APPELLATE ARBITRATION IN INDIA: COMPARING WITH GLOBAL PERSPECTIVES

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ABSTRACT

Arbitration is characterised by party autonomy, confidentiality, and the finality of awards, with judicial review remaining broadly restricted. Yet in India, judicial intervention and the growing complexity of disputes have revealed deficiencies in error-correction and weakened the legitimacy of the arbitral process. This paper examines India's Draft Arbitration and Conciliation (Amendment) Bill, 2024, which for the first time proposes the creation of Appellate Arbitral Tribunals (AATs) under Section 34A, thereby institutionalising a statutory two-tier arbitral framework.

The novelty of this development lies in shifting the corrective function from courts to specialised arbitral forums, a move distinct from both the judicial avenue to set aside under Section 34 and the contractual two-tier mechanisms upheld in *Centrotrade v. Hindustan Copper Ltd.*. Contemporary literature has explored contractual models of arbitral appeals, with little scholarship on statutory arbitral appellate mechanisms, leaving an important gap in understanding how legislated error-correction may reshape arbitral practice. This is due to the speculative nature of only a proposed amendment. This paper addresses that gap by analysing Section 34A as a doctrinal shift that codifies appellate arbitration as a systemic feature, confined to grounds such as fraud, bias, excess of jurisdiction, and public policy.

Through comparative insights from the U.S., U.K., and Singapore, the paper situates India's reform within global debates on the tension between finality and correctness. It argues that AATs represent a novel institutional experiment, with the potential to enhance coherence and predictability while risking replication of litigation's inefficiencies if not procedurally disciplined.

Keywords: Arbitration, Appellate Arbitral Tribunals, Section 34A, Arbitration and Conciliation Act 1996, Draft Arbitration Bill 2024, judicial review

1. Introduction

1.1 Arbitration and Its Distinctiveness

Arbitration, a prominent form of alternative dispute resolution (ADR), allows parties to resolve their disputes, before a neutral tribunal.[1] Unlike mediation, arbitration is adjudicatory, but remains a creature of contract, rooted in consent, and away from the public eye.[2] Its enduring appeal lies in its enshrined principles of party autonomy, confidentiality, and the choice of arbitrators by the parties, advantages not usually available in the realm of litigation.[3]

Historically, arbitration receives praise for efficiency and flexibility, though a rising tide of formalism has blurred its distinctiveness, leading some to describe it as "lit-arbigation."[4] A crucial difference between arbitration and litigation remains the narrower scope for appeals, which effectively places a hindrance on arbitration's capacity to create precedent and correct errors in awards.

1.2 UNCITRAL Model Law and India's Alignment

The UNCITRAL Model Law (1985, amended 2006)[5] and the New York Convention (1958)[6] effectively standardised arbitration across the globe by restricting the judiciary's capacity to interfere to narrow grounds, ensuring a more robust and self-sufficient procedure rooted in the parties' desire to keep it out of court. India's Arbitration and Conciliation Act 1996[7], the present framework governing Indian Arbitration today, sought to align domestic practice with

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[1] *Journal on Arbitration and Allied Fields* (2025) 1 J Arb & Allied Fields 1 <https://journal-arb.org/\> accessed 30 September 2025
Queen Mary University of London, *2025 International Arbitration Survey* (2025) <https://arbitration.qmul.ac.uk/\> accessed 30 September 2025
[2] Queen Mary University of London, *2025 International Arbitration Survey* (2025) <https://arbitration.qmul.ac.uk/\> accessed 30 September 2025
[3] Aashesh Singh and Swarna Sengupta, 'Second Bite at the Arbitration Apple' (2018) *IndiaCorpLaw Blog* <https://indiacorplaw.in/\> accessed 30 September 2025
N Teramura, 'Confidentiality and Privacy of Arbitration in the Digital Era' (2024) 40(3) *Arbitration Journal* 277 <https://academic.oup.com/arbitration/article/40/3/277/7716003\> accessed 30 September 2025
[4] Aashesh Singh and Swarna Sengupta, 'Second Bite at the Arbitration Apple' (2018) *IndiaCorpLaw Blog* <https://indiacorplaw.in/\> accessed 30 September 2025
[5] UNCITRAL, *Draft Provisions on an Appellate Mechanism* (2 September 2023) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/draft_provisions_on_an_appellate_mechanism_sept.2023.pdf\> accessed 30 September 2025
[6] AJ van den Berg, 'Appeal Mechanism for ISDS Awards' (2019) <https://www.newyorkconvention.org/media/uploads/pdf/1/1/113_isds-and-new-york-and-icsid-conventions-21-nov-2019.pdf\> accessed 30 September 2025
[7] Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

international norms and to promote arbitration through institutions.

