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# Challenges of Enforcing Arbitration Awards in India

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## Abstract

An effective system of alternative dispute resolution depends on the enforcement of arbitral rulings. India still faces major challenges in implementing both domestic and international arbitration awards, even after making important legislative reforms and having court rulings that promote arbitration. This study looks at significant court rulings, significant legal provisions, and real-world obstacles that make enforcement difficult. It also contrasts Indian enforcement practices with international best practices and suggests reform measures to strengthen India's standing as a major hub for international arbitration.

## Introduction

In response to the exponential growth in international trade and cross-border commerce in recent decades, India has seen a significant shift in its dispute settlement methodology. Due to its promises of party autonomy, efficiency, and finality, arbitration has emerged as the most popular alternative dispute resolution (ADR) mechanism requested by both domestic and international business communities. Traditional litigation in Indian courts has long been criticized for its lengthy and laborious procedures.

The Arbitration and Conciliation Act, 1996 (the "Act") is the main piece of legislation governing arbitration in India. It unified all earlier statutes and prominently referenced the UNCITRAL Model Law in order to bring India's legal system into compliance with international norms. In separate statutory sections, the Act thoroughly addresses both domestic and international arbitrations as well as the execution of both domestic and foreign verdicts. Importantly, it acknowledges the idea that arbitral decisions need to be enforceable like court orders, a characteristic intended to reassure parties looking for an impartial and effective way to settle disputes.

The actual enforcement environment is nonetheless complicated notwithstanding the statutory objective. The effectiveness of the arbitral procedure in India is hampered by a number of factors, including court intervention, the frequent use of public policy exceptions, the delayed resolution of challenges, and the actual issues associated with asset attachment. Although the 2015 and 2019 legislative amendments show forward-thinking efforts to streamline arbitration—by limiting the public policy exception, imposing deadlines, and minimizing unnecessary judicial intervention—enforcement remains a field plagued by challenges and procedural ambiguities.

In light of the increased business mix and the explosion of cross-border deals, arbitration is now accepted as the 'preferred method' for settling not only local but international commercial disputes. The Arbitration and Conciliation Act, 1996 ("Act"), which is based on the UNCITRAL Model Law was enacted with a view towards providing a sound legal framework for arbitration in India. Of particular relevance is the CRPL, which regulates both the institution and enforcement of arbitral awards; with the objective to offer parties neutrality, expediency and a final mechanism for resolution free from never-ending litigation.

Effective enforcement is nonetheless hampered by a complicated web of legislative, procedural, and systemic obstacles, as practice demonstrates. Prior to offering practical reform recommendations, this paper outlines such difficulties, bolstered by legislative frameworks, significant court rulings, and comparative analysis with international practice.

## Legislative and Institutional Framework Governing Enforcement

## The Arbitration and Conciliation Act, 1996

Domestic and international awards are governed by different sections of the Act. Section 34 outlines the grounds for setting aside domestic awards, while Section 36 deals with enforcement. Part I deals with domestic awards. Enforcement of foreign awards under the New York and Geneva Conventions is governed by Part II, specifically through Sections 44–52 of the New York Convention and Sections 53–60 of the Geneva Convention.

According to Section 36, domestic awards will be enforced as a civil court decision after the challenge time has passed or has been denied. Reiterating the Indian concepts of natural justice, incompetence, and—most importantly—contravention of public interest, Section 48 offers reasons for rejecting the enforcement of foreign awards.

## Judicial Approach and Key Reforms

In 2015, Section 36 underwent a significant revision that eliminated the automatic stay on enforcement just by submitting a Section 34 challenge. Instead, a separate application for a stay is now required.  This demonstrated an attempt to reduce stalling techniques and expedite the procedure.

However, the Supreme Court clarified in Sundaram Finance Ltd. v. Abdul Samad (2018) 3 SCC 622 that execution can be sought where the debtor has assets, not necessarily where the award was passed, resolving a conflict among High Courts caused by the Act's failure to always define jurisdiction for enforcement petitions.

## Core Challenges in Enforcing Arbitral Awards

## 1. The Public Policy Exception: Judicial Overreach and Uncertainty

When it comes to contesting and upholding arbitral rulings, the "public policy of India" exception takes centre stage. Although the phrase is essential for protecting fundamental legal principles, Indian courts have interpreted it broadly and occasionally inconsistently, which has undermined the certainty and finality of enforcement.

### Evolution through Case Laws

The Supreme Court took a restrictive stance in Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644, ruling that enforcement would only be denied if the award violated (i) the core principles of Indian law, (ii) Indian interests, or (iii) justice or morality. However, the Court expanded the scope in Oil & Natural Gas Corp. v. Saw Pipes Ltd., (2003) 5 SCC 705 (the "Saw Pipes case"), permitting challenges based on statutory infractions as being against public policy. This led to an increase in challenges and delays.

