PATENT ILLEGALITY AS A GROUND FOR SETTING ASIDE ARBITRAL AWARDS IN INDIA: FROM 2015-2025 – DO WE NEED AN AMENDMENT?

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ABSTRACT

The ground of "patent illegality" has been the single most contested doctrinal battleground in Indian arbitration law since the Supreme Court first read it into the concept of "public policy of India" in Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd. What began as an interpretive gloss on Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 was, within a decade, converted by the Arbitration and Conciliation (Amendment) Act, 2015 into an independent statutory ground under the newly inserted Section 34(2A) available only for domestic awards, and expressly excluding "mere" erroneous application of law or reappreciation of evidence. This article traces the doctrinal trajectory of patent illegality from Saw Pipes through ONGC v. Western Geco, Associate Builders v. DDA, and Ssangyong Engineering v. NHAI, to the controversial 2024 curative intervention in Delhi Metro Rail Corporation v. Delhi Airport Metro Express and the 2025 Constitution Bench decision in Gayatri Balasamy v. ISG Nova soft Technologies.

This article argues that despite repeated judicial attempts to narrow the doctrine, the distinction between patent illegality and an erroneous application of law continues to remain uncertain in practice.

Keywords: patent illegality; Section 34(2A); Arbitration and Conciliation Act 1996; public policy; ONGC v. Saw Pipes; Ssangyong; Gayatri Balasamy; judicial review of arbitral awards.

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I. WHAT IS PATENT ILLEGALITY?

The expression "patent illegality" refers to a legal error that is apparent on the face of the record and does not require elaborate examination to identify. Patent illegality is a well-established legal doctrine that refers to an error of law that is apparent on the face of the record.[1] It embodies the principle that judicial interference is warranted only when the illegality is clear, substantial, and goes to the very root of the decision, rather than where the challenge is based on a mere error of fact or a debatable interpretation of law.[2] The doctrine serves as an important safeguard against decisions that are fundamentally contrary to law while simultaneously preserving the finality of judicial and arbitral determinations by preventing courts from exercising appellate powers under the guise of judicial review. [3] In essence, patent illegality enables a court to intervene only where the decision suffers from a manifest legal defect that is immediately discernible from the record itself.

The term "patent" literally means something that is evident, obvious, or manifest, while "illegality" signifies conduct or a decision that is contrary to law.[4]. Such an error is distinguishable from a latent illegality, which becomes evident only after a detailed investigation of facts or extensive scrutiny of evidence, and from a mere erroneous interpretation of law, where more than one reasonable interpretation is possible.[5] Courts have consistently emphasized that every legal error does not amount to patent illegality. An incorrect interpretation of a statutory provision or contractual clause, where two plausible views exist, cannot by itself justify judicial interference. Rather, the illegality must be so manifest that it can be identified without embarking upon a detailed inquiry into the merits of the dispute.[6]

The doctrine is founded upon several essential characteristics that distinguish patent illegality from ordinary legal errors. First, the illegality must be apparent on the face of the record, meaning that the defect should be identifiable from the award, judgment, or decision

[1] *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, where the Supreme Court first recognised patent illegality as a ground for setting aside a domestic arbitral award under the "public policy" doctrine.
[2] Arbitration and Conciliation Act, 1996, s. 34(2A), inserted by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016); MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163.
[3] P. Ramanathan Aiyar's Advanced Law Lexicon, 6th ed. (LexisNexis, 2022), Vol. 4, pp. 3729–3731; Black's Law Dictionary (12th ed., 2024).
[4] Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49; Ssangyong Engineering & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131.
[5] Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., (2022) 1 SCC 131, paras 25–31.
[6] Arbitration and Conciliation Act, 1996, s. 34(2A) proviso; Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd., (2020) 7 SCC 167.

itself without requiring a re-appreciation of evidence or an elaborate examination of factual issues.[7] Courts exercising supervisory jurisdiction are therefore not expected to reassess witness testimony, reconsider documentary evidence, or substitute their own factual conclusions merely because another view is possible. Secondly, the illegality must be substantial and material**.** Trivial procedural irregularities, minor omissions, or insignificant mistakes that do not affect the outcome of the proceedings cannot be treated as patent illegality. The defect must materially influence the decision and undermine its legal validity.[8]

Another essential characteristic is that the decision must be contrary to law**.** Patent illegality arises where the adjudicating authority disregards mandatory statutory provisions, ignores binding judicial precedents, violates fundamental legal principles, or acts in direct contravention of the governing law.[9] Such illegality may also arise where the authority exceeds the jurisdiction conferred upon it or grants relief that is expressly prohibited by law. Finally, the illegality must go to the root of the matter. In other words, the defect must strike at the legality of the decision itself rather than constitute a minor procedural irregularity or technical lapse. Only where the illegality fundamentally affects the decision-making process or renders the decision legally unsustainable does it amount to patent illegality warranting judicial intervention.[10]