Yet India's alignment has been partial. Insistence by the court on stamp requirements for arbitration clauses, despite recognition of the separability doctrine, creates problems and diverges from the more flexible approaches in jurisdictions such as the UK and US, where procedural defects in the initial contract do not affect the enforceability of the arbitration agreement. By contrast, India's adoption of Kompetenz-Kompetenz reflects conformity with international best practice by affirming arbitral autonomy and curbing premature judicial intervention.[8]

1.3 Contemporary Relevance of Arbitration

Arbitration remains the preferred mechanism for complex commercial and cross-border disputes because it affords parties confidentiality, neutrality, and the option to appoint arbitrators actually possessing relevant experience in the field.[9] While initially promoted as a faster and cheaper alternative to courts, its current usage in high-value disputes has seen rising costs and delays, raising doubts about its efficiency.

The scope of arbitrability has also expanded. Competition and antitrust disputes, once considered non-arbitrable, are increasingly recognised as suitable for arbitration, particularly after the *Mitsubishi Motors* decision[10]. However, in consumer and employment contexts, arbitration remains controversial: critics highlight risks of unequal bargaining power, and Indian courts have often held such disputes to be non-arbitrable.

1.4 Objective: Appellate Arbitration under India's Draft Bill 2024

The Draft Arbitration and Conciliation (Amendment) Bill, 2024 marks a significant moment in India's arbitration journey by proposing the creation of Appellate Arbitral Tribunals (AATs) through a new Section 34A. This move signals a shift towards institutionalizing multi-tiered arbitration—an approach earlier upheld by the Supreme Court in *Centrotrade v. Hindustan*

[8] Neil Modi, 'The Rule of Competence-Competence' (2019) *Arbitration Law Review* <https://arbitrationlawreview.org/\> accessed 30 September 2025

[9] Aashesh Singh and Swarna Sengupta, 'Second Bite at the Arbitration Apple' (2018) *IndiaCorpLaw Blog* <https://indiacorplaw.in/\> accessed 30 September 2025

N Teramura, 'Confidentiality and Privacy of Arbitration in the Digital Era' (2024) 40(3) *Arbitration Journal* 277 <https://academic.oup.com/arbitration/article/40/3/277/7716003\> accessed 30 September 2025

[10] Jon O Shimabukuro and Jennifer A Staman, *Mandatory Arbitration and the FAA* (Congressional Research Service, 2017) <https://crsreports.congress.gov/\> accessed 30 September 2025

Copper Ltd[11]. The proposal reflects a broader policy concern: how to ensure arbitral awards are not only final and binding but also sufficiently reliable and coherent to inspire confidence in users of the system.

The case for appellate arbitration rests on its promise to correct errors that may otherwise go unaddressed[12], to bring greater consistency in quality of awards[13], and to ease the ever-increasing burden on the courts. Supporters argue that the availability of a structured appellate mechanism could properly bolster faith in arbitral outcomes, particularly in high-value disputes where accuracy and predictability matter most.

At the same time, this reform raises difficult questions. Arbitration's defining strengths, namely its finality, efficiency, and cost-effectiveness, are placed at risk if the appellate stage devolves into a mirror image of litigation. The current draft reveals gaps that heighten these concerns: the absence of fixed limitation periods for filing appeals, the exclusion of ad hoc arbitrations despite their prevalence in India, and the possibility of institutional bias in the appointment of appellate panels.[14] There is also the danger that parties may use the appeal mechanism tactically, filing frivolous challenges to delay enforcement.[15]

Comparative experience illustrates the complexity of this balancing act. In the United States, the American Arbitration Association and ICDR offer appellate arbitration as an optional feature[16]; the United Kingdom permits limited appeals on questions of law under the Arbitration Act 1996, a position it has retained even after recent reforms in 2025[17]; and Singapore, once firmly opposed to arbitral appeals, has begun consultations on the subject[18]. These views highlight that appellate arbitration is not a universally accepted or rejected

