
THE LADDER OF APPEALS: SECTION 34 REVIEW AND THE EROSION OF ARBITRAL FINALITY IN INDIA

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ABSTRACT

This paper critically examines how the Indian legal system deals with this paradox at the post-award stage. Firstly, this paper argues that Indian courts have converted what was formulated to be a narrow supervisory channel into a near-appellate mechanism via an expansive interpretation of the grounds for setting aside awards under Section 34 of the Act, compounded by the appellate route under Section 37. This in turn designates arbitral awards closer to the ‘first step on a ladder of appeals’ than to the final decisions they are intended to be. Thereafter the paper examines whether the proposed Appellate Arbitral Tribunal envisaged under Section 34A of the Arbitration and Conciliation (Amendment) Bill, 2024 advances institutional reforms which genuinely reforms the post-award framework.

Introduction: The Paradox Stated

Arbitration rests upon a foundational promise, that parties, when choosing to resolve their disputes outside the court system, will receive a final, binding and enforceable decision without the uncertainty and costs of appellate litigation. Such a promise is embedded within the framework of both the Arbitration and Conciliation Act, 1996 (“**The Act**”)¹ and the international instruments surrounding. Such position is equally reflected in the writings of leading scholarship, as Redfern and Hunter observe that “*Parties go to the trouble and expense of international arbitration in the expectation that the award will be final and binding upon them*”.²

Yet such promise is heavily complicated by a structural paradox. Arbitration, despite its formal independence from the State judiciary, is incapable of enforcing its own awards. As stated by Redfern and Hunter, that “*An arbitral tribunal has no role to play in the enforcement of its decision. When an arbitral tribunal has made a final award, its work is usually done.*”³ The consequence of the same is that, at its most critical juncture, arbitration is wholly dependent upon the coercive machinery of the very courts from which it seeks to escape from.

Such paradox is deemed as fundamental by Redfern and Hunter, that “*National courts could exist without arbitration, but arbitration could not exist without national courts.*”⁴ The relationship, they caution, “*is not a partnership of equals.*”⁵ The 246th Law Commission Report acknowledged the same dynamic, stating that “*the paradox of arbitration is that it seeks the co-operation of the very public authorities from which it wants to free itself.*”⁶

The Promise of Finality in Arbitration: Statutory and International Foundations

Section 35⁷ of the Act declares an arbitral award final and binding, while Section 5⁸ restricts judicial intervention to those situations expressly contemplated by the statute. These provisions

¹ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

² Nigel Blackaby et al., Redfern and Hunter on International Arbitration ¶ 9.01 (7th ed. 2023).

³ Id. ¶ 11.02.

⁴ Id. ¶ 7.03.

⁵ Id.

⁶ Law Commission of India, Amendments to the Arbitration and Conciliation Act, 1996, Rep. No. 246, ¶ 19 (Aug. 2014).

⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 35, India Code.

⁸ Id. § 5.

reflect the framework of the UNCITRAL Model Law,⁹ whose Article 5¹⁰ embodies the same principle, thereby indicating that national courts act in support of, and are not a substitute for the arbitral process. Furthermore, Article V of the New York Convention, 1958,¹¹ provides for the refusal of the enforcement of a foreign award on exhaustive, narrowly construed grounds. Articles 34¹² and 36¹³ of the Model Law replicate this structure for setting aside and non-enforcement respectively.

The philosophy behind this framework reflects a normative commitment that, “*By choosing arbitration, parties choose, in principle, finality. An arbitral award is not intended to be the first step on a ladder of appeals*”¹⁴ as stated by Redfern and Hunter. Gary Born, writing in the leading international treatise, states that the appropriate standard of judicial review is an inquiry into whether the arbitrator exceeded the parties grant of authority or violated basic procedural fairness not whether the award is factually or legally erroneous.¹⁵ The above position was also reiterated in *K. Sugumar v Hindustan Petroleum Corporation Limited*.¹⁶

This has a huge impact from the perspective of commercial users of arbitration, as speed and predictability are the primary attractions for arbitration for huge corporates. However, the commercial benefit derived from opting arbitration over litigation diminishes, if every award is inevitably challenged in litigation.

