

# Empirical insights on section 34 challenges: the state, judicial delay, and India's arbitration credibility

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## ABSTRACT

India's ambition to position itself as a global arbitration hub has been accompanied by repeated legislative reforms to restrict judicial intervention and enhance arbitral autonomy. Yet, Section 34 of the Arbitration and Conciliation Act, 1996, which is the principal mechanism for challenging awards, remains the focal point of tension between arbitral finality and judicial oversight. This paper empirically analyses 2020 Section 34 petitions filed before the Delhi High Court between 2021 and 2024, covering 365 judgments and nearly 17,000 orders. The study reveals three striking patterns: the state emerges as the most frequent challenger of awards despite policy commitments to arbitration; judicial timelines routinely exceed statutory limits, undermining efficiency; and substantive review continues under the guise of procedural scrutiny, particularly through the 'patent illegality' ground. While most awards are upheld, the persistence of partial modifications, extensive delays, and heavy government litigation exposes a credibility gap in India's arbitration framework. By combining doctrinal context with systematic data, the article highlights how Section 34 has become both a site of legal uncertainty and a tool of negotiation. It concludes by identifying targeted judicial, legislative, and institutional reforms necessary to align India's arbitration practice with its reformist rhetoric.

## 1. INTRODUCTION

Arbitration today occupies a paradoxical position within India's legal and economic landscape. Over the last decade, successive governments have spoken of making India a global hub for arbitration, linking efficient arbitral processes to investor confidence and the ease of doing business.<sup>1</sup> Legislative amendments, institutional initiatives, and policy pronouncements

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<sup>1</sup> Prime Minister's Office, 'Prime Minister Inaugurates Conference of the Chief Ministers of States & Chief Justices of High Courts' (*Press Information Bureau*, 15 September 2004) <<https://www.pib.gov.in/newsite/erelcontent.aspx?releid=3904>> accessed 21 August 2025.

have all signalled a strong commitment to this ambition.<sup>2</sup> Yet the lived reality of arbitration practice tells a more complicated story. Judicial intervention remains frequent, delays continue to undermine efficiency, and government entities themselves emerge as the most frequent challengers of arbitral awards.<sup>3</sup>

At the centre of this tension lies Section 34 of the Arbitration and Conciliation Act, 1996, the provision that provides the principal means of challenging arbitral awards in India. Modelled on Article 34 of the UNCITRAL Model Law, it was intended to reflect the principle of minimal judicial intervention. In practice, however, Section 34 has become the primary site of contestation between the autonomy of arbitration and the supervisory instinct of Indian courts.

Despite Section 34's centrality, there has been limited empirical work that systematically investigates how Section 34 petitions are actually disposed of by Indian courts. Do courts in practice exercise restraint? Do legislative amendments find reflection in outcomes? What patterns emerge in the role of government as a litigant, the grounds invoked, or the timelines of proceedings? These are questions that cannot be answered by doctrinal analysis alone but require careful empirical investigation.

The present study seeks to fill this gap by analysing a comprehensive dataset<sup>4</sup> of 2020 Section 34 petitions filed before the Delhi High Court between 2021 and 2024. The Delhi High Court was chosen as the site of study because of its prominence as a commercial forum and its heavy docket of arbitration-related litigation. The dataset covers final judgments, interim orders, and complete case histories, providing a granular picture of how challenges unfold over time. It spans 365 judgments and nearly 17,000 orders, offering both breadth and depth.

The choice of 2021 as the starting point captures the period following the Supreme Court's decision in *Project Director, NHAI v. M. Hakeem*,<sup>5</sup> which held that courts under Section 34 may only set aside awards and cannot modify them. After the close of the study period in 2024, the Supreme Court delivered its judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*,<sup>6</sup> recognizing a limited judicial power to modify awards. This juxtaposition of formal restraint and practical flexibility frames the empirical inquiry of this paper.

The contribution of this paper lies in two aspects. First, it brings empirical clarity to debates that have long been shaped by anecdote and assumption. Second, it situates these findings within the broader debate on India's credibility as an arbitration jurisdiction. For a country that aspires to attract international commercial arbitration,<sup>7</sup> perceptions of judicial predictability and efficiency are critical.<sup>8</sup>

This article is structured as follows. Section 2 situates Section 34 within the historical and doctrinal evolution of arbitration in India. Section 3 explains the research objectives and methodology. The empirical findings are presented in Section 4. Section 5 covers recommendations, and Section 6 concludes by reflecting on the larger implications for India's arbitration ambitions.

<sup>2</sup> Ministry of Law and Justice, 'Initiatives and Reforms in Arbitration, Mediation and Dispute Resolution' (*Press Information Bureau*, 6 February 2025) <<https://www.pib.gov.in/www.pib.gov.in/Pressreleaseshare.aspx?PRID=2100325>> accessed 20 August 2025.

<sup>3</sup> Gourab Banerji, 'Judicial Intervention in Arbitral Awards: A Practitioner's Thoughts' (2009) 21 *National Law School of India Review* 39.

<sup>4</sup> 'Arbitration - Delhi HC - Dataset', <<https://drive.google.com/file/d/1C-nMollDxLjtSrP0X3ctYKeAos-Q87U2/view?usp=sharing>>

<sup>5</sup> *NHAI v. M. Hakeem* (2021) 9 SCC 1.

<sup>6</sup> *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025) 7 SCC 1.

<sup>7</sup> Press Trust of India, 'India Aims to Be Global Arbitration Hub with Strong Legal Framework: CJI' (*Business Standard*, 5 June 2025) <[https://www.business-standard.com/india-news/india-aims-to-be-global-arbitration-hub-with-strong-legal-framework-cji-125060501100\\_1.html](https://www.business-standard.com/india-news/india-aims-to-be-global-arbitration-hub-with-strong-legal-framework-cji-125060501100_1.html)> accessed 21 August 2025.

<sup>8</sup> Justice BN Srikrishna, 'Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India' (*Department of Legal Affairs*, 2017) <<https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf>>

## 2. CONCEPTUAL FRAMEWORK

Section 34 of the Arbitration and Conciliation Act, 1996, is not merely a procedural provision: it embodies the tension between two competing imperatives—preserving the finality of arbitral awards and ensuring sufficient judicial oversight to prevent miscarriages of justice. Any meaningful analysis of empirical patterns under Section 34 must therefore be grounded in an understanding of the historical evolution of arbitration in India, the statutory and interpretative trajectory of the provision, and the persistent structural barriers that impede India's ambitions of becoming a global arbitration hub.

### 2.1 Historical Evolution and Legislative Development

Although arbitration was prevalent in India before the British arrived, during the colonial rule, it can be traced to regulations such as the Bengal Regulations of 1772 and Sir Elijah Impey's Regulation of 1781, which recognized arbitration as a legitimate mode of dispute resolution, permitting courts to encourage parties to settle disputes by reference to arbitrators.<sup>9</sup> These provisions already contained a pro-arbitration ethos, restricting judicial interference to instances of corruption or partiality. In the late nineteenth and early twentieth centuries, the Indian Arbitration Act of 1899 and subsequently the Arbitration Act of 1940 provided statutory frameworks. Yet, while the 1899 Act was geographically limited to the presidency towns,<sup>10</sup> the 1940 Act was nationwide in scope but drew criticism for being cumbersome and overly technical. The Supreme Court itself lamented that arbitration under the 1940 Act had become a 'legal trap to the unwary,'<sup>11</sup> defeating the very purpose of efficiency that arbitration was meant to serve.

The post-independence era marked a gradual shift towards aligning Indian arbitration with global standards. India's ratification of the New York Convention in 1960 and the enactment of the Foreign Awards (Recognition and Enforcement) Act, 1961, represented early steps in this direction. However, the decisive moment came with the Act of 1996, which was enacted to give effect to the UNCITRAL Model Law. The 1996 Act unified domestic and international arbitration under a single modern framework, emphasizing minimal judicial intervention and party autonomy. In principle, this placed India on par with leading arbitration jurisdictions.<sup>12</sup> Yet, as subsequent practice revealed, statutory language alone could not overcome entrenched judicial attitudes and litigation culture.<sup>13</sup>

The legislative journey of the Act further reflects this dynamic of reform and retrenchment. The 2015 Amendment represented the most ambitious attempt to curtail judicial interference, and Section 34 was amended.<sup>14</sup> The 2019 Amendment, by establishing the Arbitration Council of India and strengthening institutional arbitration, sought to move away from India's heavy reliance on *ad hoc* mechanisms.<sup>15</sup> Yet, it controversially reintroduced automatic stays on awards pending challenge, undermining earlier reforms until the Supreme Court struck down the provision as arbitrary. The 2021 Amendment,<sup>16</sup> while enhancing party autonomy in appointment of arbitrators, created fresh concerns by permitting unconditional stays in cases of alleged fraud or corruption. Each of these reforms demonstrates the state's intent to foster an arbitration-friendly climate but also illustrates the difficulties of sustaining a consistent policy direction.

<sup>9</sup> Darius J Khambata, 'Challenge and Enforcement of Awards: The Brooding Omnipresence of Public Policy' in Dushyant Dave and others (eds), *Arbitration in India* (Kluwer Law International 2021).

<sup>10</sup> Indian Arbitration Act 1899 s 2 s 23.

<sup>11</sup> *Guru Nanak Foundation v. Rattan Singh* (1981) 4 SCC 634, 635.

<sup>12</sup> Promod Nair, 'Surveying a Decade of the "New" Law of Arbitration In India' (2007) 23 *Arbitration International* 699.

<sup>13</sup> *ibid.*

<sup>14</sup> Arbitration and Conciliation (Amendment) Act, 2015 s 18.

<sup>15</sup> Arbitration and Conciliation (Amendment) Act, 2019 s 10.

<sup>16</sup> Arbitration and Conciliation (Amendment) Act, 2021.

## 2.2 Section 34: Statutory Design and Judicial Interpretation

Section 34 of the 1996 Act was modelled directly on Article 34 of the UNCITRAL Model Law and provided limited grounds for setting aside an arbitral award.<sup>17</sup> These included incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, the award being beyond the scope of submission, improper tribunal composition or procedure, non-arbitrability of the subject matter, and conflict with the ‘public policy of India.’ Additionally, the provision prescribed a strict limitation period of 3 months (extendable by thirty days) for filing challenges,<sup>18</sup> underscoring the principle of finality. On paper, this represented a narrow supervisory role for courts. In practice, however, interpretation of the ‘public policy’ ground transformed Section 34 into a portal for extensive judicial scrutiny.