In practice, patent illegality represents a narrow and exceptional ground of judicial review. It is not intended to convert judicial review into an appeal on the merits, nor does it permit courts to correct every factual or legal mistake committed by a decision-maker. Instead, it is confined to correcting manifest legal errors that are apparent on the face of the record and that substantially affect the legality and validity of the decision. By limiting judicial interference to such exceptional circumstances, the doctrine seeks to maintain an appropriate balance between ensuring the rule of law and respecting the finality and autonomy of adjudicatory processes, particularly in arbitration.[12]

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[7] *OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd.*, 2024 SCC Online SC 2866.
[8] *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705; *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49.
[9] *National Highways Authority of India v. Unitech–NCC (JV)*, 2025 SCC Online SC *Delhi Airport Metro Express Pvt. Ltd. v. DMRC*, (2022) 1 SCC 131.
[10] Gary B. Born, *International Commercial Arbitration*, 3rd ed. (Kluwer Law International, 2021), Vol. III, pp. 3647–3660; O.P. Malhotra & Indu Malhotra, *The Law and Practice of Arbitration and Conciliation*, 4th ed. (LexisNexis, 2022), Vol. II, pp. 1923–1968; Pratyush Singh & Aastha Mali Patil, "Empirical Insights into the Legal Quicksand: The Case of Patent Illegality in Indian Arbitration" (2025) 41(2) *Arbitration International* 245.

The doctrine of patent illegality has emerged as one of the most significant grounds for judicial review of arbitral awards in India. Although the expression "patent illegality" existed in common law jurisprudence, its contemporary significance is primarily attributable to Indian arbitration law, where it evolved through judicial interpretation and was later statutorily recognized by the Arbitration and Conciliation (Amendment) Act, 2015. The doctrine seeks to balance two competing objectives: preserving the finality of arbitral awards while ensuring that awards suffering from manifest legal defects do not survive judicial scrutiny. Recent Supreme Court decisions have further clarified that patent illegality is a narrow and exceptional ground of interference and cannot be used as a substitute for appellate review.

II. SCOPE OF PATENT ILEGALITY

Section 5 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act") declares, in language borrowed from the UNCITRAL Model Law, that "no judicial authority shall intervene except where so provided in this Part." That declaration of minimal curial interference sits, however, in permanent tension with Section 34, which sets out the grounds on which a party may apply to set aside a domestic arbitral award. Among these grounds, none has proved more doctrinally fertile or more destabilising to the promise of finality than the ground now codified as "patent illegality" under Section 34(2A).

Patent illegality was not originally written into the 1996 Act. It was created by the courts in 2003, then expanded in later cases. Parliament narrowed it through the 2015 amendment, and the Supreme Court further limited it in 2019. However, the doctrine became controversial again in 2024 when the Court used its rare curative jurisdiction to reopen a major arbitration case. In 2025, a Constitution Bench addressed the issue again. This history shows how patent illegality has moved back and forth between broad and narrow meanings. It also shows the ongoing tension between courts and Parliament in deciding how much power courts should have to interfere with arbitral awards.

This article proceeds in four parts, corresponding to the doctrine's historical and conceptual development. Part II traces the origin of patent illegality in ONGC v. Saw Pipes Ltd and its subsequent judicial expansion. Part III examines the statutory response Section 34(2A), inserted by the 2015 Amendment and its interpretation in Associate Builders v. DDA and Ssangyong Engineering v. NHAI. Part IV isolates the analytically central and most contested question in this area: the distinction between patent illegality and a merely erroneous application of law. Part V surveys the current judicial standards that have emerged in the decade since the 2015 Amendment, concluding with the 2024 curative intervention in the DMRC case and the 2025 Constitution Bench ruling in Gayatri Balasamy, before offering a critical assessment of where the doctrine now stands.