Indian law relatively embraces this model. The Supreme Court in *Renusagar Power Co Ltd v General Electric Co*¹⁷ initially held that ‘public policy of India’ as a ground for refusing enforcement under the Foreign Awards Act, 1961¹⁸ should be narrowly construed. The Act’s¹⁹ limited grounds namely procedural deficiency, incapacity, invalidity of the agreement, excess of jurisdiction, and public policy, was designed to implement this narrow supervisory vision.

⁹ United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (June 21, 1985), as amended by U.N. Doc. A/61/17, annex I (July 19, 2006).

¹⁰ Id. art. 5.

¹¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10, 1958, 330 U.N.T.S. 3.

¹² UNCITRAL Model Law, supra note 9, art. 34.

¹³ Id. art. 36.

¹⁴ Blackaby et al., supra note 2, ¶ 10.02.

¹⁵ Gary B. Born, International Commercial Arbitration (3d ed. 2021); Samruddhi Shastri, *Judicial Review under Section 34 of the Arbitration & Conciliation Act, 1996: An Analysis of the Courts' Power to Modify Arbitral Awards*, 4 CMR U. J. Disp. Settlement & Arb. 114, 121 (2025).

¹⁶ *K. Sugumar v. Hindustan Petroleum Corp. Ltd.*, (2020) 12 S.C.C. 539 (India).

¹⁷ *Renusagar Power Co. v. General Electric Co.*, A.I.R. 1994 S.C. 860 (India).

¹⁸ Foreign Awards (Recognition and Enforcement) Act, No. 45 of 1961, India Code (1961).

¹⁹ Id.

The question is whether the subsequent development of Indian jurisprudence has remained faithful to it.

The Erosion of Finality: Section 34 and the Expanding Grounds of Review

Saw Pipes and the Birth of Patent Illegality

The foundational expansion came with the Supreme Court's decision in *ONGC Ltd v Saw Pipes Ltd.*²⁰ The Court held²¹ that an award violated public policy not only when it offended the interest of India or basic notions of justice and morality, but also when it was patently illegal, meaning where an illegality was *prima facie* existing on the face of the award. This decision²² had profound consequences practically. Courts were now empowered to examine not merely whether an award offended fundamental public norm, but whether the arbitrator correctly applied the substantive law on the record. This was, in effect, a jurisdiction to correct legal error, which is the very function reserved to appellate courts.

Doctrinally, *Saw Pipes*²³ did not merely widen the supervisory jurisdiction, but it did the same without providing a proper criteria for differentiating permissible review of fundamental illegality from impermissible appellate scrutiny of the merits of the case.

Owing to such absence of a criteria, High Courts exercising original jurisdiction under Section 34,²⁴ and Division Benches adjudicating Section 37 appeals,²⁵ treated *Saw Pipes*²⁶ as a precedent to substitute their legal assessment of the case at hand, instead of that of the arbitrator. This had the results of courts routinely adjudicating Section 34²⁷ applications, by relitigating the substantive merits of the dispute, thereby defeating the whole speedy adjudication process intended through arbitration.

Associate Builders and the Partial Correction

In *Associate Builders v Delhi Development Authority*,²⁸ Justice Nariman²⁹ scrutinized the

²⁰ *Oil & Natural Gas Corp. Ltd. v. Saw Pipes Ltd.*, A.I.R. 2003 S.C. 2629 (India).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

²⁵ *Id.* § 37.

²⁶ *Saw Pipes*, supra note 20.

²⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

²⁸ *Associate Builders v. Delhi Development Authority*, (2015) 3 S.C.C. 49 (India).

