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## JUDICIAL INTERFERENCE UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT

Hina Katariya

The Arbitration and Conciliation Act 1996<sup>1</sup> was enacted to provide a speedy, flexible, resolution to domestic and international. Due to its comprehensive framework and minimal judicial interference, arbitration has emerged as one of the most preferred modes of dispute resolution. However section 34 of this act which deals with the challenges to arbitral awards, has always been a point of debate regarding to what extent courts can interfere in arbitral awards. This provision clearly defines what is the limit of the judicial review and arbitral autonomy which ensure effective dispute resolution with fairness and legality.

### UNDERSTANDING SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT

Section 34 of this act is based on the UNCITRAL<sup>2</sup> model law and provides the statutory framework for challenging an arbitral award before a competent court and sets out specific grounds upon which an award may be set aside.<sup>3</sup> The grounds under section 34 (2)(a) include incapacity of party, invalidity of arbitration agreement, lack of proper notice, impossibility of presenting case, matter beyond the scope of reference, irregularity in composition or procedure.<sup>4</sup>

Section 34 (2)(b) also empowers courts to set aside awards if subject matter is not arbitrable under the law or awards conflict with public policy.<sup>5</sup> The legislative intention with the amendment of act in 2015, to narrow the window of judicial review, ensures courts interference only in exceptional circumstances where fundamental fairness or legality is compromised.<sup>6</sup> This Act provides that an arbitral award can be challenged only under section 34, thereby maintaining the finality of arbitral awards.<sup>7</sup>

### THE PUBLIC POLICY CONUNDRUM: EXPENDING THE SCOPE OF INTERFERENCE

The broad interpretation of section 34 allowed the courts to set aside arbitral awards



on grounds of patent illegality or public policy ground; it often led to judicial interference in arbitral awards, which defeated the purpose of arbitration.<sup>8</sup> To address this legislature in 2015 initiated an amendment to narrow down the scope of 'public policy' under section 34 which led to limited court interference; such as fraud, corruption, violation of fundamental policy of Indian law, or conflict with morality and justice.<sup>9</sup> The amendment clarified that an award cannot be set aside merely because of incorrect application of law.<sup>10</sup>

### **JUDICIAL RESTRAINT AND EVOLVING JURISPRUDENCE**

The Supreme Court consistently emphasized minimal judicial interference in matters of arbitration.<sup>11</sup> Also clarified that section 34 does not provide appellate or re-examining power to courts on grounds of merits or factual findings.<sup>12</sup> Therefore the judiciary has adopted a narrower interpretation of "patent illegality". Holding that minor error of law or facts are not sufficient grounds to set aside awards unless it seriously affects the matter.<sup>13</sup>

### **CHALLENGE IN IMPLEMENTATION AND PERSISTENT ISSUES**

Despite the legislative amendments and judicial efforts to promote minimal interference, still several challenges remain, as in many cases lower courts continue to interfere in arbitral matters to ensure substantive justice. As well, different interpretations of fundamental policy of Indian law also led to uncertainty in arbitration matters.<sup>14</sup>

Another prominent issue is delay in proceeding under section 34, although the act clearly defines a time period of one year for proceedings. But many cases remain pending for several years in courts. It reduces the efficiency of the Arbitration Act.<sup>15</sup>

### **CONCLUSION**

Section 34 of the Arbitrations and Conciliation Act play an important role in maintaining fairness and legality in arbitration matters. At the same time excessive judiciary defeats the purpose of fast and speedy dispute resolution of this Act. However, the 2015 amendment and various judicial pronouncements have significantly minimized the judicial interference and promoted arbitral autonomy.<sup>16</sup>

Despite many practical challenges and years of pending cases we must approach with a balanced path, where court restraint in interference while also ensuring

arbitral awards do not violate core principles of public policy, legality and justice. This way we can ensure efficient, fast and speedy resolution of arbitral matters without interfering in autonomy of the Arbitration Act.

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<sup>1</sup> Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).

<sup>2</sup> UNCITRAL Model Law on International Commercial Arbitration, U.N. Comm'n on Int'l Trade Law, 40th Sess., U.N. Doc. A/40/17, Annex I (June 21, 1985).

<sup>3</sup> Arbitration and Conciliation Act § 34, No. 26 of 1996, INDIA CODE (1996).

<sup>4</sup> Arbitration and Conciliation Act § 34(2)(a), No. 26 of 1996, INDIA CODE (1996).

<sup>5</sup> Arbitration and Conciliation Act § 34(2)(b), No. 26 of 1996, INDIA CODE (1996).

<sup>6</sup> Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, INDIA CODE (2016).

<sup>7</sup> Arbitration and Conciliation Act § 34(1), No. 26 of 1996, INDIA CODE (1996).

<sup>8</sup> ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 (India).

<sup>9</sup> Arbitration and Conciliation Act § 34(2)(b)(ii), Explanation 1, No. 26 of 1996, INDIA CODE (as amended 2016).

<sup>10</sup> Arbitration and Conciliation Act § 34(2A), No. 26 of 1996, INDIA CODE (as amended 2016).

<sup>11</sup> Ssangyong Engg. & Constr. Co. v. NHAI, (2019) 15 SCC 131 (India).

<sup>12</sup> Associate Builders v. DDA, (2015) 3 SCC 49 (India).

<sup>13</sup> Delhi Airport Metro Express Pvt. Ltd. v. DMRC, (2022) 1 SCC 131 (India).

<sup>14</sup> Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 (India).

<sup>15</sup> Arbitration and Conciliation Act § 34(6), No. 26 of 1996, INDIA CODE (1996).

<sup>16</sup> Patel Engineering Ltd. v. North Eastern Electric Power Corp. Ltd., (2020) 7 SCC 167 (India).