[11] *Centrotrade Minerals and Metals Inc v Hindustan Copper Ltd* (2006) 11 SCC 245 (SC)
[12] William W Park, 'Arbitral Awards and Judicial Review' (2020) 36(2) *Arbitration International* 123
[13] Michael Hwang, 'Ensuring Consistency in Arbitral Awards' (2019) *Asian International Arbitration Journal* 15
[14] Susan Franck, 'The Role of Arbitration Institutions' (2009) 50 *Virginia J Intl L* 977
[15] Albert Jan van den Berg, *The New York Arbitration Convention of 1958* (Kluwer Law International 1981)
[16] AAA, *Optional Appellate Arbitration Rules* (2021) <https://www.adr.org/\> accessed 30 September 2025
ICDR International Dispute Resolution Procedures (2021) <https://www.icdr.org/\> accessed 30 September 2025
[17] Ministry of Justice (UK), *Draft Arbitration Bill 2024* (2024) <https://www.gov.uk/government/publications/arbitration-bill\> accessed 30 September 2025
Nihareeka Ghadage and Soham Bhagwat, 'Draft Arbitration Bill 2024: A Closer Look at Appellate Tribunals' (2024) *IBC Laws* <https://ibclaw.in/\> accessed 30 September 2025
[18] Singapore International Arbitration Centre, *Annual Report 2023* (2024) <https://siac.org.sg/\> accessed 30 September 2025

concept, but now a contested experiment across various jurisdictions.

Against this backdrop, the central question for India is whether it can design a robust appellate framework that provides actual error correction beyond mere enhancement on reasoning or grammar, and enhances its contribution to creating law without recreating the very inefficiencies of litigation that arbitration was hailed to avoid. This inquiry forms the core objective of the present paper.

2. Existing Framework in India

2.1 Section 34: A Setting Aside Mechanism, Not an Appeal

Indian arbitration law is built on the premise that arbitral awards are final and binding. Unlike litigation, there is no inherent right of appeal on the merits. Instead, Section 34 of the Arbitration and Conciliation Act, 1996 provides a narrow "setting aside" mechanism.[19] The grounds for judicial intervention are deliberately circumscribed, limited to situations where the integrity of the process has been compromised, such as cases of fraud or corruption in procuring the award[20], bias or misconduct on the part of the tribunal[21], denial of a fair hearing, or excess of authority. Awards may also be set aside where the dispute itself is non-arbitrable under Indian law[22] or where enforcement would offend public policy[23].

The public policy exception has long been the most contentious of these grounds. In ONGC v. Saw Pipes Ltd.[24], the Supreme Court expanded its meaning to include "patent illegality," effectively allowing courts to revisit the substantive correctness of awards. This broadened interpretation drew criticism for undermining finality and encouraging judicial interference. The 2015 amendments attempted to recalibrate the balance by confining "public policy" to violations of fundamental notions of justice and morality, while retaining "patent illegality" as a ground only for purely domestic awards.

[19] Arbitration and Conciliation Act 1996, s 34
[20] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705 (SC)
[21] Arbitration and Conciliation Act 1996, s 12
[22] *Booz Allen and Hamilton Inc v SBI Home Finance Ltd* (2011) 5 SCC 532 (SC)
[23] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705 (SC)
Associate Builders v Delhi Development Authority (2015) 3 SCC 49 (SC)
[24] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705 (SC)

2.2 Sections 32 and 35: Termination and Finality of Awards

If Section 34 provides a safety valve for error correction, Sections 32 and 35 underscore the countervailing principle of finality[25]. Under Section 32, an arbitral tribunal becomes functus officio once an award is delivered, with only limited powers of correction or interpretation. Section 35 codifies that awards are binding on the parties, thereby anchoring arbitration's legitimacy as an alternative to the courts. These provisions mirror the UNCITRAL Model Law and reflect a shared international understanding that arbitration must offer closure as well as adjudication.

Yet finality in India is not absolute. In Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd.[26], the Supreme Court clarified that two-tier arbitral systems are indeed permissible: a first-instance award is treated as provisional and merges into the appellate award, which alone is enforceable. The Draft Bill builds on this jurisprudence by formally distinguishing between final and non-final awards, ensuring that enforcement is stayed while an arbitral appeal is pending. This approach aims to bring harmony between processes and prevent untimely and premature enforcement.