²⁹ *Id.*

permissible scope of Section 34³⁰ review. The judgment³¹ identified the categories of arbitral reasoning that courts might legitimately disturb namely, findings where the arbitrator ignored material evidence going to the root of the matter, findings that were perverse or impossible and reasoning that no reasonable person could accept.

Crucially, Nariman J held³² that an arbitrator is entitled to take a wholly different view from that of the court, and that mere erroneous application of law or faulty appreciation of evidence would not warrant interference. The effectiveness of the above decision³³ was however limited by the absence of legislative backing. Thereby, this principle³⁴ remained vulnerable to erosion owing to inconsistent application by lower courts. Hence *Associate Builders*³⁵ did not, in practice, depart from the *Saw Pipes*³⁶ approach.

Ssangyong, Dyna Technologies, and the Continuing Ambiguity

The Supreme Court's decision in *Ssangyong Engineering and Construction Co Ltd v NHAI*³⁷ represents the most sustained modern attempt in rationalizing the Section 34 framework.³⁸ The court³⁹ struck down a contractual clause restricting the arbitrator's discretion. The court⁴⁰ further explicitly disapproved the expansive *Saw Pipes*⁴¹ standard by confining patent illegality under Section 34(2A)⁴² to only domestic arbitrations. However, the fact that the *Ssangyong*⁴³ decision came over fifteen years after *Saw Pipes*,⁴⁴ indicates how deeply court intervention via Section 34⁴⁵ review is embedded in the institutional culture of Indian courts, and litigation in India.

³⁰ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

³¹ *Associate Builders*, supra note 28.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Saw Pipes*, supra note 20.

³⁷ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 S.C.C. 131

(India).

³⁸ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

³⁹ *Ssangyong*, supra note 37.

⁴⁰ *Id.*

⁴¹ *Saw Pipes*, supra note 20.

⁴² Arbitration and Conciliation Act, No. 26 of 1996, § 34(2A), India Code.

⁴³ *Ssangyong*, supra note 37.

⁴⁴ *Saw Pipes*, supra note 20.

⁴⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

In *Dyna Technologies Pvt Ltd v Crompton Greaves Ltd*,⁴⁶ the Court⁴⁷ reinforced the non-appellate nature of Section 34⁴⁸ review, stating that courts setting aside awards must provide detailed justification and cannot merely interfere because they would have decided the matter differently.

Yet in *Larsen Air Conditioning and Refrigeration Co v Union of India*,⁴⁹ the same court, while formally reaffirming these principles, proceeded to examine the adequacy of the tribunal's treatment of the evidence on record in a manner that is, in substance indistinguishable from court review at the appellate level. The oscillation between these decisions highlights a systemic tension, that theoretically courts accept the limited court review standard, but struggle to practically confine themselves to it.

Section 37: The Ladder Made Literal

The 'ladder of appeals' problem is compounded by the structural framework of the Act⁵⁰ itself. Section 37(1)(a)⁵¹ grants a right of appeal to the Appellate court against an order passed under Section 34.⁵² A further appeal lies to the Supreme Court under Article 136 of the Constitution.⁵³ The result is a post-award framework in which a successful arbitral award can be the subject of three stages of judicial review, namely, the Section 34 application,⁵⁴ the Section 37 appeal,⁵⁵ and the constitutional appeal to the Supreme Court,⁵⁶ before the award is rendered finally enforceable. It is no rhetorical flourish to describe this structure as a ladder. The act is a ladder, which the architects of the Arbitration and Conciliation Act⁵⁷ did not constrain adequately.

The 246th Law Commission Report's observation that Indian arbitration suffers from "*a culture of frequent adjournments where arbitration is treated as secondary by the lawyers*"⁵⁸ applies with equal force to setting aside applications. This leads Section 34⁵⁹ applications,

⁴⁶ *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*, (2019) 20 S.C.C. 1 (India).

⁴⁷ *Id.*

⁴⁸ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁴⁹ *Larsen Air Conditioning & Refrigeration Co. v. Union of India*, (2023) 15 S.C.C. 472 (India).