III. HISTORY: THE DEVELOPMENT OF THE JURISPRUDENCE ON PATENT ILLEGALITY — ORIGINS IN *ONGC V. SAW PIPES*

a. The Pre-2003 Position: ***Renu Sagar*** and the Narrow Conception of Public Policy

Prior to 2003, the leading authority on the meaning of "public policy" as a ground for refusing enforcement of an award was *Renu Sagar Power Co. Ltd. v. General Electric Co.*, decided under the Foreign Awards (Recognition and Enforcement) Act, 1961.[11] The Supreme Court held that enforcement of a foreign award could be refused on the ground of public policy only if it was contrary to (i) the fundamental policy of Indian law, (ii) the interests of India, or (iii) justice or morality. This was a deliberately narrow formulation, reflecting the pro-enforcement philosophy that underlies the New York Convention regime, and it did not permit judicial review of the correctness of the arbitrator's findings of fact or law.[12]

b. ***ONGC v. Saw Pipes Ltd.*** (2003): The Judicial Invention of Patent Illegality

The dispute in *Saw Pipes* arose from a supply contract in which ONGC deducted liquidated damages for delayed delivery caused by a labour strike in Europe.[13] The arbitral tribunal ruled in favour of Saw Pipes on the ground that ONGC had failed to establish actual loss and therefore could not invoke Section 74 of the Indian Contract Act, 1872. [14] ONGC challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996.

The Supreme Court, while interpreting the expression "public policy of India" under Section 34(2)(b)(ii), significantly expanded its scope by introducing **"patent illegality"** as an additional ground for setting aside domestic arbitral awards.[15] Building upon *Renu Sagar*, the Court held that an award could be set aside where the illegality went to the root of the matter and was apparent on the face of the award. [16]It observed that patent illegality would arise where an arbitral tribunal ignored the express terms of the contract, granted relief beyond the claims made by the parties, or violated substantive provisions of Indian law or the Arbitration and

[11] Renu Sagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644.
[12] *Renu Sagar*, ibid., paras 65–66.
[13] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention), Art. V(2)(b).
[14] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705.
[15] Indian Contract Act, 1872, s. 74.
[16] ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, paras 30–31.

Conciliation Act, 1996.[17]Applying this principle, the Court concluded that the tribunal had incorrectly applied Section 74 of the Contract Act and accordingly set aside the award.[18]

c. Criticism and Judicial Amplification: ***ONGC v. Western Geco International Ltd.*** (2014)

The decision in *Saw Pipes* attracted sustained criticism from scholars and arbitration practitioners because it substantially widened judicial review under Section 34 and blurred the distinction between judicial review and appellate review.[19] Rather than limiting itself to jurisdictional or procedural errors, the doctrine enabled courts to examine whether arbitrators had correctly interpreted substantive law.[20]

The Supreme Court further expanded this approach in *ONGC Ltd. v. Western Geco International Ltd.*,[21] where it held that the expression "fundamental policy of Indian law" required an arbitral tribunal to adopt a judicial approach, comply with principles of natural justice, and avoid decisions that no reasonable person could have reached.[22] Borrowing principles analogous to Wednesbury unreasonableness from English administrative law, the Court considerably enlarged judicial scrutiny under Section 34. [23]This judgment further blurred the distinction between review of the arbitral process and review of the merits of the award.[24]

d. The Law Commission's Intervention

The cumulative effect of *Saw Pipes* and *Western Geco* was widely perceived as undermining the finality of arbitral awards and weakening India's credibility as an arbitration-friendly jurisdiction.[25]Consequently, the 246th Report of the Law Commission of India (2014) recommended significant legislative reforms. [26]The Commission proposed that the meaning of "public policy of India" should be restored to the narrow formulation adopted in *Renu Sagar* and that patent illegality should be recognised as a separate statutory ground

[17] Ibid., para 31.
[18] Ibid., paras 74–76.
[19] Ibid., paras 85–86.
[20] Gary B. Born, International Commercial Arbitration (3rd ed., Kluwer Law International, 2021) Vol. III, pp. 3647–3655.
[21] O.P. Malhotra & Indu Malhotra, The Law and Practice of Arbitration and Conciliation (4th ed., LexisNexis, 2022) Vol. II, pp. 1923–1935.
[22] ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263.
[23] Ibid., paras 35–40.
[24] Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 KB 223 (CA).
[25] Western Geco, (2014) 9 SCC 263, paras 35–40.
[26] Fali S. Nariman, Harmony Amidst Disharmony: The Indian Arbitration Experience (Hay House India, 2016) pp. 147–154.

applicable only to domestic arbitral awards.[27] It further recommended that erroneous application of law or re-appreciation of evidence should not constitute patent illegality.[28] Parliament substantially accepted these recommendations through the Arbitration and Conciliation (Amendment) Act, 2015.[29]

IV. UNDERSTANDING PATENT ILLEGALITY AND ERROR OF LAW:

When someone challenges an arbitration award in court, the law draws a line between two very different things. On one side is a case where the arbitrator simply got the law or the contract "wrong" maybe the court would have interpreted a clause differently, or applied a legal rule in a different way. That, by itself, is not enough to cancel the award, because the whole point of arbitration is that the arbitrator's decision is final, even if a judge personally disagrees with it. [30] On the other side is something more serious: an error so glaring that it isn't really a "decision" at all for instance, the arbitrator gives no reasons for the ruling,[31] bases the finding on no evidence or something completely irrelevant,[32] deliberately ignores an important piece of evidence that was right there on record,[33] or effectively throws out the contract the parties actually signed and writes a new one for them.[34]