In *Renusagar Power Co. Ltd. v. General Electric Co.*,<sup>19</sup> the Supreme Court adopted a relatively narrow reading of public policy, restricting it to contraventions of fundamental policy, interests of India, or justice and morality. This position was dramatically altered in *ONGC v. Saw Pipes*,<sup>20</sup> where the Court introduced ‘patent illegality’ as a further ground under public policy, opening the door to detailed merits review of arbitral awards. The pendulum thus swung from restraint to expansion, and arbitral finality suffered. The legislative response came through the Arbitration and Conciliation (Amendment) Act, 2015, which attempted to recalibrate the balance by expressly narrowing the scope of public policy, limiting it to fraud, corruption, contravention of fundamental policy, or conflict with basic notions of morality and justice. Importantly, the amendment clarified that ‘fundamental policy’ should not entail a merits review. At the same time, Section 34(2A) was introduced to provide that domestic awards could be set aside on the ground of patent illegality, though with the important caveat that errors of law and reappraisal of evidence were excluded.

Despite this legislative tightening, courts continued to exercise expansive powers by invoking ‘perversity’ and other elastic concepts, effectively reintroducing substantive review under the guise of procedural scrutiny.<sup>21</sup> This judicial practice underscores the resilience of interventionist tendencies within Indian arbitration jurisprudence, which statutory amendments alone have not fully eliminated.

Another flashpoint under Section 34 has been the question of whether courts can modify arbitral awards or only set them aside. In *Hakeem*,<sup>22</sup> the Supreme Court categorically held that modification was beyond the scope of Section 34. Yet, in practice, High Courts, including Delhi, have frequently engaged in partial modifications—especially with respect to interest components or severable claims—often framing them as ‘partial setting aside.’ The issue reached a constitutional bench of the Supreme Court in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*,<sup>23</sup> which recognized a limited judicial power to modify awards, confined to severable errors, manifest clerical mistakes, or adjustments to post-award interest. This pragmatic compromise reflects the judiciary’s attempt to balance arbitral finality with fairness, though it raises concerns that the line between limited correction and appellate review could once again blur.

<sup>17</sup> Khambata (n 9).

<sup>18</sup> Arbitration and Conciliation Act 1996 s 34(3).

<sup>19</sup> *Renusagar Power Co Ltd v General Electric Co.* 1994 AIR SC 860.

<sup>20</sup> *Oil and Natural Gas Corporation Ltd v Saw Pipes Ltd.* (2003) 3 SCR 691.

<sup>21</sup> Pratyush Singh and Aastha Malipatil, ‘Empirical Insights into the Legal Quicksand: The Case of Patent Illegality in Indian Arbitration’ (2025) 41 *Arbitration International* 327.

<sup>22</sup> *NHAI v. M. Hakeem* (2021) 9 SCC 1.

<sup>23</sup> *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025) 7 SCC 1.

### 2.3 Structural Barriers to Arbitral Efficiency

Beyond statutory and judicial developments, India's aspiration to become an arbitration hub is constrained by structural barriers that empirical analysis reveals in stark detail.

The litigation behaviour of government entities represents the most persistent barrier.<sup>24</sup> Despite public pronouncements championing arbitration,<sup>25</sup> empirical data show that government bodies are the most frequent litigants in arbitration-related proceedings, initiating challenges at twice the rate they defend them. Their involvement prolongs proceedings, as cases with the government on both sides take significantly longer than those between private parties. This paradox between rhetoric and practice erodes credibility, particularly for international investors who rely on predictability and finality in dispute resolution.

Judicial culture represents another barrier. Even after repeated statutory amendments, courts continue to approach arbitration with a supervisory instinct, often re-examining contractual interpretation and evidence. This tendency reflects what Nariman described as India's ability to make 'a fine art of how not to honour an award, domestic or foreign.'<sup>26</sup> The inconsistency across different High Courts compounds the problem, with success rates for challenges varying dramatically from 18.34 per cent in Delhi, to 46.66 per cent in Bombay, and 37.73 per cent in Madras.<sup>27</sup> This jurisdictional lottery undermines certainty, a cornerstone of international arbitration.

Institutional deficits further exacerbate the problem. While jurisdictions like Singapore and Hong Kong have invested heavily in arbitration infrastructure, India continues to rely predominantly on *ad hoc* arbitration.<sup>28</sup> The India International Arbitration Centre, though established as an institution of national importance, remains nascent and has yet to achieve global recognition. Infrastructure, marketing, and regulatory frameworks, including uncertainty surrounding third-party funding,<sup>29</sup> remain underdeveloped. As a result, international parties remain reluctant to seat arbitrations in India, preferring jurisdictions with clearer rules, stronger institutions, and consistent judicial support.<sup>30</sup>

Delays are perhaps the most visible barrier. Despite statutory timelines, nearly half of Section 34 cases take more than a year to resolve, with some stretching for several years. This undermines arbitration's supposed advantage of speed. Empirical evidence shows that while unmeritorious cases are sometimes disposed of quickly, complex disputes often languish, reflecting systemic inefficiencies within the judiciary.

### 2.4 Framework for Empirical Analysis

This conceptual framework reveals a striking paradox. On paper, India has aligned its arbitration law with international best practices, repeatedly amending the Act to curtail judicial intervention and promote efficiency. In practice, however, judicial attitudes, government

<sup>24</sup> PTI, 'Law Ministry for Reducing Litigation Involving Central Government' (*ETLegalWorld.com*, 20 April 2025) <<https://legal.economicstimes.indiatimes.com/news/law-policy/law-ministry-for-reducing-litigation-involving-central-government/120460020>> accessed 21 August 2025.

<sup>25</sup> PTI, 'Use Arbitration, Don't Move Court for Inter-Dept Disputes: Law Ministry' (*The Indian Express*, 7 September 2017) <<https://indianexpress.com/article/india/use-arbitration-dont-move-court-for-inter-dept-disputes-law-ministry-4832983/>> accessed 21 August 2025.

<sup>26</sup> Fali Nariman, 'Ten Steps to Salvage Arbitration in India: The First LGIA-India Arbitration Lecture' (2011) 27 *Arbitration International* 115.

<sup>27</sup> Singh and Malipatil (n 21).

<sup>28</sup> Srikrishna (n 8).

<sup>29</sup> Ansh Desai and others, 'Third-Party Funding for Dispute Resolution in India' (*Nishith Desai Associates*, 2 April 2024) <[https://www.nishithdesai.com/fileadmin/user\\_upload/Html/Hotline/NP-Third-Party-Funding-for-Dispute-Resolution-in-India-Apr0224-M.htm](https://www.nishithdesai.com/fileadmin/user_upload/Html/Hotline/NP-Third-Party-Funding-for-Dispute-Resolution-in-India-Apr0224-M.htm)> accessed 21 August 2025.

<sup>30</sup> Bhavana C Dhoundiyal, 'India as an Arbitration Hub: An Achievable Dream or an Illusion?' (*Bar and Bench*, 10 January 2025) <<https://www.barandbench.com/columns/india-an-arbitration-hub-an-achievable-dream-or-an-illusion>> accessed 21 August 2025.

behaviour, and institutional deficits have undermined these reforms. Section 34 exemplifies this paradox: intended as a narrow safety valve, it has become a frequent and often expansive site of judicial contestation. Understanding this background is essential for interpreting the empirical findings that follow. The patterns observed in Section 34 challenges before the Delhi High Court are not anomalies; they are products of a legal culture where formal reforms coexist with entrenched practices that resist change.

The following section sets out the research objectives and methodology through which this empirical inquiry was conducted. By situating the dataset within the conceptual framework outlined above, the study aims to provide a comprehensive account of how arbitration operates in India as a matter of doctrine and in practice, and to assess whether the gap between aspiration and reality is narrowing or, as the evidence suggests, persisting.

### 3. RESEARCH OBJECTIVES AND METHODOLOGY

This study examines challenges to arbitral awards under Section 34 of the Act before the Delhi High Court during 2021–2024. The objectives are to:

1. Assess the frequency, grounds, and success rates of Section 34 challenges.
2. Evaluate the role of government entities as litigants, given the policy emphasis on promoting arbitration.
3. Analyse procedural aspects such as timelines, pendency, and duration of proceedings in light of statutory mandates.
4. Identify judicial approaches to key grounds of challenge, including patent illegality and public policy, and their consistency with legislative intent.
5. Situate empirical findings within broader debates about India's credibility as an arbitration-friendly jurisdiction.

#### 3.1 Dataset and Scope

The study is based on 2,020 Section 34 petitions filed before the Delhi High Court between 2021 and 2024. The study begins from 2021, as it marks a significant watershed in Indian arbitration jurisprudence with the Supreme Court's decision in *Project Director, National Highways Authority of India v. M. Hakeem*,<sup>31</sup> where the Court conclusively held that courts cannot modify arbitration awards under Section 34 but can only set them aside in their entirety.

These cases selected in the database include Original Miscellaneous Petitions (O.M.P.) and Original Miscellaneous Petitions (Commercial) (O.M.P. (COMM)). The dataset comprises:

- 365 judgments,
- 16,977 interim and final orders, and
- complete case histories for all petitions.

The Delhi High Court was chosen as the focus because of its significance as a commercial forum and its high volume of arbitration-related litigation.

#### 3.2 Data Collection Methodology

Data were collected through systematic web scraping of the Delhi High Court's official website. All available case histories, orders, and judgments were downloaded and processed. The

<sup>31</sup> *NHAI v. M. Hakeem*, (2021) 9 SCC 1.

extracted variables included case identification, parties, filing and judgment dates, bench composition, grounds of challenge, and final outcomes. Details of these parameters are set out in the [Appendix](#).

The study was conducted independently without any funding.

### 3.3 Analytical Framework

The study employs a mixed-method approach. Quantitative analysis was performed to track success rates, duration of proceedings, pendency levels, and patterns of government versus private participation. Qualitative analysis was used to assess judicial reasoning on key grounds of challenge, especially interpretation of ‘public policy’ and ‘patent illegality,’ and to compare treatment of domestic and international commercial arbitration awards.