2.3 Current Indian Position: Finality with Limited Judicial Scrutiny

Taken together, Sections 34, 32, and 35 illustrate India's attempt to balance error correction with finality. The dominant principle remains presumptive finality, subject to narrowly confined grounds for judicial interference. This is consistent with the New York Convention's global framework, which favours enforcement and restricts judicial review.[27]

However, as it stands, the Indian arbitration landscape remains a close imitation of the new York convention, balancing the principles within without a perfect, concrete adaptation to the Indian legal system, owing to Indian courts' interpretation of the foreign terms as separated parallels rather than direct functional equivalents[28]

[25] Arbitration and Conciliation Act 1996, ss 32, 35
[26] *Centrotrade Minerals and Metals Inc v Hindustan Copper Ltd* (2006) 11 SCC 245 (SC)
[27] New York Convention, Art III, incorporated into Arbitration and Conciliation Act 1996 Pt II
[28] *State of U.P. v Raj Veer Singh* (2024) *IBC Laws* report <https://ibclaw.in/state-of-u-p-and-ors-vs-shri-raj-veer-singh-allahabad-high-court/\> accessed 30 September 2025

3. The Draft Arbitration Bill, 2024

3.1 Introduction of Section 34A: Scope, Language, and Purpose

The Draft Arbitration and Conciliation (Amendment) Bill, 2024 introduces Section 34A, establishing Appellate Arbitral Tribunals (AATs). This development marks a significant recalibration of India's arbitral framework by formalising a two-tier mechanism designed to reduce judicial intervention and strengthen institutional arbitration.

Under the Draft Bill, arbitral institutions may constitute AATs to hear applications for setting aside awards under Section 34 of the Arbitration and Conciliation Act, 1996.[29] Parties opting for this mechanism effectively transfer the error-correction function from the courts to a specialised arbitral forum. Importantly, the Draft Bill confines appellate review to the existing Section 34 grounds such as fraud, bias, excess of jurisdiction, or contravention of public policy, thereby avoiding a full reconsideration of merits.[30] A residual right of appeal under Section 37 remains, ensuring judicial oversight in exceptional cases.[31]

Yet, Section 34A currently applies only to institutional arbitration, excluding ad hoc proceedings that continue to dominate Indian practice. Critics argue that this exclusion risks creating a fragmented arbitral landscape. Extending Section 34A to ad hoc arbitrations, perhaps conditioned on adoption of institutional rules, could promote uniformity and prevent institutional arbitration from becoming the preserve of well-resourced litigants.

The objectives behind AATs appear fourfold: to ease the caseload of already overburdened courts, to encourage consistency in arbitral jurisprudence, to enhance efficiency through specialised expertise, and to strengthen India's image as an arbitration-friendly jurisdiction.[32]

3.2 Codification of Judicial Trends: Centrotrade and Beyond

Section 34A is not a radical innovation but rather a codification of judicial trends that had already recognised the legitimacy of two-tier arbitration. Codification transforms this patchwork of judicial precedent into statutory clarity. While judicial recognition ensured

[29] Arbitration and Conciliation Act 1996
[30] Arbitration and Conciliation Act 1996, s 34(2)
[31] Arbitration and Conciliation Act 1996, s 37
[32] Ishant Joshi, 'Objectives of the Draft Arbitration Bill' (2024) *LiveLaw* <https://livelaw.in/\> accessed 30 September 2025

doctrinal legitimacy, its case-specific nature left lingering uncertainty. By expressly providing for AATs, the Draft Bill embeds appellate arbitration into the legislative framework, shifting it from a contractual innovation to a systemic feature of Indian arbitration law. In this way, Section 34A seeks to reconcile arbitral finality with the need for limited internal correction, aligning India more closely with comparative jurisdictions where appellate mechanisms are already in use.

3.3 Structure and Constitution of Appellate Arbitral Tribunals

The true test of Section 34A lies not in its statutory recognition but in its institutional design. If the same institution administers both the first-instance and appellate proceedings, the risk of institutional bias becomes real. A statutory mandate requiring an independent and separately constituted appellate panel would go a long way toward preserving neutrality and institutional credibility.

Equally important are the limits of appellate review. By restricting AATs to the narrow grounds under Section 34, the Draft Bill preserves the principle of finality and prevents relitigation on merits. Yet this restriction also curtails party autonomy. Unlike in some jurisdictions, parties cannot contractually expand or narrow the scope of appellate review, reflecting a legislative preference for uniformity over flexibility.