This second category is what the law calls "patent illegality," and only this can get an award set aside. The problem, in practice, is that telling these two situations apart is genuinely hard. The Supreme Court's own decision in Ssangyong shows that the tribunal there had applied a government circular to the contract in a way that could easily be seen as just one possible (if debatable) reading of a change-in-law clause an ordinary legal disagreement. Yet the Court treated it as the tribunal rewriting the contract's risk-sharing arrangement without giving a party a fair chance to argue against it, which pushed it from "wrong but valid" into "patently illegal." Put simply, the rule looks clear in theory, but it is difficult to apply in real cases. The result often depends on how the judges read the facts and decide whether the arbitrator merely made a mistake, or crossed the line into a serious legal defect.

[27] Law Commission of India, 246th Report on Amendments to the Arbitration and Conciliation Act, 1996 (August 2014).
[28] Ibid., paras 34–38.
[29] Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016), s. 18 inserting Section 34(2A).
[30] McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181; Dyna Technologies Pvt Ltd v. Crompton Greaves Ltd, (2019) 20 SCC 1 (reasoning need only be "intelligible," not necessarily correct).
[31] Arbitration and Conciliation Act, 1996, s 31(3); Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[32] Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[33] Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[34] ibid

Section 34(2A) allows a domestic arbitral award to be set aside if it suffers from "patent illegality appearing on the face of the award." But the same provision immediately adds a proviso: an award cannot be set aside "merely on the ground of an erroneous application of the law or by re-appreciation of evidence. [35]So the statute itself draws the line but it draws it in words, not in facts, which is why courts have spent years working out what actually falls on which side. The reasoning behind this distinction is simple: when parties choose arbitration, they choose the arbitrator not a judge to be the final decision-maker on both facts and law. If a court could set aside an award every time it disagreed with the arbitrator's reasoning, arbitration would become just a longer, more expensive route to litigation, and the finality it promises would disappear. So a "wrong" decision on the law is not, by itself, a reason to interfere; something more serious is needed.[36]

At the beginning, in ONGC case, the Supreme Court first read "patent illegality" into the idea of "public policy" in this case, holding that an award could be struck down if the arbitrator ignored the express terms of the contract or misapplied Indian law.[37] The problem was that this opened the door very wide almost any legal error could now be dressed up as a "patent illegality," and Section 34 began to look like a full appeal rather than a narrow challenge.

In Western Geco, the Supreme Court widened the test even further instead of limiting it. The Court said that an award could be set aside if the tribunal did not act with a proper "judicial approach," violated natural justice, or reached a conclusion that no reasonable person could reach. In simple terms, this allowed courts to look more closely at how the arbitrator reasoned through the case. As a result, Section 34 began to look less like a narrow review and more like an appeal on the merits. The practical effect was that the line between a merely "wrong" award and a "patently illegal" award became very thin.

To correct this, Parliament inserted the current Section 34(2A) and its proviso in 2015, deliberately writing into the statute that a mere error of law or reappreciation of evidence is not enough. The idea was to reverse Western Geco and bring the doctrine back closer to something narrow and workable. Here the Court set out what has become the standard test. An award is patently illegal only where: (a) it gives no reasons at all, contrary to Section 31(3); (b) the finding is perverse based on no evidence, on irrelevant material, or reached by ignoring evidence that was clearly on record; or (c) it contravenes a substantive law or the actual terms

[35] Arbitration and Conciliation Act, 1996, s 34(2A) and proviso.
[36] McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181.
[37] ONGC Ltd v. Saw Pipes Ltd, (2003) 5 SCC 705.

of the contract.[38] Anything short of this a "possible" or "plausible" reading of the contract or the law, even if debatable is not patent illegality, just an ordinary legal disagreement. In Ssangyong Engineering and Construction Co. Ltd v. National Highways Authority of India,[39] the leading case applying the post-2015 standard.

The Court made two points clear. First, patent illegality cannot be used to revive the broad Western Geco approach. Secondly, a finding is perverse only when it is based on no evidence, irrelevant material, or when the tribunal ignores vital evidence. Mere disagreement with the result is not enough. However, on the facts, the Court held that the tribunal had effectively rewritten the contract by applying a government circular and had done so without giving one party a fair hearing. This shows the difficulty with the test: even under a narrow standard, the line between a debatable legal interpretation and patent illegality can be hard to draw. In Dyna Technologies v. Crompton Greaves, the Court added a useful practical marker here: as long as the arbitrator's reasoning is "intelligible" meaning a reader can follow the logical connection between the evidence and the conclusion a court should not interfere merely because it disagrees with that reasoning. This reinforces that the test is about the coherence of the process, not the correctness of the outcome.

