
AI AS ARBITRATOR: REGULATING AI DECISION MAKING IN INDIAN ARBITRATION

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ABSTRACT

The January 2026 order of the Madras High Court permitting a controlled trial of an AI-assisted record management tool in an arbitration matter,¹ and the subsequent public remarks of Chief Justice of India Surya Kant calling for a “proper procedural framework” for the use of artificial intelligence in arbitration,² signal the arrival of a new phase in Indian dispute resolution. This article examines the relationship between algorithmic decision support tools and the structural features of the Arbitration and Conciliation Act, 1996, in particular the independence and impartiality regime under Section 12, the tribunal's procedural autonomy under Section 19, and the grounds for setting aside an award under Section 34. It argues that the silence of the Draft Arbitration and Conciliation (Amendment) Bill, 2024 on artificial intelligence is a structural gap that leaves parties exposed to asymmetrical and opaque process.

Keywords: Artificial intelligence, arbitration, Section 12, Section 19, Section 34, explainable AI, impartiality, due process.

¹See *Madras High Court Green-Lights AI-Assisted Record Analysis in Arbitration Matter*, Moneylife (2026).

²*CJI Surya Kant Emphasises Need to Regulate Use of AI in Arbitration*, The Tribune (Apr. 11, 2026).

I. INTRODUCTION

The very basis of arbitration lies in one fundamental idea that parties choose the procedure because they trust the integrity of the arbitrator. That trust, in turn, rests on the assumption that the decision maker is a human being: capable of reasoning, answerable for his or her reasons, and open to scrutiny.

But what happens when the decision-maker is no longer entirely human ? not when artificial intelligence merely stores documents, but when it begins to shape how information is extracted, organised, and evaluated?

An order of Justice N. Anand Venkatesh of the Madras High Court dated 28 January 2026, in *Gammon–OJSC Mosmetrostroy JV v. Chennai Metro Rail Ltd.*, permitted a controlled trial of an AI assisted system, “Superlaw Courts,” in a batch of arbitration related applications between the two parties.³ The tool was confined to organising documents, preparing indexes, and retrieving excerpts; inference, credibility assessment, and the ascertainment of intention remained matters for the human decision-maker alone.⁴

Roughly two months later, on 10 April 2026, Chief Justice of India Surya Kant, addressing the Indian Council of Arbitration's international conference on “Arbitration in the Era of Globalization,” observed that artificial intelligence could become “arbitration's powerful ally,” while cautioning that its use raised genuine concerns about confidentiality and the preservation of independent judgment , concerns best met not by shunning the technology but by regulating it through a proper procedural framework.⁵

This is where Indian arbitration now stands. One High Court has cautiously permitted a supervised AI trial. The Chief Justice of India has called for regulation. But is India's existing framework - the Arbitration and Conciliation Act, 1996, together with the still pending Draft

³*Gammon–OJSC Mosmetrostroy JV v. Chennai Metro Rail Ltd.*, Common Order dated Jan. 28, 2026 (Mad. H.C.) (Venkatesh, J.); *Madras High Court Green-Lights AI-Assisted Record Analysis in Arbitration Matter*, Moneylife (2026).

⁴*Madras HC Trials AI: A Legal Tech Milestone*, Whalesbook (Jan. 31, 2026) (describing the tool as confined to a “record assistant” function, expressly excluding inference, credibility assessment, or judicial judgment).

⁵*CJI Surya Kant Emphasises Need to Regulate Use of AI in Arbitration*, The Tribune (Apr. 11, 2026) (reporting remarks at the Indian Council of Arbitration's international conference on “Arbitration in the Era of Globalization: Legal Technology, Economic Development & Cross-Border Disputes,” New Delhi, Apr. 10, 2026).

Arbitration and Conciliation (Amendment) Bill, 2024 , equipped to meet the challenge?

This Article's answer is no. The Act was drafted for an era of exclusively human decision making. Algorithmic bias, AI assisted process, and algorithmic malfunction are nowhere addressed as grounds of challenge. The Draft Bill, too, is silent on artificial intelligence. That silence is not neutral; it carries consequences.