⁵⁰ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

⁵¹ *Id.* § 37(1)(a).

⁵² *Id.* § 34.

⁵³ India Const. art. 136.

⁵⁴ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁵⁵ *Id.* § 37.

⁵⁶ India Const. art. 136.

⁵⁷ Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).

⁵⁸ Law Commission of India, *supra* note 6, ¶ 15-16.

⁵⁹ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

followed by Section 37⁶⁰ appeals, to become routine instruments of delay, rather than genuinely invoking supervisory jurisdiction.

Enforcement of Foreign Awards: Between Pro-Enforcement and Public Policy

The enforcement of foreign awards under Part II⁶¹ of the Act is somewhat more reassuring. In *Vijay Karia v Prysmian Cavi E Sistemi Srl*,⁶² the Supreme Court⁶³ firmly endorsed the New York Convention's⁶⁴ pro-enforcement framework, reasoning that courts exercising jurisdiction under Section 48⁶⁵ occupy a more narrow space than courts under Section 34,⁶⁶ therefore the public policy exception must be far more narrowly interpreted in the context of foreign awards. The court in *Vijay Karia*,⁶⁷ reasoned that the enforcing state's public policy exception is reserved solely for genuine conflicts with fundamental domestic norms, not for mere errors in interpreting the law or facts by the arbitral tribunal.

Nevertheless, *National Agricultural Cooperative Marketing Federation of India v Alimenta SA*⁶⁸ provided a counter-narrative to the above. There, the Supreme Court⁶⁹ refused enforcement of a foreign award on the basis that exporting without governmental sanction stands violative of Indian export policy.

As Shet observed,⁷⁰ the risk in such cases is that domestic courts overuse public policy as an exception thereby weakening the purpose of arbitration and causing uncertainty, thereby restricting court challenge to arbitral awards only if it clearly violates basic legal or moral principles helps India in aligning with international arbitration standards. This tendency to treat regulatory compliance with India as a component of 'fundamental policy of India', further risks converting a narrow interpretation into an expansive substantive standard, acting contrary to

⁶⁰ Id. § 37.

⁶¹ Id. pt. II.

⁶² *Vijay Karia v. Prysmian Cavi E Sistemi SrL*, (2020) 11 S.C.C. 1 (India).

⁶³ Id.

⁶⁴ New York Convention, supra note 11.

⁶⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 48, India Code.

⁶⁶ Id. § 34.

⁶⁷ *Vijay Karia*, supra note 62.

⁶⁸ *National Agricultural Cooperative Marketing Federation of India Ltd. v. Alimenta SA*, (2020) 19 S.C.C. 260 (India).

⁶⁹ Id.

⁷⁰ Abhishek Shet, *Public Policy as a Ground for Setting Aside Arbitral Award*, 8 Int'l J.L. Mgmt. & Humanities 284, 292 (2025).

the intent of the drafters of the Convention.⁷¹

A Comparative Lens: Singapore and England

The relative desirability of India's approach is rendered weak by a comparison with jurisdictions which successfully maintained the limited-intervention framework. Singapore courts, via the International Arbitration Act,⁷² have developed a doctrine of minimal court intervention treating judicial review as a purely supervisory nature, rather than corrective.⁷³

The Singapore Court of Appeal in *PT Prima International Development v Kempinski Hotels SA* reaffirmed⁷⁴ that the court's function is to support the arbitral process, rather than challenge the same on technical, procedural grounds. As a result of the above, Singapore has become a heavily preferred seat for international commercial arbitration, owing to the finality of the awards rendered there.⁷⁵

In England, the Arbitration Act 1996⁷⁶ creates a graduated review procedure, whose framework is more honest about the trade-offs involved. Section 68⁷⁷ permits challenge to arbitral awards only for serious irregularity. Section 69⁷⁸ allows appeal on a question of law only with leave of court, which is only available where the question substantially affects the parties' rights and the tribunal was *prima facie* wrong.