### 3.4 Limitations

The study faces certain limitations:

1. **Data availability**—Some judgments and orders were inaccessible on the court website despite extensive efforts. Despite filing for certified copies, some specific orders (eg, O.M.P. (COMM)-11/2021 Order dated 07/04/2021, O.M.P. (COMM) 300/2023 Order dated 19/01/2024) and judgments for several matters (O.P.M. (COMM.) cases 33/2021, 78/2021, 163/2021, 228/2021, 298/2021, and 341/2021) remained inaccessible.
2. **Temporal inconsistencies**—Rate-limiting in data scraping required collection over time, which occasionally produced discrepancies in case status that were subsequently cleaned.
3. **Jurisdictional scope**—Findings are limited to the Delhi High Court and may not fully represent practices in other High Courts.

## 4. EMPIRICAL FINDINGS

### 4.1 Overall Disposition Patterns

The empirical analysis of Section 34 challenges to arbitral awards before the Delhi High Court from 2021 to 2024 reveals significant patterns in judicial disposition. Based on our comprehensive dataset and its summarized version,<sup>32</sup> we can identify clear trends in both the outcomes of challenges and the time taken for their resolution. The breakup of cases is:

Category	Year of registration	No of cases
O.M.P.	2021	1
O.M.P.	2022	7
O.M.P.	2023	1
O.M.P.	2024	9
O.M.P. (COMM)	2021	388
O.M.P. (COMM)	2022	520
O.M.P. (COMM)	2023	537
O.M.P. (COMM)	2024	557

<sup>32</sup> ‘Arbitration-Delhi HC-Snapshot’, <[https://docs.google.com/spreadsheets/d/1DKhi1fjl0wokpF99ytjJRoWzPN2wY7fE/edit?usp=drive\\_link&ouid=106945186735482595747&rtfpof=true&sd=true](https://docs.google.com/spreadsheets/d/1DKhi1fjl0wokpF99ytjJRoWzPN2wY7fE/edit?usp=drive_link&ouid=106945186735482595747&rtfpof=true&sd=true)>

The overall disposition of Section 34 petitions shows a nuanced pattern of judicial treatment. Of the 781 decided cases in our dataset, 49.80 per cent resulted in awards being upheld entirely, while 12.55 per cent led to awards being set aside completely. Out of the 389 awards that the court upheld, 73 were adjudicated as being time-barred, and in another 9 the court found it lacked jurisdiction on the basis of the pecuniary limit. In 6.02 per cent of cases, courts opted for partial modification of awards rather than wholesale rejection. A substantial portion of petitions (27.01 per cent) were either withdrawn (17.16 per cent) or settled during proceedings (9.86 per cent), suggesting that Section 34 challenges may function as leverage for negotiation rather than solely as vehicles for judicial intervention. In five cases (0.64 per cent), the matters were remanded back to the tribunal for further proceedings,<sup>33</sup> while nine cases (1.15 per cent) remained reserved for judgment at the time of this analysis.<sup>34</sup> Of the 781 decided cases analysed, 22 cases (2.81 per cent) were classified as ‘miscellaneous’. These cases encompass diverse proceedings: post-award applications, reference judgments concerning ‘non est’ filing, applications for dismissal pursuant to s 34(3) of the Act and predominantly matters at various interim stages. Despite their procedural posture, these cases have not been classified as ‘interim’ because court records definitively designate them as ‘disposed-of’. Consultations with multiple practitioners at the Delhi High Court suggest that cases bearing ‘disposed-of’ status more likely indicate administrative omissions in uploading final orders/judgments rather than erroneous classification. This empirical observation carries significant implications for the quantitative assessment of arbitral award challenges and judicial efficiency metrics. These findings collectively indicate that the Section 34 mechanism serves multiple procedural functions beyond simple binary outcomes of upholding or setting aside arbitral awards.

Year-wise analysis demonstrates a remarkably consistent ratio between upheld and set-aside awards throughout the study period (2021–2024). As illustrated in Fig. 1, this proportional stability persists despite significant fluctuations in absolute case volumes. Such consistency across temporal cohorts suggests a well-established judicial philosophy regarding arbitral finality that transcends individual judicial personnel changes and evolving jurisprudential developments. This finding reinforces the doctrinal coherence of Section 34 adjudication and provides valuable predictive guidance for practitioners.

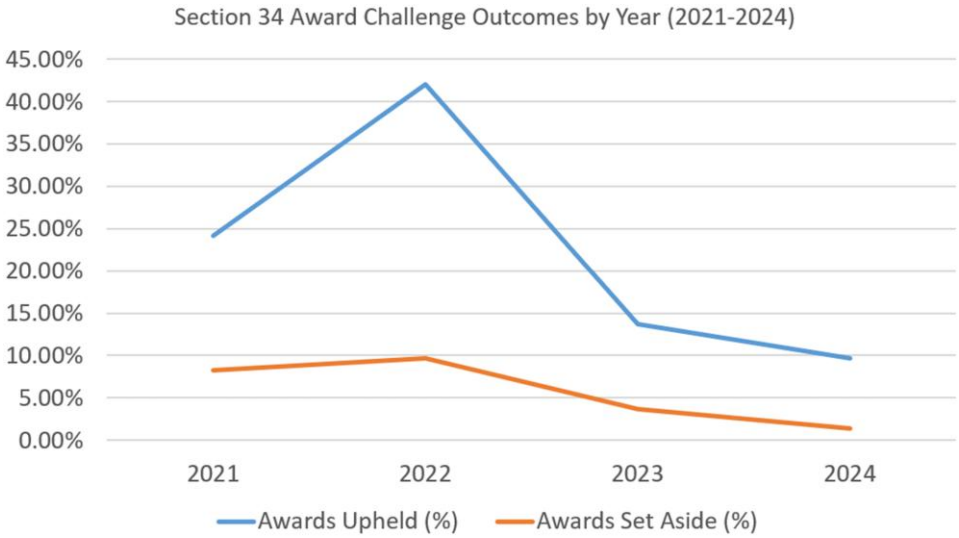
The disposal efficiency metrics, however, present a more concerning picture. The overall disposal rate stands at a modest 38.66 per cent, indicating significant pendency in the system. Disposal efficiency shows a predictable decrease for recent cases (2021: 56.04 per cent, 2022: 55.40 per cent, 2023: 33.08 per cent, 2024: 16.43 per cent), reflecting the time lag in judicial resolution. The fact that nearly two-thirds of all Section 34 challenges filed since 2021 remain pending underscores the continuing challenge of backlog in arbitration-related litigation.

Time analysis reveals a striking bimodal distribution in resolution times (Fig. 2). Quick disposals (within 0–1 month) account for 20.36 per cent of decided cases, and (within 1–3 months) account for 12.80 per cent of decided cases, suggesting effective filtration of clearly unmeritorious petitions. However, 48.91 per cent of cases take over 12 months to resolve, with some extreme cases taking several years.<sup>35</sup> The significant proportion of long-duration cases contradicts the legislative intent behind Section 34, which envisages expeditious disposal of challenges to arbitral awards.

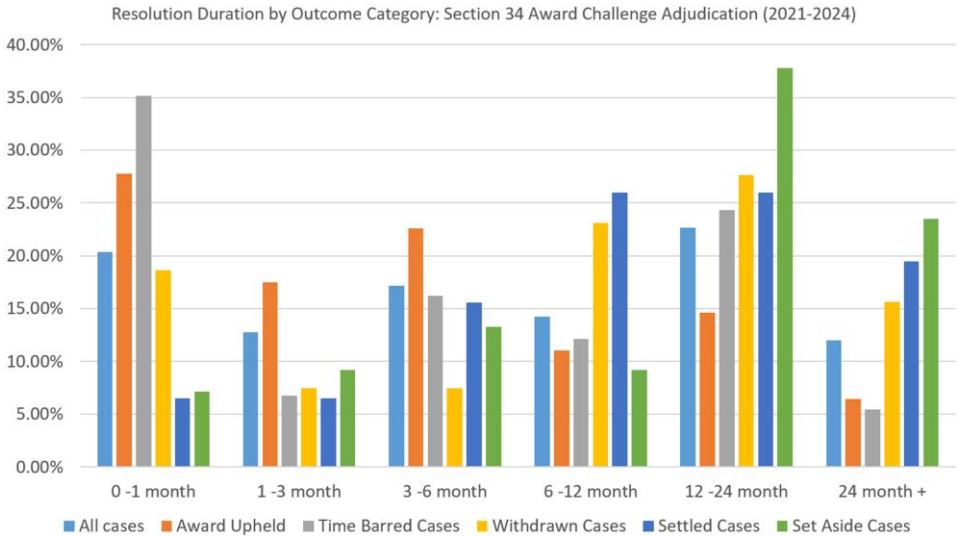
<sup>33</sup> O.M.P. (COMM) 256/2021, O.M.P. (COMM) 311/2021, O.M.P. (COMM) 443/2022, O.M.P. (COMM) 374/2023, O.M.P. (COMM) 13/2024.

<sup>34</sup> O.M.P. (COMM) 163/2021, O.M.P. (COMM) 228/2021, O.M.P. (COMM) 320/2021, O.M.P. (COMM) 321/2021, O.M.P. (COMM) 78/2021, O.M.P. (COMM) 354/2022, O.M.P. (COMM) 355/2022, O.M.P. (COMM) 485/2022, O.M.P. (COMM) 372/2024.

<sup>35</sup> *Hariram & Ors. v. National Highway Authority of India*, O.M.P. (Comm.) 86/2021 dated 04 April 2024 was decided in 1,495 days (4 years, 1 month, and 10 days) and the application was dismissed on the basis of lack of territorial jurisdiction.



**Figure 1.** Section 34 Award Challenge Outcomes by Year (2021–2024): Proportional distribution of awards upheld and awards set aside as a percentage of decided cases, disaggregated by year of registration (2021–2024).



**Figure 2.** Resolution Duration by Outcome Category: Section 34 Award Challenge Adjudication (2021–2024): Percentage distribution of cases across six duration brackets (0–1 month, 1–3 months, 3–6 months, 6–12 months, 12–24 months, and 24 months+), disaggregated by outcome category (all cases, award upheld, time-barred, withdrawn, settled, and set aside).

Further analysis revealed significant procedural asymmetries within the adjudicative framework. Cases resulting in award confirmation demonstrate a pronounced tendency towards expeditious resolution, with 67.86 per cent concluded within a 6-month timeframe. Conversely, applications culminating in the setting aside of awards exhibit a markedly protracted

trajectory, with 61.23 per cent requiring either 24 months or longer for disposition. This temporal divergence suggests a substantive procedural distinction: the validation of existing arbitral determinations appears to necessitate considerably less extensive judicial scrutiny than their invalidation. Time-barred applications are predominantly identified within initial procedural stages (35.14 per cent within the first month), whereas matters resolved through settlement demonstrate a gradual progression towards resolution (71.42 per cent requiring 12 months or longer).