Comparative practice provides useful models. Institutions such as the AAA and ICDR allow appeals to specialised panels with expedited timelines—30 days post-brief in ICDR proceedings[33], three months in the AAA system[34], while JAMS defaults to a three-member structure[35]. These systems show that appellate review can be both efficient and predictable if designed with procedural safeguards such as strict deadlines, page limits, and streamlined submissions.

For India, several operational challenges remain unresolved. First, no limitation period for invoking the AAT has been specified, opening the door to delay and tactical abuse. Second, the relationship between AAT proceedings and Section 29A's twelve-month time limit for rendering awards requires recalibration, lest appellate arbitration undermine the legislative

[33] ICDR, *Article 27 Appeals* (2021) <https://www.icdr.org/\> accessed 30 September 2025
[34] AAA, *Appellate Arbitration Rules* (2021) <https://www.adr.org/\> accessed 30 September 2025
[35] JAMS, *Comprehensive Arbitration Rules & Procedures* (2021) <https://www.jamsadr.com/\> accessed 30 September 2025

emphasis on timeliness. Third, judicial oversight needs careful calibration: unless courts are restricted to exceptional circumstances, the risk of duplicative review will persist. Fourth, ensuring consistency across multiple AATs in interpreting notoriously fluid concepts like "public policy" will require statutory or institutional guidance. Finally, accessibility is a real concern: without cost-regulation measures, appellate arbitration may become prohibitively expensive, excluding smaller parties and consolidating its use among large commercial players.[36]

4. Comparative International Perspectives

4.1 United States

The Federal Arbitration Act (FAA) sharply limits judicial review to narrow grounds, including fraud, corruption, or excess of powers.[37] To address concerns over factual and legal accuracy, arbitral institutions have developed optional appellate mechanisms that operate entirely within the arbitral framework.

4.1.1 JAMS Optional Arbitration Appeal Procedure

JAMS allows parties to appeal arbitral awards before a panel of three neutral arbitrators (or one if mutually agreed), reviewing both legal and evidentiary errors. Designed for efficiency, the process typically concludes within three months, with the appellate award replacing the original for enforcement.[38] Section 34A reflects this institutional innovation, establishing a formal appellate forum within arbitration, but it restricts review to statutory grounds such as fraud, bias, or public policy, prioritising finality over substantive reconsideration.

4.1.2 AAA Appellate Arbitration Rules

The American Arbitration Association (AAA) introduced Optional Appellate Arbitration Rules in 2013, requiring appeals to be filed within 30 days and heard by a three-member panel with appellate experience. The panel reviews "material and prejudicial" errors of law and "clearly erroneous" factual findings, typically delivering decisions within three months.[39] Similarly, the

[36] Queen Mary University of London, *2021 Costs of Arbitration Survey* (2021) <https://arbitration.qmul.ac.uk/\> accessed 30 September 2025
[37] Federal Arbitration Act 9 USC (1925)
[38] JAMS, *About JAMS* (2025) <https://www.jamsadr.com/\> accessed 30 September 2025
[39] AAA, *Optional Appellate Arbitration Rules* (2021) <https://www.adr.org/\> accessed 30 September 2025

International Centre for Dispute Resolution (ICDR) applies these standards in international arbitration, rendering decisions within 30–60 days.[40] Section 34A aligns with these models in institutionalising appellate review but remains more restrictive, confining scrutiny to procedural and jurisdictional defects rather than broad law and fact errors.

4.2 Singapore

Singapore has become a leading arbitral hub by emphasising efficiency and finality. The SIAC Rules render awards final and binding, explicitly precluding appeals[41], while courts intervene only on Model Law grounds, such as jurisdictional excess or violations of public policy. Proposed reforms would allow parties to "opt in" to appellate review on legal questions.[42] Section 34A diverges from Singapore's default finality by creating a formal appellate tier covering procedural and jurisdictional defects, reflecting a more interventionist approach focused on legitimacy.

4.3 United Kingdom

The Arbitration Act 1996 permits appeals on points of English law only when a tribunal's decision is "obviously wrong" or of general public importance.[43] Courts exercise considerable restraint, preserving arbitral autonomy. Section 34A similarly aims to correct errors within the arbitral framework, but it confines review to procedural irregularities, embedding the appellate mechanism within arbitration itself rather than leaving it to the judiciary. This reflects India's emphasis on efficiency and uniformity over doctrinal development.