The House of Lords confirmed⁷⁹ in *Lesotho Highlands Development Authority v Impregilo SpA*, the 1996 Act⁸⁰ was expressly intended to reduce court intervention in arbitration, while dismissing the challenge that the arbitrator exceeded its power in deciding on the currency of an award. Doing so would open the floodgates for challenging arbitral awards, thereby constituting a defect in the machinery of the 1996 Act.⁸¹ The above case depicts how the English model confines court review to a serious threshold, rather than allowing permissible

⁷¹ New York Convention, *supra* note 11.

⁷² International Arbitration Act 1994, (Cap. 143A, 2002 Rev. Ed.) (Sing.).

⁷³ Michael Pyles, *Recent Singapore Decisions on International Arbitration*, 24 Nat'l L. Sch. India Rev. 36, 38 (2012).

⁷⁴ *PT Prima International Development v. Kempinski Hotels SA*, [2012] SGCA 35 (Sing.).

⁷⁵ Pyles, *supra* note 73, at 38.

⁷⁶ Arbitration Act 1996, c. 23 (Eng.).

⁷⁷ *Id.* § 68.

⁷⁸ *Id.* § 69.

⁷⁹ *Lesotho Highlands Development Authority v. Impregilo SpA*, [2005] UKHL 43 (Eng.).

⁸⁰ Arbitration Act 1996, c. 23 (Eng.).

⁸¹ *Id.*

review to be done case-to-case, similar to the Indian approach, therefore, India would benefit from a similar structure.

The Stakeholder Costs of Expanded Judicial Review

An assessment of the post-award framework requires evaluating the interests of all those who participate and depend upon the arbitral process. From the perspective of commercial parties, both domestic and international, the current Indian framework imposes heavy costs. Parties having invested in arbitration, through institutional fees, costs of tribunals and counsel, and the management resources allocated to the proceedings, are expected to face the possibility of re-litigating the substantive dispute via a Section 34⁸² or 37⁸³ application, or via an appeal under Article 136 of the constitution to the Supreme Court,⁸⁴ thereby rendering redundant the commercial benefits accorded to the party winning an arbitral award, owing to such delays.

From the perspective of arbitral tribunals and institutions, the expansive power conferred upon courts under Section 34⁸⁵ depicts that the arbitrator's determinations, even on questions of fact and the evaluation of evidence, are subject to judicial review by courts in a highly comprehensive manner, thereby weakening the institutional legitimacy of arbitration as a dispute resolution mechanism. This also affects the willingness of capable advocates to accept arbitrator appointments owing to the fact that their decisions will be constantly subject to judicial review. It will also reduce the reputation for parties choosing India as an arbitral seat, particularly in context of international commercial arbitration, with parties weighing the reliability of the seat's legal framework.

From the perspective of national courts, the 246th Report⁸⁶ was correct to resist the view that "*judicial intervention is anathema to arbitration.*" Courts serve a legitimate function in policing procedural unfairness, correcting awards violating mandatory public policy norms, and preventing enforcement of awards showing *prima facie* fraud or corruption. The problem is not that courts are exercising supervisory jurisdiction, but the standards for the same are not legally well-defined, causing this supervisory function to exceed its limit and become a quasi-

⁸² Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁸³ Id. § 37.

⁸⁴ India Const. art. 136.

⁸⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁸⁶ Law Commission of India, *supra* note 6, ¶ 19.

appellate one.

The State as a regulatory actor presents another concern. India's union and state governments and their public sector undertakings are among the largest parties to domestic arbitration. The incentive of governmental entities is highly distinct systematically from that of private commercial parties. A PSU losing an arbitral award faces no personal cost from filing a Section 34⁸⁷ challenge, while the individual officer accepting an adverse award without challenge faces disastrous consequences. Such asymmetry leads to over-use of Section 34⁸⁸ as a delay tactic for enforcement, which must be reformed at the earliest.

