.

Arbitration 2020 Rules³³ and the Singapore International Arbitration Centre 2025 Rules,³⁴ allow joinder with party consent. However, HEAP has an absolute bar. This gap creates two risks specific to the Indian context. The party facing a strong ‘group of companies’ claim is incentivised to steer a dispute to HEAP, whether by an insertion of an HEAP clause in the subcontract or by consenting to HEAP on a dispute arising, strategically to close off the joinder of parties that *Cox and Kings* would allow. A system designed to assist parties requiring speed becomes a device to defeat a substantive right which Indian courts have chosen to uphold.

Even parties that act in good faith may end up opposing outcomes of HEAP. The claimant who is locked into separate bilateral proceedings on the same facts against different counterparties must suffer duplicate arbitration, duplicate costs and risk inconsistent findings on common issues, which is the very fragmentation that consolidation is designed to avoid. Delivering fast awards that contradict each other on the same set of facts is worse, for commercial parties, than one award on a normal ICC timeline. Rules intended to save time and money can thus produce the opposite effect, and this is a potential problem with importing an absolute joinder bar in the Indian legal order, which has moved firmly in the opposite direction.

Annulment risk of unreasoned awards and time compression problem

HEAP’s second point of friction with Indian law concerns Article 7(2), where an arbitrator can make an award without stating the reasons on which it is based, when the parties have expressly agreed to such omission.³⁵ It allows consenting parties to prioritise speed over time-consuming detailed records. Conversely, Indian jurisprudence grounds the requirement of reasoned orders as a fundamental principle of natural justice.³⁶ The difficulty lies not in the commercial rationale of this choice, but in whether such a contractual waiver remains legally effective when the seat of arbitration is India.

Unreasoned awards as ‘patent illegality’

According to Indian domestic law, unless otherwise agreed by the parties, an arbitral award must state reasons as mandated by Section 31(3) of the Arbitration and Conciliation Act, 1996 [**Arbitration Act**].³⁷ The availability of the waiver of reasoning is expressly provided for, and Section 34 does not disturb that autonomy on its own terms: an award cannot be ‘patently illegal’

³³ London Court of International Arbitration Rules 2020, art 22.1(x).

³⁴ Singapore International Arbitration Centre Rules 2025, art 18.

³⁵ ICC Arbitration Rules 2026, Appendix VI, art 7(2).

³⁶ *M/S Kranti Asso Pvt Ltd & Anr v Masood Ahmed Khan & Ors* (2010) 9 SCC 496.

³⁷ Arbitration and Conciliation Act 1996, s 31(3).

simply because the parties validly agreed not to have reasons.³⁸ The tension is narrower than an outright conflict between the two provisions. According to section 34(2A),³⁹ a domestic award can still be set aside by a court on the grounds that the tribunal ignored vital evidence, decided beyond the contract, or exceeded its jurisdiction.⁴⁰ These grounds are not easy to rule out, and require some reasoning trail that helps to test the award against. A validly unreasoned award does not in itself raise a Section 34 breach, but it limits the material upon which a reviewing court has to work with if another party alleges one of these grounds.

Thus, if parties opt into an India-seated HEAP arbitration and agree to an unreasoned award as per Article 7(2), the award runs a high risk of challenge. Even if waiving reasons in a contract is allowed, such an award would be highly susceptible to scrutiny under section 34(2A) since the successful party will not be able to point to anything from the tribunal's findings to rebut allegations of an arbitrary award, ignoring evidence or jurisdictional overreach.

Time compression and institutional scrutiny

According to Article 37(3), the ICC Court must take the requirements of the mandatory law at the seat into account during its scrutiny process.⁴¹ In ordinary ICC cases, this examination cycle takes around three to four weeks.⁴² In HEAP, however, the whole arbitration must finish in 12 weeks, from CMC to the final award, thereby providing the ICC Court seemingly no time for institutional scrutiny.

Indian law will apply a very strict 'public policy' standard as laid down in *Ssangyong Engineering & Construction Co. Ltd. v National Highways Authority of India*,⁴³ ["**Ssangyong**"] and this extreme time compression will obviously face that scrutiny, given the enforceability risk at stake. It is settled that an award could be set aside for violating the fundamental policy of Indian law, requiring a detailed examination of the contract and relevant statutes, which cannot be done in a cursory manner.⁴⁴ If the ICC Court is unable (or finds it difficult) to carry out a proper mandatory law analysis of this matter in the given time frame (especially one on an unreasoned award), it risks ultimately

³⁸ *ibid* s 34.

³⁹ *ibid* s 34(2A).

⁴⁰ Shilpa Shah, 'The Test of Patent Illegality' (Singhania & Partners, 29 April 2020) <<https://singhania.in/blog/the-test-of-patent-illegality>> accessed 8 September 2026.

⁴¹ ICC Arbitration Rules 2026, art 37(3).

⁴² 'Ten Tips on How to Make an Arbitration Award Work: Lessons from the ICC Scrutiny Process' *ICC Dispute Resolution Bulletin* (2022, No 2, International Chamber of Commerce) <<https://www.icc-austria.org/fxddata/iccws/prod/media/downloads/Bulletin-Ten-tips-on-how-to-make-an-arbitration-award-work.pdf>> accessed 15 June 2026.

⁴³ *Ssangyong Engineering & Construction Co Ltd v National Highways Authority of India* (2019) 15 SCC 131.

⁴⁴ *ibid*.

approving an award that will be set aside by Indian courts. This will render the HEAP process a waste of time and resources.

The foreign paradigm: pro-enforcement bias and public policy

If the HEAP arbitration is seated outside of India, then the position changes significantly. If a party gets a favourable award, it may seek to get the unreasoned award enforced in India as a foreign award under Section 48 of the Arbitration Act, which incorporates the Convention-based grounds for refusing enforcement under the New York Convention.⁴⁵

The Supreme Court's interpretation in *Ssangyong* of the 2015 amendment to the Arbitration Act introduced a bifurcated regime for judicial review of foreign awards.⁴⁶ It explained that the 'patent illegality' test can only apply to domestic awards under Section 34 and has been specifically excluded for the enforcement of foreign awards under Section 48.⁴⁷ In order to block a foreign award, the award debtor must bring its challenge within one of the limited grounds specified in Section 48, including the public-policy exception.⁴⁸

Can a foreign award that has no reasoning behind it be considered contrary to the fundamental policy of Indian law? The answer is that it cannot. In *Aircon Beibars FZE v Heligo Charters Pvt. Ltd.*, the High Court of Bombay considered a challenge to the enforcement of a foreign award under Section 48.⁴⁹ The award-debtor contended that part of the award was unreasoned and thus violated the basic notions of justice and public policy in India.⁵⁰ The High Court categorically rejected this contention, explaining that assessing the presence or absence of reasons would entail an impermissible review into the merits of a foreign award.⁵¹ It was concluded that a procedural error, even existing, does not breach the fundamental policy of Indian law if the award is unreasoned.⁵²

The result is an asymmetry. An unreasoned HEAP award rendered at a foreign seat benefits from a narrower enforcement review in India, because of exclusion from the 'patent illegality' test under Section 48. On the other hand, if the same award were made in an arbitration seated in India, it

⁴⁵ Arbitration and Conciliation Act 1996, s 48.

⁴⁶ *Ssangyong* (n 43).

⁴⁷ *ibid.*

⁴⁸ Arbitration and Conciliation Act 1996, Explanation 1 to s 48(2)(b).

⁴⁹ *Aircon Beibars FZE v Heligo Charters Pvt Ltd* 2022 SCC OnLine Bom 329.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

would likely be set aside under Section 34 for ‘patent illegality,’ making the domestic seat commercially unviable for this ICC mechanism.

Towards a calibrated framework

HEAP is made for parties who want fast, simple, and bilateral dispute resolution. Whereas, the Indian arbitration regime increasingly expects multi-party joinder and reasoned awards. To bridge this gap, the following steps may help:

1. Parties negotiating multi-tiered agreements should treat any HEAP clause in any one contract as a live risk to every related contract in the same project. Model clauses applicable to India-related transactions should exclude HEAP where a project has two or more contracting parties or mirror the clause, so that no sub-agreement can exclude joinder which would otherwise be permitted by the ‘group of companies’ doctrine.
2. Indian lawmakers should incorporate a narrow amendment in Section 34(2A) of the Arbitration Act.⁵³ A safe harbour provision could provide that a consensual waiver of reasons under a recognised institutional expedited procedure is not, in itself, ‘patent illegality,’ provided that the tribunal produces a short-form record reflecting the jurisdiction, the claims determined and the relief granted. It gives the reviewing court something to work with under Section 34 without getting the tribunal to produce a full reasoned award within HEAP’s strict timeline. In addition, the ICC Court could implement a seat-specific protocol that adds a brief fixed extension, perhaps two additional weeks, to the scrutiny period in HEAP awards seated in India so that its Article 37(3) Review of mandatory law has room to function properly.⁵⁴
3. The proposed Section 34A of the Draft Bill should provide for a dedicated fast-track appellate route for awards issued under expedited institutional procedures.⁵⁵ A course of action like this would have the result that the award is presumed to stand, and can only be rebutted by showing a manifest denial of due process and not by reopening the merits. It ensures that HEAP’s key selling point, speed, is preserved whilst giving Indian parties a genuine safety valve against the annulment risk this note traces.