4.4 Other Models

The ICSID Convention limits annulment to procedural defects such as corruption or manifest excess of powers, excluding substantive review. Proposed ICSID appeals facilities were abandoned to safeguard finality.[44] Section 34A mirrors this philosophy but institutionalises appellate review, creating a structured and interventionist framework. The UNCITRAL Model Law similarly restricts review to procedural grounds, excluding errors of law or fact. While parties could theoretically adopt a second-tier arbitral process, such practices are rare. India's

[40] ICDR, 'Appellate Procedures Explained' (2022) <https://www.icdr.org/\> accessed 30 September 2025
[41] SIAC, *Arbitration Rules 2016* (2016) <https://siac.org.sg/\> accessed 30 September 2025
[42] SIAC, *Annual Report 2023* (2024) <https://siac.org.sg/\> accessed 30 September 2025
[43] Arbitration Act 1996 (UK), s 69
[44] International Centre for Settlement of Investment Disputes, *ICSID Convention* (1965)

Draft Bill departs from this model by making appellate tribunals a default feature, emphasising legitimacy and structured error correction over procedural simplicity.

5. The Case for Appellate Arbitration

5.1 Correcting Manifest Errors and Building Precedent Value

The most immediate justification for an appellate tier is the correction of manifest errors. Even where arbitrators possess technical expertise, mistakes of law or fact are inevitable. In high-value disputes, such errors can produce disproportionate consequences, leaving parties with limited recourse under a strictly final system. Comparative experience such as the CPR and AAA jurisdictions demonstrate that appellate review serves as a necessary safeguard in this regard.

Beyond error correction, appellate review plays an important role in fostering coherence.[45] Although arbitral awards are confidential and non-precedential, the reasoning of appellate panels, particularly when anonymised or published in redacted form, can help shape consistent practices across arbitral institutions and industries. This dynamic is already visible in the context of international investment arbitration, where annulment and review decisions under ICSID, while limited in scope, are carefully studied as persuasive authority. For India, the introduction of AATs thus holds the promise not merely of preventing aberrant awards but also of gradually building a body of arbitral jurisprudence that enhances predictability and reinforces institutional credibility.

5.2 Promoting Consistency, Quality, and Arbitrator Accountability

An appellate mechanism also promotes consistency in arbitral reasoning and strengthens the overall quality of awards.[46] By encouraging coherence in the application of legal norms, appellate review reinforces arbitration's legitimacy in transnational commerce, where predictability is critical to commercial decision-making. For India, the creation of AATs may carry the indirect benefit of improving the quality of first-instance awards. Arbitrators, conscious of the possibility of appellate scrutiny, are incentivised to produce more rigorous and carefully reasoned decisions. In this sense, appellate review does not merely operate

[45] Catherine Rogers, 'Appellate Review of Arbitration Awards' (2016) 30(2) *Arbitration International* 253
[46] Michael Pryles, 'The Quality of Arbitral Awards' (2013) 29(1) *Arbitration International* 1

retrospectively but also prospectively, raising the level of arbitral practice overall.[47]

5.3 Addressing Complexity in High-Stakes Commercial Disputes

In complex and high-value disputes, accuracy and fairness often outweigh the value of immediate finality. Parties engaged in technically sophisticated or financially significant matters may view rigid finality as a liability, particularly where litigation offers multi-tier appeals as a safeguard against error. Appellate arbitration provides a means of reconciling these concerns without sacrificing efficiency.

Institutional models illustrate that review need not descend into delay. The AAA and ICDR procedures, for example, are designed to conclude within a few months, ensuring that appellate review remains time-bound. Section 34A reflects this philosophy by embedding appellate review within arbitration rather than through prolonged judicial scrutiny. For India, this innovation positions arbitration as a more attractive alternative in so-called "mega-disputes," where accuracy is paramount and parties require assurance that errors will not be left unaddressed.[48]

5.4 Safeguarding Confidentiality While Allowing Substantive Review

Confidentiality remains one of arbitration's most enduring advantages over litigation[49], protecting sensitive commercial disputes from public exposure. An appellate mechanism, if properly designed, can preserve this confidentiality while introducing a meaningful avenue for substantive review. Institutions such as CPR and JAMS have demonstrated that confidentiality can be maintained throughout appellate proceedings, avoiding the risks of disclosure that accompany judicial intervention.