II. THE SUPERLAW COURTS ORDER: A CAUTIOUS FIRST STEP

The Madras High Court's order of 28 January 2026 repays close reading , as much for what it left open as for what it settled. Justice Venkatesh approved the tool's use only after an open-court demonstration before counsel for both sides.⁶ The system builds a secure digital workspace , described in commentary as akin to a sealed record room ,confined to the documents uploaded for that case; it does not draw on the open internet or any external database, converts scanned material into searchable text, groups related documents, removes duplicates, and breaks records into logically coherent excerpts rather than mechanical page splits.⁷

It is important to note precisely what the Court was satisfied with: the tool's working method, not its outputs or the reasoning behind them. The Court was careful to keep the tool “record bound,” confined to material already on file, with every legal conclusion reserved to the human decision-maker.

The Court also directed that a separate link be maintained to log and display every interaction with the algorithm by counsel and the Court, so that the extent of reliance on the tool could be independently verified; a draft order recording facts, pleadings, evidence, and rival submissions, prepared with AI assistance, would be circulated to both sides for verification, after which reliance on the tool would “come to an end,” with final adjudication resting entirely with the judge.⁸ This is significant: it shows the Court was alert to the transparency problem, even though it stopped short of imposing any formal explainability obligation on the tool itself.

These safeguards are reassuring as far as they go. But they leave open a structural question:

⁶Madras High Court Green-Lights AI-Assisted Record Analysis in Arbitration Matter, Moneylife (2026).

⁷Id. (describing the AI tool's document-organisation and OCR functions); *Madras High Court Introduces AI-Assisted Superlaw Courts System*, Usthadian Academy Current Affairs (Feb. 17, 2026).

⁸Madras High Court Green-Lights AI-Assisted Record Analysis in Arbitration Matter, Moneylife (2026).

what standard should apply when an AI tool is deployed in a more consequential task , summarising contested factual narratives, detecting patterns across a voluminous evidentiary record, or assisting in the preparation of the award itself? The Superlaw Courts order, careful as it is, does not answer that question. It points, instead, to a problem that only legislation can resolve.

III. THE STATUTORY FRAMEWORK UNDER PRESSURE

A. Section 12 and Algorithmic Impartiality

Section 12 of the Arbitration and Conciliation Act, 1996 requires every arbitrator to disclose in writing any circumstances likely to give rise to justifiable doubts about independence or impartiality. Circumstances that automatically disqualify a person from acting as arbitrator, and those merely requiring disclosure, are set out in the Fifth and Seventh Schedules respectively.⁹

This disclosure framework presupposes a world of human relationships : financial interests, prior connections, professional associations. It does not contemplate algorithmic bias.

Consider an AI system trained on data that, knowingly or not, is skewed against one class of litigants. Such bias would escape Section 12 scrutiny entirely: when an arbitrator relies on an AI tool to detect patterns in evidence or to summarise competing claims, and the tool's output is shaped by undisclosed training data or architecture, the parties confront a further layer of reasoning they can neither examine, challenge, nor rebut. Neither Section 12 of the Act nor the Draft Bill speaks to this.

The Supreme Court's emphasis on transparency in arbitrator appointments in *Voestalpine Schienen GmbH v. Delhi Metro Rail Corp. Ltd.* would support an expansive reading of the disclosure obligation,¹⁰ but such a reading would go beyond the present statutory text. The Draft Bill imposes no obligation on an arbitrator with regard to AI use.

B. Section 19 and Procedural Fairness

Section 19 vests the arbitral tribunal with the power to determine its own procedure, subject to

⁹The Arbitration and Conciliation Act, No. 26 of 1996, § 12 & schs. V, VII (India).

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

the Act and the parties' agreement : a core expression of arbitral autonomy. Section 19(3) specifically empowers the tribunal to determine the admissibility, relevance, materiality, and weight of evidence.

Procedural fairness requires that parties be able to understand a decision well enough to challenge it. Where an arbitrator relies on an opaque AI tool to summarise evidence, this requirement is compromised: audi alteram partem is formally satisfied but substantively hollowed out.

The Draft Bill enhances institutional arbitration by empowering the Arbitration Council of India to issue model procedural rules, including rules governing proceedings conducted through audio-video electronic means.¹¹ But the Draft Bill gives the Council no specific mandate, and no discernible push, to extend those model rules to the use of AI tools in arbitration.