Conclusion

⁵³ Arbitration and Conciliation Act 1996, s 34(2A).

⁵⁴ ICC Arbitration Rules 2026, art 37(3).

⁵⁵ Draft Arbitration and Conciliation (Amendment) Bill 2024, proposed s 34A.

Simple bilateral disputes are well served by the HEAP commitments, *i.e.*, a three-month deadline, no joinder, and option of an unreasoned award, but its compatibility with Indian arbitration law remains highly conditional. The joinder bar runs against the expanding ‘group of companies’ doctrine. It hands parties a way to defeat the doctrine by pushing disputes to HEAP. And the option of an unreasoned award is vulnerable because of ‘patent illegality,’ where the seat of arbitration is in India. Further, the unreasoned award is capable of sailing through narrower enforcement review, where the seat of arbitration is based outside India. India need not reject the HEAP outright. It, rather, demands a calibrated response as discussed hereinabove, so India can capture HEAP’s efficiency benefits, without supplying the parties with a mechanism that results in fragmented proceedings at home, and which is unenforceable at the seat it is supposedly meant to serve.

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.

JURISDICTION VERSUS ADMISSIBILITY IN INDIAN ARBITRATION: THE CASE FOR A COHERENT DOCTRINAL FRAMEWORK

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Introduction

One of the key developments in modern international arbitration is the distinction between jurisdiction and admissibility. Although both raise preliminary objections to the adjudication of a dispute, the two concepts have very different procedural effects. Jurisdiction raises the question of whether the arbitral tribunal has the legal authority to decide a dispute.¹ Admissibility, on the other hand, focuses on whether a claim is appropriate for determination by an arbitral tribunal that has jurisdiction to resolve the dispute. Such matters are typically within the exclusive purview of the arbitral tribunal and are not open to judicial intervention.² The distinction has become highly relevant in the context of limitation, contractually mandated pre-arbitral procedures, and tiered dispute resolution clauses.

Although Indian courts have been reaching conclusions akin to those in international arbitration jurisprudence, they have rarely used the language of jurisdiction and admissibility in support of their decisions. Instead, they have relied on contractual construction, the distinction between mandatory and directory provisions, or the nature of judicial scrutiny under the Arbitration and Conciliation Act, 1996³ [**“Arbitration Act”**]. It could therefore be said that the difference between the two is recognised by India, but not the nomenclature used for it. This article first sets out the conceptual distinction between jurisdiction, admissibility and arbitrability before analysing the legal position within the context of the Arbitration Act. Then, it analyses the Indian legal position

¹ Andrew Tweeddale, ‘Jurisdiction and Admissibility in Dispute Resolution Clauses’ (2021) *Construction Law International* <<https://www.ibanet.org/article/57470714-a3f7-4db9-9dab-69dfbcb156c9>> accessed 10 July 2026.

² Slaughter and May, ‘Distinction Between a Challenge to the Admissibility of a Claim in Arbitration and a Challenge to Jurisdiction Confirmed in C v D’ (*Slaughter and May*, 23 June 2022) <<https://www.slaughterandmay.com/insights/importedcontent/distinction-between-a-challenge-to-the-admissibility-of-a-claim-in-arbitration-and-a-challenge-to-jurisdiction-confirmed-in-c-v-d/>> accessed 14 July 2026.

³ Arbitration and Conciliation Act 1996.

regarding the requirement of pre-arbitral procedures and concludes that, although there have been recent judicial developments, the law remains doctrinally unresolved.

Conceptual Framework

The dichotomy between jurisdiction and admissibility is rooted in the nature of the objection. An objection challenging the tribunal's power to entertain a matter is jurisdictional. Conversely, an objection that accepts the tribunal's competence but objects to the hearing of the claim due to a procedural deficiency or other unfilled prerequisites is an objection to the claim's admissibility. According to the Oxford Handbook of International Arbitration, *"In particular, it considers the question of whether there are any conditions attached to the exercise of the right to arbitrate which have not been fulfilled. Those conditions might be, for example, a limitation period applicable to the right to commence arbitration, or a requirement to mediate and/or negotiate before arbitral proceedings may be commenced."*⁴

The former relates to the tribunal, while the latter relates to the claim itself. This approach, based on the *"tribunal v claim"* dichotomy, has gained increasing acceptance across major arbitration jurisdictions and is now used as an analytical tool for deciding whether an objection concerns a reviewable question of jurisdiction or a non-reviewable question of admissibility. As Gary Born observes, *"The best approach is to presume, absent contrary evidence, that pre-arbitration procedural requirements are not jurisdictional, but matters better determined by the Arbitrators."*⁵

Arbitrability falls into its own category, alongside but conceptually distinct from the above dichotomy. It does not concern itself with whether the specific parties have agreed to arbitrate or whether a dispute is ripe for arbitration, but whether the subject matter of the dispute is something which the law allows to be determined privately through arbitration. This distinction was made by the Supreme Court in *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd.*,⁶ in which the Court drew a distinction between *rights in rem*, which are normally not arbitrable, and *rights in personam*, which normally are arbitrable. The court in *Vidya Drolia v Durga Trading Corp*⁷ came up with a four-part test to determine arbitrability and clarified that in the ordinary course of things, the arbitral tribunal would have competence over deciding the issue of arbitrability except when non-arbitrability was evident at the stage of referral. This legal position has evolved significantly following the Supreme

⁴ Thomas Schultz and Federico Ortino (eds), 'The Oxford Handbook of International Arbitration' (Oxford University Press 2020).

⁵ Gary Born, 'International Commercial Arbitration' (3rd edn, Kluwer Law International 2021).

⁶ *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd* (2011) 5 SCC 532.

⁷ *Vidya Drolia v Durga Trading Corp.* (2021) 2 SCC 1.

Court's ruling in *SBI General Insurance Co. Ltd. v Krish Spinning*.⁸ Under the current standard, once a court at the referral stage *prima facie* establishes the existence of an arbitration agreement, all questions regarding arbitrability are left to the arbitral tribunal under Section 16 of the Arbitration Act, except a narrow exception.⁹ Arbitrability has not always been conceptually distinguished from jurisdiction in Indian judgments because both can affect the tribunal's competence in resolving a dispute.

Why the Distinction Matters

This classification is not merely theoretical but is of practical importance, because it will affect the future of the award. Under Indian law, if a jurisdictional objection is accepted by the tribunal under Section 16, the arbitration proceedings terminate and that decision is appealable under Section 37 of the Arbitration Act,¹⁰ where a court may undertake a broad review. Conversely, if the tribunal rejects a jurisdictional objection, the aggrieved party cannot appeal immediately and must wait until the passing of the final award to challenge that finding under Section 34 of the Arbitration Act.¹¹ In a Section 34 challenge, the court confines its scrutiny strictly to the circumscribed grounds enumerated under Section 34.¹² Sections 34(2)(a)(i) and (iii), which allow an award to be set aside where the arbitration agreement is invalid, or where the award exceeds the scope of the parties' submission, are jurisdictional in substance because they concern the tribunal's power to decide the dispute. This is not a peculiarity of Indian law alone: the same two grounds recur in Article V(1)(a)¹³ and Article V(1)(c)¹⁴ of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This reinforces that they are treated as jurisdictional in both domestic and international planes.

Statutory Interpretation

The enforcement procedure under the Arbitration Act emerges as the principal point of contention in the classification problem. Under Section 36, an arbitral award is enforceable as a decree of the Court after the period of challenging the award under Section 34 expires, or once such an

⁸ *SBI General Insurance Co Ltd v Krish Spinning*, 2024 INSC 532.

⁹ Arbitration and Conciliation Act 1996, s 16.

¹⁰ Arbitration and Conciliation Act 1996, s 37(2)(a).

¹¹ Raphael Ren, 'The Dichotomy Between Jurisdiction and Admissibility in International Arbitration' (2024) 73(2) *International & Comparative Law Quarterly* 417.

¹² Arbitration and Conciliation Act 1996, s 34(2).

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38, art V(1)(a).

¹⁴ New York Convention (n 13) art V(1)(c).

application has been dismissed.¹⁵ Under Section 36, the court purely executes the award as a decree and possesses no statutory mandate to review the merits or findings of the arbitral award.¹⁶ A defect arising prior to the arbitration proceedings, if erroneously classified as jurisdictional in nature, may enable the aggrieved party to challenge the award under Section 34 (or, in the case of a foreign award, resist the enforcement under Section 48)¹⁷ which should be left to the arbitral tribunal, thus enabling an admissibility objection to become a jurisdictional objection at the post award stage and thereby delaying an award that would otherwise be final under law. In case it is correctly classified as an admissibility defect, the finality of the award under Section 36 will not be affected, and the ruling of the tribunal regarding the admissibility precondition will remain undisturbed.