The Court then narrowed the public policy defense in Shri Lal Mahal Ltd. v. Progetto Grano SPA, (2014) 2 SCC 433, reaffirming Renusagar for foreign awards. This limited scope was defined in Explanation 1 to Section 48 of the 2015 Amendment Act, which emphasizes that enforcement may only be denied in cases where it violates core policy, fundamental moral or just principles, or Indian interests.

In an effort to bring Indian law into compliance with international norms, the Supreme Court reaffirmed in Vijay Karia v. Prysmian Cavi e Sistemi SRL, (2020) SCC OnLine SC 177 that foreign awards can only be denied enforcement on specific grounds. In Avitel Post Studioz v. HPEIF Holdings 1 Ltd. (2024 SCC Online SC 345), the Court emphasized the comprehensiveness of Section 48(2) grounds for contesting foreign awards and the need for limited involvement.

### Practical Impact

Public policy is nevertheless an often utilized, and often exploited, basis for challenge by award debtors in spite of these declarations, leading to lengthy litigation and unpredictable enforcement results.

## 2. Judicial Intervention and Prolonged Litigation

Even though the Act seeks to minimize judicial involvement, award debtors frequently use Sections 34 or 48 to disguise in-depth appeals as acceptable concerns. Under the pretence of public interest, courts occasionally re-examine the merits of disputes, which runs counter to arbitration's intended finality. This "appeal syndrome" results in several court cases.

### Illustrative Cases

The lengthy enforcement battles are exemplified by the case of Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. (2024 SCC Online SC 522). The award was challenged under Section 34, dismissed, set aside, and reinstated several times, resulting in a ten-year process before the Supreme Court finally made a decision. Other instances include the lengthy challenge chains seen in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. (2019) 20 SCC 1 and McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181, where the Supreme Court emphasized that only fundamental perversities, not alternative interpretations, warrant setting aside an award and cautioned against casual court interference.

## The Problem of No Fixed Timelines

There is currently no set timeframe for resolving Section 34/37 challenge applications or enforcement petitions, despite the fact that Section 29A established deadlines for the conclusion of arbitral proceedings. This allows for further delays as parties move through the appellate hierarchy, occasionally all the way to the Supreme Court...

## 3. The Issue of Arbitrator Bias and Impartiality

A persistent issue that impacts both the enforceability of verdicts and the fairness of procedures is arbitrator bias or perceived lack of impartiality. In response, the legislature added Schedules V and VII to the Act, which require disclosure and outline the conditions under which a person becomes ineligible. However, their impact is diminished by the narrow scope of interlocutory disputes and practical enforcement concerns.

## Perkins Eastman Architects DPC & Another v. HSCC (India) Ltd. (2019) 20 SCC 760

The Supreme Court reaffirmed impartiality as a crucial component of enforceable awards by ruling that parties with an interest in the result cannot unilaterally select arbitrators. Nevertheless, disclosures are still arbitrary, and sanctions for noncompliance are not strong enough.

## Implications

Awards that are biased or even suspected of being biased run the possibility of being revoked, which would lead to additional rounds of legal action and make enforcement more difficult both at home and when applying for recognition outside.

## 4. Procedural and Practical Obstacles

## Complex Appeals and Abuse of Process

A multi-tier appellate process is permitted under Sections 34 and 37 (for domestic awards) and 50 (for overseas awards). This undermines the goal of arbitration as a prompt remedy and leads to piecemeal litigation when paired with interim applications and counterclaims.

## Asset Identification and Attachment

Attaching debtor assets is necessary to enforce awards, but this process is sometimes greeted with opposition, hesitancy, and delay, especially when the assets are scattered, encumbered, or concealed.

## Judicial Discretion and Execution Delays

There is still a dearth of judicial specialty when it comes to processing arbitration-related cases, and generalist courts can lack the knowledge or motivation to speed enforcement. The Supreme Court ordered that execution petitions be resolved within six months in Rahul S.

Shah v. Jinendra Kumar Gandhi (2021) SCC Online SC 341, although there are few tools available to enforce these deadlines.

## 5. Enforcement of Emergency and Foreign Awards

## Emergency Arbitration Challenges

Emergency arbitrator awards were initially unclear under Indian law, particularly in the wake of the Amazon v. Future Retail case. Although the Supreme Court ultimately upheld their enforceability, application is nonetheless uneven and contingent on the facts.

## Cross-Border Enforcement

When the award debtor's assets are located abroad, the complexity increases since they must be recognized and enforced in several jurisdictions while navigating different public policy and procedural justice philosophies.

## Comparative Perspective: India and Global Best Practices

## India versus Global Arbitration Hubs

- Singapore and England: These jurisdictions are regarded as efficient due to their specialized commercial courts, clear statutory timetables, and low levels of court intervention.
- United States: Allows court review, but offers greater speed, predictability, and less intervention than India.
- India: Despite advancements, this country is seen as slow and unpredictable, mostly because of its generalist court handling, frequent use of public policy, and delays brought on by challenge disposal.