For India, embedding appellate review within the arbitral process offers a similar advantage, allowing errors to be corrected without compromising privacy. Yet confidentiality cannot always be absolute. In disputes involving state entities or issues of public interest, some degree of transparency may be necessary to maintain legitimacy. One possible solution is the anonymised publication of appellate awards, a practice already adopted by the ICC in selected

[47] Law Commission of India, *Report No 246 on Amendments to the Arbitration and Conciliation Act* (2014)
[48] International Bar Association, *Report on Complex Arbitrations* (2019)
[49] N Teramura, 'Confidentiality and Privacy of Arbitration in the Digital Era' (2024) 40(3) *Arbitration Journal* 277 <https://academic.oup.com/arbitration/article/40/3/277/7716003\> accessed 30 September 2025

cases. Adopting such a calibrated approach could enhance legitimacy while preserving arbitration's confidential character.

6. The Case Against Appellate Arbitration

6.1 Judicialization versus Procedural Economy in Appellate Arbitration

Perhaps the most frequently voiced concern is the danger of judicialization. Arbitration, unlike litigation, is valued for its efficiency and flexibility. Yet the creation of an appellate tier risks importing litigation-style practices into arbitral proceedings extended pleadings, multiple procedural layers, and prolonged timelines.[50] In complex commercial disputes, where hearings already resemble trials with discovery, cross-examination, and voluminous pleadings, the addition of appellate review may turn arbitration into the very phenomenon it sought to escape: litigation in disguise.[51]

Empirical studies suggest that inefficiency in arbitration arises from adversarial tactics, weak case management, and delays in rendering awards. The Draft Bill, by formalising a two-tier process, may exacerbate these problems rather than resolve them. Comparative practice underscores this risk.

6.2 Forum Shopping, Frivolous Appeals, and the Need for Gatekeeping Mechanisms

A second challenge is the risk of forum shopping and the proliferation of frivolous appeals. The so-called "poor loser syndrome" often manifests in parties exploiting every procedural opportunity to delay enforcement.[52] Unless the Draft Bill incorporates robust filters, parallel recourse could lead to costly and strategically manipulative behaviour, undermining confidence in the arbitral process.

6.3 Structural Power Asymmetries and the Accessibility of Appellate Review

Another dimension of concern is the effect of appellate arbitration on weaker parties, particularly in contexts of adhesive contracts, consumer disputes, or public procurement

[50] Burdens of litigation avoided by arbitration
[51] Arbitration becoming litigation
[52] Sundaresh Menon, 'Some Cautionary Notes for an Age of Opportunity: Arbitration in Asia' (2015) *Journal of International Arbitration* 23
William W Park, 'Arbitration's Protean Nature: The Value of Rules and the Risks of Poor Losers' (2017) 33(2) *Arbitration International* 213

arrangements. More powerful entities, whether corporations or state actors, may insist on appellate clauses, strategically deterring smaller contractors or MSMEs from pursuing claims due to the costs and delays of an additional procedural layer.[53] This dynamic parallels debates in the United States, where both AAA and ICDR prohibit appellate arbitration in consumer disputes to shield vulnerable parties from being overburdened.

In India, similar risks loom large. Arbitration has become a preferred mechanism in infrastructure and procurement contracts, but the introduction of appellate review may disproportionately burden smaller players with limited resources. Judicial sensitivity to such asymmetries has already been reflected in Indian jurisprudence, such as the Supreme Court's invalidation of unilateral appointment clauses dominated by PSUs.

6.4 The Doctrinal Tension between Finality and Correctness in Arbitration

Appellate arbitration also reopens the classic doctrinal tension between finality and correctness. Arbitration has long been distinguished by the finality of its awards, as enshrined in Section 35 of the 1996 Act[54], which provides that awards are binding subject only to limited challenges under Section 34. By introducing a structured appellate process, the Draft Bill shifts this balance, prioritising correctness over closure.

This shift has both defenders and critics. Proponents argue that in high-stakes disputes, accuracy must take precedence, since a manifestly unjust award undermines confidence in arbitration. Opponents counter that commercial parties often prefer certainty, even if imperfect, to prolonged litigation-style review. Singapore, by contrast, traditionally prohibits merits review, though recent consultations suggest it may allow opt-in appeals on questions of law, preserving party autonomy.

6.5 Comparative Lessons on Balancing Finality with Error-Correction

Finally, comparative models provide valuable lessons on how to balance finality with error correction. Singapore's SIAC regime has long prioritised finality, permitting only jurisdictional and procedural challenges, yet even it is now considering opt-in appeals on questions of law.