The issue is reflected in the very structure of the Act itself, where Section 7, 8, 11(6A), and 16 establish the framework for determining the respective roles of courts and arbitral tribunals at the referral and jurisdictional stages. Section 7¹⁸ defines the arbitration agreement, Section 8¹⁹ mandates that a court shall refer the parties to arbitration unless it is *prima facie* convinced that no valid agreement exists, and Section 11(6A)²⁰ limits the inquiry of the referring court to this issue alone at the time of appointment. Finally, section 16²¹ completes this framework by empowering the arbitral tribunal to decide issues relating to its own jurisdiction. Taken together, these provisions constitute a clear legislative decision to keep the judicial function limited in the first instance and allow the tribunal to do all that follows.

Sections 34, 36, and 37 govern the post-award phase, and it is at this point that the classification becomes highly relevant. Section 34²² contains the grounds upon which a domestic award may be set aside, including the invalidity of the arbitration agreement, and these grounds are jurisdictional in substance. Section 36²³ provides that, upon the expiry of the period for filing a Section 34 application, the award becomes enforceable as a decree. Such enforcement is subject only to a conditional stay if a challenge remains pending. Section 37²⁴ introduces a procedural asymmetry:

¹⁵ Arbitration and Conciliation Act 1996, s 36(1).

¹⁶ Arbitration and Conciliation Act 1996, s 36.

¹⁷ Arbitration and Conciliation Act 1996, s 48.

¹⁸ Arbitration and Conciliation Act 1996, s 7.

¹⁹ Arbitration and Conciliation Act 1996, s 8.

²⁰ Arbitration and Conciliation Act 1996, s 11(6A).

²¹ Arbitration and Conciliation Act 1996, s 16.

²² Arbitration and Conciliation Act 1996, s 34.

²³ Arbitration and Conciliation Act 1996, s 36.

²⁴ Arbitration and Conciliation Act 1996, s 37.

whereas an order confirming jurisdictional objections can be directly appealed, an order rejecting such an objection cannot be challenged until the final award is rendered. This is one of the reasons why the defeated party, once the award has been rendered against it, would have a strong incentive to call the admissibility objections jurisdictional under Section 34.

The Indian Position

India has, in fact, approached the question of non-compliance with a pre-arbitral condition through two separate doctrinal vocabularies. The first focuses on whether such a clause is mandatory or merely directory. The second concerns whether an objection goes to jurisdiction or admissibility. In *Visa International Ltd. v Continental Resources (USA) Ltd.*,²⁵ the Supreme Court held a conciliation requirement to be directory, reasoning that where the parties' correspondence already showed opposing positions, insisting on further settlement efforts would serve no practical purpose. In *Ravindra Kumar Verma v BPTP*,²⁶ the court said that treating a mutual-discussion precondition as mandatory would extinguish the valuable right to have disputes resolved by arbitration. However, in *Centaurus Green Energy Private Ltd. v Rajshree Educational Trust*,²⁷ the court directed the parties to undertake the agreed conciliation procedure within a time-bound period, enforcing the precondition rather than dispensing with it. A court holding a precondition “*directory*” is essentially saying non-compliance does not take away the authority of the tribunal. This suggests that such issues are a matter of “*admissibility*”. On the other side, a court holding a precondition “*mandatory*” is essentially saying non-compliance bars arbitration altogether, suggesting that it is a “*jurisdictional*” issue.

The insertion of Section 11(6A) to the Arbitration Act²⁸ confined the referral court's inquiry to the bare existence of an arbitration agreement. Cases like *Duro Felguera, S.A. v Gangavaram Port Ltd.*,²⁹ and *Mayavati Trading Pvt. Ltd. v Pradyut Deb Burman*,³⁰ reiterated this position. *Bharat Sanchar Nigam Ltd. v Nortel Networks (India) Pvt. Ltd.*,³¹ [“**Bharat Sanchar**”] imported the “*tribunal v claim*” test from Singapore jurisprudence and stated, as a general proposition, that an objection alleging a claim is time-barred or prohibited until some precondition is fulfilled is a challenge to admissibility,

²⁵ *Visa International Ltd v Continental Resources (USA) Ltd* (2009) 2 SCC 55.

²⁶ *Ravindra Kumar Verma v M/s BPTP Ltd & Anr.* 2014 SCC OnLine Del 6602.

²⁷ *Centaurus Green Energy Pvt Ltd v Rajshree Educational Trust* 2024 SCC OnLine Del 3570.

²⁸ Arbitration and Conciliation Act 1996, s 11 (6A).

²⁹ *Duro Felguera, S.A. v Gangavaram Port Ltd* (2017) 9 SCC 729.

³⁰ *Mayavati Trading Pvt Ltd v Pradyut Deb Burman* (2019) 8 SCC 714.

³¹ *Bharat Sanchar Nigam Ltd v Nortel Networks (India) Pvt Ltd* (2021) 5 SCC 738.

not jurisdiction. *SBI General Insurance Co. Ltd. v Krish Spinning*,³² went a step ahead, and held that even a defence of accord and satisfaction does not affect the existence of the arbitration agreement, and must be left entirely to the tribunal. *Arif Azim Co. Ltd. v Aptech Ltd.*,³³ confirmed this specifically for limitation, treating it generally as an issue of admissibility rather than jurisdiction. *Office for Alternative Architecture v IRCON Infrastructure and Services Ltd.*³⁴ went further, holding that once a court is satisfied that an arbitration agreement exists, it should not dissect claims into arbitrable and non-arbitrable categories at the Section 11 stage at all, and that all such objections should ordinarily go to the tribunal.

Why This Isn't Solved Yet

It could be considered that *Bharat Sanchar*³⁵ has resolved the jurisdiction-admissibility question in India. However, the jurisprudence discussed thus far is confined to the Section 11 stage alone. It says nothing about how a court reviewing a final award under Section 34 (setting aside) should treat the same categorization question. At that later stage, a party dissatisfied with an adverse award has every reason to pose an admissibility ruling as a jurisdictional issue, because jurisdictional findings are subject to *de novo* review by the court.³⁶ In *Lion Engineering Consultants v State of Madhya Pradesh*,³⁷ the Supreme Court held that a jurisdictional objection can be raised for the first time in a Section 34³⁸ challenge, even if it was never raised before the arbitral tribunal. When read together with the Supreme Court's more recent clarification in *M/s. MCM Worldwide Private Ltd. v Construction Industry Development Council*,³⁹ which states that a tribunal's rejection of a Section 16 jurisdictional plea cannot itself be appealed until the final award, the overall picture is one in which jurisdictional characterization claim emerges in the post-award stage.

Why It Matters

Firstly, the parties drafting conditional arbitration clauses and investment treaties that require prior domestic litigation or negotiation cannot predict with certainty whether a failure to satisfy the

³² *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.

³³ *Arif Azim Co. Ltd v Aptech Ltd* (2024) 5 SCC 313.

³⁴ *Office for Alternative Architecture v IRCON Infrastructure and Services Ltd* 2025 INSC 665.

³⁵ *Bharat Sanchar Nigam Ltd v Nortel Networks (India) Pvt Ltd* (2021) 5 SCC 738.

³⁶ Gracious Timothy Dunna, 'Standard of Review in Set-Aside and Enforcement Proceedings Relating to Arbitral Awards in India' (2019) 14 National Law School Journal 252 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437302> accessed 9 September 2026.

³⁷ *Lion Engineering Consultants v State of Madhya Pradesh* (2018) 16 SCC 758.

³⁸ Arbitration and Conciliation Act 1996, s 34.

³⁹ *M/s. MCM Worldwide Pvt Ltd v Construction Industry Development Council* 2026 INSC 425.

condition will keep the dispute out of arbitration altogether or simply go to the merits before the tribunal.

Secondly, if the defect relates to jurisdiction, the arbitral award may be open to challenge or refusal of enforcement pursuant to Article V(1)(a)⁴⁰ and Article V(1)(c)⁴¹ of the New York Convention and to Section 34 and Section 48 of the Arbitration Act.⁴² However, errors relating to admissibility normally fall squarely within the decision-making powers of the tribunal and do not stand alone as matters of review for judicial authorities. Thus, a party seeking to delay enforcement can re-litigate a ruling that should otherwise be final.

Furthermore, this harms India's stated ambition to establish itself as a preferred seat for international commercial arbitration. Persisting doctrinal uncertainty on a question that comparator jurisdictions like Singapore, England, and the United States have already answered with reasonable consistency sits uneasily with that ambition.