The 2024 Draft Bill and the Proposed Appellate Arbitral Tribunal

The 2024 Draft Bill's proposed Section 34A⁸⁹ introduces an Appellate Arbitral Tribunal (AAT) as a mechanism for parties to route challenges to arbitral awards away from courts and into a second stage of arbitral review. The parties, by agreement, may constitute an AAT to review the first tribunal's award on grounds to be specified in the clause. The proposal⁹⁰ deserves serious attention as it seeks to address the extensive judicial review problem not by limiting courts power but by offering parties a private exit from court supervision.

By preserving party autonomy, parties must affirmatively elect AAT review, thereby avoiding imposing a mandatory appellate tier on all arbitrations. It also draws, at least in spirit, on similar mechanisms in leading international institutions. For example Article 34 of the ICC Rules of Arbitration, 2021,⁹¹ involves review of draft awards by the court before publication. The AAT model extends this institutional practice to a formalized second tier arbitral review.

However, three objections of principle are compelling. First, the AAT normalises the revisability of arbitral awards at the level of the parties contracting choices. As Born⁹² further argues that institutionalizing second tier arbitral review risks replicating the costs and delays plaguing judicial review at the court level. An AAT adjudicating the same substantive arguments as the first arbitral tribunal doesn't cure the issue of court interference. It just

⁸⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁸⁸ *Id.*

⁸⁹ Arbitration and Conciliation (Amendment) Bill, 2024, § 34A (Draft Bill, Dep't of Legal Affairs, Ministry of Law & Justice, Gov't of India, Oct. 18, 2024).

⁹⁰ *Id.*

⁹¹ ICC Rules of Arbitration art. 34 (2021).

⁹² Born, *supra* note 15.

relocates into a privately constituted mechanism.

Second, the relationship between AAT review and residual Section 34⁹³ jurisdiction is unresolved by the Draft Bill.⁹⁴ If an AAT award remains susceptible to a Section 34⁹⁵ challenge, as suggested by the current framework of the Arbitration and Conciliation Act, this reform adds a tier of proceedings without eliminating any. Third, and most fundamentally, the proposal does not address the root doctrinal problem, which is the expansive judicial interpretation of “patent illegality” and “fundamental policy of Indian law” applicable to Section 34 applications,⁹⁶ in the entire arbitration jurisprudence so far, especially in situations where parties have not opted for AAT review.

Reform and Way Forward: A Three-Pronged Process

A reform framework must coherently operate simultaneously at the legislative, institutional, and cultural levels.

First, the patent illegality ground in Section 34(2A)⁹⁷ requires legislative precision. The current framework, while ostensibly restricted to illegality apparent on the face of the award. This however has in practice permitted courts to re-assess and re-appreciate. The Arbitration and Conciliation Act⁹⁸ should be amended to state that no challenge under Section 34⁹⁹ shall succeed on the basis that the tribunal incorrectly appreciated evidence, and that the court shall not examine the adequacy of the tribunal’s assessment of the evidence on record. The Supreme Court’s decision in *Ssangyong*¹⁰⁰ and *Associate Builders*¹⁰¹ to this effect should be codified as statutory bar rather than left as common law principles vulnerable to erosion by precedent.

Second, the stay mechanism under Section 36¹⁰² requires structural strengthening. The 2021 Amendment¹⁰³ introduced a requirement for deposit of the award amount as a condition precedent for stay in numerous cases, however, its been inconsistently implemented. A more

⁹³ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁹⁴ Arbitration and Conciliation (Amendment) Bill, 2024, supra note 89, § 34A.

⁹⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

⁹⁶ Id.

⁹⁷ Id. § 34(2A).

⁹⁸ Id.

⁹⁹ Id. §34.

¹⁰⁰ *Ssangyong*, supra note 37.

¹⁰¹ *Associate Builders*, supra note 28.

¹⁰² Arbitration and Conciliation Act, No. 26 of 1996, § 36, India Code.