Government involvement also plays an active role in deciding the disposition time. Government involvement significantly impacts case duration. Cases with government entities on both sides take substantially longer (491.75 days) compared to private-only cases (297.41 days). Government-petitioner cases (294.59 days) and government-respondent cases (307.75 days) also show longer-than-average resolution times. This 39.52 per cent increase in duration for government-on-both-sides cases highlights institutional inefficiencies in government litigation that contribute to delays in the arbitration ecosystem.

The data also reveals interesting patterns in case filing. Commercial disputes dominate the landscape, with Original Miscellaneous Petition (Commercial) cases accounting for 99.11 per cent of the dataset (2,002 out of 2020 cases).

These disposition patterns illustrate the fundamental tension in India's approach to arbitral challenges: while courts maintain a formal commitment to arbitral finality by upholding a majority of awards and filtering out frivolous challenges promptly, the system still permits substantial delays and interventions that undermine the efficiency goals of the arbitration framework. The persistence of long-duration cases despite legislative time limits and the high percentage of pending matters highlight the need for procedural reforms to enhance the efficacy of the Section 34 challenge mechanism.

## 4.2 Grounds for Challenge and Their Success Rates

The empirical analysis of Section 34 challenges before the Delhi High Court reveals distinctive patterns in both the frequency with which various grounds are invoked and their relative success rates. These patterns provide crucial insights into how courts approach the review of arbitral awards in practice, often diverging from the restrictive intent of the statutory framework.

Our comprehensive dataset of Section 34 challenges from 2021 to 2024 shows that petitioners overwhelmingly favour certain grounds while rarely invoking others. 'Patent illegality appearing on the face of the award' emerges as the most frequently cited ground, appearing in 38.05 per cent of challenges filed during the study period. This is followed closely by claims that the 'award is in conflict with the public policy of India' (31.1 per cent). Other grounds are invoked less frequently: awards allegedly dealing with disputes beyond scope (9.33 per cent), improper composition of the arbitral tribunal (5.53 per cent), invalidity of the arbitration agreement (1.66 per cent), and lack of proper notice (1.74 per cent). This distribution reflects strategic choices by litigants, who clearly perceive certain grounds as more promising avenues for judicial intervention.

However, success rates reveal a striking disconnect between frequency of invocation and actual efficacy. The most successful ground for challenging awards is improper composition of the arbitral tribunal, with 74.28 per cent of such challenges resulting in awards being set aside. This high success rate stems from the Supreme Court's decisions in *TRF Limited v. Energo Engineering Projects Limited* and *Perkins Eastman Architects DPC v. HSCC (India) Limited*,<sup>36</sup> which established strict standards for arbitrator independence. In cases like

<sup>36</sup> *TRF Limited v. Energo Engineering Projects Limited* AIR 2017 SC 3889, para 53, 57; *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2020) 20 SCC 760, para 16, 20.

O.M.P. (COMM) 78/2024, courts consistently set aside awards where the arbitrator was unilaterally appointed, which is contrary to the judgments of the Supreme Court.<sup>37</sup>

By contrast, the most commonly invoked grounds show remarkably low success rates. Challenges based on ‘patent illegality’ succeed in only 10.81 per cent of cases where they are raised, while ‘public policy’ arguments fare even worse at 8.92 per cent. This discrepancy suggests strategic misjudgement by litigants, who continue to favour grounds with lower probabilities of success. It may also reflect courts’ growing reluctance to intervene on substantive grounds following the 2015 Amendment’s explicit prohibition against merits review.

The empirical findings also reveal an emerging jurisprudence around ‘non-est filings.’ The Delhi High Court has established through cases like O.M.P. (COMM) 20/2024 that filing a Section 34 petition without attaching the arbitral award renders the filing legally non-existent, with significant consequences for limitation calculations.<sup>38</sup> This technical ground has emerged as an increasingly important factor in dispositions.<sup>39</sup>

These patterns collectively suggest that despite legislative attempts to restrict judicial intervention through the 2015 Amendment, courts have maintained significant discretion in reviewing arbitral awards, particularly on procedural grounds.

### 4.3 Government as Litigant

The role of government entities in arbitration challenges represents one of the most striking findings of our empirical study. While government rhetoric consistently champions arbitration as a preferred dispute resolution mechanism for enhancing India’s business environment, the data reveal a contradictory pattern of government behaviour in practice. Our comprehensive analysis of Section 34 challenges before the Delhi High Court from 2021–2024 provides unprecedented insight into this disconnect.

Government entities feature prominently in the arbitration challenge landscape, with involvement in 62.28 per cent of all Section 34 cases (1258 out of 2020 cases) in our dataset. This overwhelming presence suggests that government contracts generate a disproportionate share of arbitration disputes, reflecting both the volume of public procurement and the institutional tendency toward litigation following adverse arbitral outcomes.

The dataset reflects heavy arbitration involvement from major infrastructure and energy-related government entities. Indian Railways and its subsidiaries, along with IRCTC, were involved in 178 cases, followed by the National Highways Authority of India (NHAI) with 116 cases. Other frequently appearing agencies include NTPC and its subsidiaries (47 cases), GAIL and the Delhi Metro Rail Corporation (each with 40 cases), the Steel Authority of India Ltd (SAIL) (25 cases), and the Delhi Development Authority (DDA) (17 cases). Additional participants include the Power Grid Corporation of India Limited (14 cases), the Dedicated Freight Corridor Corporation and the Ministry of Road Transport and Highways (each with 11 cases), as well as Oil and Natural Gas Corporation (ONGC) and NHPC Limited, both featuring in eight cases. These figures underscore the concentration of arbitration challenges within India’s infrastructure, transport, and energy sectors.

<sup>37</sup> *Uphar Finvest Limited v. Shriram Finance Limited*, O.M.P. (COMM) 78/2024, Order dated 15 March 2024, Delhi High Court, para 4.

<sup>38</sup> *Bharat Broadband Network Limited v. Sterlite Technologies Limited*, O.M.P. (COMM) 20/2024 dated 07 Feb 2025, Full Bench decision of Delhi High Court, para 97.

<sup>39</sup> Judgments discussing non est filings in their analysis. O.M.P. (COMM) 11/2023, O.M.P. (COMM) 20/2024, O.M.P. (COMM) 128/2023, O.M.P. (COMM) 20/2024, O.M.P. (COMM) 208/2022, O.M.P. (COMM) 216/2022, O.M.P. (COMM) 255/2021, O.M.P. (COMM) 274/2022, O.M.P. (COMM) 289/2022, O.M.P. (COMM) 321/2022, O.M.P. (COMM) 323/2022, O.M.P. (COMM) 368/2023, O.M.P. (COMM) 370/2022, O.M.P. (COMM) 397/2023, O.M.P. (COMM) 371/2023, O.M.P. (COMM) 392/2024, O.M.P. (COMM) 397/2023, O.M.P. (COMM) 398/2022, O.M.P. (COMM) 399/2022, O.M.P. (COMM) 400/2022, O.M.P. (COMM) 419/2023, O.M.P. (COMM) 426/2023, O.M.P. (COMM) 441/2023, O.M.P. (COMM) 465/2022, O.M.P. (COMM) 483/2024, O.M.P. 5/2024.

Most notably, government entities appear predominantly as petitioners challenging arbitral awards (825 cases, 40.84 per cent)<sup>40</sup> rather than as respondents defending them (412 cases, 20.39 per cent). This 2:1 ratio of challenging versus defending awards reveals a systematic bias towards contesting unfavourable outcomes. What is even more troubling is that 21 cases (1.04 per cent) involve government entities on both sides, indicating that inter-governmental disputes are also consistently litigated all the way, imposing unnecessary costs on the exchequer.

The propensity of government entities to challenge awards stands in stark contrast to public policy declarations promoting arbitration. As recently as February 2025, the Press Information Bureau highlighted the government's commitment to establishing an efficient, competent, and expeditious system of arbitration and its initiatives to promote 'timely conclusion of arbitration proceedings' and 'minimizing judicial intervention.'<sup>41</sup> These aspirational statements conflict with the empirical reality of government litigation practice.

Government participation in arbitration challenges correlates strongly with increased duration of proceedings. Of the decided cases, cases with government entities on both sides take an average of 491.75 days to resolve, compared to 297.41 days for private-only cases. Government-as-petitioner cases (298.67 days) and government-as-respondent cases (314.82 days) also show longer resolution times than the private-sector baseline, though the difference is less pronounced.

The Vivad se Vishwas II (Contractual Disputes) Scheme, a Ministry of Finance initiative launched in September 2023 offering contractors and suppliers a mechanism to settle pending contractual disputes with the government by accepting a discounted percentage of the claimed amount in exchange for withdrawal of litigation, has emerged as a significant factor in government arbitration litigation, with it being referred to in 64 cases. This scheme explicitly acknowledges that challenging arbitration awards often results in 'huge financial losses to the Government.'<sup>42</sup> Our data shows at least 29 cases settled under this scheme or its prior version in 2021–2024, including prominent withdrawals in O.M.P. (COMM) 1/2022, O.M.P. (COMM) 61/2022, and O.M.P. (COMM) 73/2022.<sup>43</sup> While the scheme represents a positive step towards reducing litigation, its existence implicitly confirms the problematic volume of government challenges to arbitral awards.

Success rates for government challenges reveal mixed patterns. Government entities succeeded in having awards set aside or modified in 14.66 per cent (50 of 341 disposed-of cases) where they appeared as petitioners, slightly below the overall average success rate of 18.56 per cent. This lower success rate, coupled with the substantially higher frequency of challenges, suggests a quantity-over-quality approach to arbitration litigation that contradicts efficiency goals.

Contractual clauses requiring mandatory arbitration in government contracts appear to exacerbate the volume of challenges. In infrastructure contracts particularly, standard form

<sup>40</sup> If cases in which government is both petitioner and respondent are considered, then the total count increases to 846 (41.88 per cent). These 21 cases have not been added to government-as-petitioner and government-as-respondent category.

<sup>41</sup> Ministry of Law and Justice, 'Government Initiatives in the Realm of Alternative Dispute Resolution Mechanisms' (Press Information Bureau, 13 December 2024) <<https://www.pib.gov.in/www.pib.gov.in/Pressreleaseshare.aspx?PRID=2084219>> accessed 20 August 2025.