Conclusion

Rather than focusing on whether a negotiating clause was mandatory or directory, the Indian arbitration jurisprudence should expressly embrace the jurisdiction versus admissibility test in case of pre-arbitration procedure requirements. In the scenario where there is an established basis of jurisdiction arising out of a legitimate arbitration agreement, the failure to comply with contractual preconditions should generally be regarded as an issue of admissibility to be decided by the arbitral tribunal. Applying the "*tribunal v claim*" analysis in *Bharat Sanchar* to pre-arbitration requirements will ensure consistency between Indian case law and international jurisprudence without being contrary to the competence-competence doctrine found in the Arbitration Act.

⁴⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38, art V(1)(a).

⁴¹ New York Convention (n 40) art V(1)(c).

⁴² Arbitration and Conciliation Act 1996, s 34, 48.

IN CONVERSATION WITH DR. KABIR DUGGAL



DR. KABIR DUGGAL

PARTNER, AKIN GUMP STRAUSS HAUER & FELD LLP

Editor's Note: Dr. Kabir Duggal is a Partner at Akin Gump Strauss Hauer & Feld LLP, in their international arbitration practice, based in New York. He is also a Lecturer-in-law at Columbia Law School, and a Senior Fellow and Advisor at the Center for International Commercial and Investment Arbitration at Columbia. He was also an adjunct professor at Fordham Law School, and has been a visiting professor to the Durham Law School, University of São Paulo, Universidad de Los Andes, Universidad Externado de Colombia and National Law University, Jodhpur.

He is internationally recognised for his extensive experience as counsel in complex, high-stakes investor-state and commercial arbitrations, across the energy, infrastructure, mining, telecommunications, financial services, construction and telecom, media and technology (TMT) sectors. He has also served as an arbitrator and mediator in several disputes, spanning a broad range of industries.

Dr. Duggal is also a prolific scholar and widely cited authority in international arbitration and investment law, with a presence on the editorial boards of recognised journals. He also engages in arbitration policy, serving as a Consultant to the United Nations Office of the High Representative for Least Developed Countries, on the creation of the Investment Support Program. He also works closely with the United States Department of Commerce's Commercial Law Development Program. He has prior public international law experience, including work with the World Bank Group, UNICEF. He had also served as a clerk to a judge of the Supreme Court of India.

Editorial Board [“EB”]: With a career as illustrious as yours, you get to sit as both counsel and arbitrator in different matters. How do you manage that dual role? Does being a counsel make you a better arbitrator, or the reverse?

Dr. Kabir Duggal [“KD”]: That is a question I am asked quite often, and I have come to think that the two roles are complementary, provided one is disciplined about keeping them entirely separate. When I sit as arbitrator, my only responsibility is the integrity of the process and to deciding the dispute on the facts and the law. When I act as counsel, my responsibility is to advance my client’s case as effectively and ethically as possible. Those are different responsibilities, and they require different mindsets. What I have found however, is that each role makes me better at the other. Acting as counsel gives me a healthy appreciation of the commercial realities that parties face, the strategic decisions lawyers make under pressure, and the practical consequences of procedural decisions. Conversely, serving as arbitrator has made me a more thoughtful advocate. It has reinforced the importance of clarity over volume, precision over rhetoric, and credibility over advocacy for its own sake. One quickly learns that tribunals remember the lawyer who assists them in reaching the right answer, not simply the one who speaks the longest.

Perhaps the greatest lesson from moving between the two roles is humility. Every dispute has at least two plausible narratives, and sometimes more. Sitting on both sides of the table is a constant reminder that what appears obvious from one perspective can look rather different from another. That experience encourages careful listening, intellectual curiosity, and a willingness to question one’s own initial assumptions before reaching a conclusion.

EB: Your work is quite diversified, including areas such as energy, infrastructure, mining, and TMT disputes, each of which have different technical demands. Is there a sector where you find fact-finding or expert evidence particularly difficult to referee as arbitrator?

KD: One of the pleasures of international arbitration is that no two cases are ever quite the same. I have worked on disputes involving energy, mining, infrastructure, telecommunications, and technology, and I would hesitate to say that one sector is inherently more challenging than another. The technical subject matter certainly changes, but the arbitrator’s role does not. We are not appointed to become engineers, geologists, or economists. We are appointed to ask the right questions, understand the evidence well enough to evaluate it, and ultimately decide the legal issues before us. In my experience, the more difficult cases are not necessarily those with the most technical evidence, but those where expert evidence risks overshadowing the real dispute. The challenge is to distinguish between what is genuinely necessary to resolve the issues and what is simply interesting background. A good expert should educate the tribunal rather than advocate for

a party. The most persuasive experts I have encountered are often those who are candid about the limits of their opinions and willing to acknowledge uncertainty where it exists.

Perhaps that is why I enjoy technically demanding arbitrations. They are intellectually stimulating and require the tribunal to learn continuously. Every case is an opportunity to explore a new industry, a new technology, or a new way of thinking. That constant learning is one of the aspects of international arbitration that I have found most rewarding, and it is one of the reasons the practice continues to be as engaging today as it was when I first entered the field.

EB: The literature on the subject, including your work of *“Evidence in Investment Arbitration”* points out that investor-state tribunals often import evidentiary practices without examining their basis in public international law. What, according to you, would be the clearest example that you have seen of a tribunal getting this wrong?

KD: I would hesitate to say that tribunals routinely “get it wrong.” Investment arbitration has evolved through an extraordinary body of jurisprudence, and tribunals are often dealing with novel procedural questions for which there is no single correct answer. If I were to identify one area where there is room for further development, however, it would be the tendency to rely on evidentiary practices because they have become familiar, rather than because their legal foundation has been fully articulated.

Investment arbitration is neither purely commercial arbitration nor classical interstate adjudication. It occupies a unique place within public international law. Yet awards sometimes adopt concepts relating to burdens of proof, adverse inferences, document production, or witness evidence without explaining whether those principles derive from public international law, the parties’ agreement, comparative procedural practice, or simply arbitral discretion. My view has always been that tribunals should be more explicit in that reasoning. Doing so would not only enhance the coherence of the jurisprudence but would also make awards more persuasive, particularly for States and investors seeking to understand the legal principles that govern the arbitral process.

EB: Do you think the International Bar Association [“IBA”] Rules on the Taking of Evidence still serve the field well, or are they due for revision given how much investor-state practice has diverged from commercial arbitration?

KD: The IBA Rules on the Taking of Evidence have undoubtedly made an important contribution to international arbitration by providing a common procedural framework that parties and tribunals from different legal traditions can work with. In full disclosure, I had the privilege of participating in the most recent revision process, which underscored how carefully the Working

Group considered the evolving needs of both commercial and investor–state arbitration. At the same time, no soft law instrument should be viewed as static, particularly in a field that continues to develop as rapidly as investment arbitration.

That said, it is equally important not to lose sight of what the IBA Rules are designed to be. They are voluntary guidelines, not mandatory procedural rules. Their effectiveness lies in the considerable discretion they preserve for tribunals and, above all, in their respect for party autonomy. In my view, any future revisions should continue to refine the Rules where appropriate without compromising those fundamental characteristics, which have been central to their widespread acceptance.

EB: Your recently published paper titled “*Jurisprudential Drift in International Investment Law: From the Minimum Standard to Fair and Equitable Treatment*” reassesses the meaning ascribed to FET against its original conception, partly due to the jurisprudential drifts. Where do you think tribunals have drifted furthest from what states actually intended when they included the standard in early treaties, and in your opinion, how important is this shift?

KD: The question is one I have spent a number of years thinking about, both in practice and through my doctoral research at Harvard Law School, which examined the historical origins of the Fair and Equitable Treatment standard through archival records. One of the observations that emerged from that work is that we often read today’s jurisprudence through the lens of modern investment law, whereas the earliest treaty practice was shaped by a rather different legal and historical context. As the jurisprudence has developed, FET has gradually acquired a breadth that was not always reflected in the way States originally understood or articulated the standard.

That should not necessarily be viewed as a criticism. International law evolves, and tribunals inevitably interpret treaties against changing factual and legal landscapes. The more interesting question, in my view, is whether we are sufficiently attentive to the standard’s origins when considering its future development. Understanding where FET came from does not dictate where it must go, but it provides an important anchor for interpreting existing treaties and for helping States draft the next generation of investment agreements with greater precision and predictability.

EB: Having trained governments like Colombia, Saudi Arabia, Myanmar, and the Philippines on treaty negotiation, what is the most common gap you find in how ‘capital-importing’ states approach treaty drafting compared to how ‘capital-exporting’ states do?

KD: One of the things I have learned from working with governments across different regions is that the distinction between ‘capital-importing’ and ‘capital-exporting’ states is becoming less meaningful than it once was. Many capital-importing States today have highly sophisticated legal teams and are deeply engaged with developments in international investment law. The challenge is therefore rarely one of legal capability. More often, it is one of institutional capacity, of having sufficient time, resources, and coordination across ministries to translate policy objectives into precise treaty language.