The distinction between patent illegality and error of law was reaffirmed in Patel Engineering v. NEEPCO,[40] the Court held that where an arbitrator characterises a claim in a particular way (for example, as unjust enrichment) based on a plausible reading of the contract, a court cannot recharacterize this as an "error of law" simply because it would have decided differently. This again illustrates the core principle: disagreement with interpretation is not illegality.

These decisions collectively suggest, these cases establish a clear doctrinal distinction: patent illegality must go to the “root of the matter,” whereas an erroneous application of law, by itself, does not justify setting aside an award. The difficulty lies in applying that distinction to concrete facts. In practice, courts must decide whether a tribunal has ignored “vital” evidence or merely weighed contested evidence differently; whether an interpretation is still a “possible” view of the contract or has crossed the line into rewriting it; and whether the defect is truly fundamental or only a debatable legal error. These are not mechanical inquiries, but evaluative judgments that often turn on how a particular bench reads the award and the record.

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[38] Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49.
[39] (2019) 15 SCC 131.
[40] Patel Engineering Ltd v. North Eastern Electric Power Corporation Ltd, (2020) 7 SCC 167.

SsangYong's own facts are the best proof of this: reasonable people can, and do, read the same award differently.

V. CURRENT JUDICIAL STANDARDS: 2015–2025

a. Consolidation of the Narrow Standard (2019–2023)

In the years following Ssangyong, the Supreme Court repeatedly reaffirmed a posture of restraint. In Patel Engineering Ltd v. North Eastern Electric Power Corporation Ltd[41], the Court endorsed the Associate Builders taxonomy and clarified that an arbitrator's characterisation of a claim as one for unjust enrichment, arising from a plausible reading of the contract, could not be recharacterized by a court as an error of law amounting to patent illegality; a distinction was drawn between a tribunal failing to act in accordance with the terms of the contract (impermissible) and merely construing those terms in a manner a court might not have adopted (not, by itself, a ground for interference). In State of Chhattisgarh v. Sal Udyog Pvt Ltd,[42] the Court expressly confirmed that Western Geco's expansive reading of "fundamental policy of Indian law" no longer survives after the 2015 Amendment and Associate Builders, and that principles of natural justice remain a distinct, narrower ground of challenge under Section 34(2)(a)(iii), separate from the patent illegality inquiry.

b. A Sharp Departure: DMRC v. DAMEPL (2024)[43]

In 2008, Delhi Metro Rail Corporation ("DMRC"), a state-owned entity, entered into a Concession Agreement with Delhi Airport Metro Express Pvt Ltd ("DAMEPL"), a special-purpose vehicle formed by Reliance Infrastructure and the Spanish firm CAF, under which DAMEPL was given the exclusive right to design, construct, operate, and maintain the Delhi Airport Metro Express Line as a public-private partnership running until 2038.[44] Over time, structural defects emerged in the civil works, serious enough that the Commissioner of Metro Railway Safety imposed speed restrictions on the line. DAMEPL issued a "cure notice" to DMRC under Clause 29.5.1 of the Concession Agreement, which required DMRC to remedy the defects within a stipulated cure period (90 days, extendable by a further 90 days). When DMRC allegedly failed to cure the defects within this window, DAMEPL terminated the Concession Agreement in 2012, asserting that the uncured defects had caused a "material adverse effect" on its ability to operate the line. DMRC's position, by contrast, was that it had taken adequate steps to address the defects and that DAMEPL's real motive for terminating was that the

[41] (2020) 7 SCC 167

[42] (2022) 2 SCC 275,

[43] Delhi Metro Rail Corporation Ltd v. Delhi Airport Metro Express Pvt Ltd, 2024 INSC 292 (Supreme Court, 10 April 2024)

[44] Delhi Metro Rail Corporation Ltd v. Delhi Airport Metro Express Pvt Ltd, 2024 INSC 292, paras 1–2.