<sup>42</sup> Ministry of Finance, 'Vivad Se Vishwas II (Contractual Disputes)' (Department of Expenditure, 11 September 2023) <[https://doe.gov.in/files/whats\\_new\\_documents/Vivad\\_se\\_Vishwas\\_II\\_Contractual\\_Disputes\\_Extension\\_1.pdf](https://doe.gov.in/files/whats_new_documents/Vivad_se_Vishwas_II_Contractual_Disputes_Extension_1.pdf)> accessed 20 August 2025.

<sup>43</sup> O.M.P. (COMM) 239/2021, O.M.P. (COMM) 318/2021, O.M.P. (COMM) 355/2021, O.M.P. (COMM) 39/2021, O.M.P. (COMM) 49/2021, O.M.P. (COMM) 61/2021, O.M.P. (COMM) 84/2021, O.M.P. (COMM) 1/2022, O.M.P. (COMM) 150/2022, O.M.P. (COMM) 197/2022, O.M.P. (COMM) 198/2022, O.M.P. (COMM) 199/2022, O.M.P. (COMM) 270/2022, O.M.P. (COMM) 298/2022, O.M.P. (COMM) 330/2022, O.M.P. (COMM) 339/2022, O.M.P. (COMM) 341/2022, O.M.P. (COMM) 362/2022, O.M.P. (COMM) 413/2022, O.M.P. (COMM) 432/2022, O.M.P. (COMM) 454/2022, O.M.P. (COMM) 61/2022, O.M.P. (COMM) 73/2022, O.M.P. (COMM) 76/2022, O.M.P. (COMM) 10/2023, O.M.P. (COMM) 103/2023, O.M.P. (COMM) 138/2023, O.M.P. (COMM) 177/2023, O.M.P. (COMM) 310/2023.

contracts often contain arbitration clauses that nominate senior government officials or retired judges as arbitrators, a practice increasingly scrutinized following the Supreme Court's decisions in *TRF Limited* and *Perkins Eastman*.<sup>44</sup> These clauses generate procedural challenges that might be avoided through more neutral appointment mechanisms.

The comprehensive data on government arbitration litigation underscores a fundamental disconnect between policy rhetoric and practical reality. While successive governments have promoted arbitration as a cornerstone of their economic policy and ease-of-doing-business initiatives, the actual litigation behaviour of government entities undermines these objectives. The high volume of challenges to awards, extended case durations, and strategic choices in grounds invoked all suggest systemic issues that require specific policy interventions beyond general arbitration reform.

This pattern is not unique to domestic arbitration; it extends to international disputes as well.<sup>45</sup> In cases involving foreign parties, government entities still appear as frequent challengers of awards, potentially affecting India's reputation as an arbitration-friendly jurisdiction. Addressing this disconnect between government rhetoric and litigation reality represents a crucial step towards establishing India as a credible global arbitration hub.

#### 4.4 Procedural Irregularities as Grounds for Setting Aside

While substantive grounds for challenge dominate the volume of Section 34 petitions, procedural grounds emerge as significantly more successful in our empirical analysis. The marked difference in success rates between procedural and substantive challenges reveals courts' continuing preference for intervention on technical grounds that do not require reassessment of the merits of arbitral determinations.

The most successful ground for setting aside awards is the improper composition of the arbitral tribunal, with a remarkable 74.28 per cent success rate across our dataset. This extraordinary efficacy stems from the Supreme Court's landmark decisions in *TRF Limited v. Energo Engineering Projects Limited* and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,<sup>46</sup> which established strict standards for arbitrator independence and impartiality. These decisions effectively invalidated commonly used contract clauses that allowed one party (typically the government or dominant commercial entity) to unilaterally appoint arbitrators.

Our data show that 52 out of 70 challenges based on improper tribunal composition resulted in awards being set aside. Cases like O.M.P. (COMM) 180/2022 exemplify this trend, where the court found that the arbitrator was de jure ineligible under section 12(5) of the A&C Act and that mere recording of statement before arbitrator or participation in proceedings does not constitute waiver.<sup>47</sup> Similarly, in O.M.P. (COMM) 349/2022, the court held that the award is void *ab initio* and unenforceable as the arbitrator was appointed unilaterally by one party.<sup>48</sup>

<sup>44</sup> *TRF Limited v. Energo Engineering Projects Limited*, AIR 2017 SC 3889, para 53, 57; *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2020) 20 SCC 760, para 16, 20.

<sup>45</sup> *Govt Of India Ministry Of Defence, Navy Principal Directorate Of Fleet Maintenance v. Ship Repairing Centre Zvyozdochka Russia*, O.M.P. (COMM) 532/2023; *New Delhi Municipal Council v. M/S China Railway Shishuju Group Corporation*, O.M.P. (COMM) 196/2024; *National Highway Authority Of India v. Ssangyong Engineering & Construction Co. Ltd.*, O.M.P. (COMM) 340/2021; *Dedicated Freight Corridor Corporation Of India Limited v. Sojitz L And T Consortium*, O.M.P. (COMM) 266/2022; *Steel Authority of India Limited v. Phaethon International Company AG*, O.M.P. (COMM) 281/2022; *Natrip Implementation Society v. Kistler Instrumente AG*, O.M.P. (COMM) 340/2022; *Steel Authority of India Limited v. British Marine PLC*, O.M.P. (COMM) 20/2023.

<sup>46</sup> *TRF Limited v. Energo Engineering Projects Limited*, AIR 2017 SC 3889, para 53, 57; *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2020) 20 SCC 760, para 16, 20.

<sup>47</sup> *Smaash Leisure Limited v. Ambience Commercial Developers Private Limited*, O.M.P. (COMM) 180/2022 dated 18 December 2023, Delhi High Court.

<sup>48</sup> *Sree Shiva Durga Cashew Products v. Infinity Fincorp Solutions*, O.M.P. (COMM) 349/2022 dated 23 July 2024, Delhi High Court.

The predominance of unilateral appointment challenges has created a reliable path for setting aside awards, particularly in government contracts where standard form agreements often contained clauses nominating officials from within the department or ministry. In *O.M.P. (COMM) 398/2022*, the court found the award void as the unilateral appointment of the arbitrator by the respondent is invalid based on previous Supreme Court decisions.<sup>49</sup> The consistent application of this principle has effectively rendered a significant category of arbitration clauses inoperative, requiring renegotiation or reformation.

Beyond appointment issues, challenges based on violations of parties not being given proper notice of proceedings show a moderate success rate of 22.72 per cent. In *O.M.P. (COMM) 156/2021*, the court set aside the award as the petitioners were not duly served notice of the arbitral proceedings as required.<sup>50</sup> However, courts apply rigorous scrutiny to natural justice claims, dismissing them where the party had actual knowledge of proceedings or opportunities to participate.

Jurisdictional challenges alleging that the tribunal exceeded its authority succeed at a rate of 14.39 per cent. These include cases where awards address matters beyond the scope of submission to arbitration or where the arbitration agreement itself was invalid.

The distinction between procedural orders and final awards has emerged as an important frontier in Section 34 jurisprudence. In *O.M.P. (COMM) 234/2024*, the court held that ‘an order dismissing an application under Section 23(3) of the Arbitration & Conciliation Act is only a procedural order and does not qualify as an ‘interim award’ amenable to challenge under Section 34 of the Act.’<sup>51</sup> This distinction prevents parties from challenging interim procedural decisions, restricting Section 34 review to final determinations of rights and obligations.

The pronounced success of procedural challenges reveals a continuing judicial preference for technical grounds that do not require substantive review of arbitral reasoning. This pattern suggests that despite legislative attempts to restrict intervention, courts retain significant oversight through procedural review mechanisms, creating a *de facto* system of procedural supervision that preserves judicial authority while nominally respecting arbitral autonomy on substantive matters.

#### 4.5 Substantive Review Under the Guise of Procedural Review

Despite the legislative intent to restrict judicial intervention in arbitral awards through the 2015 Amendment, our analysis reveals a concerning pattern of substantive review conducted under the guise of procedural scrutiny. This phenomenon represents one of the most significant gaps between the rhetoric of minimal intervention and the reality of judicial practice in Section 34 proceedings.

The 2015 Amendment explicitly added an explanatory note to Section 34(2)(b)(ii) clarifying that ‘the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.’<sup>52</sup> Further, the newly introduced Section 34(2A) specifically provided that ‘an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.’<sup>53</sup> These provisions sought to address the expansive interpretation in *ONGC v. Saw Pipes* that had opened the door to a wide-ranging review of arbitral findings.

<sup>49</sup> *Sunil Sethi v. Hero Fincorp Limited*, O.M.P. (COMM) 398/2022 dated 23 February 2024, Delhi High Court.

<sup>50</sup> *Ram Nanda and Co. v. Sanjay Saigal*, O.M.P. (COMM) 156/2021, p. 21, dated 19 May 2021, Delhi High Court.

<sup>51</sup> *NTPC Limited v. Starcon Infra Projects India Private Limited*, O.M.P. (COMM) 234/2024, para 24, March 07, 2025, Delhi High Court.

<sup>52</sup> Arbitration and Conciliation (Amendment) Act 2015, s 34(2)(b)(ii), Explanation 2.

<sup>53</sup> Arbitration and Conciliation (Amendment) Act 2015, s 34(2A).

However, data show that courts have developed various interpretive techniques that effectively permit substantive review while maintaining nominal adherence to the statutory restrictions. The concept of ‘perversity’ has emerged as a particularly elastic ground that enables courts to reconsider evidence and contractual interpretation under the patent illegality exception. Singh and Malipatil’s analysis of 699 cases between 2016 and 2023 found courts setting aside awards on perversity grounds in 38.98 per cent of cases where this was argued, despite the clear statutory prohibition against ‘reappreciation of evidence.’<sup>54</sup>

Our dataset reveals a specific manifestation of this phenomenon in the Delhi High Court. In cases where patent illegality was successfully argued, 30.76 per cent (17.30 per cent award completely set aside,<sup>55</sup> 13.46 per cent award partially modified<sup>56</sup>) involved challenges to the tribunal’s interpretation of contractual provisions. While courts formally acknowledge their limited review authority, they frequently engage in detailed analysis of contractual terms to determine whether the arbitrator’s interpretation was ‘possible’ or ‘perverse which provides them significant discretionary space for judicial intervention.