Perhaps the most common lesson is that treaty drafting should begin with policy rather than precedent. It is tempting to start with the text of an existing treaty and negotiate from there. In my experience, the more effective approach is to ask a series of fundamental questions first: What types of investment is the State seeking to attract? What degree of regulatory flexibility does it wish to preserve? How should investment protection be balanced against environmental, public health, or development objectives? Once those policy choices are clearly defined, the drafting exercise becomes considerably more coherent. Good treaties are rarely the product of better drafting alone, rather they are the product of clearer policy choices.

EB: You have also written on reforming investment law to align with climate objectives. Do you see the current Investor State Dispute Settlement [“ISDS”] mechanisms acting as an obstacle to this energy transition, or as necessary protections to attract the capital it requires?

KD: There is no doubt that ISDS has come under increased scrutiny in the context of the energy transition, and that scrutiny has been both inevitable and, in many respects, constructive. It has encouraged States, practitioners, academics, and arbitral institutions to reflect on whether investment law remains appropriately calibrated for today’s challenges. In my view, however, the debate should not be framed as one between investment protection and climate action. Both are indispensable. The energy transition will require unprecedented levels of private capital, while States must retain sufficient regulatory space to pursue legitimate climate and environmental objectives.

The more important question is therefore whether our legal framework is evolving in step with those realities. Many first-generation investment treaties were negotiated long before climate change became a central feature of international policymaking. As treaty practice continues to evolve, States are expressing with greater precision how they wish to balance investment protection with regulatory authority. Tribunals, in turn, should continue to interpret those treaties in accordance with established principles of international law, taking account of the treaty text, its

object and purpose, and, where appropriate, the broader framework of public international law. That, in my view, is how investment law can continue to provide legal certainty while remaining responsive to one of the defining policy challenges of our time.

EB: In your opinion, how should tribunals treat a state's climate regulation when an investor claims that it amounts to indirect expropriation of a fossil fuel asset?

KD: I would be reluctant to answer that question in absolute terms because these disputes are invariably fact and treaty-specific, and as an arbitrator one must avoid approaching them with predetermined conclusions. What I would say is that climate regulation raises issues of profound importance, not only for the parties before the tribunal but also for the broader international community. Those issues deserve to be treated with the seriousness and care they require.

From a legal perspective, tribunals should begin with the treaty text, but they should also be mindful that investment treaties do not exist in isolation from the broader framework of public international law. Particularly in the case of older-generation treaties, principles of treaty interpretation, including systemic integration under Article 31 (3)(c) of the Vienna Convention on the Law of Treaties, may assist tribunals in interpreting investment obligations consistently with other relevant rules of international law where appropriate. That does not mean rewriting treaties or diminishing investment protection. Rather, it means recognizing that international law is an integrated legal system. A careful, principled analysis of the treaty language, the purpose and effect of the regulatory measure, its proportionality, and the broader legal context is more likely to produce decisions that are both legally rigorous and institutionally credible.

EB: You have had a tremendous journey as a scholar who started in law at the oldest law school in Asia (Government Law College, Mumbai) and moved onto being a doctoral candidate at the prestigious Harvard Law School. Could you reflect on it for our young readers who are looking up to you not only as an arbitrator but also as a meticulous student of law?

KD: I have been extraordinarily fortunate to study and work in very different intellectual environments, beginning at Government Law College, Mumbai, and continuing through Oxford, New York University, Leiden, and Harvard. Looking back, what strikes me most is not the institutions themselves, but how each challenged me to think differently about the law. Every stage of that journey reinforced the idea that there is rarely a single “correct” way to approach a legal problem. Exposure to different legal traditions, academic cultures, and mentors has probably shaped my thinking as much as any particular degree or qualification.

One lesson I have come to appreciate is that expertise is not measured by how much one knows, but by how willing one remains to keep learning. International arbitration is a particularly humbling field because every case introduces a new industry, a different legal system, or a novel question of international law. That is one of the reasons I continue to teach, write, and engage with students and younger practitioners. Teaching is not simply about passing on knowledge; it is one of the best ways of testing and refining one's own thinking. I have often found that the most insightful questions come not from seasoned practitioners, but from students who are unencumbered by assumptions. Those conversations have undoubtedly made me a better lawyer, arbitrator, and scholar.

For younger lawyers, my advice would be to invest in substance rather than appearances. It is tempting to measure progress by titles, rankings, or the next professional milestone, but those things tend to follow rather than lead. Read widely, remain intellectually curious, seek out mentors who challenge you rather than simply encourage you, and remember that your professional reputation is built one interaction at a time. In the long run, people may forget a particular argument or publication, but they rarely forget integrity, generosity, sound judgment, or genuine kindness. Those qualities are every bit as important as technical excellence.

EB: How exciting do you find your work as one of the leading professionals in the Global Arbitration Practice? What advice would you give our young readers who wish to make a career in the Arbitration Practice?

KD: What continues to excite me about international arbitration is that it never becomes routine. Every dispute brings together a different legal system, a different industry, different cultures, and often questions that have not previously been answered. It is one of the few areas of practice where law, economics, politics, technology, and public policy regularly intersect. That means there is always something new to learn, and I think that intellectual curiosity is what has kept me engaged throughout my career. I have also been fortunate to work with remarkable clients, colleagues, arbitrators, and students, all of whom have challenged my thinking in different ways.

For those considering a career in arbitration, my advice is to focus less on arbitration itself and more on becoming an outstanding lawyer. Build a strong foundation in contract law, public international law, private international law, civil procedure, evidence, and advocacy. Read widely beyond the law - economics, history, political science, and even engineering or finance can prove invaluable depending on the dispute. Just as importantly, invest in your reputation. International arbitration is a relatively small community, and people remember professionalism, reliability, kindness, and intellectual honesty. Your technical ability may open doors, but your judgment,

integrity, and how you treat others will determine whether those doors remain open. I have found that the most respected practitioners are often the most generous with their time, and I hope the next generation will continue that tradition.

QUARTERLY ALTERNATE DISPUTE RESOLUTION ROUND-UP

(MAY 2026 – AUGUST 2026)

MAY

1. Prima facie review at the Section 11 stage: limits on judicial scrutiny.

The Delhi High Court in *Vijay Tyagi v NDMC* was seized of a petition under Section 11 of the Arbitration and Conciliation Act 1996¹ [“**Arbitration Act**”], arising out of disputes in a public works contract.² The respondent opposed the reference to arbitration on the ground that the claims were time-barred and premature, raising objections relating to limitation and delay. The issue before the Court was whether such objections could be examined at the stage of appointment of an arbitrator or whether they were to be left for determination by the arbitral tribunal.

The Court held that its jurisdiction at the Section 11 stage is confined to a prima facie examination of the existence of a valid arbitration agreement, and does not extend to adjudicating limitation or other merit-based objections. It reasoned that such issues fall within the domain of the arbitral tribunal in line with the principle of competence-competence. By refusing to entertain threshold objections, the Court reinforced arbitral autonomy and ensured that the arbitral process is not stalled by preliminary judicial scrutiny.

2. Section 33 cannot be used to substantively modify arbitral awards.

The dispute before the Supreme Court in *Gujarat Water Supply & Sewerage Board v Saryu Plastics Pvt. Ltd.*³ arose out of arbitral proceedings where one party challenged the award on grounds including procedural irregularities and alleged errors in the award. Additionally, an attempt had been made to alter the nature of interest awarded through a correction mechanism.

¹ Arbitration and Conciliation Act 1996, s 11.

² *Vijay Tyagi v NDMC* 2026 SCC OnLine Del 2771.

³ *Gujarat Water Supply & Sewerage Board v Saryu Plastics (P) Ltd.* 2026 SCC OnLine SC 944.

The issue before the Court was whether Section 33 of the Arbitration Act permits modification of an arbitral award beyond clerical or arithmetical corrections, and whether a party can raise procedural objections after participating in the proceedings without protest.⁴

The Court held that Section 33 is strictly limited to correction of clerical or arithmetical errors and cannot be used to modify the substance of an award. It further held that a party which participates in arbitral proceedings without raising timely objections is precluded from subsequently challenging the award on procedural grounds, applying principles of estoppel and acquiescence. The reasoning emphasised finality of arbitral awards and discouraged strategic challenges aimed at reopening concluded proceedings.

3. Courts exercising jurisdiction under Section 11 must defer substantive contractual disputes to the arbitral tribunal.

In *Cygnett Hotels & Resorts Pvt. Ltd. v Tapobhumi Eco Projects Pvt. Ltd.*⁵ before the Delhi High Court, a petition under Section 11 of the Arbitration Act sought appointment of an arbitrator in the context of a commercial agreement containing an arbitration clause.⁶ The respondent did not dispute the existence of the arbitration agreement but raised objections relating to contractual performance, accord and satisfaction, and other factual controversies.