C. Section 34 and Algorithmic Defects

Under Section 34, a court may set aside an arbitral award where a party was unable to present its case; where the award decides matters outside the scope of the submission to arbitration; where the composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement or the law; or where the award is contrary to the public policy of India.

The 2015 amendment, as construed in *ONGC Ltd. v. Saw Pipes Ltd.*¹² and ¹³ has clarified that public policy review extends to the fundamental policy of Indian law, basic notions of morality and justice, and patent illegality appearing on the face of the award.

The Draft Bill restructures Section 34 in several respects: it categorises the grounds, extends patent illegality to international commercial arbitrations seated in India, and permits partial setting-aside of an award. None of this addresses what might be called an “algorithmic defect” in the arbitral process.

¹¹Draft Arbitration and Conciliation (Amendment) Bill, 2024, proposed § 43D(2) (Dep't of Legal Affairs, Ministry of Law & Justice, Gov't of India) (empowering the Arbitration Council of India to lay down model arbitration agreements, a model code of conduct for arbitrators, model rules of arbitral procedure, and rules for conduct of proceedings by audio-video electronic means).

¹²*Oil & Nat. Gas Corp. Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

¹³*Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India*, (2019) 15 SCC 131 (India).

Take a scenario that is no longer speculative: a tribunal deploys an AI tool to analyse a corpus of fifteen thousand documents and summarise the evidentiary record on a disputed question. The system errs perhaps because its training undervalues documents in a particular language, or because a retrieval fault excludes a particular file format. The resulting award rests, unbeknownst to the parties, on an incomplete factual record.

Under the present Section 34, a challenging party faces real difficulty. “Inability to present one's case” addresses a party being prevented from adducing evidence it possessed not a tribunal's failure to retrieve evidence the party believed had been placed on record. “Patent illegality” addresses the reasoning in the award, not the adequacy of the evidentiary process behind it.

A natural objection is that “public policy” or “patent illegality” could be read expansively to capture algorithmic error. That is possible in principle, but given the deliberately narrow construction of patent illegality in *Ssangyong* and in ¹⁴ such a reading carries real uncertainty and, even if achieved, would only be a workaround for a problem legislation should solve directly.

The difficulty is a practical one: Indian arbitration law has no mechanism to audit an algorithm that may have shaped the outcome of a proceeding. Section 34, as it stands, cannot fill that gap.

IV. THE DRAFT BILL 2024: AN OPPORTUNITY FOREGONE

The Draft Arbitration and Conciliation (Amendment) Bill, 2024 was released for public consultation on 18 October 2024,¹⁵ following the report of the Expert Committee to Examine the Working of the Arbitration Law, chaired by Dr T.K. Vishwanathan, submitted on 7 February 2024.¹⁶

The Expert Committee, constituted in June 2023, was tasked with reviewing the “working of arbitration law” at a time when the impact of generative AI on professional practice was already well established. Yet the Draft Bill contains no provision addressing the use of AI in arbitration;

¹⁴Patel Eng'g Ltd. v. N. E. Elec. Power Corp. Ltd., (2020) SCC OnLine SC 466 (India).

¹⁵Draft Arbitration and Conciliation (Amendment) Bill, 2024 (Dep't of Legal Affairs, Ministry of Law & Justice, Gov't of India, released for public consultation Oct. 18, 2024).

¹⁶Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996 (Feb. 7, 2024) (T.K. Vishwanathan, Chairperson) (committee constituted June 12, 2023).

the words “artificial intelligence” do not appear in it at all.

This silence is worth pausing over, because the Draft Bill does engage with other technological developments: it recognises arbitration conducted wholly or partly through audio-video electronic means, and empowers the Arbitration Council of India to formulate model procedural rules and a model code of conduct for arbitrators.¹⁷ Set against this, the absence of any AI-specific provision looks less like a deliberate policy of restraint than a gap in imagination, particularly given that courts are already grappling with the issue, as the Superlaw Courts order and the Chief Justice's remarks both demonstrate.