In O.M.P. (COMM) 148/2021, for example, the court set aside an award finding that the arbitrator’s conclusions result in ‘manifest disregard of clause 3.4.1.5 of GCC through a distorted interpretative process’ where the arbitrator effectively ‘replaced the words with “CVD in lieu of excise duty.”’<sup>57</sup> While framed as identifying patent illegality, this analysis involved a detailed reinterpretation of contractual language, precisely the type of review the statute sought to restrict.

Similarly, in O.M.P. (COMM) 82/2022, the court set aside a portion of the award finding that ‘that the Service Period of twenty years began from 28.09.2013’, holding that this contradicted the express agreement between the parties that the guarantee period would start from May 2007.<sup>58</sup> The line between identifying patent illegality and simply preferring an alternative interpretation of contractual provisions remains remarkably thin in practice.

The treatment of evidentiary issues further illustrates this pattern. In O.M.P. (COMM) 115/2022, the court set aside an award due to the ‘absence of any finding by the arbitrator that the Respondent suffered loss or damage, which is a sine qua non for award of damages,’ highlighting that the arbitrator had ‘explicitly noted twice that no document/evidence was produced to prove damages suffered.’<sup>59</sup> While characterized as patent illegality going to the root of the matter, this reasoning involved reassessing the evidentiary basis for the award, an approach nominally prohibited by Section 34(2A).

This pattern of substantive review under procedural guises creates several problematic consequences for India’s arbitration ecosystem. First, it undermines predictability, as parties cannot reliably determine which interpretations will be deemed ‘perverse’ rather than merely ‘erroneous.’ Second, it incentivizes detailed challenges to arbitral reasoning despite statutory discouragement. Third, it prolongs litigation by introducing complex questions of degree (how unreasonable must an interpretation be to qualify as perverse?) rather than clear categorical distinctions.

<sup>54</sup> Singh and Malipatil (n 21).

<sup>55</sup> O.M.P. (COMM) 148/2021, O.M.P. (COMM) 149/2021, O.M.P. (COMM) 152/2021, O.M.P. (COMM) 153/2021, O.M.P. (COMM) 279/2021, O.M.P. (COMM) 115/2022, O.M.P. (COMM) 244/2023, O.M.P. (COMM) 269/2023, O.M.P. (COMM) 261/2024.

<sup>56</sup> O.M.P. (COMM) 82/2022, O.M.P. (COMM) 136/2021, O.M.P. (COMM) 137/2021, O.M.P. (COMM) 146/2023, O.M.P. (COMM) 8/2021, O.M.P. (COMM) 81/2024, O.M.P. (COMM) 518/2023.

<sup>57</sup> *JSIW Infrastructure Private Limited v. ONGC Limited*, O.M.P. (COMM) 148/2021, para 18, 27, dated 20 December 2023, Delhi High Court.

<sup>58</sup> *Food Corporation of India v. Adani Agri Logistics Limited*, O.M.P. (COMM) 82/2022, para 41, 55, dated 5 July 2022, Delhi High Court.

<sup>59</sup> O.M.P. (COMM) 115/2022, Delhi High Court.

The data suggest that courts' reluctance to fully relinquish supervisory authority over arbitral outcomes has led to the development of elastic interpretive doctrines that preserve intervention capability while maintaining formal adherence to restrictive statutory language. Until this gap between rhetoric and reality is addressed, the goal of limited judicial intervention in arbitration will remain aspirational rather than actual.

#### 4.6 Settlement Patterns and Alternative Resolution

The empirical analysis of Section 34 proceedings reveals significant patterns of settlement and alternative resolution that suggest these challenges often function as negotiation leverage rather than vehicles for judicial determination. Our dataset shows that a substantial portion of challenges never proceed to judicial determination on merits, instead concluding through various settlement mechanisms.

Of the 781 disposed-of cases in our dataset, 27.01 per cent were either withdrawn (17.16 per cent) or settled during proceedings (9.86 per cent), indicating that more than one-fourth of all Section 34 challenges resolve without judicial pronouncement on the validity of the challenged award. This high settlement rate suggests that Section 34 petitions frequently serve as bargaining chips in post-award negotiations rather than genuine attempts to invalidate awards on legal grounds. A significant share of government withdrawals reflects a policy push towards non-litigation-based resolution.

The impact of the Delhi High Court Mediation and Conciliation Centre is also evident in our data. Several cases, including O.M.P. (COMM) 51/2023 and O.M.P. (COMM) 449/2023, were resolved through court-annexed mediation.<sup>60</sup> These cases typically involve commercial relationships where ongoing business interests outweigh the value of the disputed award, making negotiated solutions preferable to prolonged litigation.

Time considerations appear to drive many settlements. The analysis shows that 68.2 per cent of the withdrawn and settled cases take over 12 months. This substantial duration creates incentives for commercial parties to negotiate compromises rather than await judicial outcomes, particularly when continued uncertainty affects business operations or financial planning.

The high proportion of settlements supports the view that Section 34 challenges function within a broader ecosystem of dispute resolution rather than merely as a legal error-correction mechanism. Parties often use these challenges strategically to reopen negotiations, achieve better financial outcomes, or preserve relationships that might be damaged by full enforcement of contested awards.

#### 4.7 Time-Barred Petitions and Limitation Issues

The empirical analysis of Section 34 challenges reveals rigorous judicial enforcement of the limitation period as a significant factor affecting case outcomes. Our data show that courts consistently uphold the statutory time constraints for challenging arbitral awards, creating a substantial barrier to delayed challenges while simultaneously developing nuanced jurisprudence around technical aspects of limitation.

Approximately 9.34 per cent of all decided cases were dismissed as time-barred, highlighting strict judicial adherence to the limitation period prescribed under Section 34(3) of the Act. This provision establishes a 3-month period from receipt of the award for filing challenges, with a potential extension of thirty days if the court is satisfied that sufficient cause exists. The Supreme Court in *Popular Construction Co. (2001)* held this limitation period to be mandatory and non-extendable beyond the additional thirty days.<sup>61</sup>

<sup>60</sup> *Easy Trip Planners Pvt. Ltd v. One97 Communications Ltd*, O.M.P. (COMM) 449/2023, dated 5 March 2024, Delhi High Court; *Saravana Agency v. Religare Finvest Limited*, O.M.P. (COMM) 51/2023, dated 1 December 2023, Delhi High Court.

Our analysis reveals consistent application of this principle by the Delhi High Court. In O.M.P. (COMM) 490/2022, the court dismissed the petition as ‘the delay was beyond the maximum condonable period of 30 days, and therefore, the Court had no jurisdiction to condone the delay.’<sup>62</sup> Similarly, in O.M.P. (COMM) 316/2022, the court rejected arguments based on Section 10 of the General Clauses Act, ruling that the petition was filed ‘beyond the prescribed period of limitation under Section 34(3),’ relying on the Supreme Court’s decision in *Sagufa Ahmed and Ors.*<sup>63</sup>

Some limitation cases reveal extreme delays. O.M.P. (COMM) 54/2023 involved a delay of 3,301 days, while O.M.P. (COMM) 452/2023 involved a delay of 755 days, and O.M.P. (COMM) 19/2024 involved a delay of over 800 days. These cases underscore the absolute nature of the limitation period, with courts consistently refusing to entertain petitions regardless of the magnitude of delay or explanations offered.

Government as a petitioner shows particular vulnerability to limitation dismissals, accounting for 53.42 per cent (39 of 73 cases) of all time-barred cases. This disproportionate representation likely stems from bureaucratic delays in processing award challenges, coordination issues between departments, and the multi-layered approval processes typical in government litigation.

A significant development in limitation jurisprudence concerns the concept of ‘non-est filings’. The Full Bench decision in O.M.P. (COMM) 20/2024 (*Pragati Construction Consultants v. Union of India*) established that:

1. Non-filing of the Arbitral Award renders a Section 34 application non-est (legally non-existent);
2. Mere non-filing of Statement of Truth does not ipso facto make the petition non-est;
3. Other defects like non-filing of Vakalatnama individually would not render a petition non-est but cumulatively might justify declaring it non-est.<sup>64</sup>

This doctrine has significant implications for limitation, as non-est filings do not stop the limitation clock. In cases like O.M.P. (COMM) 483/2024 and O.M.P. (COMM) 77/2024, courts dismissed petitions as time-barred when the initial filing was made without the arbitral award, even though the defect was cured in later submissions.<sup>65</sup>

The calculation of the limitation period itself has generated interpretive questions. In O.M.P. (COMM) 239/2024, the court clarified that for limitation purposes, virtual hearings are equivalent to physical hearings, dismissing a petition filed on 21 May 2024, when the award was pronounced on 16 October 2023.<sup>66</sup> This ruling adapts limitation principles to contemporary arbitration practice, particularly in the post-pandemic environment.

The strict enforcement of limitation periods serves the Act’s objective of ensuring finality and efficiency in arbitration. However, the high percentage of cases dismissed on this ground suggests continuing procedural challenges in the arbitration ecosystem. The development of technical jurisprudence around ‘non-est filings’ further highlights the procedural complexity that parties must navigate to secure judicial review of arbitral awards.

<sup>61</sup> *Union of India v. Popular Construction Co* (2001) 8 SCC 470.

<sup>62</sup> O.M.P. (COMM) 490/2022, Delhi High Court.

<sup>63</sup> O.M.P. (COMM) 316/2022, Delhi High Court.

<sup>64</sup> *Pragati Construction Consultants v. Union of India*, O.M.P. (COMM) 20/2024, para 97, dated 07 Feb 2025, Full Bench decision of Delhi High Court.

<sup>65</sup> *NHPC Ltd v. V3S Infratech Ltd*, O.M.P. (COMM) 483/2024, para 16, dated 24 March 2025, Delhi High Court; *Pragati Construction Consultants v. Union of India*, para 7,8, dated 23 February 2024, Delhi High Court.

<sup>66</sup> *Kristal Vision Projects Private Limited v. Union of India*, O.M.P. (COMM) 239/2024, para 20, dated 27 May 2024, Delhi High Court.