The issue before the Court was whether such substantive disputes could be examined by the referral court at the stage of appointing an arbitrator. The Court held that its role under Section 11 is purely facilitative and limited to verifying the existence of an arbitration agreement. It reasoned that issues relating to contractual performance, settlement, or competing claims fall exclusively within the jurisdiction of the arbitral tribunal. By deferring all substantive determinations to the tribunal, the Court upheld the principle of arbitral autonomy and minimised judicial interference at the pre-arbitral stage.

4. Interlinked disputes arising from a composite transaction may be referred through a common arbitral process.

The Delhi High Court in *Jiangxi Construction Engineering Group Co. Ltd. v Varaha Infra Ltd.*⁷ was confronted with disputes arising out of multiple interrelated agreements, including a joint

⁴ Arbitration and Conciliation Act 1996, s 33.

⁵ *Cygnett Hotels & Resorts (P) Ltd. v Tapobhumi Eco Projects (P) Ltd.* 2026 SCC OnLine Del 4439.

⁶ Arbitration and Conciliation Act 1996, s 11.

⁷ *Jiangxi Construction Engineering Group Co. Ltd. v Varaha Infra Ltd.* 2026 SCC OnLine Del 4116.

venture agreement, a settlement agreement, a consent arbitral award, and mortgage arrangements, all connected to a single infrastructure project. The parties raised objections regarding the arbitrability of certain disputes and whether fresh invocation of arbitration was required.

The issue before the Court was whether such interconnected disputes could be fragmented or ought to be referred together to arbitration. The Court held that where agreements are inextricably linked and form part of a composite transaction, disputes arising therefrom must be referred to a single arbitral process. It reasoned that fragmentation would defeat commercial efficiency and lead to inconsistent outcomes. Recognising the “bundle of agreements” as a unified contractual framework, the Court endorsed consolidation and reaffirmed a pro-arbitration approach that prioritises efficiency and coherence in dispute resolution.

5. High Courts should ordinarily refrain from interfering with pending arbitral proceedings through writ jurisdiction.

In *M/s Tarini Prasad Mohanty v M/s Sunflag Iron and Steel Ltd.*,⁸ the dispute arose during ongoing arbitral proceedings where an interlocutory order passed by the arbitrator under Section 16⁹ of the Arbitration Act was challenged before the High Court through a writ petition under Articles 226 and 227 of the Constitution.¹⁰ The High Court entertained the petition and interfered with the arbitral process, leading to an appeal before the Supreme Court. The issue was whether writ jurisdiction could be invoked against interlocutory orders of an arbitral tribunal.

The Supreme Court held that writ jurisdiction should not ordinarily be exercised to interfere with orders passed by arbitral tribunals during the pendency of proceedings. It reasoned that the Arbitration Act provides a self-contained mechanism, including a post-award remedy under Section 34, and that allowing writ petitions would undermine the principle of minimal judicial intervention. The Court emphasised that challenges must be deferred to the statutory framework, thereby preserving the efficiency and autonomy of arbitration.

6. Reaffirmation of limited appellate interference with arbitral awards.

⁸ *Tarini Prasad Mohanty v Sunflag Iron & Steel Co. Ltd.* 2026 SCC Online SC 973.

⁹ Arbitration and Conciliation Act 1996, s 16.

¹⁰ The Constitution of India 1950, arts 226-227.

In *Madhya Pradesh Road Development Corporation Ltd. v M/s Jabalpur Corridor Pvt. Ltd.*,¹¹ the dispute arose from a concession agreement for a highway infrastructure project, culminating in an arbitral award. The award was challenged under Section 34¹² and subsequently under Section 37 of the Arbitration Act,¹³ with the High Court refusing to interfere.

The matter reached the Supreme Court, where the issue was whether appellate courts could reassess the merits of an arbitral award or substitute their own interpretation. The Supreme Court upheld the limited scope of interference under Sections 34 and 37, holding that courts cannot re-appreciate evidence or substitute the arbitral tribunal's interpretation merely because another view is possible. It reasoned that judicial review in arbitration is confined to statutorily prescribed grounds such as patent illegality or perversity. By affirming the finality of arbitral awards and restricting appellate intervention, the Court reinforced the pro-arbitration framework and the principle of minimal judicial interference.

¹¹ *Madhya Pradesh Road Development Corporation Ltd. v M/s Jabalpur Corridor Pvt. Ltd.* 2026 INSC 590.

¹² Arbitration and Conciliation Act 1996, s 34.

¹³ Arbitration and Conciliation Act 1996, s 37.

1. Supreme Court clarifies limitation for Section 34 applications following Section 33 proceedings.

In *National Highway Authority of India v T. Younis & Anr.*,¹⁴ the Supreme Court clarified whether an application under Section 34¹⁵ can be filed while proceedings under Section 33 of the Arbitration Act are already underway. The dispute arose out of land acquisition proceedings under the National Highways Act, 1956. Both the Appellant and the Respondent filed applications under Section 33¹⁶ of the Arbitration Act, which were dismissed by the Arbitral Tribunal. Thereafter, the Appellant filed applications under Section 34 of the Arbitration Act before the Principal District and Sessions Judge, along with applications seeking condonation of delay, which were resisted on the ground that the applications were filed beyond the 120-day period specified in Section 34(3)¹⁷ of the Arbitration Act and hence should not be allowed. The Principal District and Sessions Judge condoned the delay, following which the Respondent challenged the order before the Karnataka High Court. The High Court set aside the order of the Principal District and Sessions Judge, prompting the Appellant to approach the Supreme Court.

The Court reversed the High Court decision and held that once proceedings under Section 33 of the Arbitration Act are initiated and entertained by the Arbitral Tribunal, the award remains subject to the limited jurisdiction of the tribunal for correction, interpretation, or supplementation as contemplated under the provision. So long as such proceedings remain pending, the parties cannot be compelled to institute proceedings under Section 34 of the Arbitration Act merely as a matter of abundant caution. The parties can effectively pursue their remedy under Section 34 of the Arbitration Act only upon conclusion of the proceedings under Section 33. Consequently, the limitation prescribed under Section 34(3) of the Arbitration Act can start only from the date on which the proceedings under Section 33 are disposed of. At the same time, the Court cautioned that where Section 33 applications are found to be sham, frivolous, or *mala fide*, or filed solely to defeat the limitation prescribed under Section 34(3) of

¹⁴ *National Highway Authority of India v T. Younis & Anr.* 2026 SCC OnLine SC 1060.

¹⁵ Arbitration and Conciliation Act 1996, s 34.

¹⁶ Arbitration and Conciliation Act 1996, s 33.

¹⁷ Arbitration and Conciliation Act 1996, s 34(3).

the Arbitration Act, courts are justified in imposing exemplary and punitive costs to prevent abuse of process.

2. Consumers invoking the Consumer Protection Act cannot be forced into arbitration merely due to the presence of an arbitration clause.

The Supreme Court in *T.K.A. Padmanabhan v Abbiyan Cooperative Group Housing Society Ltd., Through Its Secretary*¹⁸ held that consumers who have invoked the Consumer Protection Act, 1986¹⁹ [“CPA”] cannot be forced into arbitration merely because the contract contains an arbitration clause. The Court observed that the statutory remedy expressly provided under the CPA cannot be defeated due to a private contractual clause.

The dispute arose from a claim of compensation made by the consumer for the alleged delay in handing over possession of a flat allotted by the housing society, despite having made the complete payment. This led him to approach the District Consumer Forum [“**District Forum**”], where the housing society invoked Section 8 of the Arbitration Act.²⁰ The parties were referred to arbitration by the District Forum. This order was later upheld by the State and National Consumer Disputes Redressal Commissions, leading to the consumer approaching the Supreme Court. The Court accepted the consumer's contention and held that the existence of another forum does not exclude the jurisdiction of the consumer forums. Furthermore, the Court stated that the provisions preserving the additional nature of the consumer remedy and prohibiting transfer of an admitted complaint must be read together to ensure the protection of the consumer's rights. The Court restored the proceedings and directed the District Forum to adjudicate the complaint within a year.

3. Writ jurisdiction cannot be invoked to challenge a tribunal’s rejection of a jurisdictional objection while arbitral proceedings are pending.

The Karnataka High Court in *Smt G.S Sridevi v Shri H Mahadev Goud*²¹ declined to interfere with an order passed by the arbitrator who rejected a challenge to the tribunal's jurisdiction in a dispute. The jurisdiction was challenged due to questions raised on the authenticity of the Agreement of Sale relied upon in the arbitration. The Court observed that the arbitral tribunal

¹⁸ *T.K.A Padmanabhan v Abbiyan Cooperative Group Housing Society Ltd.* 2026 SCC OnLine SC 1160.

¹⁹ Consumer Protection Act 1986.

²⁰ Arbitration and Conciliation Act 1996, s 8.