[53] Lucy Greenwood, 'Equality of Arms in International Arbitration: Who is Responsible?' (2019) 35(3) *Arbitration International* 379
Stavros Brekoulakis, 'Third Parties in International Arbitration' (2009) 21(1) *ICSID Review* 1
[54] Arbitration and Conciliation Act 1996, s 35

The ICC adopts a different model, employing internal scrutiny of draft awards by the ICC Court to ensure quality control without formal appellate review. The U.K., through Section 69 of the Arbitration Act 1996, offers a narrowly tailored right of appeal on errors of law of public importance, which has been widely recognised as striking a pragmatic balance.[55]

7. Towards a Middle Path

7.1 Defining the Permissible Scope of Appellate Review

The first step towards ensuring balance lies in strictly delineating the grounds on which appeals may be entertained. If Section 34A were to open the door to wholesale reconsideration of merits, arbitration in India would risk collapsing into a form of "second-tier litigation." The law should codify a hierarchy of reviewable grounds, restricted to serious legal errors, gross misapprehensions of fact, and violations of mandatory law or public policy under Section 34(2). Any expansion beyond these categories would dilute arbitration's value.

7.2 Reconciling Party Autonomy with Cost-Control

A second pillar of design is reconciling appellate review with party autonomy, the cornerstone of arbitration. By allowing parties to opt in to appellate arbitration, the Draft Bill would ensure that review mechanisms reflect commercial reality rather than legislative compulsion. Yet, autonomy without safeguards risks encouraging dilatory tactics. International institutions have responded to this challenge by embedding cost-allocation mechanisms.[56] CPR, for example, requires unsuccessful appellants to reimburse the other party's legal and tribunal costs, thereby deterring vexatious appeals. Other measures, such as escrow deposits, security for costs, monetary thresholds for appealability, and strict filing deadlines, serve as effective deterrents against abuse.

7.3 Preserving Narrow Judicial Oversight

Finally, any two-tier arbitral framework must be situated within the broader constitutional role of courts. Even with AATs as the primary forum for error correction, judicial oversight cannot

[55] Arbitration Act 1996 (UK), s 69

[56] International Institute for Conflict Prevention and Resolution (CPR), *Rules for Administered Arbitration of International Disputes* (2021) <https://www.cpradr.org/\>
Felix Dasser, 'Cost Allocation in International Arbitration: Escrow Accounts and Security for Costs' (2018) *Journal of International Arbitration* 35(3) 345

be entirely displaced. The real challenge lies in calibrating this oversight to ensure fairness without encouraging excessive intervention. Historically, Indian courts adopted a broad interpretation of "public policy," at times conflating it with errors of law.[57] This expansive approach was later curtailed in line with international practice, but divergences remain, as illustrated by the Supreme Court's intervention in DMRC v. DAMEPL[58], where curative jurisdiction was invoked to revisit an arbitral award.

8. Conclusion

The debate on appellate arbitration centres on balancing efficiency with legitimacy. Arbitration is valued for its speed, cost-effectiveness, and finality, but excessive finality risks unjust awards, while broad appeals can erode its advantages. A carefully designed, opt-in appellate system—limited to serious errors, bound by strict timelines, and with cost penalties for frivolous appeals—can correct mistakes without replicating litigation.

India's Draft Arbitration and Conciliation Amendment Bill, 2024, introduces Appellate Arbitral Tribunals (AATs) to shift error correction from courts to arbitral forums, potentially enhancing confidence and reducing judicial interference. Yet, concerns remain: appellate review must be narrowly scoped, institutional independence ensured, and procedural clarity achieved to prevent forum shopping and enforcement conflicts. Cost safeguards—like capped fees and monetary thresholds—are vital to prevent misuse.

Comparative models offer guidance. The UK allows limited appeals to refine legal principles, Singapore prioritises party autonomy, and US institutions show how internal appellate systems can work efficiently. India should adopt an exceptional, procedurally disciplined appellate mechanism with transparent standards, harmonised grounds of review, and published appellate decisions. This approach can balance legitimacy and efficiency while building a consistent body of commercial arbitral jurisprudence.

[57] Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) ch 26
Abhinav Bhushan, 'Public Policy and Enforcement of Awards: Reading *ONGC v Saw Pipes* in Context' (2019) *Kluwer Arbitration Blog* <http://arbitrationblog.kluwerarbitration.com/\>
[58] *Delhi Airport Metro Express Pvt Ltd v Delhi Metro Rail Corporation Ltd* (2021) 12 SCC 1 (SC).