project had ceased to be financially viable for it. Conciliation between the parties failed, and the dispute went to arbitration as provided in the Concession Agreement. In May 2017, a three-member tribunal composed of engineers rather than lawyers unanimously ruled in DAMEPL's favour, holding the termination valid and directing DMRC to pay a termination sum, together with associated costs and interest, that eventually grew to roughly ₹8,000 crore. DMRC challenged the award under Section 34 before a Single Judge of the Delhi High Court, who dismissed the challenge and upheld the award. On appeal under Section 37, the Division Bench reversed this, setting aside the award on the ground that it was vitiated by perversity and patent illegality in particular, the Division Bench found that the tribunal had failed to properly connect its treatment of a relevant safety certification with its ultimate finding on the validity of the termination. DAMEPL then moved the Supreme Court by special leave petition under Article 136; a two-judge bench allowed the appeal and restored the original arbitral award, effectively reversing the Division Bench. DMRC's review petition against that restoration was dismissed. Having exhausted the ordinary channels of appeal and review, DMRC took the rare step of filing a curative petition a remedy reserved, under Rupa Ashok Hurra v. Ashok Hurra, for the narrowest class of cases where allowing a final judgment to stand would cause a grave miscarriage of justice.[45]

A three-judge bench, led by the then Chief Justice of India, allowed the curative petition. It held, first, that the petition was maintainable given the exceptional circumstances; second, that the Delhi High Court's Division Bench had correctly identified patent illegality in the award and had adequately reasoned that finding; third, that the earlier two-judge bench, in restoring the award at the Article 136 stage, had exceeded the limited scope of appellate review and had, in substance, re-appreciated the merits; and fourth, that permitting the restored award directing DMRC, a public entity, to pay approximately ₹8,000 crore to stand would itself work a grave miscarriage of justice. Exercising its residual power under Article 142 of the Constitution, the Court set aside the arbitral award and held that DMRC was not in breach of the Concession Agreement, and that DAMEPL's termination had therefore been invalid.

The decision is significant less for its facts than for what it did procedurally: it used the Court's most extraordinary jurisdiction curative petition, effectively a fifth round of challenge to a single award to revive a finding of patent illegality after two earlier stages (the Article 136 appeal and the review petition) had gone the other way. Critics have argued that this risks eroding the very finality that SsangYong's narrow "root of the matter" test was designed to protect, since it shows that even after surviving several rounds of scrutiny, a domestic award involving a public-sector party can still be reopened if a later bench is sufficiently persuaded that a serious injustice has occurred. The most consequential and most controversial development of the decade came not through an ordinary Section

[45] Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388; 2024 INSC 292, para 27 (framing of issues in the curative petition).

34 or Section 37 proceeding, but through the exercise of the Supreme Court's rare curative jurisdiction under Article 142 of the Constitution. An arbitral tribunal had earlier upheld DAMEPL's termination of a concession agreement with DMRC, awarding compensation running to several thousand crores of rupees. The Delhi High Court's Division Bench, in a Section 37 appeal, had set aside the award as suffering from perversity and patent illegality, principally on the ground that the tribunal had overlooked a material safety certification. A two-judge Bench of the Supreme Court reversed the Division Bench and restored the award; a review petition against that decision was dismissed. DMRC then took the unusual step of filing a curative petition.

A three-judge Bench led by the then Chief Justice allowed the curative petition, holding that the Division Bench had correctly applied the Section 34 test and had given adequate reasons for finding perversity and patent illegality, that there had been no valid basis for the earlier Bench to interfere under Article 136, and that restoring the award had itself caused a "grave miscarriage of justice" within the narrow exception recognised in Rupa Ashok Hurra v. Ashok Hurra,[46] The Court was careful to caution that curative jurisdiction should not become a routine "fourth or fifth stage" of review of an arbitral award. Even so, the decision to overturn what had been, at that point, a final and twice-affirmed award has been widely criticised by arbitration practitioners and scholars as itself blurring the very line Ssangyong had sought to draw using the language of patent illegality to justify what critics characterise as a fresh appreciation of the underlying evidence, at the outermost and most extraordinary stage of the Indian judicial process, in a dispute involving a public sector entity.

c. The 2025 Docket: Reaffirming Restraint, and Resolving the Modification Question

In the year that followed, the Supreme Court handed down a cluster of decisions that, reaffirm the narrow, post-Ssangyong conception of patent illegality while resolving an adjacent and long-standing controversy concerning courts' remedial powers under Section 34.