It might be argued that the silence is intentional, that the government prefers to leave the field to institutional rules or judicial interpretation. But that argument proves too much: the very provisions on impartiality, procedure, and challenge that form the foundation of the Act would all be implicated by AI's growing role in arbitral process.

VI. A FRAMEWORK FOR EXPLAINABLE AI IN INDIAN ARBITRATION

“Explainability” in AI resists precise definition. In arbitration, it cannot mean full transparency of a system's technical internals, no party needs to know the weightings of a neural network. But some minimum should be non-negotiable: an intelligible account of the tool's purpose, its training data, its known limitations, and its outputs. The question is whether Indian arbitration law demands even that much. This article proposes a three-tier framework: disclosure, scrutiny and remedy.

A. Mandatory Disclosure

The first and most essential requirement is disclosure. Any party, arbitrator, or institution using, or intending to use, AI in connection with an arbitral proceeding for document management, summarisation, legal research, or any fact or law related task should be obliged to disclose that use to the other parties and to the tribunal.

That disclosure should cover the identity of the AI tool and its developer, the task it performs, the data on which it was trained, and any limitations, biases, or error rates the developer has

¹⁷Draft Arbitration and Conciliation (Amendment) Bill, 2024, proposed §§ 2(1)(aa), 43D(2) (Dep't of Legal Affairs, Gov't of India).

disclosed. This is not an onerous requirement; it is a matter of basic procedural justice.

The cost of undisclosed AI use is illustrated by the case of Jerome Dewald, a self-represented litigant before the New York State Supreme Court, Appellate Division, First Department, who in March 2025 presented oral argument through an AI-generated avatar without disclosing this to the court, drawing sharp criticism from the bench and requiring a formal apology.¹⁸ What occurred in open court could be considerably more damaging in arbitration, where confidentiality limits scrutiny and an award, once rendered, is far harder to unwind.

B. Structured Scrutiny

The second requirement is that disclosed AI use be capable of being questioned. This is not a novel idea: expert evidence on technical matters is a familiar feature of civil litigation. What is needed is a procedural mechanism through institutional rules, tribunal practice directions, or legislative amendment that expressly recognises the admissibility and relevance of evidence bearing on an AI tool's reliability.

Arbitral institutions, through the model procedural rules they will be empowered to issue under the Draft Bill, are well placed to develop such mechanisms. A model clause requiring that AI deployment above a defined functional threshold trigger a mandatory technical annexure describing the tool's parameters and outputs would systematise scrutiny without imposing disproportionate burdens.

C. Targeted Remedies Under Section 34

The third requirement calls for legislative change. Section 34 should be amended to make the undisclosed or unreliable use of an AI tool, where that use adversely affected a party's ability to present its case, an explicit ground for setting aside an award.

This ground would sit alongside the existing “inability to present one's case” ground, tailored to reflect the specific nature of an algorithmic defect. Read together with the Draft Bill's partial set-aside provision, it would allow a court to confine relief to the portion of the record affected by the defect, permitting reconsideration of that segment alone, without AI assistance or with

¹⁸See *A 74-Year-Old Man Sent an AI Avatar to Argue His Court Case and Judges Were Not Amused*, ZME Science (Apr. 14, 2025); *AI Update: AI Avatar Does NOT, In Fact, Please the Court*, Zelle LLP (2025) (New York State Supreme Court, Appellate Division, First Judicial Department, argument of Mar. 26, 2025).

AI assistance that has been disclosed and reviewed.

VII. REGULATORY CHOICE: LEGISLATION OR GUIDELINES?

Should India enact a standalone AI-in-arbitration statute, amend the existing Act, or rely on guidelines issued by arbitral institutions or the Arbitration Council of India?

A standalone statute risks obsolescence: AI is evolving quickly enough that detailed rules could be outdated before they take effect. That is a fair concern, but it does not defeat the case for a statutory framework as such, a statute can lay down principles of disclosure, scrutiny, and remediation while leaving technical implementation to sub-regulation.

The more practical route is to amend the Arbitration and Conciliation Act, 1996 through the Draft Bill already under consideration. The Draft Bill already contains significant structural amendments; adding AI disclosure provisions and an additional Section 34 ground would not require restructuring the Bill, only extending it.