²¹ *G.S Sridevi v H Mahadev Goud* 2026 SCC OnLine Kar 6240.

is competent to determine questions regarding the existence, validity, and scope of arbitration agreements, authorising the tribunal to rule on any contention under Section 16²² of the Arbitration Act. It held that such challenges are postponed to the stage of proceedings under Section 34²³ of the Arbitration Act, to minimise judicial intervention during the pendency of arbitral proceedings at the interlocutory stage.

4. Parties cannot oppose arbitration after having accepted arbitration in similar disputes arising from the same agreement.

The Madhya Pradesh High Court in *JVS Foods Pvt. Ltd. v M.P. State Agro Industries Development Corp. Ltd.*²⁴ held that a party cannot ‘blow hot and cold’ in terms of appointment of an arbitrator. The dispute arose due to a disagreement in valuation of shares for the purchase agreement between the parties. The arbitration clause was invoked by JVS, but it was rejected by the Corporation, stating that exercising the clause was optional. However, JVS contended that the same clause had been previously invoked in a different dispute where an arbitrator was appointed. The Corporation argued that since the word ‘may’ was used in the clause, it was voluntary and optional. The Court, while deciding on the matter, observed that the Corporation had earlier conceded to arbitration and rejected the Corporation’s contention.

The Court stated that although the words ‘may refer’ have been used in the clause, the surrounding mandatory language ‘shall’ dictated the governing law and seat if arbitration was chosen. Crucially, the court emphasised the Corporation’s prior conduct of conceding to arbitration in similar disputes under the same agreement, ruling that a party cannot ‘blow hot and cold’ by rejecting the arbitration mechanism merely when it suits their convenience.

5. Correction of a contradictory operative direction by the arbitral tribunal does not amount to a review on its merits.

The Patna High Court in *M/s Ganesh Foundry and Castings Ltd. v The Bihar State Electricity Board (now M/s Bihar State Power (Holding) Company Ltd.) & Ors.*²⁵ held that any computational or clerical errors or contradictions of a similar nature are to be given a purposive interpretation in the context of the statute. The dispute arose from an alleged theft of electricity at Ganesh

²² Arbitration and Conciliation Act 1996, s 16.

²³ Arbitration and Conciliation Act 1996, s 34.

²⁴ *JVS Foods Pvt. Ltd. v M.P. State Agro Industries Development Corporation Ltd.* 2026 SCC OnLine MP 17656.

²⁵ *M/s Ganesh Foundry and Castings Ltd. v The Bihar State Electricity Board (now M/s Bihar State Power (Holding) Company Ltd.) & Ors.* 2026 SCC OnLine Pat 4337.

Foundry's manufacturing unit. They approached the Patna High Court to seek restoration of electricity, with the dispute being referred to arbitration by the court, resulting in an award that held that the tariff had to be assessed on the basis of total KVA (electrical load) reflected in independent test reports. The Bihar State Electricity Board subsequently filed an application under Section 33²⁶ of the Arbitration Act, contending that the operative portion of the award needed a correction. The tribunal agreed and issued an additional award to modify the operative part.

This modification made by the tribunal was challenged by the Appellant, arguing that the tribunal had exceeded its jurisdiction by substantively altering the award instead of correcting an error. The Court disagreed with this contention and held that the correction merely aligned the operative directives with the findings already produced and that it did not amount to a merits-based review of the dispute.

6. ICC Arbitration Rules 2026 amendments enter into force for faster and more efficient arbitration.

The International Chamber of Commerce's Arbitration Rules, 2026²⁷ ["**2026 Rules**"] entered into force on 1 June 2026 and introduced multiple changes to enhance efficiency, clarity, and usability. The 2026 Rules remove the requirement for the mandatory Terms of Reference, a document that both parties must sign, which often causes delays of up to 30 days or becomes a point of disagreement when one party refuses to sign. Under the 2026 Rules, the tribunals retain the discretion to draw up Terms of Reference where it is appropriate, instead of it being mandatory. The Rules also establish an early-determination process, which allows tribunals to handle claims or defences that have no basis or are outside their authority.

The 2026 Rules also add the Highly Expedited Arbitration Provisions in Appendix VI, which is an optional procedure aimed at getting a final award within three months of the first case management meeting. The Statement of Claim is included with the Request for Arbitration, and the Statement of Defence is included with the Answer. Parties have 20 days to choose an arbitrator, and the tribunal has wide authority to limit what is submitted, restrict the number of documents produced, skip hearings and even issue an award without giving reasons if the parties agree. These changes create a three-tier system for ICC arbitration that includes

²⁶ Arbitration and Conciliation Act 1996, s 33.

²⁷ International Chamber of Commerce, *ICC Arbitration Rules* (2026) < <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2026-arbitration-rules/> > accessed on 29 June 2026.

standard, expedited and highly expedited procedures. These are just some of the many changes provided for by the 2026 Rules.

1. High Courts should exercise restraint in interfering with ongoing arbitral proceedings under Article 227.

In *Manash Kamal Bezboruah v Bokahola Tea Company Pvt. Ltd. & Ors.*,²⁸ the Supreme Court held that High Courts must exercise utmost caution before exercising their power of supervision under Article 227 of the Constitution of India in respect of orders made by an arbitral tribunal under Section 16 of the Arbitration Act.²⁹ It was also stated by the Court that such orders must generally be questioned through the provisions of Section 34³⁰ under the Arbitration Act only after completion of the process of arbitration and making of the final award. While the jurisdiction of High Courts under Article 227 cannot be ousted, the High Court would generally intervene only when there is a prima facie case of want of inherent jurisdiction.

2. Plaintiff must adhere to 120-day limit for reply to counter claim in commercial suits.

In *A.K. Ghosh & Co. v Biman Bose & Ors.*,³¹ the Supreme Court held that, in a commercial action, the plaintiff will be under the compulsion of the mandatory provision of the proviso to Order VIII Rule 1 of the Civil Procedure Code, 1908 [“CPC”]³² regarding filing a reply in respect of counter claim by the plaintiff. The Court held that, generally, the plaintiff will have to file his reply in 30 days, and, upon showing sufficient cause, the period can be extended, but not more than 120 days. In the said context, the Court referred to Order VIII Rule 6G CPC,³³ according to which the rules of filing replies in respect of written statements will apply to the replies filed in respect of counterclaims.

3. Section 43(3) cannot, by itself, validate a contractual clause that is otherwise void under the law.

²⁸ *Manash Kamal Bezboruah v M/s Bokahola Tea Co. Pvt. Ltd. & Ors.* 2026 SCC OnLine SC 1330.

²⁹ Arbitration and Conciliation Act 1996, s 16.

³⁰ Arbitration and Conciliation Act 1996, s 34.

³¹ *A.K. Ghosh & Co. and Ors. v Biman Bose and Ors.* 2026 INSC 684.

³² Code of Civil Procedure 1908, O VIII R 1.

³³ Code of Civil Procedure 1908, O VIII R 6G.

In *Mahanagar Telephone Nigam Ltd. v M/s Rukma Decor and Construction Co.*,³⁴ the Delhi High Court held that Section 43(3) of the Arbitration Act,³⁵ which gives the power to the courts to extend the contractual period for filing of arbitration proceedings in situations of undue hardship, does not serve the purpose of giving validity to the contract where such a contract is void under Section 28 of the Indian Contract Act, 1872.³⁶ The Court observed that where a contractual clause not only prescribes a time limit but also extinguishes substantive rights and discharges a party from liability, it is void under Section 28(b). Section 43(3) of the Arbitration Act operates only where a valid contractual time-bar clause exists and cannot, by itself, render an otherwise void clause enforceable.

4. Email delivery of scanned signed arbitral award valid, limitation under Section 34 starts from such delivery.

The Delhi High Court held that sending a scanned copy of signed arbitral award by email amounts to valid service under Section 31(5) of the Arbitration Act, which in turn makes the limitation period commence under Section 34(3)³⁷ of the Arbitration Act. In *Chief Engineer, Employees' State Insurance Corp. v Enarch Consultants Pvt. Ltd.*,³⁸ the Court did not accept the argument of ESIC that the limitation period would start from the date of receipt of the copy in hard copy by the officer authorized to file legal cases. The Court noted that Section 31(5) of the Arbitration Act does not mandate any mode of delivery and when the arbitration process involved only electronic communication throughout and there was no dispute about the award, the delivery by way of e-mail was adequate. The Court has further emphasised the three-month limitation period, along with the additional thirty-day period of condonation, is the maximum period within which the Court can entertain the case under Section 34.

5. Arbitral Tribunal becomes functus officio after award, except for limited corrections.

The Delhi High Court held that once an arbitral award is rendered, the arbitral tribunal becomes functus officio and cannot reopen the merits of its decision. In *Supreme Advertising Pvt. Ltd. v Genus Power Infrastructures Ltd.*,³⁹ the Court clarified that Section 33 of the Arbitration

³⁴ *Mahanagar Telephone Nigam Ltd. v M/s Rukma Decor and Construction Co.* 2026 SCC OnLine Del 5176.