## Reforms and Judicial Trends: Towards a Pro-Enforcement Regime

## Legislative Efforts

- 2015 Amendment: Removed the automatic delay on filing Section 34 petitions and narrowed the public policy exception.
- Recommendations for reforms include requiring benches with expertise in arbitration, imposing actual costs on pointless challenges, and establishing set deadlines for challenge and enforcement applications.

## Noteworthy Judicial Decisions

- The Supreme Court limited the power of courts in reviewing arbitral awards in SsangYong Engineering & Construction v. NHAI, (2019) 15 SCC 131, and made it clear that a mistake in contract interpretation does not constitute grounds for setting aside an award.
- In the case of Avitel Post Studioz v. HPEIF Holdings 1 Ltd. (2024 SCC Online SC 345), the Court upheld the notion that Section 48 enforcement can be denied based solely on bias and extraordinary circumstances.

- As evidenced by Rahul S. Shah v. Jinendra Kumar Gandhi (2021) SCC Online SC 341, the Supreme Court has repeatedly insisted on prompt enforcement, indicating a rising judicial sensitivity to delays.
- Sundaram Finance Ltd. v. Abdul Samad (2018) 3 SCC 622 allowed execution where assets are located, resolving forum jurisdiction question.

## Recommendations

### Narrowing Judicial Discretion

- To discourage "appeal disguised as objection" and limit extensive review, amend Sections 34 and 48 further.
- Provide a consistent definition of public policy that is limited to the most basic legal precepts.

### Efficient Institutional Arbitration

- Encourage parties to choose institutional rules so they can take advantage of established protocols and deadlines.
- Higher courts with specialized arbitration benches could significantly speed up the process and create jurisprudential coherence.

### Promoting Arbitrator Independence

- Stress judicial respect for the selected procedure, with the exception of recorded cases of bias or violation of natural justice;
- Enhance disclosure regimes and implement sanctions for non-compliance under Schedules V and VII.

### Minimizing Delays and Abuse

- Impose heavy costs on non-meritorious challenges or frivolous delay tactics.
- Encourage alternative enforcement mechanisms, such as interim measures and bank guarantees, to protect creditor interests, especially during pendency of challenges.

### Cross-Border Coordination

- Foster bilateral and multilateral agreements for easier cross-border execution.
- Educate parties about asset tracing and enforcement strategies in anticipation of post-award resistance.

### Increase the Legal Infrastructure and Institutional Capacity

- Create a specialized arbitration bar with organized instruction, ongoing legal education for judges and advocates, and institutional ties to international arbitration fora.
- While strictly enforcing passed reforms on the ground, encourage frequent revisions to arbitration laws to stay up with business realities, economic shifts, and international jurisprudence.

## Conclusion

Enforcing arbitral rulings in India is a complex problem that affects access to justice, commercial certainty, and India's standing as a leading arbitration hub internationally. Fundamentally, the conflict is about the practical realities and interpretive ambiguities that still impede prompt and dependable enforcement, not the absence of a legal framework—India's Arbitration and Conciliation Act, 1996, is largely contemporary and compliant with international standards.

Despite decades of Supreme Court instruction supporting a restrictive reading, the broad and frequently unpredictable invocation of "public policy" continues to be a major barrier, enabling courts to strike aside or refuse enforcement on nebulous, expanding grounds. Although landmark rulings make it clear that public policy, particularly with regard to foreign awards, should adhere firmly to the core tenets of Indian law or justice, award debtors' frequent abuse of this defense feeds uncertainty and inefficiency. However, if arbitrator bias issues are not addressed or are only partially resolved, they run the risk of undermining arbitration's fundamental neutrality and creating additional avenues for challenge, which would further muddy enforcement results and undermine public trust in the procedure.

Procedurally, the path from obtaining an award to realizing its economic value can be long and arduous. Multiple rounds of litigation, including interim orders, appeals, and challenges under Sections 34 and 37, stretch disputes over years and dilute the finality arbitration promises. Asset tracing, attachment, and cross-border execution present additional difficulties, especially when award debtors actively resist through legal and tactical means or when assets are dispersed outside Indian jurisdiction.

Nonetheless, there is cause for optimism due to encouraging developments such as the reduction of public policy grounds, significant revisions brought about by the 2015 amendment, heightened judicial attention to timeline enforcement, and Supreme Court support for minimal involvement. To fully achieve the promise of arbitration in India as a prompt, dependable, and internationally regarded system, additional institutional and legislative reforms are required, such as increased arbitrator independence, specialized arbitration tribunals, and more stringent constraints on challenge and review.

In the end, India's appeal as a thriving arbitration destination will be cemented by standardizing domestic enforcement procedures, bringing them into line with international best practices, and unquestionably reducing abuse of process. This will also speed economic growth by increasing the guarantee of dispute settlement.

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