In *Som Datt Builders–NCC–NEC (JV) v. National Highways Authority of India*,[47] the Court held that where an award has been wholly or substantially upheld under Section 34, an appellate court exercising jurisdiction under Section 37 must exercise a high degree of restraint, confining itself to whether the Section 34 court exceeded its statutory limits rather than conducting an independent assessment of the award's merits. A similar emphasis on the narrow, non-appellate character of Sections 34 and 37 proceedings appears in *M/s C & C Constructions Ltd v. IRCON International Ltd*,[48] and in *Consolidated Construction Consortium v. Software Technology Parks of India*,[49] where the Court

[46] (2002) 4 SCC 388.
[47] 2025 INSC 113
[48] 2025 INSC 138
[49] 2025 INSC 574 : (2025) 7 SCC 757,

reiterated that judicial review under Section 34 is restricted to patent illegality, violations of public policy, and jurisdictional errors, and does not extend to re-evaluating evidence or reinterpreting contractual terms; a plausible arbitral view, once reached, must prevail.

e. Gayatri Balasamy v. M/s ISG Nova soft Technologies Ltd

The most structurally significant development, however, is the Constitution Bench decision in Gayatri Balasamy v. M/s ISG Nova soft Technologies Ltd,[50] For several years, a tension had persisted between decisions suggesting that courts possessed an implicit power to modify rather than merely set aside an arbitral award in limited circumstances, and the clearer position taken in NHAI v. M. Hakeem,[51] that Section 34 confers only a power to set aside, not a power to modify, an award, on the reasoning that a modification power would blur the line between annulment and appellate correction. The Constitution Bench, by a 4:1 majority, held that courts do possess a limited power to modify arbitral awards in defined circumstances including severance of an invalid portion from a valid remainder, correction of clerical, computational, or typographical errors, and adjustment of post-award interest while emphasising that this is a narrow and residual power, not a licence to conduct a merits review of the tribunal's findings, and that the Supreme Court's own residuary power under Article 142 may, in appropriate cases, be invoked to do complete justice.

The case of Gayatri Balasamy is best understood as recalibrating the remedial wordings of Section 34 without disturbing the narrow, Ssangyong-derived threshold for when hold up is available in the first place. The Gayatri Balasamy case arose out of an employment dispute between Gayatri Balasamy, a senior executive, and her employer, ISG Nova soft Technologies Ltd, involving allegations connected to her termination. The matter went to arbitration, and the tribunal awarded her damages of ₹2 crore, while rejecting some of her other claims. Dissatisfied with the quantum, she challenged the award under Section 34 before the Madras High Court. A Single Judge, treating the power to modify as inherent in Section 34, increased the amount awarded. On appeal, however, the Division Bench went the other way and reduced the sum to a nominal ₹50,000. This sequence one court raising the award, the next slashing it exposed a deeper, unresolved question that had been dividing High Courts for years: does Section 34 (and Section 37, on appeal) permit a court only to set aside an award, or can it also modify one?

The text of the Arbitration and Conciliation Act, 1996, modelled on the UNCITRAL Model Law, appears to confine courts to either upholding or setting aside an award nothing in between. Yet earlier Supreme Court decisions had pointed in different directions: NHAI v. M. Hakeem (2021) had

[50] 2025 INSC 605.
[51] (2021) 9 SCC 1,

held firmly that Section 34 confers only a power to set aside, not modify, while some High Courts (for instance, in Vedanta Ltd v. Shenzhen Shandong Nuclear Power Construction Co.) had carved out exceptions for practical situations like correcting interest rates. To resolve this conflict, a three-judge bench, by order dated 20 February 2024, referred the matter to a five-judge Constitution Bench, framing the core question as whether the power to set aside an award being the "larger" power includes within it the power to modify.[6] By a 4:1 majority, the Constitution Bench, led by Chief Justice Sanjiv Khanna, held that courts do possess a limited power to modify an arbitral award under Sections 34 and 37, but only in narrowly defined circumstances:

1. where the valid and invalid parts of the award are severable, allowing the court to strike out the bad part while leaving the rest intact;

2. where there is a clerical, computational, or typographical error apparent on the face of the award;

3. where post-award interest needs to be adjusted in the interests of justice; and

4. where the Supreme Court itself invokes Article 142 of the Constitution to do "complete justice" in an exceptional case.

The Court was emphatic that this is not a licence to review the merits of the dispute or to "rewrite" the tribunal's findings modification is confined to technical correction and severance, not to substituting the court's own view of the case.[8] Justice K.V. Viswanathan dissented, taking the stricter view that Section 34 permits only minor corrections falling within the narrow principle that "an act of the court shall prejudice no one," and that anything beyond this risks undermining the statutory design and the finality that arbitration is meant to offer.[9] For nearly three decades, the settled (if occasionally contested) position was that a court under Section 34 could do only one of two things: uphold the award, or set it aside and send the parties back to arbitration or fresh litigation it could never rewrite the outcome itself. Gayatri Case changes this. It is the first time the Supreme Court has authoritatively held that a limited power of modification does exist, converting what had been an all-or-nothing remedy into one with a narrow middle ground for technical fixes. In doing so, it also resolves the tension left open by M. Hakeem, and gives lower courts clearer (if still evolving) boundaries for when they may correct rather than annul an award. Although Gayatri Case is framed as a case about remedial power rather than about patent illegality itself, the two issues are closely linked: a narrow, well-defined modification power (severance, clerical correction, interest adjustment) is precisely the kind of technical fix that a court could use instead of striking down an entire award for a defect that is really confined to one part of it. Read alongside SsangYong's narrow test for what counts as patent illegality, Gayatri Case can be seen as an attempt to make the finality of arbitration more workable in practice by giving courts a tool short of full annulment even as commentators have flagged it as a further, if measured, step away from the strict finality the 1996 Act was originally designed to guarantee.