³⁵ Arbitration and Conciliation Act 1996, s 43(3).

³⁶ Indian Contract Act 1872, s 28.

³⁷ Arbitration and Conciliation Act 1996, s 34.

³⁸ *Chief Engineer, Employees' State Insurance Corp. v Enarch Consultants Pvt. Ltd.* 2026 DHC 5562.

³⁹ *Supreme Advertising Pvt. Ltd. v Genus Power Infrastructures Ltd.* 2026 SCC OnLine Del 5226.

Act⁴⁰ permits the tribunal to correct only computational, clerical, typographical, and similar errors. The Court upheld a modified award where the tribunal had confined its corrections to such accidental errors without reopening the determination of liability or entitlement. It further observed that the relevant test is whether the tribunal has reopened the adjudicatory process, and not merely whether the numerical outcome of the award has changed.

6. A Facilitation Council cannot refer MSMED disputes to an individual arbitrator; it must arbitrate itself or refer to an institution.

The Himachal Pradesh High Court in *M/s Tynor Orthotics Pvt. Ltd. v Himachal Pradesh Micro & Small Enterprises Facilitation Council & Ors.*⁴¹ set aside an ex parte arbitral award and quashed the underlying reference in a dispute where the HP Micro and Small Enterprises Facilitation Council, after conciliation failed, referred a supplier's claim for recovery to an individually appointed arbitrator rather than either deciding the dispute itself or referring it to an arbitral institution or centre providing alternate dispute resolution services as required under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006, [“**MSMED Act**”].⁴²

The Court held that in the given situation, the Council exceeded its statutory powers and the award rendered was not a validly constituted arbitral award. In this regard, with reference to the question of the mandatory pre-deposit of 75 percent under Section 19 of the MSMED Act⁴³, the High Court has observed that the pre-condition of deposit presupposes the validity of the award, capable of legal recognition. It cannot, therefore, be used to make the party first depositing the amount to prove that the said award is *non-est*.

Where there is a case of nullity *ex facie*, a court under Section 34⁴⁴ or 37 of the Arbitration Act⁴⁵ has jurisdiction to adjudicate upon the same irrespective of non-compliance with the pre-deposit condition.

⁴⁰ Arbitration and Conciliation Act 1996, s 33.

⁴¹ *M/s Tynor Orthotics Pvt. Ltd. v Himachal Pradesh Micro & Small Enterprises Facilitation Council & Ors.* 2026 HHC 26951-DB.

⁴² Micro, Small and Medium Enterprises Development Act 2006, s 18(3).

⁴³ Micro, Small and Medium Enterprises Development Act 2006, s 19.

⁴⁴ Arbitration and Conciliation Act 1996, s 34.

⁴⁵ Arbitration and Conciliation Act 1996, s 37.

1. Non-Signatory shareholder held to be a veritable party to the arbitration agreement.

In *KKH Finvest Pvt. Ltd. v Ashiesh Shukla*,⁴⁶ the Supreme Court applied the ‘veritable party’ doctrine to hold that a non-signatory shareholder was bound by the arbitration agreement contained in a Memorandum of Settlement [“**MoS**”]. The MoS formed part of a corporate takeover under which the buyer agreed to acquire the complete shareholding of the sellers. Although Ashiesh Shukla was not a signatory to the MoS, he executed a separate Share Purchase Agreement [“**SPA**”] for the transfer of his shares.

After an arbitrator was appointed, Shukla and other non-signatories objected to their inclusion in the arbitration under Section 16 of the Arbitration and Conciliation Act, 1996⁴⁷ [“**Arbitration Act**”]. The appellant subsequently filed a Section 11⁴⁸ application seeking their reference to the same arbitration. The Delhi High Court referred the management members but excluded Shukla, relying on a clause in his SPA stating that the share transfer was independent of the MoS.

The Supreme Court reversed this finding. It noted that the SPAs of the management members contained identical clauses. Applying *Cox and Kings*,⁴⁹ the Court held that Shukla’s share transfer was fundamental to completing the MoS. It therefore found him to be a ‘veritable party’ to the MoS and amenable to arbitration.

2. Post-award Section 9 relief available to unsuccessful party in exceptional circumstances.

In *National Projects Construction Corporation Ltd. v Ishvakoo (India) Pvt. Ltd.*,⁵⁰ the Supreme Court held that an unsuccessful party in an arbitration can, in exceptional circumstances, seek post-award interim relief under Section 9 of the Arbitration Act.⁵¹ The dispute centered on bank guarantees furnished by the respondent for a mobilisation advance, which the appellant

⁴⁶ *KKH Finvest Pvt. Ltd. v Ashiesh Shukla* 2026 INSC 803.

⁴⁷ Arbitration and Conciliation Act 1996, s 16.

⁴⁸ Arbitration and Conciliation Act 1996, s 11.

⁴⁹ *Cox and Kings Ltd. v SAP India Pvt. Ltd.* 2023 SCC OnLine SC 1634.

⁵⁰ *National Projects Construction Corp. Ltd. v Ishvakoo (India) Pvt. Ltd.* 2026 INSC 828.

⁵¹ Arbitration and Conciliation Act 1996, s 9.

encashed. Although the arbitrator dismissed all the respondent's claims, the appellant had not filed a counterclaim, and the award lacked any finding that the advance was unutilised.

Pending a Section 34⁵² challenge, the respondent successfully obtained a Section 9 order requiring the appellant to deposit the encashed funds in court. Upholding this, the Supreme Court reiterated that while the threshold for granting such relief to an unsuccessful party is exceptionally high, Section 9 relief may be granted in rare and compelling circumstances.

Permitting the appellant to retain the funds without a counterclaim would result in unjust enrichment, justifying the interim deposit to preserve the efficacy of the Section 34 challenge.

3. Supreme Court holds prior election of HRERA remedy bars subsequent Section 9 proceedings in same dispute.

In *Neo Developers Pvt. Ltd. v Rahul Bhargava*,⁵³ the Supreme Court considered whether the respondents could invoke arbitration and seek interim measures under Section 9 of the Arbitration Act, after having first approached the Haryana Real Estate Regulatory Authority [“HRERA”]. The respondents had entered into Builder Buyer Agreements and Memoranda of Understanding concerning commercial spaces in the appellant's project. After default in assured returns and delay in the project, they approached HRERA and initiated execution proceedings following an order passed in their favour.

Subsequently, after receiving communications proposing to lease the properties and raising demands for development and fit-out charges, the respondents sought a Section 9⁵⁴ injunction restraining the appellant from creating third-party interests in the premises. The Commercial Court rejected the application, but the High Court granted the interim relief.

The Supreme Court restored the Commercial Court's order. It held that the respondents had elected to approach HRERA first and that the relief sought before HRERA and under Section 9 were substantially the same. The subsequent communications did not create a fresh cause of action for arbitration. The Court therefore held that the Section 9 proceedings could not continue and relegated the parties to HRERA.

⁵² Arbitration and Conciliation Act 1996, s 34.

⁵³ *Neo Developers Pvt. Ltd. v Rahul Bhargava* 2026 INSC 875.

⁵⁴ Arbitration and Conciliation Act 1996, s 9.

4. Parliamentary Committee calls for reforms to strengthen India International Arbitration Centre.

The 165th Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, on the subject ‘Creation and Development of Institutional Mechanism to support the Alternative Dispute Resolution Ecosystem’, presented on 7 August 2026, sets out recommendations for strengthening India’s Alternative Dispute Resolution [“**ADR**”] ecosystem⁵⁵. A major focus is the India International Arbitration Centre [“**IIAC**”], with the Committee calling for an assessment of its performance, caseload and fee structure to ensure effective utilisation of public investment and improve its competitiveness with international institutions such as the Singapore International Arbitration Centre and the London Court of International Arbitration. It also recommends diversifying the IIAC’s arbitral panel, adopting global best practices and undertaking targeted outreach to Central Ministries, public sector undertakings and large corporations.

The Report also addresses institutional capacity, recommending expansion of the Delhi International Arbitration Centre’s physical infrastructure and administrative workforce. It calls for clearer guidelines to limit judicial intervention in arbitration and minimum digital standards to promote the use of technology, particularly beyond urban centres.

On mediation, the Committee recommends expediting the establishment of the Mediation Council of India and strengthening Pre-Institution Mediation through measures to discourage merely formal participation.

It further recommends uniform guidelines for Lok Adalats and stronger institutional support for the National Legal Services Authority. Finally, the Committee emphasises accreditation, standardised training and greater integration of ADR into legal education to develop ADR as a structured career pathway.

⁵⁵ Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Creation and Development of Institutional Mechanism to support the Alternative Dispute Resolution Ecosystem*, 165th Report (Rajya Sabha 2026) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2296302®=48&lang=2>> accessed 28 August 2026.



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