#### 4.8 Empirical Evidence on Award Modification

Prior to the Supreme Court's definitive ruling in *Gayatri Balasamy v ISG Novasoft Technologies Limited*,<sup>67</sup> empirical evidence from the Delhi High Court already revealed a significant practice of partial modification occurring in Section 34 proceedings. Our data indicated that 6.02 per cent of disposed-of Section 34 cases resulted in partial modification, often framed as 'partial setting aside' post *Hakeem*.<sup>68</sup> Common instances included adjusting interest components or setting aside specific, severable claims found defective, while preserving the remainder of the award. This empirical reality aligns with the Supreme Court's eventual holding in *Gayatri Balasamy*, which recognized a limited, inherent power to modify within Section 34, particularly concerning severable parts and manifest errors. The Court's decision provides a legal foundation for the pragmatic approach already observed in practice, aimed at enhancing efficiency and avoiding unnecessary re-arbitration.

The modifications can be categorized into several distinct types, each reflecting different judicial approaches to intervention. The most common category involves interest-related modifications, where courts adjust or set aside interest components while preserving the main award. For instance, in O.M.P. (COMM) 219/2024, the court upheld the principal award amount but set aside only the interest component.<sup>69</sup> Similarly, in O.M.P. (COMM) 260/2024, the court preserved the main award regarding the principal amount but set aside the pre-award interest components based on a specific contractual clause that prohibited pre-award interest.<sup>70</sup>

The second prominent category involves substantive claim modifications, where courts intervene on specific portions of the award related to particular claims. In O.M.P. (COMM) 223/2024, the court modified the award by setting aside the award to the extent of grant of mesne profits, finding that there was no evidence led by either party with respect to the amount of mesne profits, and the arbitral tribunal had resorted to guesswork.<sup>71</sup> A particularly illustrative example is O.M.P. (COMM) 418/2023, where the court upheld the award for Rs. 16,02,01,966/- towards compensation but set aside the award of Rs. 15,00,00,000/- towards terminal benefits, finding that the terminal benefits award was unjust and independent and severable.<sup>72</sup>

The third category involves jurisdictional modifications, addressing specific issues where the tribunal exceeded its authority. For example, in O.M.P. (COMM) 261/2024, the court set aside the award to the extent it rejected IRB's claim for compensation under the terms of the concession agreement, finding that the Arbitral Tribunal had erroneously rewritten a provision of the contract by adding a requirement not present in the contract.<sup>73</sup>

Significantly, in cases predating the Supreme Court's decision in *Hakeem*,<sup>74</sup> the Delhi High Court was more explicit about exercising modification powers. In O.M.P. (COMM) 150/2021, the court set aside the impugned award 'to the extent that the Arbitral Tribunal had not considered the petitioner's claim for pre-reference interest on Claims Nos. 1 to 4,' finding that the award did not indicate any reason why the petitioner's claim for pre-reference interest was rejected, which rendered the award legally flawed in this respect.<sup>75</sup> Similarly, in O.M.P.

<sup>67</sup> *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.* (2025) 7 SCC 1.

<sup>68</sup> *NHAI v. M. Hakeem* (2021) 9 SCC 1.

<sup>69</sup> *NHPC Ltd v. Apaar Infratech Pvt Ltd*, O.M.P. (COMM) 219/2024, para 18, dated 13 May 2024, Delhi High Court.

<sup>70</sup> *Union of India v. Shivalik Fasteners Pvt Ltd*, O.M.P. (COMM) 260/2024, para 19, dated 4 July 2024, Delhi High Court.

<sup>71</sup> *GLS Infratech Pvt Ltd v. Radianc Infracon and Developers Pvt Ltd*, O.M.P. (COMM) 223/2024, para 21, dated 20 May 2024, Delhi High Court.

<sup>72</sup> *Manipal Hospitals (Dwarka) Private Limited v. Dr. Sanjeev Bagai*, O.M.P. (COMM) 418/2023, para 77, dated 28 May 2024, Delhi High Court.

<sup>73</sup> *IRB Ahmedabad Vadodara Super Express Tollway Pvt Ltd v. National Highways Authority of India*, O.M.P. (COMM) 261/2024, dated 11 February 2025, Delhi High Court.

<sup>74</sup> *NHAI v. M. Hakeem* (2021) 9 SCC 1.

(COMM) 12/2021, the court directly reduced interest from 12 per cent to 10 per cent annum and removed a claim of USD \$100,000.<sup>76</sup>

Post *Hakeem*, courts have generally avoided explicitly terming their interventions as ‘modifications,’ instead framing them as partial setting aside of awards. This semantic approach reflects judicial awareness of the Supreme Court’s position while maintaining practical flexibility. As observed in O.M.P. (COMM) 374/2023, when remanding specific issues to arbitrators for reconsideration, the court acknowledged the need for issue-specific interventions while avoiding language suggesting direct modification.<sup>77</sup>

Several factors appear to influence courts’ decisions to partially modify rather than set aside awards entirely. First, the nature of the error, particularly when confined to specific, severable components like interest calculations, makes partial intervention more appropriate than wholesale rejection. Second, judicial economy considerations feature prominently, as partial modifications prevent the need for re-arbitration of entire disputes when only specific issues are problematic. Third, clear contractual provisions, especially regarding technical matters like interest calculations, often provide courts with concrete bases for targeted interventions.

The prevalence of interest-related modifications is particularly notable, suggesting courts find it especially appropriate to modify rather than set aside awards when discrete components like interest can be cleanly separated from the main award. This aligns with the principle of minimal intervention while addressing specific legal errors.

This empirical evidence demonstrates a significant gap between the theoretical position articulated in *Hakeem*,<sup>78</sup> that courts lack modification powers under Section 34, and the practical reality where courts regularly engage in de facto modifications through various mechanisms. This ongoing practice by the Delhi High Court provides vital context for the Supreme Court’s deliberation, showing how courts have developed practical solutions to address partially defective awards without necessitating complete re-arbitration.

## 5. RECOMMENDATIONS AND WAY FORWARD

Effective judicial reforms represent a critical pathway for addressing the disconnect between India’s arbitration aspirations and current realities. Based on our empirical findings and comparative analysis, several targeted judicial reforms emerge as priorities for enhancing arbitration enforcement in India.

First, specialized arbitration benches should be established in High Courts with significant commercial caseloads. Our empirical data reveals that just five judges in the Delhi High Court handle 52.82 per cent of all Section 34 cases, with one particular judge alone managing 20.54 per cent of the total caseload. This existing concentration provides a foundation for formalized specialization; dedicated arbitration benches would develop consistent jurisprudence and enhance predictability. Judges appointed to these benches should receive intensive training in international arbitration principles, comparative practices, and the policy objectives underlying the arbitration framework.

Second, a robust case management protocol specifically designed for Section 34 proceedings should be implemented. Our empirical findings reveal a concerning bimodal distribution in resolution times: while 20.36 per cent of cases receive disposition within one month, 27.02

<sup>75</sup> *Gupta and Co v. DDA*, O.M.P. (COMM) 150/2021, para 32, dated 13 May 2021, Delhi High Court.

<sup>76</sup> *Oil India Limited v. Techno Canada Inc.*, O.M.P. (COMM) 12/2021, para 12, dated 08 Sep 2021 Delhi High Court.

<sup>77</sup> *National Insurance Company Ltd v. Brijbasi Art Press Ltd*, O.M.P. (COMM) 374/2023, para 14, dated March 18, 2025, Delhi High Court.

<sup>78</sup> *NHAI v. M. Hakeem* (2021) 9 SCC 1.

per cent take over 2 years to resolve. This protocol should include presumptive timeframes for different stages of proceedings, standards for granting adjournments, and consequences for non-compliance with timelines. Similar to Hong Kong's approach of awarding indemnity costs against parties who unsuccessfully challenge arbitral awards, this protocol should incorporate cost consequences for parties engaging in dilatory tactics.<sup>79</sup>

Third, clear doctrinal frameworks for applying the 'patent illegality' standard need to be established. Our research shows this ground is invoked in 38.05 per cent of challenges despite succeeding in only 10.81 per cent of cases where raised. The Supreme Court should articulate specific criteria for what constitutes a 'perverse' interpretation versus merely an 'alternative' interpretation of contractual provisions. These frameworks should explicitly discourage courts from re-evaluating evidence or reinterpreting contracts.

Fourth, judicial performance metrics specific to arbitration enforcement should be developed. These metrics should track not only disposal rates but also the nature of interventions, adherence to the limited review mandate, and comparative analysis with international standards. Regular publication of these metrics would enhance transparency and accountability while creating institutional incentives for appropriate judicial restraint.

Fifth, courts should develop a formal mechanism for early filtration of clearly unmeritorious challenges. Our data show that 20.36 per cent of cases are disposed of within 1 month, indicating significant potential for early identification of non-viable petitions. A preliminary review stage would help filter out challenges that plainly fall outside Section 34's limited scope. This would particularly address the pattern of challenges based on contractual interpretation, which constitute a significant portion of unsuccessful petitions.

Finally, the judiciary should reconsider its approach to government entities as litigants. Given that government entities initiate challenges at twice the rate they defend awards, courts should apply particular scrutiny to those challenges, ensuring they meet the high threshold required under Section 34 rather than receiving the traditional deference often accorded to government positions. This recalibration would align judicial practice with the policy objectives articulated by the government itself in promoting arbitration.

The empirical analysis reveals several areas where legislative intervention could address persistent gaps between statutory intent and judicial practice. Most critically, Parliament must resolve the ambiguity regarding courts' power to modify arbitral awards under Section 34, the current judgment in *Gayatri Balasamy v ISG Novasoft Technologies Limited* leaves too many ambiguities which can take back to square zero with intervention in every award.<sup>80</sup> Our data indicates that the Delhi High Court partially modified awards in 6.02 per cent of cases despite the textual limitations of Section 34. This practice has developed to address the practical inefficiency of setting aside entire awards for discrete defects but lacks an explicit statutory foundation.

<sup>79</sup> Justin D'Agostino, 'The Loser Pays It All: Hong Kong Court of Appeal Confirms Principle of Indemnity Costs for Failed Set aside Application' (*Kluwer Arbitration Blog*, 29 October 2012) <<https://legalblogs.wolterskluwer.com/arbitration-blog/the-loser-pays-it-all-hong-kong-court-of-appeal-confirms-principle-of-indemnity-costs-for-failed-set-aside-application/>> accessed 21 August 2025.