VI. CRITICAL ANALYSIS

Three features of the recent jurisprudence deserve attention from this doctrinal history that merit particular emphasis for a critical assessment of Indian arbitration law as it stands in 2025–26. The trajectory traced above narrow (Renu Sagar) to wide (Saw Pipes, Western Geco) to narrow by statute (the 2015 Amendment, Associate Builders, Ssangyong) to controversially wide again in a single, high-stakes case (DMRC) to a renewed emphasis on restraint (the 2025 cluster of decisions) reveals a doctrine is not settled still. Even accepting that DMRC was expressly confined to its own "exceptional" facts and to the extraordinary character of curative jurisdiction, the case demonstrates that the patent illegality standard remains vulnerable to expansive application whenever a court is sufficiently persuaded, on the facts of a given dispute, that an award works a serious injustice. For commercial parties structuring dispute resolution clauses particularly in long-term infrastructure and public-private partnership contracts, where the DMRC dispute itself arose this unpredictability is a hindrance, since the finality that arbitration is meant to offer cannot be assumed even after an award has survived a Section 34 challenge, a Section 37 appeal, and an ordinary Article 136 special leave petition. As Part IV demonstrated, the distinction between patent illegality and a merely erroneous application of law remains difficult to apply in practice. Whether a tribunal has ignored "vital" evidence, or has merely weighed contested evidence differently from how a court might have weighed it, is itself risks the review of Section 34 (2A)'s proviso. The doctrine would benefit from further legislative or judicial articulation of objective indicators for instance, requiring that a finding be characterised as perverse only where no arbitrator, acting reasonably on the record as a whole, could have arrived at it, and treating disagreement over the weight to be given to competing evidence as, by definition, outside the scope of Section 34(2A). Because Section 34(2A) applies only to awards arising from arbitrations that are not international commercial arbitrations, and because Section 48 (governing enforcement of foreign awards) contains no equivalent patent illegality ground, India maintains a two-track system in which foreign awards enjoy materially greater insulation from substantive review than purely domestic awards. This asymmetry is defensible as a matter of international comity and India's obligations under the New York Convention, but it also means that Indian parties to purely domestic contracts including, notably, government and public-sector counterparties such as DMRC and NHAI, who feature disproportionately in the reported patent illegality case law continue to litigate under a materially more permissive standard of review than their counterparts in cross-border transactions, a distinction that is difficult to justify from the standpoint of contracting parties' reasonable expectations of finality.

Reports of a proposed Arbitration and Conciliation (Amendment) Bill, 2024 suggest that the legislature is considering further clarification of the grounds for partial set-aside and modification of awards, likely informed by the very controversies canvassed in this article. Any such reform would do well to codify, rather than leave to case-by-case judicial elaboration, the objective markers of patent illegality identified in Associate Builders and refined in Ssangyong, and to consider whether curative jurisdiction ought to be expressly circumscribed in the arbitral context, given the exceptional and disruptive character of its invocation in the DMRC case.

VII. CONCLUSION

Patent illegality entered Indian arbitration jurisprudence as a judicial gloss on public policy in 2003, was substantially discredited by its own excesses within a decade, was narrowed by Parliament in 2015, and has since been the subject of continuous judicial recalibration most recently through the extraordinary curative intervention in DMRC v. DAMEPL and the Constitution Bench's clarification of remedial powers in Gayatri Balasamy. By the close of 2025, the doctrine is considerably narrower than it was under Saw Pipes or Western Geco. It is confined to illegality that goes to the root of the matter and expressly excludes mere errors of law or reappreciation of evidence. The DMRC episode nevertheless shows that, in a sufficiently compelling case, even this narrowed doctrine can be stretched to address outcomes that courts regard as unjust. That possibility sits uneasily with the finality that Section 5 of the 1996 Act was designed to protect. Whether Parliament chooses to amend Section 34(2A) or the Supreme Court develops clearer standards, greater certainty is now essential if arbitration is to remain a credible alternative to litigation in India.