¹⁰³ Arbitration and Conciliation (Amendment) Act, No. 3 of 2021, India Code (2021).

robust approach would be to place a presumption against granting a stay in all Section 34¹⁰⁴ proceedings, subject to a high threshold proof of irreparable prejudice and a strong prima facie case on the challenge, thereby aligning the Indian framework more closely with the New York Convention's pro enforcement approach.¹⁰⁵ In those cases, the default position would be the enforcement of the award, rather than suspending the same.

Lastly, the development of India's institutional arbitration system requires deliberate policy support. The 246th Report's observation¹⁰⁶ that the "*cultural revolution has to come from within the arbitration community*" correctly identifies the systemic dimension of the problem, but actual demonstrable change is accelerated by institutional structures. If institutional arbitration under bodies such as the Delhi International Arbitration Centre and the Mumbai Centre for International Arbitration is actively promoted, including through legislative preferences for institutional arbitration in high-value commercial contracts involving public entities. In those cases the consequent improvements in procedural quality and transparency will reduce the frequency of setting aside applications under Section 34.¹⁰⁷

Conclusion

Indian arbitration law at the post-award stage mirrors an unresolved paradox. Whilst the statute promises finality in decision, the international instruments on which it is modelled demand limited court intervention. Analysing comparative jurisprudence in Singapore¹⁰⁸ and England¹⁰⁹ demonstrates that such limitation is both achievable and commercially beneficial to parties. Yet the Indian jurisprudence on the same, from *Saw Pipes*¹¹⁰ through *Associate Builders*¹¹¹ and *Ssangyong*¹¹² to *Larsen Air Conditioning*¹¹³ has produced a framework in which the Section 34¹¹⁴ jurisdiction functions as an appellate stage, and in which Section 37¹¹⁵ adds a further rung to the ladder which ideally should not exist.

¹⁰⁴ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

¹⁰⁵ New York Convention, supra note 11.

¹⁰⁶ Law Commission of India, supra note 6, ¶ 19.

¹⁰⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

¹⁰⁸ *PT Prima*, supra note 74.

¹⁰⁹ *Lesotho*, supra note 79.

¹¹⁰ *Saw Pipes*, supra note 20.

¹¹¹ *Associate Builders*, supra note 28.

¹¹² *Ssangyong*, supra note 37.

¹¹³ *Larsen Air Conditioning*, supra note 49.

¹¹⁴ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

¹¹⁵ *Id.* §37.

The proposed Section 34A Appellate Arbitral Tribunal¹¹⁶ represents a structurally inadequate response to this challenge, as it addresses only the opt-in class of cases, whilst leaving the dominant framework under Section 34,¹¹⁷ unresolved. The deeper reform, via a legislative redefinition of the grounds for Section 34 review,¹¹⁸ a restructured stay mechanism under Section 36,¹¹⁹ and sustained institutional development, requires the kind of deliberate reform missing in India's arbitration jurisprudence so far.

This paper doesn't aim to insulate arbitral awards from all review. As the 246th Law Commission wisely insisted, "*the judicial machinery provides essential support for the arbitral process*"¹²⁰ and the rejection of the view that "*judicial intervention is anathema to arbitration*"¹²¹ remains sound.

The goal of the paper is to suggest reform to the current existing framework under Section 34.¹²² through judicial involvement targeted at genuine procedural injustice, fundamental illegality, and real public policy concerns. It is only when reform is institutionalised, will Indian arbitration realise, that the arbitral award is not, in Redfern and Hunter's formulation, "*the first step on a ladder of appeals*",¹²³ but its rather the 'top of the ladder' remaining a final, enforceable destination.

¹¹⁶ Arbitration and Conciliation (Amendment) Bill, 2024, supra note 89, § 34A.

¹¹⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

¹¹⁸ Id.

¹¹⁹ Id. § 36.

¹²⁰ Law Commission of India, supra note 6, ¶ 19.

¹²¹ Id.

¹²² Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code.

¹²³ Blackaby et al., supra note 2, ¶ 10.02.