<sup>80</sup> Aashish Gupta, Puneeth Ganapathy and Rishab Aggarwal, 'Can Arbitral Awards Be Modified in Setting Aside Proceedings? — A Brief on the Supreme Court's Reinterpretation of Section 34 of the Arbitration and Conciliation Act, 1996' (*SCC Times*, 2 May 2025) <<https://www.sconline.com/blog/post/2025/05/02/modification-of-arbitral-awards-supreme-court-section-34/>> accessed 21 August 2025; DrGB Reddy and DrSB Md Irfan Ali Abbas, 'Allowing Modification of Arbitral Award by Court — A Retrograde Step?' (*SCC Times*, 27 June 2025) <<https://www.sconline.com/blog/post/2025/06/27/allowing-modification-of-arbitral-award-by-court-a-retrograde-step/>> accessed 21 August 2025; Deepriya Snehi, 'Judicial Innovation or Overreach? Indian Supreme Court's New Take on Modification of Arbitral Awards' (*Oxford Business Law Blog*, 11 June 2025) <<https://blogs.law.ox.ac.uk/oblb/blog-post/2025/06/judicial-innovation-or-overreach-indian-supreme-courts-new-take-modification>> accessed 21 August 2025.

Parliament should amend Section 34 to provide a clear, limited modification power with specific guardrails. The amendment could permit modifications only for severable components (particularly interest calculations) while prohibiting substantive rewriting of awards. This would align with the practice already evident in cases like *O.M.P. (COMM) 260/2024*, where the court preserved the main award regarding the principal amount but set aside only the pre-award interest components based on a specific contractual clause.<sup>81</sup>

A second critical area requiring legislative clarification is the ‘patent illegality’ standard. Parliament should introduce a precise statutory definition of ‘patent illegality’ that explicitly excludes contractual interpretation and evidential reassessment. This definition should codify the Supreme Court’s caution in *P.R. Shah Shares & Stock Brokers* holding that ‘court does not sit in appeal over the award of an arbitral tribunal by re-assessing or re-appreciating the evidence’.<sup>82</sup>

Third, while Section 34(3) establishes a strict limitation period that courts generally enforce, our finding that 48.91 per cent of cases take over 12 months to resolve despite statutory timelines indicates inadequate procedural discipline. Legislative amendments should impose mandatory case management protocols with fixed timelines for different stages of Section 34 proceedings.

Finally, given the high success rate of challenges based on procedural irregularities, particularly improper appointment of arbitrators (74.29 per cent success rate), statutory standardization of appointment procedures is essential. Parliament should codify the principles established in *TRF Limited* and *Perkins Eastman*<sup>83</sup> into a comprehensive framework for arbitrator appointment that eliminates the frequent grounds for setting aside awards.

These targeted legislative interventions would address the empirical realities of Section 34 practice, bringing statutory language into alignment with practical judicial approaches while reinforcing the fundamental policy goal of minimal intervention in arbitration. The effectiveness of such reforms, however, ultimately depends on corresponding judicial willingness to respect legislative boundaries.

## 6. CONCLUSION

This empirical analysis of Section 34 challenges before the Delhi High Court (2021–2024) reveals a persistent gap between India’s ambitious rhetoric about becoming a global arbitration hub and the practical reality of its arbitration ecosystem. While successive governments have enacted legislative reforms aimed at restricting judicial intervention and enhancing arbitral autonomy, our data demonstrates that significant structural and cultural barriers continue to undermine these objectives.

The findings reveal several critical disconnects. First, between statutory intent and judicial practice: despite the 2015 Amendment’s explicit prohibition against ‘reappreciation of evidence’ in Section 34(2A), courts continue to reassess arbitral findings under the expansive umbrella of ‘patent illegality’.<sup>84</sup> The success rate of 10.81 per cent for patent illegality challenges indicates that this ground remains a significant avenue for judicial intervention. More concerning is the dramatic variance in outcomes across High Courts, with success rates ranging from 18.34 per cent in Delhi to 46.66 per cent in Bombay,<sup>85</sup> suggesting that the fate of arbitral awards depends more on the forum than on consistent legal principles.

<sup>81</sup> *Union of India v. Shivalik Fasteners Private Limited*, O.M.P. (COMM) 260/2024, para 19, dated Jul 4, 2024, Delhi High Court.

<sup>82</sup> *P.R. Shah Shares & Stock Brokers (P) Ltd v. B.H.H. Securities (P) Ltd.*, para 15, October, 2011, AIR 2012 SC 1866.

<sup>83</sup> *TRF Limited v. Energo Engineering Projects Limited*, AIR 2017 SC 3889, para 53, 57; *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2020) 20 SCC 760, para 16, 20.

<sup>84</sup> Arbitration and Conciliation (Amendment) Act 2015, s 34(2A).

<sup>85</sup> Singh and Malipatil (n 21).

Second, a pronounced incongruity exists between government rhetoric and government practice. While official pronouncements champion arbitration as central to improving India's business environment, government entities initiate challenges to arbitral awards at twice the rate they defend them. This contradiction is further highlighted by the Vivad se Vishwas II scheme's acknowledgment that challenging arbitration awards often results in 'huge financial losses to the Government'.<sup>86</sup> The reality is that government entities remain the primary contributors to arbitration-related litigation.

Third, despite statutory timelines for expeditious disposal, 48.91 per cent of Section 34 cases take over 12 months to resolve, with many languishing for several years. This undermines a core benefit of arbitration: efficient dispute resolution. The bimodal distribution in resolution times (20.36 per cent within 0–1 month versus 48.91 per cent over 12 months) suggests that while courts can identify and dispose of clearly unmeritorious challenges promptly, complex cases face significant procedural delays despite statutory time limits.

The resolution of the constitutional question regarding courts' power to modify arbitral awards in *Gayatri Balasamy v ISG Novasoft Technologies Limited*<sup>87</sup> exemplifies these tensions and provides a way forward. Our data showed that the Delhi High Court partially modified 6.02 per cent of arbitral awards in disposed-of cases, reflecting a practical need addressed by the judiciary even before the *Gayatri Balasamy* decision affirmed a limited modification power. This judgment attempts to reconcile the need for finality with practical justice and efficiency. While providing legal clarity, the challenge remains to ensure this limited power is exercised judiciously, within the strict confines delineated by the Court, preventing a slide back into merits review, which the 1996 Act and its amendments sought to curtail. This judicial approach reflects pragmatic concerns about setting aside entire awards for discrete defects, while raising fundamental questions about the boundary between legitimate supervision and unwarranted intervention.

These findings have significant implications. For international parties, the unpredictability of how Indian courts might treat arbitral awards creates significant risk, undermining India's attractiveness as an arbitration seat. For domestic businesses, the prospect of prolonged Section 34 proceedings reduces the efficiency advantages of arbitration. For the government, the persistent pattern of challenging awards despite low success rates suggests systemic institutional failure to respect arbitral outcomes, leading to wasted resources and reputational harm.

Our analysis reveals that procedural reforms alone cannot address these issues. The reality is that challenges to arbitration in India stem from deeper cultural and institutional factors.

The comparison with leading jurisdictions is instructive. Hong Kong has invested heavily in arbitration infrastructure and maintains extreme judicial discipline when supervising awards. Courts there award indemnity costs against parties who unsuccessfully challenge arbitral awards, creating powerful disincentives against frivolous challenges.<sup>88</sup> India's approach, by contrast, lacks both the physical infrastructure and judicial restraint necessary to achieve similar success.

The way forward requires acknowledging that rhetoric alone cannot transform India into an arbitration hub. Concrete reforms must address the specific patterns identified in our empirical analysis. First, the government must lead by example, implementing a stringent policy restricting challenges to arbitral awards to exceptional circumstances. Second, India needs specialized arbitration courts or benches with judges trained in international best practices, addressing the problematic variance in outcomes across different courts. Third, legislative clarity on modification powers and the scope of 'patent illegality' would reduce uncertainty for all stakeholders. Fourth, investing in world-class arbitration infrastructure comparable to

<sup>86</sup> Ministry of Finance (n 42).

<sup>87</sup> *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1.

<sup>88</sup> D'Agostino (n 79).

Singapore's Maxwell Chambers would demonstrate a serious commitment to institutional excellence.<sup>89</sup>

Most critically, the culture of arbitration must evolve. This requires educational initiatives for the judiciary, legal profession, and business community to foster greater respect for arbitral autonomy. Nariman's concept of 'l'esprit d'arbitrage' (the spirit of arbitration)<sup>90</sup> remains elusive in India despite decades of formal reforms. For future research, longitudinal studies tracking outcomes over longer timeframes would help assess whether recent reforms are gradually changing patterns of judicial intervention. Comparative studies across different High Courts could further illuminate the causes of variance in outcomes. Research on institutional arbitration outcomes versus *ad hoc* proceedings would help quantify the potential benefits of stronger institutions. A study of arbitration outcomes in specialized sectors like infrastructure or energy might reveal domain-specific patterns requiring targeted interventions.

In conclusion, our empirical analysis reveals that India's journey towards becoming an arbitration hub remains incomplete, hampered by persistent tensions between statutory intent and judicial practice, government rhetoric and litigation behaviour, and formal procedures and practical outcomes. Meaningful progress requires acknowledging these gaps honestly and addressing the underlying cultural and institutional factors that maintain them. Only by directly confronting these tendencies can India transform aspirational rhetoric into an arbitration reality.

## APPENDIX

For each case, the following data points were extracted:

1. Case Identification:
  - Name of Respondent (extracted from Case History)
  - Name of Petitioner (extracted from Case History)
2. Temporal Parameters:
  - Date of Filing (extracted from Case History)
  - Date of Registration (extracted from Case History)
  - Date of Judgment (extracted from Order/Judgment)
  - Listing Dates (all listing dates available in Case History)
3. Case Status and Judicial Composition:
  - Status of the case (extracted from Case History)
  - Coram (bench composition, extracted from Order/Judgment)
4. Substantive Legal Parameters:
  - Grounds of Challenge (extracted from Order/Judgment for decided cases)
  - Outcome Metrics (extracted from Order/Judgment for decided cases)

All available orders (PDF format), judgments (PDF format), and case histories (HTML format) were systematically collected and processed to extract these parameters.

<sup>89</sup> Sagnik Sengupta, 'Advancing International Commercial Arbitration in India: Insights from Singapore and Japan' (*Vanderbilt Journal of Transnational Law*, 9 December 2024) <<https://www.transnat.org/post/advancing-international-commercial-arbitration-in-india-insights-from-singapore-and-japan>> accessed 20 August 2025.

<sup>90</sup> Fali S Nariman, 'The Spirit of Arbitration: The Tenth Annual Goff Lecture' (2014) 16 *Arbitration International* 261.